State of Iowa

Iowa Administrative Code Supplement

Biweekly
August 25, 2010

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Acting Administrative Code Editor

Published by the
STATE OF IOWA
UNDER AUTHORITY OF IOWA CODE SECTION 17A.6

The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index or the Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515)281-3355 or (515)242-6873

Agriculture and Land Stewardship Department[21]

Replace Chapter 76

Capital Investment Board, Iowa[123]

Replace Analysis
Replace Chapters 3 and 4

Insurance Division[191]

Replace Chapter 70

Iowa Finance Authority[265]

Replace Chapter 3
Replace Chapter 29

Ethics and Campaign Disclosure Board, Iowa[351]

Replace Analysis
Replace Chapter 4
Replace Chapter 6
Replace Chapter 9

Racing and Gaming Commission[491]

Replace Analysis
Replace Chapter 5
Replace Chapters 11 and 12

Environmental Protection Commission[567]

Replace Chapter 135

Public Safety Department[661]

Replace Analysis
Replace Reserved Chapter 276 with Chapter 276

Regents Board[681]

Replace Chapter 1

Archaeologist[685]

Replace Analysis
Replace Chapters 1 and 2

Replace Chapter 4
Replace Chapters 6 to 8
Replace Chapters 10 to 12
Replace Chapter 14
Insert Chapter 15

CHAPTER 76
MEAT AND POULTRY INSPECTION
[Prior to 7/27/88 see Agriculture Department 30—Ch 43]

21—76.1(189A) Federal Wholesome Meat Act regulations adopted. Part 301 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2009, is hereby adopted in its entirety by reference; and in addition thereto, the following subsections shall be expanded to include:

1. Sec. 301.2(a) therein defining the term "Act" shall include the Iowa meat and poultry inspection Act, Iowa Code chapter 189A.
2. Sec. 301.2(b) therein defining the term "department" shall include the Iowa department of agriculture and land stewardship.
3. Sec. 301.2(c) therein defining the term "secretary" shall include the secretary of agriculture of the state of Iowa.
4. Sec. 301.2(e) therein defining the term "administrator" shall include the supervisor of the Iowa meat and poultry inspection service or any officer or employee of the Iowa department of agriculture and land stewardship.
5. Sec. 301.2(t) therein defining the term "commerce" shall include intrastate commerce in the state of Iowa.
6. Sec. 301.2(u) therein defining the term "United States" shall include the state of Iowa.

[**ARC 9012B**, IAB 8/25/10, effective 9/29/10]

21—76.2(189A) Federal Wholesome Meat Act regulations adopted. Part 303, Part 304, Part 305, Part 306, Parts 308 through 320, Part 329, Part 416, Part 417, Part 424, Part 430, Part 441 and Part 442 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2009, are hereby adopted in their entirety by reference. Part 307 except Sections 307.5 and 307.6 and Part 325 except Sections 325.3 and 325.12 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2009, are hereby adopted in their entirety by reference. Part 500 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2009, is adopted by reference, except that references in Sections 500.5, 500.6, 500.7, and 500.8 to the federal Uniform Rules of Practice are not adopted.

[**ARC 9012B**, IAB 8/25/10, effective 9/29/10]

21—76.3(189A) Federal Poultry Products Inspection Act regulations adopted. Part 381, Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2009, is hereby adopted in its entirety with the following exceptions: 381.96, 381.97, 381.99, 381.101, 381.102, 381.104, 381.105, 381.106, 381.107, 381.128, Subpart R, Subpart T, Subpart V, Subpart W; and in addition thereto, the following subsections shall be expanded to include:

1. Sec. 381.1(b)(2) therein defining the term "Act" shall include the Iowa meat and poultry inspection Act, Iowa Code chapter 189A.
2. Sec. 381.1(b)(3) therein defining the term "administrator" shall include the supervisor of the Iowa meat and poultry inspection service, or any officer or employee of the Iowa department of agriculture and land stewardship.
3. Sec. 381.1(b)(10) therein defining the term "commerce" shall include intrastate commerce in the state of Iowa.
4. Sec. 381.1(b) therein defining the term "department" shall include the Iowa department of agriculture and land stewardship.
5. Sec. 381.1(b)(47) therein defining the term "secretary" shall include the secretary of agriculture of the state of Iowa.
6. Sec. 381.1(b)(53) therein defining the term "United States" shall include the state of Iowa.

[**ARC 9012B**, IAB 8/25/10, effective 9/29/10]

These rules are intended to implement Iowa Code sections 189A.3 and 189A.7(8).

21—76.4(189A) Inspection required. Every establishment except as provided in Section 303.1(a), (b), (c) and (d) of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of

January 1, 2009, in which slaughter of livestock or poultry, or the preparation of livestock products or poultry products is maintained for transportation or sale in commerce, shall be subject to the inspection and other requirements of those parts of Title 9, Chapter III, Subchapter A, of the Code of Federal Regulations, revised as of January 1, 2009, enumerated in rules 21—76.1(189A), 21—76.2(189A) and 21—76.3(189A).

This rule is intended to implement Iowa Code sections 189A.4 and 189A.5.

[**ARC 9012B**, IAB 8/25/10, effective 9/29/10]

21—76.5(189A) Custom/exempt facilities sanitation standard operating procedures. Iowa inspected custom/exempt facilities shall develop and implement a sanitation standard operating procedure (SSOP) in a manner consistent with Section 416.12, Title 9, Chapter III, Code of Federal Regulations.

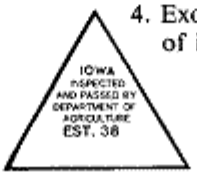
21—76.6(189A) Forms and marks. Whenever an official form is designated by federal regulation, the appropriate Iowa form will be substituted and whenever an official mark is designated, the following official Iowa marks will be substituted:

1. IOWA INSP'D AND CONDEMNED

2.

3. Exotic Carcass Brand

4. Exotic product label mark of inspection



This rule is intended to implement Iowa Code section 189A.5(2).

21—76.7(189A,167) Registration. Every person engaged in business in or for intrastate commerce as a broker, renderer, animal food manufacturer, or wholesaler or public warehouser of livestock or poultry products, or engaged in the business of buying, selling or transporting in intrastate commerce any dead, dying, disabled or diseased livestock or poultry or parts of the carcasses of such animals, including poultry, that died otherwise than by slaughter, shall register with the meat and poultry section, department

of agriculture and land stewardship, indicating the name and address of each place of business and all trade names.

This rule is intended to implement Iowa Code section 189A.7(7).

21—76.8(189A,167) Dead, dying, disabled or diseased animals. Persons shall not engage in the business of buying, selling, transporting in intrastate commerce, dead, dying, disabled or diseased animals, or any parts of the carcasses of any animal, unless they have been licensed for the purpose of disposing of the bodies of dead animals pursuant to Iowa Code section 167.2. All persons so engaged are subject to the provisions of Iowa Code chapter 167 and regulations of 21—Chapter 61, "Dead Animal Disposal," Iowa Administrative Code.

76.8(1) All rendering plants engaged in processing fallen or dead animals into pet food and pet food processing plants shall be inspected by the meat and poultry section in accordance with Iowa Code chapter 167 before registration is approved.

76.8(2) The plant shall engage the services of a licensed veterinarian, approved by the department, to inspect carcasses for the presence of communicable disease or harmful contamination or adulteration and evidence of decomposition. Any of these conditions shall be cause for the carcass to be condemned as unfit for processing into pet animal food.

All compensation for the veterinarian employed by the rendering plant and pet animal food processing plants processing inedible meat and carcass parts for pet food shall be paid by the plant.

76.8(3) Fallen or dead animals which are recovered and transported to the processing plant shall be immediately skinned and eviscerated, except the lungs, heart, kidneys and liver, which shall be left attached to the carcass, and the carcasses shall be stored in a chill room with attached viscera until inspected and approved by a veterinary inspector. The stomach or stomachs, together with the entire intestinal tract, shall be tagged immediately with serially numbered tags and stamped with the word "inedible." The word "inedible" shall be not less than one-half inch high. Condemned carcasses shall be deeply slashed on the round, rump, loin and shoulder, denatured with a ten percent solution of cresylic acid or other decharacterizing agent approved by the department of agriculture and land stewardship and removed to a rendering plant prior to the close of the working day.

76.8(4) The department shall inspect each place registered under Iowa Code chapter 189A or licensed under Iowa Code chapter 167 at least once a year, and as often as it deems necessary and shall see that the registrant conducts the business in conformity to both chapters and these rules.

76.8(5) Rendering plants and pet animal food processing plants may process fallen or dead animals into pet food where the animals are recovered and transported to a processing plant within a reasonable time following the death of an animal and before decomposition occurs.

76.8(6) Processing facilities, when located in or operated in conjunction with a rendering plant, shall be in a separate area equipped and used only for skinning, eviscerating, deboning, grinding, decharacterizing, packaging and labeling of inedible meat and carcass parts to be used in pet animal food. Rendering facilities approved by the department shall be available to process materials not suitable for pet animal food.

76.8(7) These rules shall also govern the collection, transportation and processing of other inedible material such as lungs, livers, hearts, spleens, poultry and poultry parts obtained from slaughterhouses, packing plants or other sources, to be used in the processing and manufacture of pet animal food.

This rule is intended to implement Iowa Code sections 189A.8, 167.5 and 167.14.

21—76.9(189A) Denaturing and identification of livestock or poultry products not intended for use as human food. No person shall buy, sell, transport, or offer for sale or transportation, or receive for transportation, in intrastate commerce any livestock products or poultry products which are not intended for use as human food unless they are denatured or otherwise identified.

76.9(1) All inedible meat and carcass parts shall be adequately decharacterized with charcoal or with other suitable agent acceptable to the Iowa department of agriculture and land stewardship. Inedible material shall be cut into pieces or chunks no more than four inches in any dimension. Following

decharacterization, inedible meat and carcass parts shall be packed in suitable containers approved by the department.

76.9(2) Decharacterizing shall be done to an extent acceptable to the department. Decharacterization shall be done in such a manner that each piece of material shall be decharacterized so as to preclude its being used for, or mistaken for, product for human consumption.

76.9(3) All containers for decharacterized inedible meat or carcass parts shall be plainly marked with the word "inedible" in letters no less than two inches high.

76.9(4) Decharacterized inedible meat and carcass parts shall be frozen or held at a temperature of 40°F or less in the processing plant or during transportation to the final processor.

This rule is intended to implement Iowa Code section 189A.8.

21—76.10(189A,167) Transportation of decharacterized inedible meat or carcass parts. No person engaged in the business of buying, selling or transporting in intrastate commerce, dead, dying, disabled or diseased animals, or any parts of the carcasses of any animals that died otherwise than by slaughter, or any other inedible product not intended for use as human food, shall buy, sell, transport, offer for sale or transportation or receive for transportation in such commerce, any dead, dying, disabled or diseased livestock or poultry or the products of any such animals that died otherwise than by slaughter, or any other inedible product not intended for use as human food, unless such transaction or transportation is made in accordance with Iowa Code chapters 167 and 189A and 21—Chapters 61 and 76.

76.10(1) All carcasses and other inedible material received for processing, and all decharacterized inedible material shipped from the plant, shall be transported and delivered in closed conveyances. The conveyance shall be constructed in such a manner as to prevent the spillage of liquids and material and in accordance with rules 21—61.15(167) and 61.16(167), Iowa Administrative Code.

76.10(2) Rendering plants and pet animal food processing plants outside the state of Iowa, from which decharacterized inedible meat or carcass parts are shipped into the state of Iowa, shall be certified by the proper public officials of the state of origin that the processing plants meet at least the minimum standards as set forth in these rules.

This rule is intended to implement Iowa Code sections 189A.8 and 167.15.

21—76.11(189A) Records. Records which fully and correctly disclose all transactions involved in their business shall be kept and retained for a period of no less than two years by the following classes of persons:

Any person that engages in intrastate commerce in the business of slaughtering any livestock or poultry, or preparing, freezing, packaging or labeling, buying or selling, transporting or storing any livestock or poultry products for human or animal food;

Any person that engages in intrastate commerce in business as a renderer or in the business of buying, selling or transporting any dead, dying, disabled or diseased carcasses of such animals or parts of carcasses of any such animals, including poultry, that died otherwise than by slaughter.

76.11(1) All such persons shall afford the secretary and authorized representatives access to such business and opportunity at all reasonable times to examine the facilities, inventory and records thereof, to copy the records and to take reasonable samples of the inventory, upon payment of the reasonable value therefor.

76.11(2) Records shall include the following:

a. The name and address of the owner, the approximate time of death of the animal and the date the animal was received for processing shall be recorded for all animals to be inspected for processing into pet animal food.

b. The number of cartons or containers and the approximate weight of other material received from slaughterhouses, packing plants and other sources to be used in the processing of pet animal food.

c. The number of cartons, packages or containers of processed inedible meat and carcass parts and the weight of each carton stored.

d. Date of shipment, number of containers or boxes, weight of each shipment and name and address of the consignee of all inedible and decharacterized material shipped from the plant.

This rule is intended to implement Iowa Code section 189A.4(7).

21—76.12(189,189A) Movement of meat products into the state. Rescinded IAB 2/26/97, effective 4/2/97.

21—76.13(189A) Voluntary inspections of exotic animals. Every person wishing to obtain voluntary inspection of exotic animals shall comply with the regulations adopted in this rule.

Part 352 of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2009, is hereby adopted in its entirety by reference.

This rule is intended to implement Iowa Code chapter 189A.

[**ARC 9012B**, IAB 8/25/10, effective 9/29/10]

21—76.14(189A) Federal Wholesome Meat Act regulations adopted for the regulation of farm deer.

1. All federal regulations adopted in 21—76.1(189A).
2. All federal regulations adopted in 21—76.2(189A), except Part 303 and Part 307.4(c) of Title 9, Chapter III, of the Code of Federal Regulations, revised as of January 1, 2009.

This rule is intended to implement Iowa Code chapters 170 and 189A.

[**ARC 9012B**, IAB 8/25/10, effective 9/29/10]

21—76.15(189A) Fees. Rescinded IAB 7/21/04, effective 7/2/04.

[Filed 7/12/66; amended 11/14/66, 9/26/67, 2/20/71, 4/20/72, 7/30/73]
[Filed 4/13/76, Notice 2/9/76—published 5/3/76, effective 6/7/76]
[Filed 6/29/76, Notice 5/17/76—published 7/12/76, effective 8/17/76]
[Filed without Notice 8/19/76—published 9/8/76, effective 10/13/76]
[Filed 2/15/83, Notice 1/5/83—published 3/2/83, effective 4/6/83]
[Filed 1/13/84, Notice 12/7/83—published 2/1/84, effective 3/7/84]
[Filed emergency 5/22/85—published 6/19/85, effective 5/22/85]
[Filed 7/25/85, Notice 6/19/85—published 8/14/85, effective 9/18/85]
[Filed emergency 7/8/88 after Notice 6/1/88—published 7/27/88, effective 7/8/88]
[Filed emergency 10/9/91—published 10/30/91, effective 10/9/91]
[Filed 11/8/91, Notice 9/18/91—published 11/27/91, effective 1/1/92]
[Filed 11/3/95, Notice 9/27/95—published 11/22/95, effective 12/27/95]
[Filed 2/7/97, Notice 12/4/96—published 2/26/97, effective 4/2/97]
[Filed 12/24/98, Notice 11/4/98—published 1/13/99, effective 2/17/99]
[Filed 3/30/01, Notice 1/24/01—published 4/18/01, effective 5/23/01]
[Filed emergency 9/5/03—published 10/1/03, effective 9/5/03]
[Filed 11/7/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]
[Filed emergency 7/2/04—published 7/21/04, effective 7/2/04]
[Filed 8/11/04, Notice 5/26/04—published 9/1/04, effective 10/6/04]
[Filed 10/2/08, Notice 8/13/08—published 10/22/08, effective 11/26/08]
[Filed ARC 9012B (Notice ARC 8842B, IAB 6/16/10), IAB 8/25/10, effective 9/29/10]

CAPITAL INVESTMENT BOARD, IOWA[123]

[Created by 2002 Iowa Acts, chapter 1005, section 3]

CHAPTER 1
IOWA CAPITAL INVESTMENT BOARD – ADMINISTRATION

1.1(15E) Mission of the board
1.2(15E) Membership of the board
1.3(15E) Powers of the board
1.4(15E) Correspondence and communications
1.5(15E) Meetings of the board
1.6(15E) Duties of the board

CHAPTER 2
TAX CREDIT FOR INVESTMENTS IN QUALIFYING BUSINESSES AND COMMUNITY-BASED SEED CAPITAL FUNDS

2.1(15E) Tax credit for investments in qualifying businesses and community-based seed capital funds
2.2(15E) Definitions
2.3(15E) Taxpayers eligible for the investment tax credit
2.4(15E) Application for the investment tax credit
2.5(15E) Verification of qualifying businesses and community-based seed capital funds
2.6(15E) Issuance and distribution of investment tax credits
2.7(15E) Claiming the tax credits
2.8(15E) Notification to the department of revenue
2.9(15E) Rescinding the tax credits
2.10(15E) Additional information

CHAPTER 3
TAX CREDIT FOR INVESTMENTS IN VENTURE CAPITAL FUNDS

3.1(15E) Tax credit for investments in venture capital funds
3.2(15E) Definitions
3.3(15E) Verification of venture capital funds
3.4(15E) Application for the investment tax credit
3.5(15E) Issuance and distribution of investment tax credits
3.6(15E) Claiming the tax credits
3.7(15E) Notification to the department of revenue
3.8(15E) Additional information
3.9(15E) Repeal of the tax credit

CHAPTER 4
INVESTMENT TAX CREDITS RELATING TO INVESTMENTS IN A FUND OF FUNDS ORGANIZED BY THE IOWA CAPITAL INVESTMENT CORPORATION

4.1(15E) Contingent tax credits relating to investments in Iowa fund of funds
4.2(15E) Definitions
4.3(15E) Report of the Iowa capital investment corporation
4.4(15E) Allocation and issuance of certificates
4.5(15E) Procedures for verification of tax credits
4.6(15E) Contractual nature of certificates; irrevocability of tax credits
4.7(15E) Transfer of tax credit certificates
4.8(15E) Cancellation of tax credits upon receipt of scheduled return
4.9(15E) Lost or mutilated tax credit certificates
4.10(15E) Claiming the tax credits

4.11(15E)	Notification to the department of revenue
4.12(15E)	Other provisions

CHAPTER 3
TAX CREDIT FOR INVESTMENTS IN VENTURE CAPITAL FUNDS

123—3.1(15E) Tax credit for investments in venture capital funds. For tax years beginning on or after January 1, 2002, a taxpayer may claim a tax credit against the taxpayer's tax liability for personal net income tax imposed under Iowa Code chapter 422, division II; business tax on corporations imposed under Iowa Code chapter 422, division III; taxation of financial institutions imposed under Iowa Code chapter 422, division V; insurance companies tax imposed under Iowa Code chapter 432; or taxation of credit unions imposed pursuant to 2007 Iowa Acts, Senate File 557, section 60, for a portion of a taxpayer's equity investment in a venture capital fund. Natural persons and various types of legal entities, including but not limited to corporations, limited liability companies, partnerships (both general and limited), trusts and estates, shall be eligible for the investment tax credit provided for an investment in a venture capital fund. If the taxpayer that is entitled to an investment tax credit for an investment in a venture capital fund is a pass-through entity electing to have its income taxed directly to its individual owners, such as a partnership, limited liability company, S corporation, estate or trust, the pass-through entity shall allocate the allowable credit to each of the individual owners of the entity on the basis of each owner's pro rata share of the earnings of the entity, and the individual owners may claim their respective credits on their individual income tax returns. A taxpayer shall not claim an investment tax credit for an investment in a venture capital fund if the taxpayer is a venture capital investment fund allocation manager for the Iowa fund of funds described in Iowa Code section 15E.65, an investor that receives a tax credit for the same investment in a community-based seed capital fund as described in Iowa Code section 15E.45, or an investor that receives a tax credit for the same investment in a qualifying business as described in Iowa Code section 15E.44 for investments made on or after January 1, 2004. The taxpayer's equity investment must be made in the form of cash to purchase equity in a venture capital fund.

123—3.2(15E) Definitions. The following definitions are applicable to this chapter:

"Board" means the Iowa capital investment board created under Iowa Code section 15E.63.

"Physical presence in Iowa" includes, but is not limited to, having an office or other business location in Iowa, or having employees or representatives present in Iowa on a regular and continuing basis.

"Venture capital fund" means a private seed and venture capital partnership or entity fund that has been certified by the Iowa capital investment board.

123—3.3(15E) Verification of venture capital funds. A venture capital fund shall provide to the board information as a prerequisite to the board's issuance of any investment tax credits to investors in such venture capital funds. The venture capital fund must provide this information within 120 days from the first date on which the equity investments qualifying for the investment tax credit have been made (or, for investments made during the 2002 calendar year, by the later of 120 days from the first date on which the investments have been made or March 31, 2003).

Application forms setting forth the information required to verify the eligibility of a venture capital fund may be obtained by contacting the Iowa capital investment board at the Iowa Department of Revenue, 1305 E. Walnut Street, Hoover State Office Building, Des Moines, Iowa 50319. The telephone number is (515)281-3204. Applications shall be submitted to the board in care of the department of revenue at the address identified above.

The information required by the board to verify an eligible venture capital fund is set forth below:

1. A copy of the fund's certificate of limited partnership, limited partnership agreement, articles of organization or operating agreement certified by the chief executive officer of the venture capital fund.

2. A signed statement, from an officer, director, manager, member or general partner of the fund, stating that the fund maintains a physical presence within Iowa.

3. A signed statement, from an officer, director, manager, member or general partner of the fund, stating that a commitment has been made by the fund to consider equity investments in businesses located within Iowa.

Upon the board's receipt of the information and documentation necessary to demonstrate satisfaction of the criteria set forth herein, the board shall, within a reasonable period of time, determine whether a certification will be issued for the venture capital fund. If the board certifies the venture capital fund, the board shall register the fund on a registry that shall be maintained by the board. The board shall use such registry to authorize the issuance of further investment tax credits to taxpayers who make equity investments in the venture capital funds registered with the board. The board shall issue written notification to the venture capital fund that such fund has been registered as a venture capital fund with the board for the purpose of issuing investment tax credits.

123—3.4(15E) Application for the investment tax credit. Upon verification and registration by the board of a venture capital fund, a taxpayer who desires to receive an investment tax credit for an equity investment in a venture capital fund must submit an application to the board for approval and provide such other information and documentation as may be requested by the board. Application forms for the investment tax credit may be obtained by contacting the Iowa capital investment board at the Iowa Department of Revenue, 1305 E. Walnut Street, Hoover State Office Building, Des Moines, Iowa 50319. Applications shall be submitted to the board in care of the department of revenue at the address identified above. Each application shall be date- and time-stamped by the department of revenue in the order in which such applications are received. Applications for the investment tax credit shall be accepted by the board until March 31 of the year following the calendar year in which the taxpayer's equity investment is made.

123—3.5(15E) Issuance and distribution of investment tax credits. Upon verification and registration by the board of a venture capital fund, the board shall issue a tax credit certificate to the applicant. The tax credit certificate shall be in a form approved by the board and shall contain the taxpayer's name, address, and tax identification number, the amount of credit, the name of the venture capital fund, the year in which the credit may be redeemed and any other information that may be required by the department of revenue. In addition, the tax credit certificate shall contain the following statement:

> The Iowa Capital Investment Board has not recommended or approved this investment or passed on the merits or risks of such investment. Investors should rely solely on their own investigation and analysis and seek investment, financial, legal and tax advice before making their own decision regarding investment in this enterprise.

A tax credit is equal to 6 percent of the taxpayer's equity investment in the venture capital fund. The aggregate amount of tax credits issued pursuant to this rule shall not exceed a total of $5 million. The applicants shall receive tax credit certificates on a first-come, first-served basis, until the amount of credits authorized for issuance has been exhausted.

123—3.6(15E) Claiming the tax credits. A taxpayer shall not claim the tax credit prior to the third tax year following the tax year in which the investment is made. An investment shall be deemed to have been made on the same date as the date of acquisition of the equity interest as determined by the Internal Revenue Code. A tax credit shall not be redeemed during any tax year beginning prior to January 1, 2005. A tax credit shall not be transferable to any other taxpayer. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer redeems the tax credit.

123—3.7(15E) Notification to the department of revenue. Upon the issuance and distribution of investment tax credits for each tax year, the board shall notify the department of revenue by providing copies of the tax credit certificates issued for such tax year to the department of revenue. Such notification shall also include, but not be limited to, the aggregate number and amount of tax credits issued for such tax year.

123—3.8(15E) Additional information. The board retains the authority to request additional information and documentation from the venture capital fund regarding the investments made by the venture capital fund in businesses located in Iowa.

123—3.9(15E) Repeal of the tax credit. The tax credit for investments in venture capital funds is repealed for investments made after July 1, 2010. Any tax credit certificates issued for investments made on or before July 1, 2010, are valid and can be claimed on tax returns beginning with the third tax year following the tax year the investment was made in accordance with rule 123—3.6(15E).
[**ARC 9030B**, IAB 8/25/10, effective 9/29/10]

These rules are intended to implement Iowa Code section 15E.51 as amended by 2010 Iowa Acts, Senate File 2380.

[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]
[Filed 8/28/03, Notice 7/23/03—published 9/17/03, effective 10/22/03]
[Filed 9/24/04, Notice 8/18/04—published 10/13/04, effective 11/17/04]
[Filed 10/7/05, Notice 8/31/05—published 10/26/05, effective 11/30/05]
[Filed 8/22/07, Notice 7/18/07—published 9/12/07, effective 10/17/07]
[Filed ARC 9030B (Notice ARC 8875B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 4
INVESTMENT TAX CREDITS RELATING TO INVESTMENTS IN A FUND OF FUNDS ORGANIZED BY THE IOWA CAPITAL INVESTMENT CORPORATION

123—4.1(15E) Contingent tax credits relating to investments in Iowa fund of funds. Contingent tax credits are available for designated investors in the Iowa fund of funds organized by the Iowa capital investment corporation in accordance with Iowa Code section 15E.65. Tax credit certificates related to the contingent tax credits will be issued by the Iowa capital investment board. If the tax credit certificates are redeemed, a taxpayer may claim a credit against the taxpayer's tax liability for personal net income tax imposed under Iowa Code chapter 422, division II; business tax on corporations imposed under Iowa Code chapter 422, division III; taxation of financial institutions imposed under Iowa Code chapter 422, division V; taxation of insurance companies imposed under Iowa Code chapter 432; or taxation of credit unions imposed under Iowa Code section 533.24.

123—4.2(15E) Definitions. The following definitions are applicable to this chapter:

"Act" means Iowa Code sections 15E.61 through 15E.69.

"Actual return" means the actual aggregate amount of moneys or the fair market value of property received from a fund of funds by a designated investor, with respect to an investment amount for which a certificate is issued, including amounts received as returns of invested capital or returns on invested capital and amounts received in excess of invested capital, in whatever form received for the period from the date of the closing to the date on which the certificate is redeemed.

"Board" means the Iowa capital investment board created under Iowa Code section 15E.63.

"Certificate" or *"tax credit certificate"* means a document constituting a contract between the state of Iowa and a holder and evidencing a tax credit that has been issued and, subject to the contingencies described on the certificate, that may become available to the holder.

"Certificate register" means the register to be maintained by the department recording the name, address, and taxpayer identification number of each holder and the maximum potential amount of the tax credits represented by each certificate issued to each holder.

"Closing" means a time when a certificate is issued to a designated investor in exchange for a commitment to contribute cash to the capital of a fund of funds.

"Commitment" or *"commits"* means either a binding obligation undertaken at a closing to invest in a fund of funds in the future or an actual investment made in a fund of funds, but without counting the same amount twice.

"Contingencies" shall mean the conditions under which a tax credit may be claimed and shall include each of the following:

1. The condition that the tax credits may only be used to the extent that the actual return on the investment amount associated with the certificate is less than the applicable scheduled return on such investment amount, and then only to the extent such tax credit becomes a verified tax credit;
2. The condition that the amount of the total verified tax credits represented by such certificate that first may be claimed during any redemption year will be limited to the amount verified by the board to the department;
3. The condition that no amount of the tax credit may be claimed prior to a maturity date stated on the certificate; and
4. The condition that receipt by the designated investor of an actual return on the investment amount associated with the certificate equal to the scheduled return on such investment amount will result in the cancellation of the tax credit certificate.

"Day" means any weekday Monday through Friday that is not a legal holiday in the state of Iowa.

"Department" means the Iowa department of revenue.

"Designated investor" means a natural person or an entity, other than the Iowa capital investment corporation or the revolving fund, that has committed to contribute capital to a fund of funds, and such person's or entity's successors and assignees.

"Fiscal year" means the fiscal year for the state of Iowa.

"Fund of funds" means any private, for-profit limited partnership or limited liability company established by the Iowa capital investment corporation to which a designated investor commits to make a capital contribution.

"Holder" means a holder of a tax credit certificate, either as a designated investor or as a transferee of a designated investor, as reflected on the certificate register.

"Investment amount" means the amount of cash contributed by a designated investor to a fund of funds with respect to which a certificate has been issued.

"Iowa capital investment corporation" means the private, nonprofit corporation created pursuant to Iowa Code section 15E.64.

"Maturity date" means a specific date or dates specified in a certificate, representing the earliest date on which a holder of the certificate may use it to satisfy tax liabilities.

"Percentage of return" means the percentage represented by the quotient of (1) the actual return for a designated investor on the investment amount associated with a certificate divided by (2) the scheduled return for such designated investor on such investment amount.

"Portfolio entity" means a venture capital fund or direct investment entity in which a fund of funds makes an investment.

"Redeem" means, with respect to a certificate, to present such certificate to the department as payment for tax liabilities due or to become due on or after the date of such presentation.

"Redemption year" means each calendar year for which verified tax credits associated with a certificate may first be utilized to reduce tax liabilities.

"Revolving fund" means the private, for-profit limited liability company established by the Iowa capital investment corporation as a revolving fund of funds pursuant to Iowa Code section 15E.65.

"Scheduled return" means the scheduled return, whether in money or property, (including returns of and returns on investment) with respect to an investment amount associated with a certificate issued to a designated investor in a fund of funds determined in accordance with the limited partnership agreement or the operating agreement of such fund of funds for the period from the date of the closing to the date on which the certificate is redeemed.

"Tax credit" means a contingent tax credit authorized pursuant to Iowa Code section 15E.66 that is available against tax liabilities up to the amount stated on the certificate for such tax credit.

"Tax liabilities" means those tax liabilities identified in rule 123—4.1(15E).

"Verified tax credits" means tax credits that have been verified by the board to the department and to the holder of the certificate that represents such tax credits.

123—4.3(15E) Report of the Iowa capital investment corporation. No less than ten days prior to each closing, the Iowa capital investment corporation shall deliver a written report to the board and to the department containing the following information:

1. A copy of the certificate of limited partnership or articles of organization of the fund of funds for which the closing is scheduled, certified by the Iowa secretary of state;
2. A summary of the terms of the anticipated investments in such fund of funds as contained in the limited partnership agreement or the operating agreement of the fund of funds; and
3. A statement of the anticipated date of the closing.

No less than two days prior to each closing, the Iowa capital investment corporation shall deliver to the board a signed statement of an officer of the Iowa capital investment corporation certifying the names, addresses and taxpayer identification numbers of the persons expected to be designated investors at the closing, the total amount of the capital commitments expected to be received at the closing, the maximum amount of tax credits to be represented by each certificate to be issued at the closing, the date of the anticipated closing, the maturity date or dates for each certificate to be issued at the closing, the contingencies applicable to the tax credits, and the calculation formula for determining the scheduled return.

123—4.4(15E) Allocation and issuance of certificates. Certificates shall be issued only by the board and only with respect to an actual capital commitment to a fund of funds.

Following receipt of the certification of the Iowa capital investment corporation pursuant to rule 123—4.3(15E), the board shall issue a certificate to each such designated investor at the closing. The maximum amount of tax credits represented by each certificate shall be calculated in accordance with the limited partnership agreement or operating agreement of the applicable fund of funds. The board shall not issue certificates if, in the aggregate, the maximum amount of tax credits represented by all issued and uncanceled certificates at any time would exceed $60 million (less the aggregate amount of any tax credits that have been used to reduce tax liabilities) calculated in accordance with Iowa Code section 15E.66.

A tax credit certificate shall contain, or incorporate by reference to another document, each of the following:

1. The name, address, and tax identification number of the holder;
2. The investment amount committed upon issuance of that certificate and (if applicable) the class of interests issued to the designated investor that has committed to make such investment amount;
3. All of the contingencies applicable to the tax credits;
4. The date of issue of the certificate;
5. The maximum amount of the tax credit represented by the certificate;
6. The maturity date or dates of the certificate;
7. The calculation formula for determining the scheduled return;
8. The calculation formula for determining the amount of the tax credit that may be used to reduce tax liabilities;
9. If the certificate is issued upon a transfer after verification in accordance with 123—4.5(15E), the amount of the verified tax credits represented by such certificate and the redemption year(s) for which they may be used to reduce tax liabilities; and
10. A statement that, although the certificate is not considered a security pursuant to Iowa Code chapter 502, the certificate constitutes a security as such term is defined in Iowa Code section 554.8102(1)*"o"* solely for purposes of the creation, perfection, priority and enforcement of security interests.

[**ARC 9030B**, IAB 8/25/10, effective 9/29/10]

123—4.5(15E) Procedures for verification of tax credits.

4.5(1) At any time after the applicable maturity date for a certificate, the holder may present such certificate to the Iowa capital investment corporation for certification. Within ten days after receipt of such certificate, the Iowa capital investment corporation shall certify to the board the percentage of return for the designated investor for such certificate. If the percentage of return is less than 100 percent, the Iowa capital investment corporation shall certify the resulting total amount of tax credits to be verified for use by the holder of such certificate in accordance with the terms of the limited partnership agreement or the operating agreement of the fund of funds. The Iowa capital investment corporation shall give notice of such percentage of return and such amount of tax credits to the holder of such certificate at the holder's address as it appears on the certificate register.

4.5(2) Within ten days after the certification of the Iowa capital investment corporation to the board of the percentage of return for a certificate, the board shall establish and verify the amount of tax credits related to that certificate, if any, that may be initially used in each redemption year so that no more than $20 million in tax credits, in the aggregate, may become useable to reduce tax liabilities in any fiscal year (provided that such $20 million limitation shall not limit the carryforward of tax credits otherwise authorized by the Act or these rules). Except to the extent specifically required by the $20 million annual limitation, all tax credits relating to a verified certificate shall be useable to satisfy tax liabilities beginning on the maturity date and ending at the expiration of the carryforward period specified in rule 123—4.10(15E).

4.5(3) The board shall issue to the holder of such certificate a verification setting forth (a) the amount of verified tax credits represented by such certificate (if any) and (b) the amount of verified tax credits represented by such certificate that may first become useable to reduce tax liabilities in any redemption year (if any).

4.5(4) If the verified certificate has more than one maturity date, the board shall issue to the holder a certificate for the verified tax credits. The verified certificate will contain no contingencies. The board shall issue one or more balance certificates for any maturity dates for which tax credits are not then being verified.

4.5(5) Certificates being verified for a maturity date shall be verified pro rata with all other certificates being verified for the same maturity date.

123—4.6(15E) Contractual nature of certificates; irrevocability of tax credits. Upon the issuance of a certificate, the entitlement of a holder to use the tax credits represented by the certificate shall be final and permanent, subject only to the contingencies expressly stated or incorporated by reference in the certificate, and such entitlement shall not be subject to any further condition, reduction, modification, amendment, change, revocation, or recapture.

The entitlement of a holder to claim tax credits represented by a certificate shall constitute a contract between the state of Iowa on the one hand and such holder and the holder's successors and assignees on the other hand which shall not be subject to modification, amendment, change or rescission without prior written consent of the holder as of the date of any such purported action. No such modification, amendment, change or rescission to which a holder may have agreed shall be binding upon any of the successors or assignees of such holder unless it is stated in the text of the certificate issued to such successor or assignee.

The entitlement of a holder to claim tax credits represented by such certificate shall not be affected in any way or become subject to forfeiture or recapture by:

1. Action or inaction of the holder or designated investor;
2. The transfer by the designated investor of all or any portion of the designated investor's interest in a fund of funds;
3. The determination after the closing that a fund of funds was not organized or did not make its investments in accordance with the requirements of the Act or these rules;
4. The invalidity or illegality for any reason of the existence or functions of the board, the revolving fund, a fund of funds or the Iowa capital investment corporation or the investments made by a fund of funds or one or more of the portfolio entities;
5. The bankruptcy, insolvency, reorganization, merger, consolidation, dissolution or liquidation of the board, the revolving fund, any fund of funds, the Iowa capital investment corporation or any portfolio entity for any reason; or
6. The level, timing, or degree of success of any fund of funds or any portfolio entities, or the extent to which venture capital funds that are portfolio entities are invested in Iowa venture capital projects, or are successful in accomplishing any economic development objective.

If the legal existence of the board, the revolving fund, a fund of funds, the Iowa capital investment corporation or the department is ended or some or all of its respective functions are transferred to another entity at any time prior to the full use of 100 percent of the tax credits that could potentially be represented by all of the certificates, the board or its successor (or the state of Iowa if the legal existence of the board ends or the board ceases to have the requisite authority and there is no successor with such authority) shall adopt such rules as may be necessary to ensure the continuity and effectiveness of the entitlement of each holder to use the tax credits represented by such holder's certificate.

Upon the closing, a certificate shall be binding on the board, the department, and the state of Iowa, and the tax credits represented thereby shall not be modified, terminated, or rescinded or subject to recapture.

123—4.7(15E) Transfer of tax credit certificates. Certificates shall be transferable by the holders and any subsequent holders to any transferee or transferees.

Transfer of a certificate may be effected only by the holder's surrender of the certificate to the board with an endorsement in favor of the transferee, or transferees, and a statement containing the name, address and tax identification number of the transferee, and a written request for the board to issue a replacement certificate or certificates in the name of the transferee(s) (as well as, in any case where the

transferor requests that more than one replacement certificate be issued, a statement by the transferor that sets forth the aggregate amount of tax credits represented by the transferred certificate that are to be represented by each replacement certificate).

Within ten days after the surrender and endorsement of a certificate, the board shall issue a replacement certificate or certificates in the name of the transferee(s). Once a transferor of a certificate has surrendered a certificate to the board, such transferor may no longer use the tax credits represented by such certificate.

A holder shall have the right to pledge and grant security interests in certificates and tax credits held by such holder as collateral for loans to or other obligations of such holder.

123—4.8(15E) Cancellation of tax credits upon receipt of scheduled return. Tax credits represented by a certificate are subject to cancellation only as provided in the certificate and upon receipt by the designated investor of an actual return equal to the designated investor's scheduled return with respect to such certificate. At the time of each distribution to a designated investor in a fund of funds, the Iowa capital investment corporation shall determine the amount of tax credits related to each certificate that have been canceled and have become null and void by reason of such distribution, if any, and shall certify such amount to the board. After any such certification, the board shall certify to the holder of each such certificate, at the holder's address as shown on the certificate register, and to the department the amount of tax credits that are deemed to have been canceled and to be null and void. If at any time prior to a verification of a certificate the actual return of a designated investor shall equal the designated investor's scheduled return with respect to such certificate, and all other conditions for cancellation contained in the certificate have been met, the Iowa capital investment corporation shall so certify to the board. After any such certification, the board shall certify to such holder at the holder's address as shown on the certificate register and to the department that such certificates shall be deemed to have been canceled and to be null and void. Tax credits that are canceled may be reissued with respect to the same or another fund of funds.

123—4.9(15E) Lost or mutilated tax credit certificates. Upon receipt of evidence satisfactory to the board of the loss, theft, destruction or mutilation of any certificate, and in case of any such loss, theft or destruction, upon delivery of any indemnity agreement satisfactory to the board, or in case of any such mutilation, upon surrender and cancellation of such certificate, the board shall issue and deliver to the holder a replacement certificate within ten days.

123—4.10(15E) Claiming the tax credits. The holder shall attach a copy of the verification or (if the applicable certificate has been transferred after the date of such verification) a copy of the certificate issued to such holder to any tax return in which verified tax credits are used to reduce tax liabilities. Verified tax credits may be carried forward by the holder for use in any of the seven calendar years following the initial redemption year. Verified tax credits may be used to make estimated tax payments insofar as the holder may take the amount of the tax credit into account in calculating the holder's estimated annual tax liability, thus reducing or eliminating the amount of estimated tax that would otherwise be payable. Verified tax credits not used after the expiration of such seven-calendar-year period shall be deemed to have been canceled and to be null and void and may be reissued in respect to the same or another fund of funds.

The following nonexclusive examples illustrate how this rule applies:

EXAMPLE 1: Holder X has redeemed Holder X's tax credit certificate and received verification from the board authorizing the use of the following amounts of tax credits to reduce tax liabilities in the indicated years: 2010: $700,000; 2011: $140,000; 2012: $70,000. Holder X has zero Iowa tax liability in 2010, $900,000 of tax liabilities in 2011 and $100,000 of tax liabilities in 2012. Holder X may carry forward the $700,000 in tax credits that were first useable in 2010. Holder X may use up to $840,000 of tax credits in 2011 and $70,000 in 2012.

EXAMPLE 2: Holder X has redeemed Holder X's tax credit certificate and received verification from the board authorizing the use of tax credits to reduce tax liabilities that are the same as in Example 1. Holder X has zero in Iowa taxable income in each of the years 2010 through 2014. Holder X may carry

forward the $700,000 of tax credits attributable to 2010 and use such tax credits in years 2015, 2016 and 2017 (i.e., up to seven tax years after 2010). To the extent that the $700,000 of tax credits attributable to 2010 is not used by 2017, Holder X may no longer use such tax credits. Holder X may carry forward the $140,000 of tax credits attributable to 2011 and use such tax credits in years 2015, 2016, 2017 and 2018 (i.e., up to seven tax years after 2011). To the extent that the $140,000 of tax credits attributable to 2011 is not used by 2018, Holder X may no longer use such tax credits. Holder X may carry forward the $70,000 of tax credits attributable to 2012 and use such tax credits in years 2015, 2016, 2017, 2018 and 2019 (i.e., up to seven tax years after 2012). To the extent that the $70,000 of tax credits attributable to 2012 is not used by 2019, Holder X may no longer use such tax credits.

EXAMPLE 3: Holder X has redeemed Holder X's tax credit certificate and received verification from the board authorizing the use of tax credits to reduce tax liabilities that are the same as in Example 1. In 2011, Holder X actually uses $840,000 of tax credits to reduce an equal amount of tax liabilities (reducing Holder X's tax liabilities in 2011 to zero). In 2014, as a result of an audit, Holder X's tax liabilities for 2011 are changed to $700,000. That adjustment creates $140,000 in tax credits that were not actually useable in 2011. Holder X may use this $140,000 of tax credits in years 2012 through 2018.

If a holder is a partnership (whether general, limited or limited liability), limited liability company that has not elected to be taxed as a corporation for federal income tax purposes, or a corporation for which a valid Iowa "S" election is in effect, and such holder has no tax liability because only the partners, members or shareholders of such holder are subject to the tax liabilities imposed by the state of Iowa and described in section 15E.62(6) of the Act, the holder may allocate the tax credits represented by the holder's certificate among the holder's partners, members or shareholders. Such allocation shall be made on the basis of the pro rata share of earnings from the partnership, limited liability company, or S corporation calculated in accordance with the organizational documents of the holder.

If a holder is an estate or trust, the tax credits represented by the holder's certificate shall be allocated to such estate or trust or to such other person to whom the income of such estate or trust is taxed in proportion to each such person's actuarial interest in such estate or trust.

123—4.11(15E) Notification to the department of revenue. Upon the issuance, distribution, redemption, or transfer of tax credit certificates, the board shall provide copies of the tax credit certificates or replacement certificates to the department of revenue.

123—4.12(15E) Other provisions. The department shall maintain the certificate register at its principal office. The certificate register shall be open to inspection by holders during the department's normal business hours. The department shall, upon request, issue confirmation as to the ownership of a certificate or entitlement to tax credits. The certificate registry is the conclusive record of holders and their entitlements to tax credits.

All notices, requests, and submissions required to be sent to the board shall be sent to the Iowa Capital Investment Board in care of the Iowa Department of Revenue, 1305 E. Walnut Street, Hoover State Office Building, Des Moines, Iowa 50319.

Each fund of funds shall principally make investments in venture capital funds managed by investment managers who have made a commitment to consider equity investments in businesses located within the state of Iowa and who have committed to maintain a physical presence within the state of Iowa. For purposes of this requirement, a physical presence in Iowa includes, but is not limited to, having an office or other business location in Iowa or having employees or representatives present in Iowa on a regular and continuing basis.

123—4.13(15E) Redemption date and priority of tax credits with respect to limited partnership interests in the Iowa fund of funds, Fund A. Rescinded IAB 4/13/05, effective 3/25/05.

123—4.14(15E) Scheduled return and tax credits represented by certificates issued with respect to Class C limited partnership interests in Fund A. Rescinded IAB 4/13/05, effective 3/25/05.

123—4.15(15E) Scheduled return and tax credits represented by certificates issued with respect to Class A limited partnership interests in the Iowa fund of funds, Fund A. Rescinded IAB 4/13/05, effective 3/25/05.

123—4.16(15E) Scheduled return and tax credits represented by certificates issued with respect to Class D limited partnership interests in Fund A. Rescinded IAB 4/13/05, effective 3/25/05.

These rules are intended to implement Iowa Code chapter 15E as amended by 2010 Iowa Acts, Senate File 2380.

[Filed emergency 7/3/03—published 7/23/03, effective 7/3/03]
[Filed 8/28/03, Notice 7/23/03—published 9/17/03, effective 10/22/03]
[Filed emergency 3/25/05—published 4/13/05, effective 3/25/05]
[Filed 5/18/05, Notice 4/13/05—published 6/8/05, effective 7/13/05]
[Filed ARC 9030B (Notice ARC 8875B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

MANAGED HEALTH CARE

CHAPTER 70
UTILIZATION REVIEW

191—70.1(505,514F) Purpose. The purpose of this chapter is to:

1. Promote the delivery of appropriate health care in a cost-effective manner.
2. Ensure that any utilization review system used by a third-party payor adheres to reasonable standards for conducting orderly and efficient utilization review processes.
3. Ensure that any utilization review system used by a third-party payor does not result in an unfair discrimination between enrollees of essentially the same class or risk in the benefits payable under a contract for health benefits.
4. Foster greater coordination and cooperation between health care providers and utilization reviewers.
5. Improve communications and knowledge of benefits among all parties concerned before expenses are incurred.

191—70.2(505,514F) Definitions. As used in this chapter, unless the context otherwise requires:

"Commissioner" means the commissioner of insurance.

"Enrollee" means an individual who has contracted for or who participates in health benefits coverage provided through any third-party payor.

"Third-party payor" means any of the following entities:

1. An insurer subject to Iowa Code chapter 509 or 514A.
2. A health service corporation subject to Iowa Code chapter 514.
3. A health maintenance organization subject to Iowa Code chapter 514B.
4. A preferred provider arrangement subject to 191—Chapter 27, Iowa Administrative Code.
5. A multiple employer welfare arrangement.
6. A third-party administrator.
7. A fraternal benefit society.
8. Any other benefit program providing payment, reimbursement, or indemnification for health care costs for an enrollee or an enrollee's eligible dependents.

"Utilization review" means a program or process by which an evaluation is made of the necessity, appropriateness and efficiency of the use of health care services, procedures, or facilities given or proposed to be given to an individual within this state. These standards do not apply to requests by any person or provider for a clarification, guarantee or statement of an individual's health insurance coverage or benefits provided under a health insurance policy, nor to claims adjudication. Unless it is specifically so stated, verification of benefits, preauthorization, and prospective or concurrent utilization review programs shall not be construed in any context as a guarantee or statement of insurance coverage or benefits for any individual under a health insurance policy.

191—70.3(505,514F) Application.

70.3(1) A third-party payor which provides health benefits to enrollees residing in the state of Iowa shall not conduct utilization review, either directly or indirectly, by contract with a third party that does not meet the requirements established for accreditation by the Utilization Review Accreditation Commission (URAC) or another national accreditation entity recognized and approved by the commissioner.

70.3(2) On or before March 1 of each year, a third-party payor conducting utilization review shall provide the commissioner with a certification that it is in compliance with this chapter, and shall continuously meet all requirements of the relevant standards in addition to the following information:

a. Name, address, telephone number and normal business hours of the third-party payor and of the utilization review agent if not the same as the third-party payor.

b. Name, address, and telephone number of a person for the commissioner to contact in connection with utilization review compliance.

Any material changes in the information filed in accordance with this rule shall be filed with the commissioner within 30 days of the change.

70.3(3) This chapter does not apply to any utilization review performed solely under contract with the federal government for review of patients eligible for services under:

a. Title XVIII (Medicare) of the federal Social Security Act;

b. The Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); or

c. Any other federal employee health benefit plan.

191—70.4(505,514F) Standards. For the purpose of certification and compliance under rule 70.3(505,514F), the most recently available utilization review standards adopted by URAC shall be used.

A copy of the standards and application for accreditation may be obtained from the Utilization Review Accreditation Commission, 1227 25th Street N.W., Suite 610, Washington, D.C. 20037. A copy of the standards shall be readily available and maintained on the premises of any third-party payor conducting utilization review.

191—70.5(505,514F) Retroactive application. A third-party payor shall not impose a retroactive change in procedure that creates an impossibility or impracticability of compliance that would result in a refusal of payment.

191—70.6(505,514F) Variances allowed. Upon application by a third-party payor, the commissioner may approve a variance from the URAC standards for good cause shown, provided such conditions are consistent with the purpose of this chapter. The commissioner shall require the third-party payor to provide reasonable written notice to providers of any approved variance.

70.6(1) Notification of allowed coverage and denials. Notification of the attending physician and treatment facility (as used and defined in the URAC standards) by telephone within one working day is not required provided a documented communication with the physician or the physician's staff and treatment facility is made within one working day of a determination not to certify an admission or extension of a hospital stay.

70.6(2) Individuals who are not licensed health care professionals, but who are otherwise qualified, may perform routine utilization review under the following conditions:

a. They have received full orientation by the utilization review organization relating to administrative practices and policies;

b. They have been fully trained in the application of the medical and/or benefit screening criteria established or endorsed by the utilization review organization;

c. They are trained to refer review requests to licensed health care professionals when the required review exceeds their own expertise, when not addressed in the criteria established or endorsed by the utilization review organization, or when requested by the provider; and

d. They are under the direct supervision of a licensed health care professional.

191—70.7(505,514F) Confidentiality. A third-party payor shall require a contract utilization review agent to adhere to the same standards of patient medical record confidentiality as are directly applicable to the third-party payor.

191—70.8(76GA,ch1202) Utilization review of postdelivery benefits and care. When performing utilization review of inpatient hospital services related to maternity and newborn care, including but not limited to length of postdelivery stay and postdelivery follow-up care, a third-party payor shall use the guidelines adopted under the provisions of 191—81.3(76GA,ch1202) and shall not deselect, require additional documentation, require additional utilization review, terminate services to, reduce payment to, or in any manner provide a disincentive to an attending physician solely on the basis that the attending physician provided or directed the provision of services in compliance with those guidelines. This does not preclude a third-party payor from monitoring a patient's stay or making

reasonable inquiries necessary to assess patient progress in accordance with the guidelines and to coordinate discharge planning or postdischarge care.

191—70.9(505,507B,514F) Enforcement. The remedy for noncompliance with this chapter shall be those remedies authorized by Iowa Code chapters 505 and 507B, including, upon order of the commissioner, payment of outstanding charges, as determined to be reasonable by the commissioner. Upon a finding of a pattern or practice of noncompliance with this chapter, the commissioner may also suspend a person's authority to conduct utilization review.

191—70.10(514F) Credentialing—retrospective payment.

70.10(1) *Purpose.* This rule implements Iowa Code section 514F.6 as amended by 2010 Iowa Acts, Senate File 2201, section 16, which provides for the retrospective payment of clean claims for covered services provided by a physician, advanced registered nurse practitioner or physician assistant during the credentialing period, once the physician, advanced registered nurse practitioner or physician assistant is credentialed.

70.10(2) *Definitions.* For purposes of this rule, the definitions found in Iowa Code section 514F.6 as amended by 2010 Iowa Acts, Senate File 2201, section 16, shall apply. In addition, the following definitions shall apply:

"Application date" means the date on which the health insurer or other entity responsible for the credentialing of health care professionals on behalf of the health insurer receives the health care professional's completed application for credentialing.

"Clean claim" means clean claim as defined in Iowa Code section 507B.4A(2)*"b."*

"Health care professional" means a physician, advanced registered nurse practitioner or physician assistant.

"Health insurer" means the same as a carrier, as defined in Iowa Code section 513B.2(4), that provides health insurance coverage, as defined in Iowa Code section 513B.2(12).

70.10(3) *Retrospective payment of clean claims.* A health insurer shall make retrospective payment for all clean claims submitted by a health care professional after the credentialing period for covered services provided by the health care professional during the credentialing period subject to all of the following:

a. The credentialing period shall begin on the application date and end on the date the health insurer or other entity responsible for credentialing health care professionals on behalf of the health insurer makes a final determination approving the health care professional's application to be credentialed.

b. The health insurer or other entity responsible for credentialing health care professionals on behalf of the health insurer shall notify an applicant of its determination regarding a properly completed application for credentialing within 90 days of receipt of an application containing all information required by the health insurer's credentialing form.

c. The health care professional shall not submit any claims to the health insurer during the credentialing period.

d. A health insurer shall not be required to pay any claims submitted by a health care professional during the credentialing period.

e. The health insurer's time period for timely submission of claims shall not start until the credentialing period has ended. The health insurer's rules pertaining to timely submission shall not be used to deny payment of any clean claims for medical services provided by a health care professional during the credentialing period, so long as the health care professional submits all such claims within the time period required by the health insurer's rules beginning on the date the health care professional is credentialed.

f. After the health care professional has been credentialed, the health care professional shall submit all claims to the health insurer for covered services provided by the health care professional during the credentialing period.

g. After the health care professional has been credentialed, a health insurer shall pay all clean claims submitted by the health care professional for covered services provided by the health care professional during the credentialing period within the time periods specified in 191—15.32(507B).

70.10(4) *Applicability.*

a. This rule shall not apply to services provided by a health care professional that are covered by Medicaid, Medicare, TRICARE, or other health care benefit programs subject to federal regulations regarding eligibility and provider payments.

b. Nothing contained in this rule shall require a health insurer or other entity responsible for credentialing health care professionals on behalf of the health insurer to take any action in violation of the requirements of the National Committee for Quality Assurance (NCQA) or Utilization Review Accreditation Commission (URAC).

c. Nothing contained in this rule shall require a health insurer or other entity responsible for credentialing health care professionals on behalf of the health insurer to credential a health care professional or to permit a noncredentialed health care professional to participate in the health insurer's provider network.

70.10(5) *Effective date.* This rule shall become effective on July 22, 2009.

[**ARC 7880B**, IAB 6/17/09, effective 7/22/09; **ARC 9038B**, IAB 8/25/10, effective 9/29/10]

These rules are intended to implement Iowa Code chapter 507B and sections 505.8, 514C.12, and 514F.2.

[Filed 4/10/92, Notice 2/5/92—published 4/29/92, effective 6/3/92]
[Filed 12/13/96, Notice 9/25/96—published 1/1/97, effective 2/5/97]
[Filed ARC 7880B (Notice ARC 7525B, IAB 1/28/09), IAB 6/17/09, effective 7/22/09]
[Filed ARC 9038B (Notice ARC 8884B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 3
MULTIFAMILY HOUSING

DIVISION I
MULTIFAMILY LOAN PROGRAM

265—3.1(16) Purpose. Through its multifamily loan program (program), the authority seeks to preserve the existing supply of affordable rental units at risk of being lost and to foster the production of new affordable rental units in the state.

265—3.2(16) Available funds. The authority anticipates that it will, from time to time, publicize the approximate amount of funds available under this program on the authority's Web site at www.iowafinanceauthority.gov.

265—3.3(16) Intent of the authority. It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this program, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of loans and grants under this program. It is the position of the authority that such discretion and flexibility are essential to structuring transactions that will work to foster affordable housing in the state in a manner that best serves the citizens of the state.

265—3.4(16) Application procedure. Applications for assistance under this program must be made on forms and in the manner provided by the authority. Inquiries with respect to this program should be made to those persons identified on the authority's Web site as contacts for this program. Once contacted with an inquiry, the authority will send an application package to the potential applicant. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve to foster affordable housing in the state.

265—3.5(16) Program guidelines. For-profit and nonprofit sponsors are eligible to apply for assistance under this program. There are three categories of loans under this program: preservation of affordable housing, low-income housing tax credits, and substantial rehabilitation of nonrestricted projects.

3.5(1) Projects eligible for assistance must meet the following criteria, in addition to any specific requirements applicable to a particular category of loan as set forth in rule 265—3.6(16), 265—3.7(16), 265—3.8(16), or 265—3.9(16), as applicable:

a. Both a demonstrated market need for the units must exist and the project must be in a good location, as determined by the authority in its sole discretion.

b. Assistance provided under this program must enable the project to maintain financial feasibility and affordability for at least the term of the assistance.

c. Maintenance and debt service reserve funds must be adequately funded, as determined by the authority in its sole discretion.

d. The maximum loan term is 24 months for construction financing and 40 years for permanent financing.

e. The required debt service is 1.25 to 1. Loan-to-value ratio will be considered. The authority may, in limited cases, change the required debt service ratio. Such decision will be made in the sole discretion of the authority.

f. Interest rates will be set by the authority, in its sole discretion.

g. Except as permitted in the case of loans made pursuant to rule 265—3.8(16), loans shall be secured by a first mortgage; provided, however, that in limited cases the authority may consider a subordinate mortgage when the first mortgage is held by another entity.

h. Construction financing may be awarded to projects under the program.

i. Borrowers must covenant to observe certain compliance measures, including a recorded agreement to ensure long-term affordability.

j. A title guaranty certificate from the authority's title guaranty division is required on all loans, unless specifically waived by the authority.

k. A local contributing effort in an amount of up to 1 percent of the proposed loan may be required by the authority, if feasible, for loans made under division I of this chapter. If a local contributing effort is required, evidence of such local contributing effort shall be presented to the authority.

l. The authority may require a change of management or general partner and may refer applicants to other financing options, such as tax-exempt bonds or tax credits, when appropriate.

m. FHA-insured loans may be available through the Multifamily Accelerated Processing (MAP) of HUD, if the authority is an approved MAP lender at the time of the loan closing. The authority may require or suggest such a MAP loan for any and all projects applying for assistance. In addition, the authority may participate in the HUD Risk-Sharing Program and may suggest or require such a loan for any and all projects applying for assistance.

n. Grant funds may be available, in the sole discretion of the authority, if the authority determines that such funds are necessary for the continued financial viability of the project.

o. Recipients must execute such documents and instruments, and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

3.5(2) Loan fees are as follows:

a. Commitment fee (construction period) - 1.0 percent of total development costs.

b. Commitment fee (permanent loan) - 2.0 percent of loan amount.

c. Inspection fee - 0.5 percent of loan amount.

d. Application fee - 0.3 percent of proposed loan amount.

The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

[**ARC 8078B**, IAB 8/26/09, effective 8/7/09; **ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

265—3.6(16) Multifamily loan program for preservation of affordable housing. Projects eligible for loans under this category must satisfy the following conditions, in addition to (or instead of, if there is a conflict) the requirements of rule 265—3.5(16):

1. Projects must have been developed using at least one of the following: low-income housing tax credits (LIHTC); state or local HOME funding; tax-exempt bonds; a HUD or USDA Rural Development program (i.e., Section 515); authority HAF funds; or funds of the former Iowa housing corporation (IHC).

2. Units must at a minimum be affordable to tenants with incomes at or below 80 percent of area median income (AMI), and, in most cases, must be affordable to tenants with incomes at or below 50 percent AMI. Mixed income projects will be considered.

3. Projects must have at least five units.

265—3.7(16) Multifamily loan program for low-income housing tax credits. Projects allocated either 4 percent or 9 percent tax credits that have not yet started construction or have not obtained permanent financing are eligible for loans under this category.

265—3.8(16) Multifamily loan program for workforce housing loan assistance. Projects eligible for loans under this category must satisfy the following conditions, in addition to (or instead of, if there is a conflict) the requirements of rule 265—3.5(16):

3.8(1) A loan made under this category (the "primary loan") shall be made to an Iowa city or county for the purpose of being reloaned by the borrower in order to provide financial assistance to an identified project to rehabilitate or create new rental workforce or affordable multifamily housing within the borrower's jurisdiction (the "secondary loan"). The authority may restrict the use of funds to a designated portion of the borrower's jurisdiction.

3.8(2) At least 50 percent of the housing units rehabilitated or created with the proceeds of the secondary loan shall be restricted to families whose annual income at the time of leasing is at or below 120 percent of the area median income, unless the authority agrees otherwise.

3.8(3) The primary loan may be unsecured, but it shall constitute a general obligation of the borrower.

3.8(4) Preference under this category shall be given to cities and counties that can document an increased need for housing as the result of new job creation within their jurisdiction.

3.8(5) The borrower shall use funds received in repayment of the secondary loan first to make the scheduled principal and interest payments on the primary loan. Any secondary loan payments remaining after all then-due scheduled payments on the primary loan have been repaid may be reloaned by the borrower on the same basis as if such secondary loan payment amounts were proceeds of the primary loan.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

265—3.9(16) Multifamily loan program for substantial rehabilitation of nonrestricted projects. Projects eligible for loans under this category must satisfy the following conditions, in addition to (or instead of, if there is a conflict) the requirements of rule 265—3.5(16):

1. Projects that currently have no affordability restrictions (e.g., Section 8 project based, USDA 515, LIHTC) are eligible for assistance.
2. Projects must need and sponsors must agree to complete rehabilitation of at least $6,000 per unit in hard construction costs.
3. Sponsors must agree that at least 40 percent of the units shall have rents at or below the applicable area FMR (fair market rents as determined by HUD).
4. Projects must have at least five units.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

265—3.10(16) Authority analysis of applications. Authority staff will analyze and underwrite each potential project, and will make recommendations for funding assistance to the board of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this program. In addition, the authority anticipates that because of the complex nature of each transaction, and the particular sets of circumstances attributable to each particular application/transaction, that the terms and conditions of loans will vary from project to project. The authority will make available its general operating procedures and guidelines for this program, as such may be revised from time to time.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

265—3.11(16) Discretion of authority board. The authority board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

265—3.12(16) Closing/advance of funds. If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and to, accordingly, not advance any funds for such project.

[**ARC 8789B**, IAB 6/2/10, effective 5/12/10; **ARC 9028B**, IAB 8/25/10, effective 9/29/10]

265—3.13 to **3.19** Reserved.

DIVISION II
PREDEVELOPMENT LOAN FUND

265—3.20(16) Purpose. Through its predevelopment loan fund (fund), the authority seeks to expand the ability of organizations to utilize the authority's multifamily loan program (program) by offering low-cost predevelopment loans for which reasonable financing through traditional lenders or other government financing is not readily available.

265—3.21(16) Available funds. The authority will publicize the approximate amount of funds available under this fund on the authority's Web site at www.iowafinanceauthority.gov.

265—3.22(16) Intent of the authority. It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this fund, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of loans under this fund.

265—3.23(16) Application procedure. Applications for assistance under this fund must be made on forms and in the manner provided by the authority. Inquiries with respect to this fund should be made to those persons identified on the authority's Web site as contacts for the program and the fund. Once contacted with an inquiry, the authority will send an application package to the potential applicant. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve to foster affordable housing in the state.

265—3.24(16) Fund guidelines. Any sponsor is eligible to apply for assistance from the fund relating to a specific project provided that the sponsor applies for a multifamily loan under the program for the same project.

3.24(1) Loans may be made to sponsors only with respect to projects that meet the criteria detailed in subrule 3.5(1).

3.24(2) The following types of activities and costs, to the extent approved by the authority, are eligible for assistance: architect services, engineering services, attorney's fees, accounting fees, environmental consultants and reports, finance and development consultants, tax credit consultants, market studies, survey fees, appraisal costs, and such other similar activities as may be determined by the authority from time to time to fall within the guidelines and purposes established for loans under the fund.

3.24(3) Assistance will be provided upon the following terms and conditions:

a. Generally, the minimum loan amount is $2,500, and the maximum loan amount is $25,000.

b. The loan will be due on the earlier of (1) 12 months from the date it is issued or (2) the closing of the authority's first mortgage loan for the project under the program. The authority may extend the loan term as it deems necessary.

c. Principal and interest payments will be due at loan maturity and may be paid from the proceeds of a loan under the program.

d. Interest rates will be set by the authority, in its sole discretion.

e. Recipients must execute such documents and instruments, and must provide such information, certificates and other items, as determined necessary by the authority, in its sole discretion, in connection with any assistance.

265—3.25(16) Authority analysis of applications. Authority staff will analyze each potential loan and will make recommendations for funding assistance to the board of directors of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this fund.

265—3.26(16) Discretion of authority board. The authority's board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

265—3.27(16) Closing/advance of funds. If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and to, accordingly, not advance any funds for such project.

265—3.28 to **3.30** Reserved.

DIVISION III
GAP FINANCING FUND

265—3.31(16) Purpose. Through its gap financing fund (gap fund), the authority seeks to expand the ability of organizations to utilize the authority's multifamily loan program (program) by offering low-cost gap loans for which reasonable financing through traditional lenders or other government financing is not readily available.

265—3.32(16) Intent of the authority. It is the authority's intent to allow maximum discretion and flexibility to be used by those applying for assistance under this gap fund, and to allow discretion and flexibility to be used by the authority in its analysis and awarding of loans under this gap fund.

265—3.33(16) Application procedure. Applications for assistance under this gap fund must be made on forms and in the manner provided by the authority. The authority will take such applications from time to time and will analyze and award loans to applicants on an ongoing basis. It is the position of the authority that such flexibility in taking and reviewing applications and making awards will best serve affordable housing in the state.

265—3.34(16) Fund guidelines. Any sponsor is eligible to apply for assistance from the gap fund relating to a specific project provided that the sponsor applies for a multifamily loan under the program for the same project.

3.34(1) Loans may be made to sponsors only with respect to projects that meet the criteria detailed in subrule 3.5(1).

3.34(2) The following types of activities and costs, to the extent approved by the authority, are eligible for assistance: acquisition costs, operating and replacement reserves, insurance, closing costs, and such other similar activities as may be determined by the authority to fall within the guidelines and purposes established for loans under the gap fund.

3.34(3) Assistance will be provided upon the following terms and conditions:

a. The maximum loan amount cannot exceed 50 percent of the authority's first mortgage loan and second mortgage loan, if any, under the program.

b. The loan term shall not exceed 40 years.

c. Principal and interest payments shall be due monthly.

d. Interest rates will be set by the authority, in its sole discretion, as close to market as the financial capacity of the project will allow.

e. Loans shall be secured by a subordinate mortgage.

f. Recipients must execute such documents and instruments, and must provide such information, certificates and other items as determined necessary by the authority, in its sole discretion, in connection with any assistance.

3.34(4) Loan fees are as follows:

a. Commitment fee - 1.0 percent of loan amount.

b. Origination fee - 2.0 percent of loan amount.

c. Inspection fee - 0.5 percent of loan amount.

d. Application fee - 0.3 percent of proposed loan amount.

The authority may, in limited cases, reduce such fees if necessary in connection with assistance provided under this program. Such decision will be made in the sole discretion of the authority.

265—3.35(16) Authority analysis of applications. Authority staff will analyze each potential loan and will make recommendations for funding assistance to the board of directors of the authority. Authority staff will use such procedures and processes in its underwriting and analysis as it deems necessary and appropriate in connection with furthering the purposes of this gap fund.

265—3.36(16) Discretion of authority board. The authority board of directors has the sole and final discretion to award or not award assistance and to approve final loan terms.

265—3.37(16) Closing/advance of funds. If all requirements of the authority are not met in accordance with any time frames set by the authority and to the complete satisfaction of the authority, all in the sole discretion of the authority, the authority may determine to cease work on an approved project and accordingly, not advance any funds for such project.

265—3.38 to **3.40** Reserved.

These rules are intended to implement Iowa Code sections 16.5(17), 16.18(1) and 16.18(2).

[Filed 10/11/02, Notice 8/7/02—published 10/30/02, effective 12/4/02]
[Filed 5/9/03, Notice 4/2/03—published 5/28/03, effective 7/2/03]
[Filed 10/8/04, Notice 9/1/04—published 10/27/04, effective 12/1/04]
[Filed 8/12/05, Notice 5/25/05—published 8/31/05, effective 10/5/05]
[Filed 11/4/05, Notice 9/28/05—published 11/23/05, effective 12/28/05]
[Filed Emergency ARC 8078B, IAB 8/26/09, effective 8/7/09]
[Filed Emergency ARC 8789B, IAB 6/2/10, effective 5/12/10]
[Filed ARC 9028B (Notice ARC 8790B, IAB 6/2/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 29
JUMP-START HOUSING ASSISTANCE PROGRAM

265—29.1(16) Purpose. This chapter defines and structures the jump-start housing assistance program to aid individuals whose homes, located in parts of Iowa declared by the President of the United States to be disaster areas, were destroyed or damaged by the natural disasters of 2008. Under the program, the authority may grant funds in accordance with this chapter to local government participants, including certain Iowa councils of governments, cities, and counties. The local government participants shall, in turn, loan funds to eligible residents under the conditions specified in this chapter to assist those eligible residents in purchasing homes generally comparable to those they lived in prior to the occurrence of the natural disasters of 2008, in repairing or rehabilitating disaster-affected homes, and in making mortgage payments and paying for other eligible property-carrying costs while the eligible residents await a property acquisition of their disaster-affected homes.

265—29.2(16) Definitions. For purposes of this chapter, the following definitions apply.

"Authority" means the Iowa finance authority.

"COG" means an Iowa council of governments as identified by Iowa Code chapter 28H.

"Disaster-affected home" means a primary residence that was destroyed or damaged by the natural disasters of 2008.

"Disaster compensation" means moneys received by an eligible resident as a result of damage caused to the eligible resident's disaster-affected home by the natural disasters of 2008 from any of the following sources: (1) FEMA, (2) any other governmental assistance, or (3) proceeds of any insurance policy. "Disaster compensation" shall not include rental assistance received from FEMA or other sources.

"Eligible energy-efficient home appliances and improvements" means energy-efficient furnaces, boilers, appliances, air conditioners, hot water heaters, windows, and insulation that meet standards set by the office of energy independence.

"Eligible property-carrying costs" means the following expenses associated with the ownership of a disaster-affected home: liability insurance premiums, flood insurance premiums, property tax payments, installment payments on a real estate purchase contract for the disaster-affected home provided that the real estate purchase contract was executed prior to the first date on which the disaster-affected home sustained damage as a result of the natural disasters of 2008, and special assessments.

"Eligible repair expenses" means the reasonable cost of repairing damage to a disaster-affected home necessitated by the natural disasters of 2008. "Eligible repair expenses" shall not include additions to or expansions of a disaster-affected home or the purchase or installation of luxury items that were not part of the disaster-affected home prior to the natural disasters of 2008.

"Eligible resident" means an individual or family who resided in a disaster-affected home at the time of the natural disasters of 2008 and who:

1. Is the owner of record of a right, title or interest in the disaster-affected home; and
2. Has been approved by FEMA for housing assistance as a result of the natural disasters of 2008.

In cases where multiple persons own a disaster-affected home together, such as by a tenancy in common or joint tenancy, such persons will generally be deemed collectively to be the "eligible resident," provided the requirements set forth above are met. In the event that multiple persons assert inconsistent claims as to who the owner of a disaster-affected home is, the local government participant shall review the facts and, if necessary, make an allocation among the various applicants.

"FEMA" means the Federal Emergency Management Agency.

"Forgivable loan" means a loan made to an eligible resident pursuant to the requirements of this chapter.

"Local government participant" means:

1. Any of the following Iowa cities: Ames, Cedar Falls, Cedar Rapids, Council Bluffs, Davenport, Des Moines, Dubuque, Iowa City, Waterloo, and West Des Moines;

2. Any COG whose territory encompasses one or more Iowa counties that have been declared by the President of the United States to be disaster areas; and

3. Any county that is not part of any Iowa council of governments and has been declared by the President of the United States to be a disaster area.

"Natural disasters of 2008" means the severe storms, tornadoes, and flooding that occurred in Iowa between May 25, 2008, and August 13, 2008, and designated by FEMA as FEMA-1763-DR.

"Program" means the jump-start housing assistance program described in this chapter.

"Retention agreement" means an agreement, to be recorded as a lien against the property for which assistance is provided, requiring that if an eligible resident sells a home that was purchased or repaired or for which a mortgage loan was paid with the assistance of a loan made under this chapter, then that portion of the original principal amount that has not been forgiven, if any, shall be repaid.

265—29.3(16) Grants to local government participants.

29.3(1) *Allocation criteria.*

a. Initial allocation, loans to local government participants. The authority shall make an initial allocation of the funds made available for the program to the local government participants pro rata based on the funds awarded by FEMA under its housing assistance program to each local government participant's jurisdiction as a percentage of the total amount of funds awarded as a result of the natural disasters of 2008. The authority shall enter into a grant agreement with each local government participant, pursuant to which the authority may disburse funds to the local government participant for the purposes described in this chapter. The grant agreement shall be prepared by the authority and may contain such terms and conditions, in addition to those specified in this chapter, as the executive director may deem to be necessary and convenient to the administration of the program and to the efficient and responsible use of the granted funds.

b. Funds made available pursuant to 2009 Iowa Acts, Senate File 376. The authority shall allocate program funds made available under 2009 Iowa Acts, Senate File 376, section 29, Disaster Damage Housing Assistance Grant Fund [creating Iowa Code section 16.186], by inviting local government participants to submit an application for funding. The authority shall award program funding made available under this paragraph based upon priority criteria to be specified in the application form including, but not limited to, the following:

(1) The applicant's demonstrated maximum use and leverage of other disaster recovery resources; and

(2) Provision of program assistance to the maximum number of potential eligible residents with priority given to eligible residents who:

1. Have not received any moneys under the program;

2. Are in need of an interim mortgage assistance extension meeting the conditions specified in subrule 29.5(2); and

3. Are not eligible for assistance under the requirements of other available disaster recovery assistance programs.

29.3(2) *Review of requests for assistance.* The local government participant shall accept and review each request for assistance and shall determine whether the requesting party is an eligible resident. If the requesting party is determined an eligible resident, the local government participant shall determine whether the funds are being requested for a use permitted under the program and the amount available to the eligible resident under the terms of the program.

29.3(3) *Coordination with the jump-start business assistance program.* For presidentially declared disaster areas outside a COG region, counties may elect to apply singly, join with other counties, or join with an adjacent COG region. Likewise, a city named in the definition of "local government participant" in rule 265—29.2(16) may join with a COG, county, or multicounty entity. To the extent local government participants act jointly or cooperatively in their participation in the small business disaster recovery financial assistance program administered by the Iowa department of economic development pursuant to 261—Chapter 78, Iowa Administrative Code, the authority may require the

local government participants to similarly act jointly or cooperatively in their participation under this chapter.

29.3(4) *Reallocation of unused funds.* Following one year, or following any three-month period during which a local government participant has requested no draws, the authority may reallocate all or part of any remaining portion of funds allocated to that local government participant to another local government participant with a demonstrated need for program funds.

29.3(5) *Administrative fees.* Each local government participant shall be entitled to receive an administrative fee equal to 5 percent of its initial disbursement, which shall consist of 30 percent of the local government participant's initial allocation. Subsequent thereto, each local government participant shall receive 5 percent of the funds loaned by the local government participant to eligible residents under the program from subsequent disbursements. The administrative fee shall be paid from the allocation made to each such local government participant by the authority pursuant to subrule 29.3(1).

29.3(6) *Proceeds of repayments.* All loan amounts repaid to a local government participant by an eligible resident pursuant to this chapter shall be returned to the authority's housing assistance fund created by Iowa Code Supplement section 16.40.

[**ARC 7899B**, IAB 7/1/09, effective 6/10/09; **ARC 8074B**, IAB 8/26/09, effective 9/30/09]

265—29.4 Reserved.

265—29.5(16) Eligible uses.

29.5(1) *Forgivable loans.* Local government participants may make forgivable loans, pursuant to the conditions set forth in rule 265—29.7(16), to eligible residents for the following eligible uses:

a. Down payment assistance. An eligible resident whose disaster-affected home was destroyed or damaged beyond reasonable repair may be provided down payment assistance for the purchase of replacement housing located within the local government participant's jurisdiction and, if necessary, for the cost of making reasonable repairs to the home being purchased to make it safe, decent, and habitable. The amount of down payment assistance available to an eligible resident shall generally not exceed 25 percent of the purchase price of the home being purchased and, in no event, shall the down payment assistance and any amount allowed for repairs collectively exceed $50,000.

(1) For purposes of calculating the amount of down payment assistance available to the eligible resident, the amount of the down payment assistance shall be reduced by the amount of any disaster compensation received by the eligible resident in excess of any amount necessary to pay off a mortgage or real estate purchase contract on the disaster-affected home.

(2) As a condition of receiving down payment assistance, the eligible resident shall agree that any disaster compensation received subsequent to the closing of the forgivable loan, if not applied toward repayment of a mortgage on the disaster-affected home, shall be used by the eligible resident to pay down the balance of the forgivable loan outstanding at the time the eligible resident receives such disaster compensation.

(3) Down payment assistance shall be allowed only for the purchase of a primary residence by means of a fully amortized mortgage loan from a regulated lender featuring a rate of interest that is fixed for at least 5 years and that has a term not to exceed 30 years.

(4) Eligible residents who receive down payment assistance under this subrule may also receive the assistance available under subrule 29.5(2), but not the assistance available under paragraph 29.5(1)*"b."*

(5) An eligible resident shall not use the assistance allowed under this subrule for the purchase of more than one home.

b. Housing repair or rehabilitation. An eligible resident whose disaster-affected home is not proposed, or located in an area proposed, by a municipality or county to the Iowa homeland security and emergency management division for property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or under any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008) may receive financial assistance to pay for eligible repair expenses up to an amount not to exceed the lesser of $50,000 or 60 percent of the latest available assessed value of the disaster-affected home, not including the assessed value of the land on

which it is situated, dated prior to the natural disasters of 2008; provided, however, that for application purposes under paragraph 29.3(1)*"b"* allocating program funds under 2009 Iowa Acts, Senate File 376, section 29, the local government participant may elect to establish its own measure of housing repair or rehabilitation financial feasibility in lieu of 60 percent of the latest available assessed value of the disaster-affected home, not including the assessed value of the land on which it is situated, dated prior to the natural disasters of 2008. The eligible resident shall establish the necessity and reasonable cost of the repairs or rehabilitation to the reasonable satisfaction of the local government participant.

(1) For purposes of calculating the amount of assistance available to the eligible resident pursuant to this paragraph, the cost of repairs to, or rehabilitation of, the disaster-affected home shall be reduced by the amount of any disaster compensation received.

(2) As a condition of receiving assistance pursuant to this paragraph, the eligible resident shall agree that any disaster compensation received subsequent to the closing of the forgivable loan shall be used by the eligible resident to pay down the balance of the forgivable loan outstanding at the time the eligible resident receives such disaster compensation.

(3) An eligible resident who receives assistance pursuant to this paragraph shall not be eligible for assistance under either paragraph 29.5(1)*"a"* or subrule 29.5(2).

29.5(2) *Interim mortgage assistance loans.* An eligible resident whose disaster-affected home is proposed, or is located in an area proposed, by a municipality or county to the Iowa homeland security and emergency management division for property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008) may receive financial assistance equivalent to an amount of up to $1,000 per month for the purpose of paying mortgage payments and other eligible property-carrying costs for the disaster-affected home for a period not to exceed 12 months. An eligible resident who receives assistance pursuant to this subrule shall not be eligible for assistance under paragraph 29.5(1)*"b."* If, however, it subsequently is determined by the Iowa homeland security and emergency management division that the disaster-affected home of the eligible resident will not be acquired under the hazard mitigation grant program, then the eligible resident shall be eligible for assistance under paragraph 29.5(1)*"b"* on the condition that the amount of assistance available under that paragraph shall be reduced by the amount of assistance received by the eligible resident under subrule 29.5(2). Financial assistance provided pursuant to this subrule shall be in the form of a forgivable loan.

a. Notwithstanding the foregoing, with the approval of the applicable local government participant, an eligible resident may receive financial assistance under this subrule for up to an additional 6 months (beyond the usual 12-month limit set forth above), provided that all of the following conditions are met:

(1) The eligible resident must reapply for or request an extension of financial assistance on forms to be provided by the applicable local government participant;

(2) The disaster-affected home for which an extension of financial assistance is sought must continue to be on the current hazard mitigation grant program (or comparable program) property acquisition list (i.e., it must continue to be proposed for buyout);

(3) The disaster-affected home for which an extension of financial assistance is sought must have been destroyed or damaged beyond reasonable repair such that the eligible resident is displaced from the home;

(4) The eligible resident must have contacted or must agree to contact the mortgage holder or an Iowa Mortgage Help counseling agency (Web site: www.iowamortgagehelp.com) to discuss the situation and, if possible, negotiate better terms.

b. Local government participants may fund extensions of financial assistance only from funds already allocated to their region. Local government participants shall give priority for extensions of financial assistance to those eligible residents who are supporting the costs of both the disaster-affected home and a new primary residence through a second mortgage payment or a rental payment.

29.5(3) *Energy efficiency assistance.* An eligible resident who receives either down payment assistance pursuant to paragraph 29.5(1)*"a"* or housing repair or rehabilitation assistance pursuant to

paragraph 29.5(1)*"b"* shall also be eligible to receive an additional loan amount, up to a maximum of $10,000, as reimbursement for the purchase and installation costs for eligible energy-efficient home appliances and improvements. Any amount allowed pursuant to this subrule shall be added to the principal balance of the forgivable loan. Amounts loaned pursuant to this subrule may be loaned either at the time the forgivable loan is first made or subsequent thereto within three months.

29.5(4) *Expenses incurred prior to September 19, 2008.* In the event an eligible resident purchased a home, made or caused to be made repairs to a disaster-affected home, or made mortgage payments (or paid for other eligible property-carrying costs) for a disaster-affected home located within the jurisdiction of a local government participant prior to September 19, 2008 (the effective date of this chapter), the eligible resident shall be eligible for reimbursement therefor under this chapter as though the purchase, repairs, or payments had taken place following September 19, 2008.

29.5(5) *Applications for assistance.* To apply for down payment assistance or down payment assistance plus interim mortgage assistance, the eligible resident shall apply to the local government participant in whose jurisdiction the home being purchased is located. To apply for assistance for repair or rehabilitation of a disaster-affected home, the eligible resident shall apply to the local government participant in whose jurisdiction the disaster-affected home is located. To apply for interim mortgage assistance only, the eligible resident shall apply to the local government participant in whose jurisdiction the disaster-affected home is located.

[**ARC 7842B**, IAB 6/17/09, effective 5/14/09; **ARC 7899B**, IAB 7/1/09, effective 6/10/09; **ARC 8074B**, IAB 8/26/09, effective 9/30/09; **ARC 8075B**, IAB 8/26/09, effective 9/30/09; **ARC 8907B**, IAB 6/30/10, effective 6/10/10; **ARC 9029B**, IAB 8/25/10, effective 9/29/10]

265—29.6(16) Loan terms. Loans made under the program shall, at a minimum, contain the following terms:

29.6(1) *Forgivability.* Forgivable loans made pursuant to the program shall be forgivable over a five-year period. One-fifth of the total principal amount loaned shall be forgiven following each full year the eligible resident owns the home for which the loan was made, beginning on the date of the final disbursement of forgivable loan proceeds.

29.6(2) *Zero percent interest.* Loans made pursuant to the program shall bear no interest.

29.6(3) *Five-year term.* All loans made pursuant to the program shall be for a term of five years.

29.6(4) *Repayment due upon sale of home.* Any principal of a forgivable loan that has not yet been forgiven at the time the home for which the forgivable loan was made is sold by the eligible resident (including property acquisitions) shall be due and payable upon such sale.

29.6(5) *Retention agreement.* Each loan made pursuant to this program shall be secured by a retention agreement which shall constitute a lien on the title of the real property for which the forgivable loan is made until such time as the forgivable loan has either been fully forgiven or paid in full; provided, however, that in the case of a property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or under any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008), payment of the following shall be waived:

a. That portion of the repayment due for a down payment assistance loan made under paragraph 29.5(1)*"a"* or an interim mortgage assistance loan made under subrule 29.5(2), provided that the amount so waived shall not exceed $25,000;

b. That portion of the repayment due for a housing repair or rehabilitation assistance loan made under paragraph 29.5(1)*"b"* for which the eligible resident provides documentation that the assistance was expended for the purpose for which it was awarded; and

c. That portion of the repayment due for an energy efficiency assistance loan made under subrule 29.5(3) for which the eligible resident provides documentation that the assistance was expended for the purpose for which it was awarded.

[**ARC 7842B**, IAB 6/17/09, effective 5/14/09; **ARC 8075B**, IAB 8/26/09, effective 9/30/09; **ARC 8323B**, IAB 12/2/09, effective 11/4/09; **ARC 8546B**, IAB 2/24/10, effective 3/31/10; **ARC 8907B**, IAB 6/30/10, effective 6/10/10; **ARC 9029B**, IAB 8/25/10, effective 9/29/10]

265—29.7(16) Financial assistance subject to availability of funding. All financial assistance authorized pursuant to this chapter shall be subject to funds being made available to the authority for the purposes set forth herein.

265—29.8(16) Funds allocated pursuant to 2009 Iowa Acts, House File 64, division I. Notwithstanding the foregoing, the following additional restrictions shall apply to loans made pursuant to program funding allocated under 2009 Iowa Acts, House File 64, division I:

29.8(1) *Income.* An eligible resident must have a family income equal to or less than 150 percent of the area median family income.

29.8(2) *Application deadline.* An eligible resident must submit an application for assistance by September 1, 2009.

29.8(3) *Priorities.* Forgivable loans awarded under this rule shall be awarded pursuant to the following priorities:

a. *First priority.* First priority shall be given to eligible residents who have not received any moneys under the program.

b. *Second priority.* Second priority shall be given to eligible residents who have received less than $24,999 under the program.

c. *Third priority.* Third priority shall be given to eligible residents who have received $24,999 under the program and who continue to have unmet needs for down payment assistance, emergency housing repair or rehabilitation, interim mortgage assistance, or energy efficiency assistance. An eligible resident shall not receive more than an additional $24,999 under this paragraph.

29.8(4) *Maximum assistance.* Except as provided in paragraph 29.8(3)*"c,"* an eligible resident who meets the area median family income requirement shall not receive more than $24,999 under the program.
[**ARC 7899B**, IAB 7/1/09, effective 6/10/09; **ARC 8074B**, IAB 8/26/09, effective 9/30/09]

These rules are intended to implement Iowa Code sections 16.5(1)*"r"* and 16.40, 2009 Iowa Acts, Senate File 376, section 29, and 2009 Iowa Acts, House File 64, division I.

[Filed emergency 9/19/08—published 10/8/08, effective 9/19/08]
[Filed emergency 10/1/08—published 10/22/08, effective 10/1/08]
[Filed Emergency ARC 7842B, IAB 6/17/09, effective 5/14/09]
[Filed Emergency ARC 7899B, IAB 7/1/09, effective 6/10/09]
[Filed ARC 8074B (Notice ARC 7900B, IAB 7/1/09), IAB 8/26/09, effective 9/30/09]
[Filed ARC 8075B (Notice ARC 7843B, IAB 6/17/09), IAB 8/26/09, effective 9/30/09]
[Filed Emergency ARC 8323B, IAB 12/2/09, effective 11/4/09]
[Filed ARC 8546B (Notice ARC 8324B, IAB 12/2/09), IAB 2/24/10, effective 3/31/10]
[Filed Emergency ARC 8907B, IAB 6/30/10, effective 6/10/10]
[Filed ARC 9029B (Notice ARC 8908B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Rules transferred from agency number [190] to [121] to conform with the reorganization numbering scheme in general, IAC Supp. 9/9/87.
Prior to 3/30/94, Campaign Finance Disclosure Commission [121]

CHAPTER 1
IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

1.1(68A,68B) General agency description
1.2(68B) Requirements for requesting board advisory opinions
1.3(68B) Processing of advisory opinion requests; routine administrative advice
1.4(68B) Board code of ethics

CHAPTER 2
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

2.1(22,68A,68B) Definitions
2.2(22,68A,68B) Statement of policy
2.3(22,68A,68B) Requests for access to records
2.4(22,68A,68B) Procedures for access to confidential records
2.5(22,68A,68B) Request for treatment of a record as a confidential record
2.6(22,68A,68B) Procedure by which a subject may have additions, dissents or objections entered into the record
2.7(22,68A,68B) Consent to disclosure by the subject of a confidential record
2.8(22,68A,68B) Notice to suppliers of information
2.9(22,68A,68B) Disclosure without the consent of the subject
2.10(22,68A,68B) Routine use
2.11(22,68A,68B) Consensual disclosure of confidential records
2.12(22,68A,68B) Release to subject
2.13(22,68A,68B) Availability of records
2.14(22,68A,68B) Personally identifiable information
2.15(22,68A,68B) Other groups of records
2.16(22,68A,68B) Data processing systems
2.17(22,68A,68B) Limitation of applicability
2.18(68B) Use of information prohibited

CHAPTER 3
IOWA ELECTION CAMPAIGN FUND

3.1(68A) Interpretation of checkoff markings
3.2(68A) Distribution of funds
3.3(68A) Director of revenue—monthly reports
3.4(68A) Funds—application and transfer
3.5(68A) Nonlegitimate Iowa election campaign fund expenses; documentation; return of funds
3.6(68A) Legitimate campaign expenses
3.7(68A) Loss of party status
3.8(68A) Filing of Iowa election campaign fund report

CHAPTER 4
CAMPAIGN DISCLOSURE PROCEDURES

DIVISION I
ORGANIZATIONAL REQUIREMENTS

4.1(68A,68B) Requirement to file statement of organization (DR-1)—persons subject to requirements; financial thresholds; where to file; when due
4.2(68A,68B) Information required: committee name
4.3(68A,68B) Information required: committee purpose; party affiliation
4.4(68A,68B) Information required: officers; committee information; signatures
4.5(68A,68B) Segregation and timely deposit of funds; information required: identification of financial institution, account name; notice to treasurer
4.6(68A,68B) Amendments to statement of organization; requirement for new statement of organization for new office sought

DIVISION II
REPORTING AND FINANCIAL TRANSACTION REQUIREMENTS

4.7(68A,68B) Disclosure reporting required; information on initial report; minimum filing if no activity
4.8(68A,68B) Disclosure reporting required—where reports filed
4.9(68A) Campaign disclosure report due dates
4.10(68A) Time of filing
4.11(68A) Voluntary registration—Form DR-SFA
4.12(68A,68B) Exception from reporting requirement—reports due within five days of one another
4.13(68A,68B) Report forms—summary page (DR-2) and supporting schedules
4.14(68A,68B) Schedule A - Monetary Receipts
4.15(68A,68B) Schedule B - Monetary Expenditures
4.16(68A,68B) Schedule D - Incurred Indebtedness
4.17(68A,68B) Schedule E - In-kind Contributions
4.18(68A,68B) Schedule F - Loans Received and Repaid
4.19(68A) Schedule G - Breakdown of Monetary Expenditures by Consultants
4.20(68A,68B) Schedule H - Campaign Property
4.21(68A) Reconciled bank statement required with January report and final report
4.22(68A,68B) Verification of reports; incomplete reports
4.23(68A,68B) Amendment—statements, disclosure reports and notices
4.24(68A) Reporting of state party building fund transactions
4.25(68A,68B) Legitimate expenditures of campaign funds
4.26(68A) Transfers between candidates
4.27(68A) Filing of independent expenditure statement
4.28(68A) Prohibition on contributions and independent expenditures by foreign nationals
4.29(68A,68B) Contributions by minors
4.30(68A,68B) Funds from unknown source prohibited; subsequent identification of source; notice to contributors
4.31(68A) Information required for a trust to avoid a contribution in the name of another person
4.32(68A) Contributions from political committees not organized in Iowa
4.33(68A) Reporting of earmarked contributions
4.34(68A) Copies of reports filed by 527 Committees
4.35(68A) Permanent organizations forming temporary political committees; one-time contributor filing Form DR-OTC
4.36(68A) Cash transactions
4.37(68A,68B) Record keeping

DIVISION III
POLITICAL MATERIAL—ATTRIBUTION STATEMENTS

4.38(68A)	Political attribution statement—contents
4.39(68A)	Specific items exempted from or subject to attribution statement requirement; multiple pages
4.40(68A,68B)	Newspaper or magazine
4.41(68A,68B)	Apparent violations; remedial action
4.42 and 4.43	Reserved

DIVISION IV
CORPORATE POLITICAL ACTIVITY

4.44(68A,68B)	Prohibited corporate activity
4.45(68A,68B)	Corporate-sponsored political committee
4.46	Reserved
4.47(68A,68B)	Permitted activity—reimbursement required
4.48(68A)	Sham newspapers subject to campaign laws
4.49(68A,68B)	Individual property
4.50	Reserved
4.51(68A)	Candidate debate—media organization; debate structure; debate funding; contribution reporting inapplicable
4.52(68A,68B)	Corporate involvement with political committee funds

DIVISION V
INDEPENDENT EXPENDITURES AND IN-KIND CONTRIBUTIONS

4.53(68A,68B)	Express advocacy; in-kind contributions; independent expenditures— definitions

DIVISION VI
COMMITTEE DISSOLUTION

4.54(68A)	Committee dissolution; disposition of property; resolution of loans or debts
4.55(68A)	Statement of dissolution; final report; final bank statement
4.56 and 4.57	Reserved

DIVISION VII
CIVIL PENALTIES FOR LATE REPORTS

4.58(68B)	Late-filed campaign disclosure reports
4.59(68B)	Routine civil penalty assessment for late-filed disclosure reports
4.60(68B)	Requests for waiver of penalties
4.61(68B)	Contested case challenge
4.62(68B)	Payment of penalty

CHAPTER 5
USE OF PUBLIC RESOURCES FOR A POLITICAL PURPOSE

5.1(68A)	Scope of chapter
5.2(68A)	Applicability
5.3(68A)	Definitions
5.4(68A)	Use of public resources for a political purpose prohibited
5.5(68A)	Exceptions from prohibition on use of public resources for a political purpose
5.6(68B)	Board advice
5.7(68B)	Complaints
5.8(68A)	Holders of certain government positions prohibited from engaging in political activities

CHAPTER 6
EXECUTIVE BRANCH ETHICS

DIVISION I
GENERAL PROVISIONS

6.1(68B) Scope of chapter
6.2(68B) Definitions
6.3(68B) Complaints or filing information alleging a violation
6.4(68B) Board advice

DIVISION II
CONFLICT OF INTEREST AND MISUSE OF PROPERTY

6.5 Reserved
6.6(68B) Dual executive branch compensation prohibited
6.7 Reserved
6.8(68B) Misuse of public property
6.9(68B) Use of confidential information

DIVISION III
SALES OR LEASES OF GOODS OR SERVICES

6.10(68B) Prohibition on sales; when public bids required—disclosure of income
6.11(68B) Sales or leases by regulatory agency officials or employees
6.12(68B) Sales or leases by members of the office of the governor

DIVISION IV
EMPLOYMENT RESTRICTIONS

6.13 Reserved
6.14(68B) Engaging in services against the interest of the state prohibited
6.15 Reserved

DIVISION V
GIFTS AND OFFERS

6.16 to 6.18 Reserved
6.19(68B) Prohibition on receipt of an honorarium
6.20(68B) Loans from executive branch lobbyists prohibited

CHAPTER 7
PERSONAL FINANCIAL DISCLOSURE

7.1(68B) Filing requirements and procedures
7.2(68B) Information disclosed on form
7.3(68B) Procedure for determining persons required to file with the board—distribution of forms
7.4 Reserved
7.5(68B) Penalties
7.6(68B) Requests for waiver of penalties
7.7(68B) Contested case challenge
7.8(68B) Payment of penalty
7.9(68B) Retention and availability of filed forms

CHAPTER 8
EXECUTIVE BRANCH LOBBYING

8.1(68B) Executive branch lobbying defined
8.2(68B) Executive branch lobbyist defined
8.3(68B) Individuals not considered executive branch lobbyists
8.4(68B) Executive branch lobbyist client defined
8.5(68B) Lobbyist compensation defined; contingency fee lobbying prohibited
8.6 Reserved

8.7(68B) Lobbyist registration required
8.8 Reserved
8.9(68B) Executive branch lobbyist client reporting
8.10(68B) Session function registrations and reports
8.11(68B) Penalties for delinquent reports
8.12(68B) Request for waiver of penalty
8.13(68B) Contested case proceeding
8.14(68B) Payment of penalty
8.15(68A) Campaign contributions by lobbyists during the regular legislative session prohibited
8.16(68B) Lobbyists prohibited from making loans
8.17(68B) Ban on certain lobbying activities by government personnel
8.18(68B) False communications prohibited
8.19(68B) Advisory opinions
8.20(68) Retention and availability of filed forms

CHAPTER 9
COMPLAINT, INVESTIGATION, AND RESOLUTION PROCEDURES
9.1(68B) Complaints
9.2(68B) Investigations—board action
9.3(68B) Grounds for disciplinary action
9.4(68B) Disciplinary remedies; administrative resolution of enforcement matters
9.5(68B) Settlements
9.6(68B) Whistle-blower protection
9.7(68B) Providing false information to the board during an investigation

CHAPTER 10
Reserved

CHAPTER 11
CONTESTED CASE PROCEDURES
11.1(17A,68B) Scope and applicability
11.2(17A,68B) Definitions
11.3(17A,68B) Time requirements
11.4(17A,68B) Requests for contested case proceeding
11.5(17A,68B) Notice of hearing
11.6(17A,68B) Waiver of procedures
11.7(17A,68B) Telephone proceedings
11.8(17A,68B) Disqualification; request for administrative law judge
11.9(17A,68B) Consolidation—severance
11.10(17A,68B) Pleadings
11.11(17A,68B) Service and filing of pleadings and other papers
11.12(17A,68B) Discovery
11.13(17A,68B) Subpoenas
11.14(17A,68B) Motions
11.15(17A,68B) Prehearing conference
11.16(17A,68B) Continuances
11.17(17A,68B) Withdrawals
11.18(17A,68B) Intervention
11.19(17A,68B) Hearing procedures
11.20(17A,68B) Evidence
11.21(17A,68B) Default
11.22(17A,68B) Ex parte communication

11.23(17A,68B) Recording costs
11.24(17A,68B) Interlocutory appeals
11.25(17A,68B) Final decision
11.26(17A,68B) Board review
11.27(17A,68B) Application for rehearing
11.28(17A,68B) Stay of agency actions
11.29(17A,68B) No factual dispute contested cases

CHAPTER 12
DECLARATORY ORDERS

12.1(17A,68B) Petition for declaratory order
12.2(17A,68B) Briefs
12.3(17A,68B) Notice of petition
12.4(17A,68B) Intervention
12.5(17A,68B) Inquiries
12.6(17A,68B) Board consideration
12.7(17A,68B) Action on petition
12.8(17A,68B) Refusal to issue order
12.9(17A,68B) Contents of declaratory order
12.10(17A,68B) Copies of orders
12.11(17A,68B) Effect of a declaratory order
12.12(17A,68B) Advisory opinion

CHAPTER 13
PETITIONS FOR RULE MAKING

13.1(68B) Petition for rule making
13.2(68B) Briefs
13.3(68B) Inquiries
13.4(68B) Board consideration

CHAPTER 14
BOARD PROCEDURE FOR RULE MAKING

14.1(17A) Applicability
14.2(17A) Advice on possible rules before notice of proposed rule adoption
14.3(17A) Public rule-making docket
14.4(17A) Notice of proposed rule making
14.5(17A) Public participation
14.6(17A) Regulatory analysis
14.7(17A,25B) Fiscal impact statement
14.8(17A) Time and manner of rule adoption
14.9(17A) Variance between adopted rule and published notice of proposed rule adoption
14.10(17A) Exemptions from public rule-making procedures
14.11(17A) Concise statement of reasons
14.12(17A) Contents, style, and form of rule
14.13(17A) Board rule-making record
14.14(17A) Filing of rules
14.15(17A) Effectiveness of rules prior to publication
14.16(17A) General statements of policy
14.17(17A) Review by board of rules

CHAPTER 15
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

15.1(17A) Definition
15.2(17A,68A,68B) Scope of chapter
15.3(17A,68A,68B) Applicability
15.4(17A) Criteria for waiver
15.5(17A,68A,68B) Filing of petition
15.6(17A) Content of petition
15.7(17A) Additional information
15.8(17A) Notice
15.9(17A) Hearing procedures
15.10(17A) Ruling
15.11(17A,22) Public availability
15.12(17A) Summary reports
15.13(17A) Cancellation of a waiver
15.14(17A,68A,68B) Violations
15.15(17A,68A,68B) Defense
15.16(17A) Appeals

CHAPTER 4
CAMPAIGN DISCLOSURE PROCEDURES

[Prior to 9/9/87, Campaign Finance Disclosure[190] Ch 4]
[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 4]

DIVISION I
ORGANIZATIONAL REQUIREMENTS

351—4.1(68A,68B) Requirement to file statement of organization (DR-1)—persons subject to requirements; financial thresholds; where to file; when due.

4.1(1) *Persons subject to requirement.* Every committee shall file a statement of organization (Form DR-1) within ten days from the date of its organization. The forms shall be either typewritten or printed legibly in black ink.

a. "Committee" defined. "Committee" includes the following:

(1) A "candidate's committee" that is the committee, even if the committee consists only of the candidate, designated by a candidate for a state or local office to receive contributions, make expenditures, or incur debts in excess of $750.

(2) A "political committee" (PAC) that is a committee exceeding the $750 organizational threshold to expressly advocate the nomination, election, or defeat of candidates or to expressly advocate the passage or defeat of a ballot issue. The board shall automatically classify as a political committee any political organization that loses its status as a political party because it fails to meet the requirements of Iowa Code section 43.2. The board shall automatically classify as a political committee any county central committee that operated under the former political party.

(3) A "state statutory political committee" (state party), "county statutory political party" (county central committee), or "city statutory political committee" (city central committee).

(4) A person that wishes to register a committee for purposes of using the short form "paid for by" attribution statement shall file Form DR-SFA pursuant to rule 351—4.11(68A).

b. When organization occurs; financial thresholds. At the latest, organization is construed to have occurred as of the date that the committee first exceeded $750 of financial activity in a calendar year in any of the following categories: contributions received (aggregate of monetary and in-kind contributions); expenditures made; or indebtedness incurred.

c. Permanent organizations temporarily engaging in political activity. The requirement to file the statement of organization applies to an entity that comes under the definition of a "political committee" (PAC) in Iowa Code Supplement section 68A.102(18) by receiving contributions, making expenditures, or incurring debts in excess of $750 in any one calendar year for the purpose of expressly advocating the election or defeat of a candidate for public office, or for the purpose of expressly advocating the passage or defeat of a ballot issue. A permanent organization that makes a one-time contribution in excess of $750 may in lieu of filing a statement of organization follow the procedure in rule 351—4.35(68A). A permanent organization that makes loans to a candidate or committee or that is owed debts from a candidate or committee is not deemed to be engaging in political activity requiring registration.

d. Independent expenditure committee. A person that is required to file campaign disclosure reports pursuant to 2009 Iowa Code Supplement section 68A.404(3)*"a"* as amended by 2010 Iowa Acts, Senate File 2354, section 3, due to the filing of an independent expenditure statement (Form Ind-Exp-O) shall be referred to as an "independent expenditure committee." An independent expenditure committee, or a sole individual making an independent expenditure by filing Form Ind-Exp-I, is not required to file a statement of organization.

4.1(2) *Place of filing.* Statements of organization mandated by statute to be filed electronically with the board shall be filed through the board's Web site at www.iowagov/ethics. A statement of organization not mandated by statute to be filed electronically may be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319; by fax at (515)281-4073; or as an E-mail attachment.

4.1(3) *Time of filing.* A statement of organization shall be filed with the board within ten days after the financial filing threshold in subrule 4.1(1) has been exceeded. A statement must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or

before the report due date. Faxed or electronically filed statements must be submitted on or before 11:59 p.m. of the tenth day after the organization of the committee is required. A committee that is mandated by statute to electronically file a statement of organization shall file the statement with the board on or before 4:30 p.m. on the due date. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

4.1(4) *Candidate defined.* For purposes of Iowa Code chapters 68A and 68B and the rules of the board, "candidate" means an individual who takes affirmative action to seek nomination or election to a state or local public office. For purposes of Iowa Code chapter 68A and any rules of the board on campaigning for public office, "candidate" includes any judge or judicial employee who is required by law to stand for retention. "Takes affirmative action" includes making a public announcement of intention to seek nomination or election, making any expenditure or accepting any contribution for nomination or election, distributing petitions for signatures for nomination, filing nomination papers or an affidavit of candidacy, or being nominated by any convention process set out by law.

4.1(5) *Ballot issue defined.* "Ballot issue" means a question that has been approved by a political subdivision or the general assembly to be placed before the voters or is otherwise required by law to be placed before the voters. "Ballot issue" does not include the nomination, election, or defeat of a candidate.

4.1(6) *Electronic format or electronic filing defined.* "Electronic format" or "electronic filing" means the board's electronic filing system for submitting a statement of organization via the board's Web site at www.iowa.gov/ethics.

This rule is intended to implement Iowa Code section 68A.201 and section 68A.401 as amended by 2009 Iowa Acts, Senate File 51, section 1.

[**ARC 7995B**, IAB 7/29/09, effective 9/2/09; **ARC 8290B**, IAB 11/18/09, effective 12/23/09; **ARC 8826B**, IAB 6/2/10, effective 5/17/10; **ARC 9031B**, IAB 8/25/10, effective 9/29/10]

351—4.2(68A,68B) Information required: committee name.

4.2(1) *Full name required.* The statement of organization shall include the full name of the committee. A committee using an abbreviation or acronym as part of the committee name shall provide with the statement of organization a written explanation of the full word or words that are abbreviated or that form the acronym.

4.2(2) *Duplication of name prohibited.* The committee name shall not duplicate the name of another committee organized under Iowa Code chapter 68A. The board shall determine whether two committee names are in duplication in violation of Iowa Code section 68A.201(2)*"a."* A committee duplicating the name of another organized committee shall choose a new committee name upon notification from the board. A candidate who files an amended statement of organization to reflect a change in office sought shall not be required to change the name of the candidate's committee unless the committee's name duplicates the name of another organized committee. A committee shall not duplicate the name of a dissolved committee for a period of ten years after the dissolved committee is certified as being dissolved except when the candidate for both committees is the same individual.

4.2(3) *Candidate's surname required in committee name.* A candidate filing a statement of organization on or after July 1, 1995, shall include the candidate's surname within the committee name. This requirement also applies to a new candidate's committee organized by a candidate who has a preexisting candidate's committee but who organizes a new candidate's committee or files an amended statement of organization.

This rule is intended to implement Iowa Code Supplement section 68A.201.

[**ARC 7646B**, IAB 3/25/09, effective 4/29/09]

351—4.3(68A,68B) Information required: committee purpose; party affiliation.

4.3(1) *Committee purpose.* An organized campaign committee shall identify the purpose of the committee on the statement of organization. The purpose shall be indicated in part by designating the committee as one of the following types of committees:

Type 1 - A candidate's committee for a statewide or legislative candidate or a judge standing for retention. This type of committee is referred to as a state candidate's committee.

Type 2 - A political committee that expressly advocates for or against candidates at the state level. This type of committee is referred to as a statewide PAC.

Type 3 - A state statutory political committee. This type of committee is referred to as a state party.

Type 4 - A county statutory political committee. This type of committee is referred to as a county central committee.

Type 5 - A candidate's committee for a candidate seeking county office. This type of committee is referred to as a county candidate's committee.

Type 6 - A candidate's committee for a candidate seeking city office. This type of committee is referred to as a city candidate's committee.

Type 7 - A candidate's committee for a candidate seeking school board or other political subdivision office except for a county or city office. This type of committee is referred to as a school board or other political subdivision candidate's committee.

Type 8 - A political committee that expressly advocates for or against candidates for county office. This type of committee is referred to as a county PAC.

Type 9 - A political committee that expressly advocates for or against candidates for city office. This type of committee is referred to as a city PAC.

Type 10 - A political committee that expressly advocates for or against candidates for school board or other political subdivision except for county or city candidates. This type of committee is referred to as a school board or other political subdivision PAC.

Type 11 - A political committee that expressly advocates for the passage or defeat of a ballot issue, franchise election, or referendum conducted for a county, city, school, or other political subdivision ballot question. This type of committee is referred to as a ballot issue committee. This type of committee also includes a political committee that expressly advocates for or against a statewide ballot issue (constitutional amendment) or a political committee that expressly advocates for or against ballot issue questions in multiple cities or counties.

4.3(2) *Party affiliation.* A candidate's committee is deemed to be established to expressly advocate the election of a candidate for public office. Each candidate's committee shall designate the political affiliation of the candidate. Any other committee shall designate that it is either established to expressly advocate the election or defeat of candidates or the passage or defeat of a ballot issue.

This rule is intended to implement Iowa Code Supplement section 68A.201.

[**ARC 8289B**, IAB 11/18/09, effective 12/23/09]

351—4.4(68A,68B) Information required: officers; committee information; signatures.

4.4(1) *Committee officers.* The committee shall disclose on the statement of organization the name, mailing address, telephone number, and office of each committee officer whom the committee is required by statute to appoint. Each candidate's committee shall appoint a treasurer who shall be an Iowa resident and at least 18 years of age. Every other committee shall appoint a separate treasurer and chairperson, each of whom shall be at least 18 years of age. The committee may appoint other officers not required by statute without restriction on residency or age, and the committee is not required to disclose these officers. Except for a candidate's committee, every committee shall either have an Iowa resident as treasurer or shall maintain all of the committee's funds in bank accounts in a financial institution in Iowa.

4.4(2) *Committee address and telephone number.* The address and telephone number of the candidate as indicated on the statement of organization shall be the official address and telephone number to be used for communication from the board to the candidate's committee. The address and telephone number of the committee chairperson as indicated on the statement of organization shall be the official address and telephone number to be used for communication from the board to every other committee except for a candidate's committee. If an electronic mail address has been provided on the statement of organization, communication from the board to a committee shall be sent by electronic mail.

4.4(3) *Signatures.* The candidate and treasurer shall sign the statement of organization filed by a candidate's committee. The chairperson and treasurer shall sign a statement of organization filed by any other type of committee. A statement of organization filed electronically using the board's Web site is deemed signed when filed.

This rule is intended to implement Iowa Code Supplement section 68A.201.

351—4.5(68A,68B) Segregation and timely deposit of funds; information required: identification of financial institution, account name; notice to treasurer.

4.5(1) *Segregation and deposit of funds.* All committee funds shall be maintained in a financial institution and shall be segregated from any other funds held by a candidate, officer, member, or associate of the committee. The committee treasurer shall deposit all contributions within seven days of receipt by the treasurer in an account maintained by the committee.

4.5(2) *Exception from segregation of committee funds.* A candidate's committee that receives contributions only from the candidate is not required to maintain a separate account. A permanent organization temporarily engaging in activity that qualifies it as a political committee that uses existing general operating funds and does not solicit or receive funds from other sources for campaign purposes is not required to maintain a separate account.

4.5(3) *Identification of financial institution and account.* The committee shall disclose on the committee's statement of organization the name and mailing address of all financial institutions in which committee funds are maintained. The committee shall also disclose the name and type of all accounts in which committee funds are maintained, and the name of any such account shall be the same as the committee name on the statement of organization.

4.5(4) *Notice to treasurer.* Any person who receives contributions for a committee shall render the contributions to the treasurer within 15 days of receipt and provide the committee treasurer with the reporting information required by Iowa Code Supplement section 68A.203(2).

This rule is intended to implement Iowa Code Supplement sections 68A.201 and 68A.203.

351—4.6(68A,68B) Amendments to statement of organization; requirement for new statement of organization for new office sought.

4.6(1) *Amendment within 30 days.* If there is a change in any of the information disclosed on a statement of organization, the committee shall file with the board an amended statement within 30 days of the change. An amended statement shall be filed with the board in a format as required by 2009 Iowa Code Supplement section 68A.401 as amended by 2010 Iowa Acts, Senate File 2128, section 3, and board rule 351—4.1(68A,68B).

4.6(2) *New office sought.* A candidate who filed a statement of organization for one office but eventually seeks another office may file an amended statement of organization to reflect the change in office sought in lieu of dissolving the old committee and organizing a new committee. A candidate filing an amended statement of organization for a new office shall continue to file the required campaign reports regardless of whether the $750 financial filing threshold for the new office has been exceeded. A candidate who has filed a statement of organization for one office and who then exceeds the financial activity threshold as set forth in Iowa Code section 68A.102(5) for a new office shall, within ten days of exceeding the threshold, file either an amended statement of organization disclosing information for the new office sought or organize and register a new committee.

This rule is intended to implement Iowa Code Supplement section 68A.201.

[**ARC 8787B**, IAB 6/2/10, effective 7/7/10]

DIVISION II
REPORTING AND FINANCIAL TRANSACTION REQUIREMENTS

351—4.7(68A,68B) Disclosure reporting required; information on initial report; minimum filing if no activity.

4.7(1) *Disclosure reporting required.* Every committee that has filed a statement of organization under Iowa Code section 68A.201 and rule 351—4.1(68A,68B), has exceeded the financial activity

threshold set out in Iowa Code section 68A.102(5) or (18) prior to the cutoff date for reporting campaign transactions, or has made an independent expenditure shall file a campaign disclosure report pursuant to Iowa Code section 68A.402. Form Ind-Exp-O shall serve as a campaign disclosure report for an independent expenditure committee. Form Ind-Exp-I shall serve as a campaign disclosure report for a sole individual making an independent expenditure.

4.7(2) *Information on initial report.* The first disclosure report filed by a committee shall include the relevant financial information covering the period from the beginning of the committee's financial activity through the end of the current reporting period.

4.7(3) *Funds available from prior committee.* If funds are available to a candidate's committee from a prior candidacy of that candidate, or to a ballot issue committee from a prior effort on a ballot issue, and the prior candidacy or effort had not exceeded the financial reporting threshold, the carryover balance shall be disclosed by the new committee. The disclosure shall be made on Schedule A - Contributions and shall include the amount of the carryover, the date of the prior election, and the name and address of any source that made contributions to the candidacy or ballot effort that totaled more than $750 during the preceding three calendar years.

4.7(4) *Funds available from preballot issue activity.* Funds that are raised for an activity that is not included in the definition of a ballot issue in Iowa Code Supplement section 68A.102(1) and that are made available to a subsequent ballot issue committee shall be disclosed by the committee. The disclosure shall be made on Schedule A - Contributions and shall include the amount of the carryover balance, the date of the preballot issue activity, and the name and address of any source that made contributions to the activity that totaled more than $750 during the previous three calendar years.

4.7(5) *No financial activity during reporting period.* A committee that did not have any financial activity during the relevant reporting period for which a disclosure report is due shall be required to file only Form DR-2. However, if the committee had previously disclosed debts or loans, those obligations shall again be disclosed on either Schedule D - Incurred Indebtedness or Schedule F - Loans Received and Repaid, as appropriate, and the schedule or schedules shall be included with Form DR-2. A candidate's committee that has reportable campaign property under Iowa Code Supplement section 68A.304 shall disclose the property on Schedule H - Campaign Property and the schedule shall be included with Form DR-2.

This rule is intended to implement Iowa Code Supplement section 68A.402.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.8(68A,68B) Disclosure reporting required—where reports filed.

4.8(1) *Place of filing.* Disclosure reports mandated by statute to be filed electronically with the board shall be filed through the board's Web site at www.iowagov/ethics. A disclosure report not mandated by statute to be filed electronically may be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319; by fax at (515)281-4073; or as an E-mail attachment.

4.8(2) *Reports made available.* The board shall post on its Web site at www.iowa.gov/ethics all statements and reports filed under Iowa Code chapter 68A.

4.8(3) *Records retention.* The board shall maintain and retain all statements and reports filed under Iowa Code chapter 68A under the applicable provisions of Iowa Code chapter 305.

4.8(4) *Electronic format or electronic filing defined.* "Electronic format" or "electronic filing" means the board's electronic filing system for submitting campaign disclosure reports via the board's Web site at www.iowa.gov/ethics.

This rule is intended to implement Iowa Code section 68A.401 as amended by 2009 Iowa Acts, Senate File 51, section 1, and section 68A.402 as amended by 2009 Iowa Acts, Senate File 49, section 4.

[**ARC 7995B**, IAB 7/29/09, effective 9/2/09; **ARC 9031B**, IAB 8/25/10, effective 9/29/10]

351—4.9(68A) Campaign disclosure report due dates.

4.9(1) *Statewide office, general assembly, judge standing for retention.* A candidate's committee of a candidate for statewide office or the general assembly or a judge standing for retention shall file campaign disclosure reports as follows:

a. *Election year.*

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 or Wednesday preceding primary election* through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 or Wednesday preceding general election* through December 31 of election year

b. Supplementary report.

Report due	Covering period
Friday preceding primary election*	May 15 through Tuesday preceding primary election*
Friday preceding general election*	October 15 through Tuesday preceding general election*

*If supplementary report required. See subrule 4.9(2).

c. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

d. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(1)"a."*

4.9(2) *Statewide office or general assembly—supplementary reports.* In addition to reports required under subrule 4.9(1), a supplementary report is required if contributions received during the period beginning on the date of initial financial activity, or the day after the period covered by the last report, as applicable, through the Tuesday preceding the primary or general election equal or exceed the following thresholds:

Office sought	Contribution threshold
Governor	$10,000 or more
Other statewide office	$5,000 or more
General assembly	$1,000 or more

4.9(3) *County candidate.* A candidate's committee of a candidate for county office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(3)"a."*

4.9(4) *City candidate.* A candidate's committee of a candidate for city office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before primary election	Date of initial activity through ten days before primary election
Five days before general election	Nine days before primary election through ten days before general election
Five days before runoff election*	Nine days before the general election through ten days before the runoff election
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

*If a runoff election is held.

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(4)"a."*

4.9(5) *School board or other political subdivision.* A candidate's committee of a candidate for school board or other political subdivision office, except for county office or city office, shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before election	Date of initial activity through ten days before election
January 19 (next calendar year)	Nine days before election through December 31

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

c. Special election.

Report due	Covering period
Five days preceding the election*	Date of initial activity through tenth day prior to the special election

This report is in addition to the election year reports required under paragraph 4.9(5)"a."*

4.9(6) *State statutory political committee (state political party).* A committee defined in Iowa Code Supplement section 68A.102(22)as a state statutory political committee shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(7) *County statutory political committee (county central committee).* A committee defined as a county statutory political committee in Iowa Code Supplement section 68A.102(12) shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(8) *State political committee (state PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for statewide office or the general assembly or a judge standing for retention shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
July 19	January 1 through June 30
January 19 (next calendar year)	July 1 through December 31

4.9(9) *County political committee (county PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for county office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
May 19	January 1 through May 14
July 19	May 15 through July 14
October 19	July 15 through October 14
January 19 (next calendar year)	October 15 through December 31 of election year

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(10) *City political committee (city PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for city office shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before primary election	Date of initial activity through ten days before primary election
Five days before general election	Nine days before primary election through ten days before general election
Five days before runoff election*	Nine days before the general election through ten days before runoff election
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

*If a runoff election is held.

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(11) *School board or other political subdivision political committee (school board or other local PAC).* A political committee expressly advocating the nomination, election, or defeat of candidates for school board or other political subdivision office, except for county office or city office, shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before election	Date of initial activity through ten days before election
January 19 (next calendar year)	Nine days before election through December 31

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(12) *Statewide or local ballot issue committee (ballot issue PAC).* A committee expressly advocating the passage or defeat of a statewide or local ballot issue shall file campaign disclosure reports as follows:

a. Election year.

Report due	Covering period
Five days before election	Date of initial activity or previous report through ten days before election
May 19	Date of initial activity or previous report through May 14
July 19	Date of initial activity or previous report through July 14
October 19	Date of initial activity or previous report through October 14
January 19 (next calendar year)	Cutoff date from previously filed report through December 31

b. Nonelection year.

Report due	Covering period
January 19 (next calendar year)	January 1 through December 31 of nonelection year

4.9(13) *Permanent organizations.* A permanent organization temporarily engaging in political activity as described in Iowa Code Supplement section 68A.102(18) shall organize a political committee and shall keep the funds relating to that political activity segregated from its operating funds. The committee shall file reports on the applicable due dates as required by this rule. The reports shall identify the source of the original funds used for a contribution made to a candidate or a candidate's committee. When the permanent organization ceases to be involved in the political activity, the permanent organization shall dissolve the political committee. "Permanent organization" means an organization that is continuing, stable, and enduring, and was originally organized for purposes other than engaging in election activities.

4.9(14) *Election year defined.* "Election year" means a year in which the name of the candidate or ballot issue appears on a ballot to be voted on by the electors of the state of Iowa. For state and county statutory political committees, "election year" means a year in which primary and general elections are held.

4.9(15) *Independent expenditure reporting.* An independent expenditure committee that is required to file campaign disclosure reports pursuant to 2009 Iowa Code Supplement section 68A.404(3) as amended by 2010 Iowa Acts, Senate File 2354, section 3, shall file an initial report at the same time as the committee files its original independent expenditure statement. The committee shall then continue to file reports according to the same schedule as the office or election to which the independent expenditure was directed until the committee files a notice of dissolution pursuant to Iowa Code section 68A.402B(3) as amended by 2010 Iowa Acts, Senate File 2354, section 2. Form Ind-Exp-O shall serve as a campaign disclosure report for an independent expenditure committee. Form Ind-Exp-I shall serve as a campaign disclosure report for a sole individual making an independent expenditure.

This rule is intended to implement Iowa Code section 68A.402.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.10(68A) Time of filing. A report must be physically received by the board or, if mailed, shall bear a United States Postal Service postmark dated on or before the report due date. Faxed, E-mailed, or electronically filed reports must be submitted on or before 11:59 p.m. of the report due date. However, as provided in Iowa Code section 68A.402 as amended by 2009 Iowa Acts, Senate File 49, section 4, any report that is required to be filed five days or less prior to an election must be physically received by the board prior to 4:30 p.m. on the report due date. A report that is mandated by statute to be electronically filed shall be filed with the board on or before 4:30 p.m. on the due date. If the due date falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date is extended to the first working day when the board office is open.

This rule is intended to implement Iowa Code section 68A.401(1) as amended by 2009 Iowa Acts, Senate File 51, and section 68A.402 as amended by 2009 Iowa Acts, Senate File 49, section 4.

[**ARC 8290B**, IAB 11/18/09, effective 12/23/09]

351—4.11(68A) Voluntary registration—Form DR-SFA.

4.11(1) *Persons voluntarily registering a committee.* A person that has not exceeded the $750 financial filing threshold may file Form DR-SFA for purposes of using the short form "paid for by"

attribution statement under Iowa Code section 68A.405 and rule 351—4.38(68A). A person using the short form "paid for by" attribution statement shall file Form DR-SFA with the board prior to distributing the political material containing the short form "paid for by" attribution statement.

4.11(2) *$750 threshold later exceeded.* A person filing Form DR-SFA shall not be required to file a statement of organization or be required to file disclosure reports unless the $750 threshold is later exceeded. A person that later exceeds the $750 threshold and that fails to timely file a statement of organization or to timely file disclosure reports may be subject to the appropriate board sanctions as set out by statute and board rule.

4.11(3) *Subsequent elections.* A person that filed Form DR-SFA for one election and then becomes involved in a subsequent election and wants to voluntarily register a committee shall file either a new Form DR-SFA or file an amended Form DR-SFA, which provides information concerning the new election.

This rule is intended to implement Iowa Code sections 68A.201 and 68A.405.

[**ARC 7994B**, IAB 7/29/09, effective 9/2/09]

351—4.12(68A,68B) Exception from reporting requirement—reports due within five days of one another. When two disclosure reports are due from the same committee within five days of each other, the activity may be combined into one report. A committee choosing this option shall file a report on or before the second due date that covers the extended reporting period.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.13(68A,68B) Report forms—summary page (DR-2) and supporting schedules. The board may require committees to submit relevant information not specifically delineated in Iowa Code Supplement chapter 68A on their disclosure report where the report form asks for and leaves space for information. All information shall be pertinent to the duties of the board.

4.13(1) *Official reporting forms.* The disclosure reporting forms provided by the board shall be the official forms on which the disclosure reports shall be submitted. Machine copies of original report forms are acceptable. The standard forms for campaign disclosure reports are:

DR-2 — Disclosure Summary Page
Schedule A — Monetary Receipts
Schedule B — Monetary Expenditures
Schedule C — (Reserved)
Schedule D — Incurred Indebtedness
Schedule E — In-kind Contributions
Schedule F — Loans Received and Repaid
Schedule G — Consultant Activity
Schedule H — Campaign Property

4.13(2) *Computer-generated reports.* Committees that are not mandated by statute to file disclosure reports electronically may generate a disclosure report in lieu of using a board-approved paper report or the board's electronic filing system so long as the generated report contains the same information and is in the same basic format as a board-approved paper report. A committee failing to submit a generated report that contains the same information and is in the same basic format as a board-approved paper report shall be required by the board's staff to file an amended report, and the committee may be subject to board sanctions as provided in Iowa Code chapter 68B and rule 351—9.4(68B).

4.13(3) *Typewritten or legible ink reports required.* Information provided on all forms, statements, and reports that are required to be filed under Iowa Code chapter 68A or the board's rules in 351—Chapter 4 and that are not mandated by statute to be filed electronically shall be either typewritten or printed legibly in black ink. Approved computer-generated documents satisfy this requirement. If the board deems that a form, statement, or report is not legible or is otherwise not in compliance with rule 351—4.13(68A,68B), the person shall be required to file an amended form, statement, or report and the person may be subject to board sanctions as provided in Iowa Code chapter 68B and rule 351—9.4(68B).

4.13(4) *Special information required for city, school, or local ballot issue elections.* Committees expressly advocating the election or defeat of a candidate for city or school public office, or expressly advocating the passage or defeat of a local ballot issue, shall indicate in the designated spaces on the report summary page the date that the election is to be held, the period covered by the disclosure report, and the control county responsible for conducting the election.

4.13(5) *Signature on DR-2 Report Summary Page.* A disclosure report shall be signed by the individual filing the report. A disclosure report filed electronically using the board's Web site is deemed signed when filed.

4.13(6) *Independent expenditure disclosures.* An independent expenditure committee that is required to file campaign reports pursuant to 2009 Iowa Code Supplement section 68A.404(3) as amended by 2010 Iowa Acts, Senate File 2354, section 3, shall disclose campaign transaction information as required by Iowa Code section 68A.402A. However, the committee is required to disclose only those monetary receipts as provided in 2009 Iowa Code Supplement section 68A.404(3)*"a"*(2) as amended by 2010 Iowa Acts, Senate File 2354, section 3. Form Ind-Exp-O shall serve as a campaign disclosure report for an independent expenditure committee. Form Ind-Exp-I shall serve as a campaign disclosure report for a sole individual making an independent expenditure.

This rule is intended to implement Iowa Code Supplement sections 68A.402 and 68A.403.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10; **ARC 9031B**, IAB 8/25/10, effective 9/29/10]

351—4.14(68A,68B) Schedule A - Monetary Receipts.

4.14(1) *Reporting of all monetary receipts; chronological listing.* The committee shall report the amounts of all monetary receipts which are accepted by the committee during the reporting period. If a contribution is returned to a contributor prior to the end of the reporting period and is not deposited into the committee's bank account, the contribution is deemed to have been rejected and shall not be reported. A contribution which is physically received and either deposited into the committee's account or not returned by the end of the reporting period is deemed to have been accepted. The schedule entries shall be listed in chronological order by the date on which the contribution is received.

4.14(2) *Date of contribution—date received.* The schedule shall include the complete date (month/day/year) that the contribution was physically received by a person on behalf of the committee. If the contribution is by check, the date of the contribution to be reported is the date the check is physically received by a person on behalf of the committee, even if this date is different from the date shown on the check. For contributions received by mail, the date of the contribution to be reported shall be the date that the recipient physically opens the envelope.

4.14(3) *Name and address of contributor; joint accounts.* The schedule shall include the name and address of each person who has made one or more contributions of money to the committee if the aggregate amount of contributions (either monetary or in-kind) received from that person in the calendar year exceeds $25, except that the itemization threshold is $200 for a state statutory political committee and $50 for a county statutory political committee. In the case of a contribution by check, the contributor name on the disclosure report shall be the name shown as the account name on the account, except that if the check is on a joint account, the contribution shall be presumed to be from the person who signs the check. If the committee chooses to itemize contributions that are less than the required itemization threshold, it may do so, but shall either do so for all contributions or none of the contributions under the threshold.

4.14(4) *Unitemized contributions and freewill donations.* If the committee does not choose to itemize all contributions under the itemization threshold ($25 for most committees, see Iowa Code Supplement section 68A.402(3)*"b"*), it shall aggregate these contributions and report the aggregate amount as "unitemized contributions." No date received is required to be provided for miscellaneous unitemized contributions. Unitemized contributions may be solicited and received through a freewill donation such as a "fish bowl" or "pass the hat" collection if the collection is in compliance with rule 351—4.30(68A,68B). Unitemized contributions collected through freewill donations (the net amount of the collection after the itemization of those persons whose contributions of more than $10 in the freewill collection resulted in exceeding the annual itemization threshold) shall be reported by showing

the net amount as "unitemized contributions—pass the hat (or can collection or fish bowl, for example) collection." The "date received" to be reported for a freewill donation is the date a representative of the committee takes possession of the proceeds of the collection.

4.14(5) *Relationship to candidate.* In the case of contributions to candidates' committees, the schedule shall include information indicating whether the contributor is related to the candidate within the third degree of consanguinity or affinity. "Consanguinity" means a relative through descent from common ancestors (by blood). "Affinity" means a relative through a current marriage. A husband has the same relation, by affinity, to his wife's blood relatives as she has to them by consanguinity and vice versa. "Degree of kinship" is determined by counting upward from one of the persons in question to the nearest common ancestor, and then down to the other person, calling it one degree for each generation in the ascending as well as the descending line. Under this rule, a woman's sister is related to her by consanguinity in the second degree. The sister is thus related to the woman's husband by affinity in the second degree. Other examples of relationships within the third degree between a contributor and a candidate would be the following: children and stepchildren (first degree); siblings and half-siblings (second degree); grandparents (second degree); grandchildren (second degree); aunts and uncles (third degree); nieces and nephews (third degree); great-grandparents (third degree) and great-grandchildren (third degree), all irrespective of whether the blood relationship is to the candidate or to the candidate's spouse.

4.14(6) *ID number and check number.* If a contribution to a statewide or general assembly candidate or a judge standing for retention is from a statewide political committee (PAC) or a state party committee, the candidate receiving the contribution shall include on the candidate's disclosure report the board-assigned identification number of the contributing committee and the check number by which the contribution was made. A list of ID numbers may be obtained from the board and is also available on the board's Web site at www.iowa.gov/ethics.

4.14(7) *Fund-raiser income.* Contributions arising from the sale of goods or services at a fund-raising event shall be designated by marking the indicated space on the schedule.

4.14(8) *Interest and other monetary receipts other than contributions.* If the monetary receipt is not a "contribution," the name and address of the source of the funds shall be identified in the space provided for the name and address of "contributor," with a notation as to the purpose of the payment, such as "bank interest."

4.14(9) *Reverse entries—refunds.* If a committee determines to decline or otherwise return a contribution after it has been received, accepted, and deposited, the committee may issue a refund to the contributor, which shall be reported on Schedule A as a reverse entry, reducing the monetary receipts.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.15(68A,68B) Schedule B - Monetary Expenditures.

4.15(1) *Date expended.* The committee shall report the amounts of all itemized expenditures (expenditures of $5 or more) made by the committee for the reporting period chronologically by the date expended. The date of the expenditure is the date the check is issued. The complete date (month/day/year) shall be provided.

4.15(2) *Name and address of recipient.* The schedule shall include the name and address of each person to whom disbursements, other than loan repayments, were made during the reporting period. (Loan repayments shall be reported on Schedule F.)

4.15(3) *Purpose of expenditure.* The schedule shall include a description of the purpose of each disbursement. The description shall be a clear and concise statement that specifically describes the transaction which has occurred. The following general terms are examples of descriptions which are not acceptable: "expenses," "reimbursement," "candidate expense," "services," "supplies," and "miscellaneous expense." The following are examples of acceptable descriptions: "printing—candidate yard signs," "printing—PAC membership solicitation letter," "mailing—candidate brochures," "reimbursement for candidate lodging to attend campaign event," or "mileage reimbursement—150 miles @ 25¢ per mile." A combined description is not acceptable unless sufficient information is

provided so that the cost of separate purposes can be discerned, for example, "printing and mailing of 1,000 brochures."

4.15(4) *Miscellaneous (unitemized) expenses.* Notwithstanding the other provisions of this rule, disbursements of less than $5 may be shown as miscellaneous disbursements or expenses for the period so long as the aggregate miscellaneous disbursements to any one person during a calendar year do not exceed $100.

4.15(5) *Candidate ID number and committee check number.* If a contribution is made by a statewide political committee (PAC) or a state party committee to a statewide or general assembly candidate or a judge standing for retention, the committee making the contribution shall include on the committee's disclosure report the board-assigned identification number of the recipient candidate's committee and the check number by which the contribution was made. A list of candidate ID numbers may be obtained from the board and is also available on the board's Web site at www.iowa.gov/ethics.

4.15(6) *Check transactions required.* All disbursements, including all expenditures and any other withdrawals from committee funds, shall be by check. Cash withdrawals and "petty cash" accounts are not permitted. Committees' activities which necessitate cash drawers or other cash transactions shall be conducted and reported as provided by rule 351—4.36(68A,68B).

4.15(7) *Reverse entries—refunds.* If a committee receives a refund of all or part of a disbursement previously made, the committee shall report the refund on Schedule B as a reverse entry, reducing the monetary expenditures. The purpose should include an explanation as to why the refund was made.

4.15(8) *Interest paid; bank charges.* Although repayments of loan principal are reported on Schedule F (see rule 351—4.18(68A,68B)), interest payments on loans shall be reported on Schedule B. Bank service charges and fees (e.g., monthly service fees, costs for check printing, returned check charges) shall also be reported and identified on Schedule B.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.16(68A,68B) Schedule D - Incurred Indebtedness.

4.16(1) *Reporting of debts and obligations other than monetary loans.* The committee shall report all debts and obligations owed by the committee which are in excess of the thresholds in subrule 4.14(3). This applies to any unpaid debt or obligations incurred by the committee for the purchase of a good or service, either as a debt or obligation owed to the immediate provider of the good or service, or as a debt or obligation owed to an individual who initially personally paid for the good or service on behalf of the committee with the expectation of ultimately receiving reimbursement from the committee. However, monetary loans to the committee (which are deposited directly into the committee's account) shall be reported on Schedule F, not on Schedule D.

4.16(2) *Date incurred; balance owed.* The committee shall report the amounts of all indebtedness owed by the committee at the end of the reporting period, reported chronologically by the date incurred. The date the debt or obligation is incurred is the date on which the committee committed to obtaining the good or service underlying the obligation. This date may be earlier than the date the provider of the good or service issues a bill to the committee. For example, if the committee places a printing order, but the printer does not issue a bill until some time after the order is placed, the date which shall be reported as the date the debt was incurred is the date the order is placed, not the date the bill was issued. If the precise amount of the final bill is not known by the time the report is due, the committee shall provide its best estimate as to what the obligation will be, with an indication "(e)" that the amount reported is an estimate. The complete date (month/day/year) shall be provided. Debts and obligations incurred and reported in a prior reporting period but which remain unpaid as of the end of the current reporting period shall be included, showing the remaining balance on the obligation, as well as any new obligations incurred in the current reporting period. Payments of all or part of a previously reported obligation shall be reported as expenditures on Schedule B.

4.16(3) *Name and address of person to whom the debt or obligation is owed.* The schedule shall contain the name and address of each person to whom an obligation is owed, including both those obligations which were incurred during the reporting period and those outstanding obligations which are being carried forward from prior reports. If the obligation is owed to an individual who initially

personally paid for the good or service on behalf of the committee with the expectation of ultimately receiving reimbursement from the committee, the original nature of the obligation shall be provided; the name and address of the original provider of the good or service shall also be provided, unless the nature of the obligation indicates that the obligation is for the anticipated reimbursement for mileage or postage stamps.

4.16(4) *Nature of obligation.* The schedule shall include a description of the nature of each obligation. The description shall be a clear and concise statement that specifically describes the transaction which has occurred. The following general terms are examples of descriptions which are not acceptable: "expenses," "reimbursement," "candidate expense," "services," "supplies," and "miscellaneous expense." The following are examples of acceptable descriptions: "printing—candidate yard signs," "printing—PAC membership solicitation letter," "mailing—candidate brochures," "anticipated reimbursement for candidate lodging to attend campaign event," or "anticipated mileage reimbursement—150 miles @ 25¢ per mile." A combined description is not acceptable unless sufficient information is provided so that the cost of separate purposes can be discerned, for example, "printing and mailing of 1,000 brochures."

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.17(68A,68B) Schedule E - In-kind Contributions.

4.17(1) *Reporting of all in-kind contributions; chronological listing.* The committee shall report the amounts of all in-kind contributions which are accepted by the committee during the reporting period. The schedule entries shall be listed in chronological order by the date on which the contribution is received.

4.17(2) *Date of contribution—date received.* The schedule shall include the complete date (month/day/year) on which the in-kind contribution was provided to the committee. The actual or fair market value of the in-kind contribution shall be reported regardless of whether or not the person providing the in-kind contribution has been billed for the costs.

4.17(3) *Name and address of contributor.* The schedule shall include the name and address of each person who has made one or more in-kind contributions to the committee if the aggregate amount of contributions (either monetary or in-kind) received from that person in the calendar year exceeds $25, except that the itemization threshold is $200 for a state statutory political committee and $50 for a county statutory political committee.

4.17(4) *Relationship to candidate.* In the case of in-kind contributions to candidates' committees, the schedule shall include information indicating whether the contributor is related to the candidate within the third degree of consanguinity or affinity, as defined in subrule 4.14(5).

4.17(5) *Description of in-kind contribution; loaned equipment as in-kind contribution.*

a. The schedule shall include a description of the good or service contributed to the committee in kind. The description shall be a clear and concise statement that specifically describes the transaction which has occurred.

b. A committee's use of equipment owned by another organization, committee, or individual is reportable as an in-kind contribution. Equipment includes, but is not limited to, typewriters, calculators, copy machines, office furniture, computers and printers.

4.17(6) *Fair market value.* The committee shall provide either the actual (if known) or estimated fair market value of the good or service received.

4.17(7) *Fund-raiser item.* Goods or services contributed in kind for sale at a fund-raising event shall be designated by marking the indicated space on the schedule.

4.17(8) *Unitemized contributions.* Notwithstanding the other provisions of this rule, in-kind contributions with a fair market value less than the itemization threshold noted in subrule 4.17(3) may be reported as "unitemized in-kind contributions."

This rule is intended to implement Iowa Code Supplement section 68A.402.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.18(68A,68B) Schedule F - Loans Received and Repaid.

4.18(1) *Reporting of monetary loans (not debts and obligations for goods and services).* The committee shall report all loan activity made to or repaid by the committee during the reporting period. This applies to any loan of money which is deposited into the committee's accounts. However, other debts and obligations owed for the provision of goods or services to the committee (which are not monetary advances deposited into the committee's account) shall be reported on Schedule D, not on Schedule F.

4.18(2) *Report of lump sum of unpaid loans carried over from last report.* The schedule shall contain a beginning entry of the total unpaid loans as of the last report. Loans received and itemized on prior reports should not be re-itemized on the current report, except as necessary to indicate repayment activity.

4.18(3) *Date received.* The schedule shall include the complete date (month/day/year) the loan was physically received by a person on behalf of the committee. If the loan was by check, the date of the loan to be reported is the date the check is physically received by a person on behalf of the committee, even if this date is different from the date shown on the check.

4.18(4) *Date paid.* The schedule shall include the complete date (month/day/year) a full or partial loan repayment is made by the committee. The date of the repayment is the date the check is issued. Full or partial loan repayments shall be shown on this schedule and should not be reported on Schedule B. However, loan interest payments shall be reported on Schedule B (see rule 351—4.15(68A,68B)) and not on Schedule F. Loans which may be and are forgiven in full or in part are considered in-kind contributions and shall be itemized on Schedule E, with a cross-reference entry in the space provided on Schedule F.

4.18(5) *Name and address of lender.* The schedule shall include the name and address of each person who has made one or more loans of money to the committee during the reporting period, or to whom the committee makes a full or partial loan repayment during the reporting period. If the person who made the loan to the committee is not the original source of the money, when the original source of the money is a third party (such as a bank which loans money to an individual who loans it to the committee) or if a third party has personally paid and assumed a loan from the original lender (such as an individual who pays off the loan to the bank with the expectation of receiving the loan repayment from the committee), the report shall also identify the name and address of the third party.

4.18(6) *Relationship to candidate.* In the case of monetary loans to candidates' committees, the schedule shall include information indicating whether the lender is related to the candidate within the third degree of consanguinity or affinity, as defined in subrule 4.14(5).

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.19(68A) Schedule G - Breakdown of Monetary Expenditures by Consultants. A committee that enters into a contract with a consultant for future or continuing performance shall be required to report expenditures made to the consultant and the nature of the performance of the consultant that is expected to be received by the committee. A committee is required to report in Part 1 of Schedule G any contracts with consultants that it has negotiated, the complete name and address of the consultant, the period of time during which the contract is in effect, and estimates of performance to be derived from the contract. Expenditures made to the consultant during a reporting period shall be reported with all other expenditures on Schedule B, and debts incurred with the consultant during the reporting period shall be reported with all other debts on Schedule D. Additionally, a detailed breakdown of the expenditures made by the consultant shall be reported by the committee in Part 2 of Schedule G and shall include the date of the expenditure, the purpose of the expenditure and the amount of the expenditure. The description of the purpose of the expenditure shall be consistent with the provisions of subrule 4.15(3).

For purposes of this rule, "contract" means an oral or written agreement between two parties for the supply or delivery of specific services in the course of the campaign. "Performance" means the execution or fulfillment of the contractual agreement. "Nature of performance" means a clear description of the specific services received or benefit derived as the result of a contract with a consultant. "Estimate of

performance" means a clear description of the services the committee reasonably expects to receive or the benefit the committee reasonably expects to derive during the period of the contract.

This rule is intended to implement Iowa Code sections 68A.102(9) as amended by 2005 Iowa Acts, House File 312, section 3, and 68A.402A.

351—4.20(68A,68B) Schedule H - Campaign Property.

4.20(1) *Ongoing inventory.* Equipment, supplies, or other materials purchased with campaign funds or received in kind are campaign property. Campaign property, other than consumable campaign property, with a value of $500 or more when acquired by the committee shall be listed on the inventory section of the schedule. The property shall be listed on each report until it is disposed of by the committee or its residual value falls below $100 and the property is listed once as having a residual value of less than $100. "Consumable campaign property" means stationery, yard signs, and other campaign materials that have been permanently imprinted to be specific to a candidate or election. For property purchased by the committee, the date purchased shall be the earlier of the date the committee attained physical possession of the property or the date the committee issued payment for the property. For in-kind contributions, the date received shall be the date on which the committee attained physical possession of the property. The committee shall provide the complete date (month/day/year). The schedules shall include the purchase price of property purchased by the committee and the actual or estimated fair market value of property received as an in-kind contribution, as well as the actual or estimated current fair market value of the property at the end of the current reporting period.

4.20(2) *Sales or transfers of campaign property.* The schedule shall include information regarding the sale or transfer of campaign property, other than consumable campaign property, which occurred during the current reporting period. The information shall include the complete date of the transaction (month/day/year), the name and address of the purchaser or donee, and a description of the property. If the property is sold, the information shall include the sales price received; if the property is donated, the information shall include the fair market value of the property at the time of the transfer.

This rule is intended to implement Iowa Code Supplement sections 68A.304 and 68A.402.

351—4.21(68A) Reconciled bank statement required with January report and final report.

4.21(1) A committee that participates in an election at the state level and that is required by Iowa Code Supplement section 68A.402 to file a disclosure report on or before January 19 of each year shall attach to or submit with that disclosure report a copy of the committee's bank statement that includes activity through December 31 of the year reported.

4.21(2) A committee that participates in an election at the county, city, school, or other political subdivision level, or an independent expenditure committee, is not required to attach or submit a copy of the committee's bank statement unless requested to do so by the board. If a committee is requested to file the bank statement, the committee shall provide the board with a copy of the bank statement within ten days of the request. A sole individual making an independent expenditure and filing Form Ind-Exp-I is not required to submit a bank statement under rule 351—4.21(68A) unless requested to do so by the board.

4.21(3) If the bank statement cycle is such that the committee has not received the statement including activity through December 31 by the date for filing the January report, the committee shall separately file or submit the bank statement within ten days after receipt of the statement by the committee.

4.21(4) The committee shall include a reconciliation to justify outstanding checks and other discrepancies between the ending balance on the bank statement and the ending balance on the disclosure report.

4.21(5) A committee that files a final disclosure report shall comply with the requirements of subrule 4.55(5) concerning the filing of a final bank statement.

4.21(6) A committee seeking a waiver from the requirements of this rule may do so in accordance with 351—Chapter 15.

This rule is intended to implement Iowa Code Supplement section 68A.402.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.22(68A,68B) Verification of reports; incomplete reports.

4.22(1) The board staff will review and desk audit each disclosure report. The board may contact other parties to verify the accuracy and completeness of the reports. The board may contact a representative of the committee and may contact other parties to determine the authenticity of information provided about filed reports.

4.22(2) If, upon review, board staff determine that a committee's report is incomplete because required information has been omitted or has been incorrectly reported, the staff shall communicate the deficiencies to the committee. A failure to satisfactorily respond to or to remedy the error or omission may be grounds for a violation of Iowa Code Supplement section 68A.402 as a failure to file a report which conforms to the requirements of that provision.

This rule is intended to implement Iowa Code Supplement section 68A.402 and Iowa Code section 68B.32A.

351—4.23(68A,68B) Amendment—statements, disclosure reports and notices. A committee may amend a previously filed statement of organization, disclosure report or notice of dissolution. To amend a previously filed statement, report or notice, the committee shall file an amended document on the approved form and shall designate on the form in the space provided, if applicable, that the document being filed is an amendment to a previously filed statement, report or notice. The term "amended document" as used in this rule shall mean a document on forms issued by the board which includes only the information which is being added, deleted or changed from a previously filed statement of organization or notice of dissolution.

This rule is intended to implement Iowa Code Supplement section 68A.402.

351—4.24(68A) Reporting of state party building fund transactions. Pursuant to Federal Election Commission Advisory Opinion 2004-28, the board will permit a state statutory political committee (state party committee) to receive contributions from corporations, insurance companies, and financial institutions when those contributions are placed in the state party building fund account, the contributions are used to pay for costs associated with the building, and all transactions involving the fund are disclosed pursuant to this rule.

A state party committee filing a state party building fund report under this rule shall use either the report form prescribed by the board or a computer-generated report so long as the report includes the information required under subrule 4.24(2).

4.24(1) *Period covered.* A state party building fund report shall cover the time period from January 1 through December 31 of the previous year.

4.24(2) *Information to be disclosed.* The following information shall be disclosed on a state party building fund report:

a. The name and address of the state party committee.

b. The name and address of each person who makes a contribution in excess of $200, or contributions in the aggregate that exceed $200 during the period covered, to the state party building fund. If no contributions were received for the fund, the report shall disclose $0.00 as contributions received.

c. The date and the amount of the contribution. If aggregate contributions from one person are received that exceed $200, the amount to be disclosed shall be the total amount received from that person for the period covered and the date to be disclosed shall be the date of the last contribution.

d. The total amount of all contributions of $200 or less received during the period covered. This total amount shall be disclosed as being received from "unitemized" with the date of the contribution being the last day of the reporting period.

e. The name and mailing address of each person to whom an expenditure that exceeds $200 is made, or expenditures in the aggregate that exceed $200 during the period covered, from the state party building fund. If no expenditures were made from the fund, the report shall disclose $0.00 as expenditures made.

f. The date and the amount of the expenditure. If aggregate expenditures that exceed $200 are made to one person, the amount to be disclosed shall be the total amount made to that person for the period covered and the date to be disclosed shall be the date of the last expenditure.

g. The total amount of all expenditures of $200 or less made during the period covered. This total amount shall be disclosed as being expended to "unitemized" with the date of the expenditure being the last day of the reporting period.

h. The signature and date of the individual filing the state party building fund report.

4.24(3) *Place of filing.* A state party building fund report shall be filed with the board at 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319, or by fax at (515)281-3701.

4.24(4) *Time of filing.* A state party building fund report shall be filed on or before January 31 of each year. If mailed, the report must bear a United States Postal Service postmark dated on or before the due date. A faxed report must be submitted on or before 11:59 p.m. on the due date. If January 31 falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date shall be extended to the next working day when the board office is open.

4.24(5) *Failure to file.* If the board determines that a state party committee has failed to timely file a state party building fund report, the state party committee is subject to the possible imposition of board sanctions.

This rule is intended to implement Iowa Code sections 68A.402A(1)*"k"* and 68A.503.

351—4.25(68A,68B) Legitimate expenditures of campaign funds.

4.25(1) Expenses which may be paid from campaign funds for campaign purposes include, but are not limited to, the following items so long as the items promote or enhance the candidacy of the candidate:

a. Electronic media advertising, such as radio, cable television and commercial television.

b. Published advertising, such as newspaper, magazine, newsletter and shopper advertising.

c. Printed promotional materials, such as brochures, leaflets, flyers, invitations, stationery, envelopes, reply cards, return envelopes, campaign business cards, direct mailings, postcards and "cowboy" political cards.

d. Political signs, such as yard signs, car signs, portable outdoor advertising, stationary outdoor advertising and billboards.

e. Political advertising specialty items, such as campaign buttons, campaign stickers, bumper stickers, campaign pins, pencils, pens, matchbooks, balloons, scratch pads, calendars, magnets, key chains, and articles of clothing that are political advertising.

f. Travel and lodging expenses of the campaign workers for campaign purposes and political party activities. Travel and lodging expenses for a candidate to attend a national political party convention are also permitted.

g. Contributions to political party committees.

h. The purchase of tickets to a meal for the candidate and one guest so long as the attendance at the meal by the candidate and guest is for the sole purpose of enhancing the candidacy of any person.

i. General campaign expenditures, such as printing, copy machine charges, office supplies, campaign photographs, gambling permits, fund-raiser prizes, postage stamps, postage meter costs, bulk mail permits, telephone installation and service, facsimile charges, and computer services. However, the purchase or rental of formal wear to attend a political event is not a permissible general campaign expenditure.

j. Purchase or lease of campaign equipment, such as copy machines, telephones, facsimile machines, computer hardware, software and printers.

k. Purchase or lease of campaign office space, parking lots or storage space and the payment for campaign office utilities and maintenance.

l. Payment of salaries, fringe benefits, bonuses, and payroll taxes of paid campaign staff. As provided in Iowa Code section 68A.302(2) as amended by 2009 Iowa Acts, Senate File 50, section 1, family members who perform actual work or services for a campaign and are not the candidate, candidate's spouse, or candidate's dependent children may be compensated for such work or services.

m. Payment for check printing and financial institution banking service charges.

n. Lease or rental of a campaign vehicle, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that noncampaign miles are reimbursed to the committee at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code. However, the purchase of a campaign vehicle is prohibited.

o. Reimbursement to candidates and campaign workers for mileage driven for campaign purposes in a personal vehicle, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that reimbursement is paid at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code.

p. Payment for food expenses and supplies for campaign-related activities, such as the purchase of food, beverages and table service for fund-raising events or campaign volunteers. However, except as provided in paragraph *"h,"* the purchase of tickets for meals or fund-raising events for other candidates is prohibited, and the purchase of groceries for the candidate or candidate's family is also prohibited. Payment for meals for the candidate (other than those involving tickets for fund-raiser events as addressed in paragraph *"h"*) is permitted as an allowable expenditure for campaign purposes if the meal was associated with campaign-related activities.

q. Payment of civil penalties and hearing costs assessed by the board.

r. Payment for the services of attorneys, accountants, consultants or other professional persons when those services relate to campaign activities.

s. Subscriptions to newspapers and periodicals that circulate within the area represented by the office that a candidate is seeking or holds, that contain information of a general nature about the state of Iowa, or that contain information useful to all candidates such as The Wall Street Journal and Roll Call. Candidates who are unsure whether a subscription is permissible shall seek guidance from the board prior to paying for the subscription with campaign funds.

t. Membership in service organizations including a local chamber of commerce that the candidate joins solely for the purpose of enhancing the candidate's candidacy.

u. Repayment of campaign loans made to the committee. As provided in Iowa Code section 68A.302(2) as amended by 2009 Iowa Acts, Senate File 50, section 1, candidates who make loans to their own committees shall not charge interest on the loans.

v. Purchase of reports of other candidates and political committees so long as the reports' contents are not used for solicitation or commercial purposes.

w. Donations to charitable organizations unless the candidate or the candidate's spouse, child, stepchild, brother, brother-in-law, stepbrother, sister, sister-in-law, stepsister, parent, parent-in-law, or stepparent is employed by the charitable organization and will receive a direct financial benefit from a donation.

x. Contributions to federal, state, county and city political party committees.

y. Refunds to contributors when a contribution has been accepted in error, or when a committee chooses to dispose of leftover funds by refunding them in prorated shares to the original contributors.

z. Payment for items with a purchase price not to exceed $250 per person that are presented to committee workers in recognition of services to the committee.

aa. Expenses incurred with respect to an election recount as provided in Iowa Code section 50.48.

bb. The sharing of information in any format such as computer databases containing yard sign locations or lists of registered voters with another candidate's committee.

4.25(2) Expenses which may be paid from campaign funds for educational and other expenses associated with the duties of office include, but are not limited to, the following items:

a. Purchase or lease of office supplies and equipment, such as paper, copy machines, telephones, facsimile machines, computer hardware, software and printers.

b. Travel, lodging and registration expenses associated with attendance at an educational conference of a state, national, or regional organization whose memberships and officers are primarily composed of state or local government officials or employees. However, meal expenses are not allowable as expenses associated with the duties of office under any circumstances.

c. Meals and other expenses incurred in connection with attending a local meeting to which the officeholder is invited and attends due to the officeholder's official position as an elected official.

d. Purchases of small, incidental items such as pencils, pens, rulers and bookmarks provided to members of the public touring the offices of the state or a political subdivision. However, such items distributed on public property shall not expressly advocate the election or defeat of a candidate or the adoption or defeat of a ballot issue as prohibited in Iowa Code Supplement section 68A.505. For example, a bookmark bearing the state seal could be distributed on public property, while a bookmark that identified the donor as a candidate for office could not be distributed on public property.

e. Gifts purchased for foreign dignitaries when the officeholder is part of an official trip out of the country such as a trade mission or exchange program.

f. Printing of additional stationery and supplies above the standard allotment of the state or political subdivision.

4.25(3) Expenses which may be paid from campaign funds for constituency services include, but are not limited to, the following items:

a. Mailings and newsletters sent to constituents.

b. Polls and surveys conducted to determine constituent opinions.

c. Travel expenses incurred in communicating with members of an elected official's constituency, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that reimbursement is paid at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code. However, meal expenses are not allowable as expenses associated with constituency services under any circumstances.

d. Holiday and other greeting cards sent to constituents.

This rule is intended to implement Iowa Code Supplement sections 68A.301, 68A.302, and 68A.303.

[**ARC 7647B**, IAB 3/25/09, effective 4/29/09; **ARC 7801B**, IAB 6/3/09, effective 7/8/09]

351—4.26(68A) Transfers between candidates.

4.26(1) *Transfer of assets between different candidates.* A candidate's committee may transfer an asset to a candidate's committee established by a different candidate so long as the recipient committee pays the transferring committee the fair market value of the asset and the transaction is properly disclosed on each committee's disclosure report.

4.26(2) *Transfer of assets for same candidate.* A candidate's committee may transfer funds, assets, loans, and debts to a committee established for a different office when the same candidate established both committees. A candidate seeking to transfer funds, assets, loans, or debts under this subrule shall file either an amended statement of organization disclosing information for the new office sought or register a new committee regardless of whether the $750 financial filing threshold for the new office will be exceeded.

This rule is intended to implement Iowa Code Supplement section 68A.303.

[**ARC 7992B**, IAB 7/29/09, effective 9/2/09]

351—4.27(68A) Filing of independent expenditure statement. Pursuant to 2009 Iowa Code Supplement section 68A.404 as amended by 2010 Iowa Acts, Senate File 2354, section 3, any person except a candidate, a committee filing a statement of organization, a federal committee, or an out-of-state committee that makes one or more independent expenditures in excess of $750 in the aggregate shall file Form Ind-Exp-O. A sole individual making one or more independent expenditures in excess of $750 in the aggregate shall file Form Ind-Exp-I. A committee that has registered by filing a statement of organization shall disclose an independent expenditure on the appropriate campaign disclosure report.

4.27(1) *Independent expenditure defined.* "Independent expenditure" means an expenditure as defined in 2009 Iowa Code Supplement section 68A.404(1) as amended by 2010 Iowa Acts, Senate File 2354, section 3.

4.27(2) *Independent expenditure reporting.* When applicable under 2009 Iowa Code Supplement section 68A.404 as amended by 2010 Iowa Acts, Senate File 2354, section 3, and rule 351—4.27(68A), Form Ind-Exp-O shall be filed by a person and Form Ind-Exp-I shall be filed by a sole individual. Both forms shall be in a format that will enable a person or sole individual making an independent expenditure to comply with all of the reporting requirements in 2009 Iowa Code Supplement section 68A.404 as amended by 2010 Iowa Acts, Senate File 2354, section 3.

4.27(3) *Place of filing.* Form Ind-Exp-O and Form Ind-Exp-I shall be filed with the board electronically via the board's Web site at www.iowa.gov/ethics.

4.27(4) *Time of filing.* Form Ind-Exp-O or Form Ind-Exp-I shall be filed within 48 hours of the person's or sole individual's making an independent expenditure exceeding $750 in the aggregate or within 48 hours of disseminating the communication to its intended audience, whichever is earlier. An independent expenditure is deemed made at the time that the cost is incurred regardless of whether or not the costs for the independent expenditure have been billed.

4.27(5) *Failure to file.* The failure to timely file either Form Ind-Exp-O or Form Ind-Exp-I shall be subject to the imposition of civil penalties pursuant to 351—subrule 4.59(7).

4.27(6) *Attribution statement applicable.* Any person that makes an independent expenditure in any amount shall comply with the appropriate "paid for by" attribution statement pursuant to 2009 Iowa Code Supplement section 68A.405 as amended by 2010 Iowa Acts, Senate File 2354, section 4, and by 2010 Iowa Acts, Senate File 2195, section 7, and rule 351—4.38(68A).

This rule is intended to implement 2009 Iowa Code Supplement section 68A.404 as amended by 2010 Iowa Acts, Senate File 2354, section 3.

[**ARC 7800B**, IAB 6/3/09, effective 7/8/09; **ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.28(68A) Prohibition on contributions and independent expenditures by foreign nationals. As provided in Federal Election Commission regulation 11 CFR 110.20, a foreign national shall not, directly or indirectly, make a monetary or in-kind contribution, or specifically promise to make a contribution, in connection with a state or local campaign or election in Iowa. A foreign national shall not, directly or indirectly, make a contribution to a candidate or to a campaign committee organized under Iowa Code chapter 68A. Pursuant to 2009 Iowa Code Supplement section 68A.404(2)*"c"* as amended by 2010 Iowa Acts, Senate File 2354, section 3, foreign nationals are prohibited from making independent expenditures in relation to any state or local election in Iowa.

4.28(1) *Foreign national defined.* "Foreign national" means a person as defined in 2009 Iowa Code Supplement section 68A.404(2)*"c"* as amended by 2010 Iowa Acts, Senate File 2354, section 3.

4.28(2) *Acceptance of campaign contributions and donations from foreign nationals.* No person shall knowingly accept or receive a campaign contribution from a foreign national. No person shall knowingly accept a monetary donation from a foreign national for purposes of making an independent expenditure.

4.28(3) *Participation by foreign nationals in decisions involving election-related activity.* A foreign national shall not, directly or indirectly, participate in the decision-making process of any person with regard to such person's election-related activities. Decisions including election-related activities include decisions involving the making of contributions, donations, or expenditures in connection with elections for state or local office, ballot issues, or decisions involving the administration of a committee.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.404(2)*"c"* as amended by 2010 Iowa Acts, Senate File 2354, section 3.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.29(68A,68B) Contributions by minors. Persons under 18 years of age may make contributions to a candidate or political committee if all of the following conditions exist:

1. The decision to contribute is made knowingly and voluntarily by the minor;

2. The funds, goods, or services contributed are owned or controlled exclusively by the minor, such as income earned by the minor, the proceeds of a trust for which the minor is the beneficiary, or a savings account opened and maintained exclusively in the minor's name; and

3. The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another person.

This rule is intended to implement Iowa Code Supplement section 68A.404.

351—4.30(68A,68B) Funds from unknown source prohibited; subsequent identification of source; notice to contributors.

4.30(1) *Anonymous contributions in excess of $10 prohibited.* No person shall make a contribution in excess of $10 to a committee without providing the person's name and address to the committee. The committee shall not maintain in any campaign account funds in excess of $10 that cannot be accounted for and reconciled with the committee's disclosure reports.

4.30(2) *Escheat to the state.* Any contribution in excess of $10 from an unknown source or campaign funds in excess of $10 that cannot be accounted for and reconciled shall escheat to the state of Iowa as required by Iowa Code section 68A.501 as amended by 2007 Iowa Acts, Senate File 39, section 8. A committee required to escheat shall escheat such funds by depositing the funds into the committee's campaign account and issuing a committee check to the general fund in the same amount. The committee check shall be sent to the board office at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, for transmittal to the office of treasurer of state.

4.30(3) *Subsequent identification of source.* A committee discovering the source of any funds that have been escheated to the state may make an application to the board for a return of the funds if the following requirements are met:

a. The committee has not dissolved;

b. Documentation of the name and address of the source is provided;

c. The amount requested to be returned is in excess of $100; and

d. The application is made within 90 days of the date of the deposit in the general fund of the state of Iowa.

4.30(4) *Notice at fund-raising event.* Pursuant to Iowa Code Supplement section 68A.501, a person requested to make a contribution at a fund-raising event shall be advised that it is illegal to make a contribution in excess of $10 unless the person making the contribution also provides the person's name and address. Notice of the requirement to provide a person's name and address for a contribution in excess of $10 may be made orally or in a written statement that is displayed at the fund-raising event.

This rule is intended to implement Iowa Code section 68A.501.

351—4.31(68A) Information required for a trust to avoid a contribution in the name of another person. A contribution to a committee by a trustee solely in the name of the trust constitutes a contribution in the name of another person as prohibited in Iowa Code Supplement section 68A.502 unless the recipient committee publicly discloses the contribution as provided in this rule.

4.31(1) *Living or revocable trust.* If the contribution involves a trust identified as a revocable trust or a living trust that does not file a separate trust tax return and whose federal tax ID number is the same as the social security number of the grantor who creates the trust and who is also a trustee, the contribution shall be reported by the recipient committee as being made by the "(name) revocable (or living) trust."

4.31(2) *Other trusts.* For a contribution involving a trust that does not qualify under subrule 4.31(1), the recipient committee shall identify the trust, the trustee, and the trustor.

4.31(3) *Registering a committee.* A trust, except for a living or revocable trust, that raises or spends more than $750 for campaign activities shall register a political committee (PAC) and shall file disclosure reports. A trust, except for a living or revocable trust, that makes a one-time contribution in excess of $750 may file Form DR-OTC in lieu of filing a statement of organization and filing disclosure reports.

This rule is intended to implement Iowa Code Supplement sections 68A.402(6) and 68A.502.

351—4.32(68A) Contributions from political committees not organized in Iowa. Iowa committees may receive contributions from committees outside Iowa, and committees outside Iowa may contribute to Iowa committees provided the out-of-state committee complies with either subrule 4.32(1) or subrule 4.32(2). For purposes of this rule, "out-of-state committee" means a committee that is registered with the campaign enforcement agency of another state or is registered with the Federal Election Commission. For purposes of this rule, "contribution" does not include an item purchased at fair market value from an Iowa committee.

4.32(1) *Regular filings.* Out-of-state committees may choose to comply with the regular disclosure filing requirements in Iowa Code Supplement sections 68A.201 and 68A.402 by filing a statement of organization and periodic disclosure reports.

4.32(2) *Verified statement of registration.* In lieu of filing a statement of organization and regular disclosure reports as required by Iowa Code chapter 68A, the out-of-state committee shall file with the board a verified statement registration form (VSR) for each contribution in excess of $50. The VSR shall contain the following information:

a. The complete name, address and telephone number of the out-of-state committee;

b. The state or federal agency with which the out-of-state committee is registered;

c. All parent entities or other affiliates or sponsors of the out-of-state committee;

d. The purpose of the out-of-state committee;

e. The name, address and telephone number of an Iowa resident authorized to receive service on behalf of the out-of-state committee;

f. The name and address of the Iowa recipient committee;

g. The date and amount of the contribution, including description if the contribution is in-kind; and

h. An attested statement that the jurisdiction with which the out-of-state committee is registered has reporting requirements substantially similar to those of Iowa Code chapter 68A. The statement shall include confirmation that the contribution is made from an account that does not accept contributions prohibited by Iowa Code section 68A.503 unless the contribution from the out-of-state committee is made to an Iowa ballot issue committee.

4.32(3) *Signature.* The VSR shall be signed by the individual filing the VSR on behalf of the out-of-state committee. A VSR that is filed electronically using the board's Web site is deemed signed when filed.

4.32(4) *Where filed.* Every VSR filed for a contribution in excess of $50 shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, electronically using the board's Web site at www.iowa.gov/ethics, as an E-mail attachment, or by fax at (515)281-4073.

4.32(5) *When filed.* The VSR shall be filed with the board on or before the fifteenth day after the date of the contribution, or mailed bearing a United States Postal Service postmark dated on or before the fifteenth day after the date of the contribution. For purposes of this subrule, "date of the contribution" means the day, month, and year the contribution check is dated. If the board deems it necessary, a copy of any contribution check may be required to be filed with the board. When a copy of a check is required to be filed with the board, the copy shall be filed within ten days after notice by the board.

4.32(6) *Enhanced filing.* An out-of-state committee determining that the jurisdiction under which the committee is registered does not have reporting requirements substantially similar to those of Iowa Code Supplement chapter 68A may choose to comply by enhancing the committee's filing in the other jurisdiction. The enhanced filing shall meet the reporting requirements of Iowa Code Supplement chapter 68A for the reporting period during which contributions to Iowa committees are made. The report shall cover a period of at least one month. An out-of-state committee choosing this option shall comply with the VSR procedures in subrule 4.32(2) and attach a signed statement that the report has been enhanced to satisfy the Iowa reporting requirements.

This rule is intended to implement Iowa Code section 68A.201(5).

[**ARC 8286B**, IAB 11/18/09, effective 12/23/09]

351—4.33(68A) Reporting of earmarked contributions. A political committee or a political party committee is permitted to receive a contribution that is earmarked to be donated to another committee. A political committee or political party committee receiving and transferring an earmarked contribution is required to list on its disclosure report the name of the contributor and the name of the candidate or committee for which the contribution was earmarked. The political committee or political party committee shall notify the recipient committee in writing of the name of the individual contributor and the name of the committee that orginally received the contribution. The committee ultimately receiving the earmarked contribution shall disclose on its disclosure report both the name of the individual contributor and the name of the committee that originally received and then transferred the earmarked contribution. A ballot issue committee is not permitted to transfer earmarked contributions except to another ballot issue committee.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.402.

[**ARC 8788B**, IAB 6/2/10, effective 7/7/10]

351—4.34(68A) Copies of reports filed by 527 Committees. Iowa Code section 68A.401A requires the board to adopt a procedure for 527 Committees that file reports with the Internal Revenue Service and engage in issue advocacy in Iowa to file copies of those reports with the board. If a 527 Committee notifies the board that it is filing reports with the Internal Revenue Service, the 527 Committee will be deemed in compliance with Iowa Code section 68A.401A. The board will then establish on its Web site a link to the reports filed with the Internal Revenue Service, or the board will otherwise post on its Web site the reports filed with the Internal Revenue Service.

This rule is intended to implement Iowa Code section 68A.401A.

351—4.35(68A) Permanent organizations forming temporary political committees; one-time contributor filing Form DR-OTC. Pursuant to Iowa Code section 68A.402(9), a permanent organization temporarily engaging in activity that exceeds the $750 financial filing threshold described in rule 351—4.1(68A,68B) is required to organize and register a political committee (PAC), file disclosure reports, and, upon completion of activity, file a notice of dissolution. A permanent organization that is temporarily a political committee shall comply with all of the campaign laws in Iowa Code chapter 68A and this chapter. A permanent organization that makes loans to a candidate or committee or that is owed debts from a candidate or committee is not deemed to be engaging in political activity requiring registration.

4.35(1) *Form DR-OTC.* A permanent organization that makes a one-time contribution in excess of $750 to a committee may, in lieu of filing a statement of organization, disclosure reports, and a notice of dissolution, file Form DR-OTC. The following information shall be disclosed on Form DR-OTC:

a. The name and address of the organization making the contribution.

b. The name and address of a contact person for the organization making the contribution.

c. The name and address of the campaign committee receiving the contribution. If the contribution is to a candidate or a candidate's committee, the source of the original funds used to make the contribution shall be disclosed.

d. The date and amount of the contribution. If the contribution is an in-kind contribution, a description of the provided goods or services must be included.

e. The date of election and the county in which the recipient committee is located if the committee is a county or local committee.

f. The date and signature of the person filing Form DR-OTC. A Form DR-OTC that is filed electronically using the board's Web site is deemed signed when filed.

A permanent organization that makes more than one contribution is not eligible to file Form DR-OTC and is required to file a statement of organization, file disclosure reports, and file a notice of dissolution.

4.35(2) *Place of filing.* Form DR-OTC shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, filed by fax at (515)281-4073, or filed electronically using the board's Web site at www.iowa.gov/ethics.

4.35(3) *Time of filing.* Form DR-OTC shall be filed with the board within ten days after the one-time contribution in excess of $750 is made. The form must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the report due date. A faxed or electronically filed Form DR-OTC must be submitted on or before 11:59 p.m. of the tenth day after the organization of the committee is required. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

4.35(4) *Failure to register.* If the board discovers that a permanent organization has become subject to the provisions of Iowa Code Supplement chapter 68A but did not timely file a statement of organization or file Form DR-OTC, as applicable, the permanent organization is subject to the possible imposition of board sanctions.

4.35(5) *Partial refund of contribution.* A committee that receives a contribution from a permanent organization that causes the organization to become subject to the provisions of Iowa Code Supplement chapter 68A may refund all or part of a contribution to the organization so as to reduce the contribution to $750 or less and remove the organization's filing obligations.

This rule is intended to implement Iowa Code sections 68A.102(18) and 68A.402.

351—4.36(68A) Cash transactions. All disbursements, including all expenditures and any other withdrawals from committee funds, shall be by check, debit card, or credit card. Cash withdrawals and "petty cash" accounts are not permitted. If a committee fundraising activity necessitates a cash drawer for making change or other cash transactions, the committee may issue a check payable to the committee treasurer or the candidate, in the case of a candidate's committee, or payable to the committee treasurer or the committee chairperson, in the case of a political committee. The purpose of the expenditure shall be reported on Schedule B as "cash advance for (describe activity, e.g., concession stand cash drawer)." Upon completion of the fundraising activity, the committee shall redeposit the same amount as that which was advanced into the committee account. The redeposit shall be reported as a reverse entry on Schedule B as a "redeposit of cash advance for (describe activity)." The proceeds of the fundraising activity (excluding the cash advance) shall be reported on Schedule A - Contributions Received.

This rule is intended to implement Iowa Code sections 68A.203 as amended by 2005 Iowa Acts, House File 312, section 5, and 68A.402A.

351—4.37(68A,68B) Record keeping.

4.37(1) *Copies of reports.* A committee shall preserve a copy of every report it files for at least three years following the filing of the report.

4.37(2) *Supporting documentation.* The documentation which supports a committee's disclosure report shall be preserved by the committee for at least five years after the due date of the report that covers the activity documented in the records; however, a committee is not required to preserve these records for more than three years from the certified date of dissolution of the committee. At a minimum, the supporting documentation shall consist of all of the following:

a. A ledger or similar record-keeping device which details all contributions received by the committee. This record shall include the name and address of each person making a contribution in excess of $10, with the date and amount of the contribution. In lieu of or in addition to a ledger, the committee may record contributions received through a receipt book or other method of individually documenting the contributions, such as by making and keeping copies of the contribution checks.

b. The check register for the committee's account(s).

c. Bank statements for the committee's account(s).

d. Copies of canceled or duplicate checks for committee expenditures, if available.

e. Copies of bills or receipts for committee expenditures.

f. For committees which pay reimbursement for committee-related mileage, copies of vehicle mileage logs, including travel dates, distance driven, and travel purpose (description of event or activity). For a candidate's committee which leases a vehicle, the mileage log shall detail all mileage driven on the vehicle, including non-committee-related mileage.

4.37(3) *Records forwarded.* An officer of a committee who is replaced by another officer shall forward within seven days any committee records to the subsequently appointed or elected committee officer. The board may grant an extension of time for good cause. The failure to forward records pursuant to this subrule may subject the former officer to board sanctions.

This rule is intended to implement Iowa Code Supplement sections 68A.203, 68A.302, 68A.402 and 68A.403 and Iowa Code section 68B.32A.

[**ARC 7998B**, IAB 7/29/09, effective 9/2/09]

DIVISION III
POLITICAL MATERIAL—ATTRIBUTION STATEMENTS

351—4.38(68A) Political attribution statement—contents. Published material that expressly advocates for or against a clearly identified candidate or ballot issue shall contain a statement identifying the person paying for the published material. This statement is referred to as the "attribution statement." The term "published material" means any newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, Internet Web site, television, video, or motion picture advertising, campaign sign larger than 32 square feet, or any other form of printed political advertising.

4.38(1) *Registered committee.* If the person paying for the published material is a committee that has filed a statement of organization, the words "paid for by" and the name of the committee shall appear on the material. An "independent expenditure committee" is not a "registered committee."

4.38(2) *Individual, married couple, or unregistered candidate's committee.* If the person paying for the published material is an individual, the words "paid for by" and the name and address of the individual shall appear on the material. Published material that is jointly paid for by a married couple shall include the words "paid for by" and the name and address of one member of the married couple. For purposes of this subrule, "individual" includes a candidate who has not filed a statement of organization to register a committee.

4.38(3) *Multiple individuals.* If more than one individual paid for the published material, the words "paid for by", the names of the individuals, and either the addresses of the individuals or a statement that the addresses of the individuals are on file with the Iowa ethics and campaign disclosure board shall appear on the material. The addresses shall be provided to the board and made available for public inspection.

4.38(4) *Organization or unregistered political committee.* If the person paying for the published material is an organization, the words "paid for by", the name and address of the organization, and the name of one officer of the organization shall appear on the material. For purposes of this subrule, "organization" includes an organization advocating the passage or defeat of a ballot issue but that has not filed a statement of organization to register a political committee.

4.38(5) *Pooled efforts.* If the published material is paid for by more than one person, the words "paid for by" and the identification of the persons as set out in this rule shall appear on the material.

4.38(6) *Corporations.* If the person paying for the published material is a corporation, the words "paid for by", the name and address of the corporation, and the name and title of the corporation's chief executive officer shall appear on the material.

4.38(7) *Independent expenditures.* A person, including a sole individual, making an independent expenditure shall provide the attribution statement according to the appropriate category under this rule. The attribution statement shall also include a statement that the published material was not authorized by any candidate, candidate's committee, or ballot issue committee.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.405 as amended by 2010 Iowa Acts, Senate File 2354, section 4, and by 2010 Iowa Acts, Senate File 2195, section 7.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.39(68A) Specific items exempted from or subject to attribution statement requirement; multiple pages. 2009 Iowa Code Supplement section 68A.405 as amended by 2010 Iowa Acts, Senate File 2354, section 4, and by 2010 Iowa Acts, Senate File 2195, section 7, and rule 351—4.38(68A)

require the placement of a "paid for by" attribution statement on published material that expressly advocates for or against a clearly identified candidate or ballot issue, with certain exceptions.

4.39(1) *Items exempted from requirement.* The requirement to place a "paid for by" attribution statement does not apply to the following:

a. Editorials or news articles of a media organization that are not political advertisements.

b. Small items upon which the inclusion of the attribution statement would be impracticable, such as campaign signs 32 square feet or smaller that have been placed or posted on real property, bumper stickers, pins, buttons, pens, pencils, emery boards, matchbooks and, except as set out in subrule 4.39(2), items that are smaller than 2 inches by 4 inches. For purposes of this rule, 32 square feet is the total dimension of the campaign sign regardless of whether or not both sides of the sign are used for campaign advertising.

c. T-shirts, caps, and other articles of clothing that expressly advocate for or against a candidate or ballot issue.

d. Radio advertisements, live telephone calls, or auto-generated telephone messages.

e. Published material placed by an individual who acts independently and spends $100 or less of the individual's own resources to expressly advocate the passage or defeat of a ballot issue.

4.39(2) *Items subject to requirement.* The requirement to place a "paid for by" attribution statement applies to the following:

a. Published material such as campaign signs larger than 32 square feet that have been placed or posted on real property, billboards, posters, portable sign carriers, and signs affixed or painted to the side or top of a building or vehicle. A campaign sign placed on a building or vehicle shall contain the appropriate attribution statement regardless of the size of the sign.

b. Published material in a newspaper, magazine, shopper, or other periodical regardless of the size of the material.

c. Direct mailings, flyers, brochures, postcards, or any other form of published material that is larger than 2 inches by 4 inches and not otherwise set out in 351—4.39(68A).

d. Campaign Web sites. A blog that is not owned or controlled by a candidate or committee is not required to include an attribution statement disclosing who paid for the costs of the blog. A political advertisement on a blog is required to include the appropriate attribution statement disclosing who paid for the advertisement.

e. Television, video, and motion picture advertising. The attribution statement shall be displayed on the advertisement in a clearly readable manner for at least four seconds.

4.39(3) *Multiple pages.* If the published material consists of more than one page, the "paid for by" attribution statement need only appear on one page of the material. For a campaign Web site, the attribution statement need only appear on the home page of the site. A scratch pad need only include the attribution statement on the pad and not on each individual page of the pad.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.405 as amended by 2010 Iowa Acts, Senate File 2354, section, 4, and by 2010 Iowa Acts, Senate File 2195, section 7.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.40(68A,68B) Newspaper or magazine. For the purposes of these rules and Iowa Code Supplement section 68A.405, "newspaper or magazine" means a regularly scheduled publication of news, articles of opinion, and features available to the general public which does not require membership in or employment by a specific organization.

This rule is intended to implement Iowa Code Supplement section 68A.405.

351—4.41(68A,68B) Apparent violations; remedial action.

4.41(1) *Administrative resolution.* In an effort to informally resolve apparent violations of the requirement to place a "paid for by" attribution statement, the board may order administrative resolution of the matter. The board may direct the person responsible for placing the original published political material that did not include the attribution statement to place a correction notice in a local newspaper that reaches the same or substantially the same portion of the public that received the original published

political material. A person may also resolve a violation of the "paid for by" attribution statement by resending corrected published political material to the same portion of the public that received the original published political material and by filing a copy of the corrected material with the board.

4.41(2) *Form of correction notice.* The correction notice shall be in substantially the following form: "On (date) (describe the type of published political material) was distributed that did not state who paid for it. The (describe the type of published political material) was paid for by (insert name)."

4.41(3) *Board notice.* The board shall notify the person who paid for the original published political material of the requirements of this rule.

4.41(4) *Refusal to place correction notice.* The board may initiate a contested case proceeding and impose discipline against any person who refuses to place a correction notice under this rule.

This rule is intended to implement Iowa Code section 68A.405 and Iowa Code Supplement section 68B.32A(8) as amended by 2006 Iowa Acts, House File 2512, section 3.

351—4.42(56,68B) Specific items exempted from or subject to attribution statement requirement. Rescinded IAB 2/4/04, effective 3/10/04.

351—4.43(56,68B) Apparent violations; remedial actions. Rescinded IAB 2/4/04, effective 3/10/04.

DIVISION IV
CORPORATE POLITICAL ACTIVITY

351—4.44(68A,68B) Prohibited corporate activity. As provided in 2009 Iowa Code Supplement section 68A.503 as amended by 2010 Iowa Acts, Senate File 2354, section 5, a financial institution, insurance company, or corporation is prohibited from using its resources to make monetary or in-kind campaign contributions to a candidate, candidate's committee, political committee that expressly advocates for or against a candidate, or a political party committee. For purposes of this chapter, "corporate entity" shall include financial institutions, insurance companies, and corporations.

4.44(1) The prohibition on corporate political activity does not apply to any of the following:

a. An LLC, LLP, or any other organization that does not file articles of incorporation.

b. Monetary or in-kind campaign contributions to a ballot issue committee.

c. Independent expenditure communications.

d. A campaign committee using a corporate entity computer to generate and file a campaign disclosure statement or report.

4.44(2) For purposes of this rule, prohibited corporate activity shall include, but not be limited to, the following:

a. The physical placement of campaign materials on corporate property except as permitted under Iowa Code sections 68A.406 and 68A.503.

b. The use of motor vehicles, telephone equipment, long-distance lines, computers, typewriters, office space, duplicating equipment and supplies, stationery, envelopes, labels, postage, postage meters or communication systems of corporate entities.

c. The use of corporate entity facilities, premises, recreational facilities and housing that are not ordinarily available to the general public.

d. The furnishing of beverages and other refreshments that cost in excess of $50 and that are not ordinarily available to the general public.

e. The contributing of money of the corporate entity.

f. Any other transaction conducted between a corporate entity and a candidate, candidate's committee, political committee that expressly advocates for or against candidates, or a political party committee. Such transaction is presumed to be a corporate contribution unless it is sufficiently demonstrated to the board that the transaction should not be considered a prohibited contribution under

2009 Iowa Code Supplement section 68A.503 as amended by 2010 Iowa Acts, Senate File 2354, section 5.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.503 as amended by 2010 Iowa Acts, Senate File 2354, section 5.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.45(68A,68B) Corporate-sponsored political committee. These rules do not prevent a corporate entity from soliciting eligible members to join or contribute to its own corporate-sponsored political committee (PAC), so long as the corporate entity adheres to the provisions of Iowa Code Supplement section 68A.503.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.46(68A) Voter education. Rescinded IAB 6/2/10, effective 5/17/10.

351—4.47(68A,68B) Permitted activity—reimbursement required. The prohibitions against certain transactions between corporate entities and candidates or committees expressly advocating the election or defeat of candidates contained in Iowa Code Supplement section 68A.503 and in rule 351—4.44(68A,68B) are not construed to prohibit activity that occurs consistent with this rule.

4.47(1) *Purchase or rental of office facility.* A candidate's committee or any other committee that expressly advocates the election or defeat of a candidate may purchase or rent property belonging to a corporate entity, so long as the purchase or rental is at fair market value. For the purpose of this subrule, "fair market value" means the amount that a member of the general public would expect to pay to purchase or rent a similar property within the community in which the property is located.

4.47(2) *Use of corporate facilities to produce or mail materials.* Any person who uses the facilities of a corporate entity to produce or mail materials in connection with a candidate election is required to reimburse the corporate entity within a commercially reasonable time for the normal and usual charge for producing or mailing such materials in the commercial market. For example, if it would otherwise cost 10 cents per page to have a brochure copied at a commercial printer, the corporate entity must be reimbursed at 10 cents per page even if the overhead and operating cost is only 5 cents per page. Likewise, the corporate entity must be reimbursed at the first-class mail rate even if the direct cost to the corporate entity is less through the use of its bulk mail permit. This subrule does not affect the ability of a commercial vendor to charge an amount for postage which is less than for first-class mail where the reduced or bulk mail charge is available to all similarly situated customers without respect to the political identity of the customer.

4.47(3) *Use or rental of corporate facilities by other persons.* Persons other than stockholders, administrative officers or employees of a corporate entity who make any use of corporate facilities, such as using telephones, facsimile machines, typewriters or computers or borrowing office furniture for activity in connection with a candidate election, are required to reimburse the corporate entity within a commercially reasonable time in the amount of the normal and usual rental charge. If one or more telephones of a corporate entity are used as a telephone bank, a rebuttable presumption is established that $3 per telephone per hour, plus any actual long distance charges, is acceptable as a normal and usual rental charge.

4.47(4) *Use of airplanes and other means of transportation.*

a. *Air travel.* A candidate, candidate's agent, or person traveling on behalf of a candidate who uses noncommercial air transportation made available by a corporate entity shall, in advance, reimburse the corporate entity as follows:

(1) Where the destination is served by regularly scheduled commercial service, the coach class airfare (without discounts).

(2) Where the destination is not served by a regularly scheduled commercial service, the usual charter rate.

b. Other transportation. A candidate, candidate's agent, or person traveling on behalf of a candidate who uses other means of transportation made available by a corporate entity shall, within a commercially reasonable time, reimburse the corporate entity at the normal and usual rental charge.

4.47(5) *Equal access not required.* For the purpose of this rule, it is not necessary that the corporate entity be in the business of selling or renting the property, good or service to the general public; further, it is not necessary that the corporate entity provide access to the same property, good or service to other candidates or committees.

4.47(6) *Commercially reasonable time.* For the purpose of this rule, a rebuttable presumption is established that reimbursement to the corporate entity within ten business days is acceptable as within a commercially reasonable time.

4.47(7) *Loans and debts.* A financial institution may make a loan to a candidate or candidate's committee so long as the loan is repaid and all proper public disclosure of the transaction is made pursuant to rule 351—4.18(68A,68B). A candidate or candidate's committee may owe a debt to an insurance company, financial institution, or corporation so long as the debt is repaid and all proper public disclosure of the transaction is made pursuant to rule 351—4.16(68A,68B). The repayment of a loan or debt under this subrule shall be made prior to the dissolution of the committee pursuant to rule 351—4.57(68A,68B).

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.48(68A) Sham newspapers subject to campaign laws. Iowa Code chapter 68A provides that when a media organization discusses candidates and public affairs, the media organization does not trigger the campaign laws. 2009 Iowa Code Supplement section 68A.503(5)*"b"* as amended by 2010 Iowa Acts, Senate File 2354, section 5, directs the board to adopt a rule requiring the owner, publisher, or editor of a sham newspaper who is using the sham newspaper to promote in any way the candidacy of any person for public office to comply with the requirements of Iowa Code chapter 68A.

4.48(1) *Factors.* In determining whether or not a publication is entitled to the press exception or is a sham newspaper that triggers the campaign laws, the board will consider the following factors:

a. Whether the publication is published and made available on a regular schedule or interval;

b. The proximity to the election in which the candidates and public affairs are discussed;

c. Whether the publication contains news items and articles of opinion of a general character separate from discussions concerning candidates and public affairs;

d. How widely the publication is circulated or is otherwise made available to the public in comparison to a targeted audience for potential campaign purposes;

e. Whether the publication discusses all candidates for a particular election or otherwise gives all candidates equal space; and

f. Whether the publication expressly advocates for the candidacy of any person.

4.48(2) *Definitions.* For purposes of this rule, the following definitions apply:

"Express advocacy" means "express advocacy" as defined in Iowa Code section 68A.102(14) and rule 351—4.53(68A).

"Media organization" means "media organization" as defined in rule 351—4.51(68A).

"Sham newspaper" means "sham newspaper" as defined in 2009 Iowa Code Supplement section 68A.503(5)*"b"* as amended by 2010 Iowa Acts, Senate File 2354, section 5.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.503(5)*"b"* as amended by 2010 Iowa Acts, Senate File 2354, section 5.

[**ARC 7866B**, IAB 6/17/09, effective 7/22/09; **ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.49(68A,68B) Individual property. These rules do not apply to the personal or real property of corporate officers or of individuals employed or associated with a corporate entity and shall not abridge the free-speech rights and privileges of individuals.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.50(68A) Political corporations. Rescinded IAB 6/2/10, effective 5/17/10.

351—4.51(68A) Candidate debate—media organization; debate structure; debate funding; contribution reporting inapplicable. Iowa Code Supplement section 68A.503 prohibits corporations from making contributions to state or local candidates in Iowa. This prohibition does not apply to incorporated media organizations that host candidate debates described in this rule.

4.51(1) *Media organization defined.* "Media organization" means a broadcaster, cable television operator, television programmer, television producer, bona fide newspaper, magazine, or any other periodical publication. The media organization shall not be owned or controlled by a political party, political committee, or candidate.

4.51(2) *Debate structure.* The structure of the debate shall be left to the discretion of the media organization provided that at least two or more candidates for the particular office are invited to participate. The debate shall not be structured to promote or advance one candidate over another. In choosing which candidates to invite to a debate, the media organization shall use good faith editorial judgment that is reasonable and viewpoint-neutral.

4.51(3) *Funding debates.* A media organization may use its own funds and may accept funds donated by corporations to defray costs incurred in staging a candidate debate under this rule.

4.51(4) *Contribution reporting inapplicable.* The costs of a debate under this rule are not a reportable monetary or in-kind contribution under Iowa Code Supplement section 68A.402.

This rule is intended to implement Iowa Code Supplement sections 68A.402 and 68A.503.

351—4.52(68A,68B) Corporate involvement with political committee funds.

4.52(1) *Corporate payroll deductions.* For purposes of interpretation of Iowa Code Supplement section 68A.503, the administrative functions performed by a corporation (profit or nonprofit corporation including, but not limited to, a bank, savings and loan institution, credit union or insurance company) to make payroll deductions for an employee organization's political committee and to transmit the deductions in lump sum to the treasurer of the political committee shall not be a prohibited corporate activity so long as the corporate entity is serving only as a conduit for the contributions.

4.52(2) *Electronic transfer of deposits.* A corporation, financial institution, or insurance company may receive and deposit checks that include both dues and PAC contributions. Contributions for the PAC shall be transferred as soon as possible into the PAC checking account and all disclosure, record-keeping, and record-retention requirements of Iowa Code chapter 68A shall be followed.

4.52(3) *Allowable costs of administration.* For the purposes of interpreting Iowa Code Supplement section 68A.503, subsection 3, which permits an entity otherwise forbidden from contributing to a candidate or a candidate's committee for "financing the administration of a committee sponsored by that entity," the following are considered to be allowable costs of administration:

a. Full or partial compensation for political committee staff, which may include both wages and benefits.

b. Expenses of transportation and travel incurred by political committee staff; however, this does not include expenses of transportation or travel if provided by a political committee or a staff member to a candidate, nor does this include expenses of meals or events held on behalf of a candidate.

c. Printing and office supplies related to routine office administration so long as the printing and supplies are not used to expressly advocate for or against any candidate.

d. Postage and stationery, including that necessary for mailing contributions to specific candidates. Postage and stationery necessary for distributing political material expressly advocating a specific candidate to persons other than the committee membership are not permitted.

e. Expenses of maintaining committee records and preparing financial disclosure reports, including costs associated with services provided by an accountant or other professional.

f. Promotional materials, such as stickers, pens, and coffee cups, so long as the items promote the political committee itself, but not a specific candidate.

An item which is excluded by this subrule from being an allowable cost of administration may still be provided by the committee, so long as that cost is paid for from contributions or other sources of funds other than the parent entity.

This rule is intended to implement Iowa Code Supplement section 68A.503.

DIVISION V
INDEPENDENT EXPENDITURES AND IN-KIND CONTRIBUTIONS

351—4.53(68A,68B) Express advocacy; in-kind contributions; independent expenditures—definitions. For the purposes of Iowa Code Supplement chapter 68A, the following definitions apply.

4.53(1) *Express advocacy.* "Express advocacy" means any communication as defined in Iowa Code Supplement section 68A.102(14). "Express advocacy" includes a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or for the passage or defeat of a clearly identified ballot issue.

4.53(2) *In-kind contribution.* "In-kind contribution" means the provision of any good or service to a committee without charge or at a charge that is less than the usual and normal charge for such good or service. If a good or service is provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the good or service at the time of the contribution and the amount charged the committee. An in-kind contribution also includes any expenditure that meets the definition of a coordinated expenditure in subrule 4.53(4).

4.53(3) *Independent expenditure.* "Independent expenditure" means "independent expenditure" as defined in 2009 Iowa Code Supplement section 68A.404(1) as amended by 2010 Iowa Acts, Senate File 2354, section 3.

4.53(4) *Coordinated expenditure.*

a. "Coordinated expenditure" means an expenditure made with the knowledge and approval of a candidate, candidate's committee, political party committee, or political committee. "Coordinated expenditure" also means that there has been arrangement, coordination, or direction by the candidate, candidate's committee, political party committee, or political committee, or an agent or officer of the candidate's committee or a ballot issue committee prior to the procurement or purchase of the good or service, or the publication, distribution, display, or broadcast of an express advocacy communication.

b. An expenditure will be presumed to be coordinated when it is:

(1) Based on information provided to the expending person by the candidate, the candidate's committee, or the ballot issue committee with a view toward having an expenditure made; or

(2) Made by or through any person who is or has been authorized to raise or expend funds; who is or has been an officer of the candidate's committee or the ballot issue committee; or who is or has been receiving any form of compensation or reimbursement from the candidate, the candidate's committee, or the ballot issue committee.

c. Pursuant to 2009 Iowa Code Supplement section 68A.404(7) as amended by 2010 Iowa Acts, Senate File 2354, section 3, a person making an independent expenditure shall not engage or retain an advertising firm or consultant that has also been engaged or retained within the prior six months by the candidate, candidate's committee, or ballot issue PAC that is benefited by the independent expenditure. "Engage or retain" shall not include the purchase of goods or products from an advertising firm or consultant when the advertising firm or consultant does not provide guidance, assistance, or advice to the person making the purchase concerning the good or product.

This rule is intended to implement 2009 Iowa Code Supplement section 68A.404 as amended by 2010 Iowa Acts, Senate File 2354, section 3.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10]

DIVISION VI
COMMITTEE DISSOLUTION

351—4.54(68A) Committee dissolution; disposition of property; resolution of loans or debts. A committee shall not dissolve until all loans and debts are paid, forgiven, or transferred, and the remaining funds in the committee's campaign account are distributed according to Iowa Code sections 68A.302 and 68A.303 and rule 351—4.25(68A,68B). In the case of a candidate's committee, the disposition of all campaign property with a residual value of $100 or more must be accomplished before dissolution.

4.54(1) *Manner of disposition—candidates' committees.* A candidate's committee shall dispose of campaign property with a residual value of $100 or more through a sale of the property at fair market

value, with proceeds treated as any other campaign funds, or through donation of the property as set out in Iowa Code section 68A.303(1). The candidate's committee shall disclose on the committee's campaign report the manner of disposition.

4.54(2) *Resolution of loans and debts.* The loans and debts of a committee may be transferred, assumed, or forgiven except that a loan or debt owed to a financial institution, insurance company, or corporation may not be forgiven unless the committee is a ballot issue committee. The committee shall disclose on the committee's campaign report the transfer, assumption, or forgiveness of a loan or debt on the appropriate reporting schedules.

4.54(3) *Settlement of disputed loans and debts.* A dispute concerning a loan or debt may be resolved for less than the original amount if the committee discloses on the committee's campaign report the resolution of the dispute. If the dispute is between a candidate's committee and a financial institution, insurance company, or corporation, the candidate's committee shall submit a written statement to the board describing the loan or debt, the controversy, and the steps taken to settle or collect the loan or debt. The board will review the statement and determine whether to permit the candidate's committee to report the loan or debt as discharged.

4.54(4) *Unavailable creditor.* If the committee cannot locate a person to whom it owes a loan or debt, the committee shall provide the board with a written statement describing the steps the committee has taken to locate the creditor and shall request direction from the board as to what additional steps, if any, should be taken. If a candidate's committee owes a loan or debt to a financial institution, insurance company, or corporation, resolution of the matter shall include payment to a charitable organization or the general fund of the state of Iowa.

This rule is intended to implement Iowa Code section 68A.402B.

351—4.55(68A) Statement of dissolution; final report; final bank statement.

4.55(1) *Statement of dissolution.* A statement of dissolution (Form DR-3) shall be filed after the committee terminates its activity, disposes of its funds and assets, and has discharged all of its loans and debts. The statement shall be either typewritten or printed legibly in black ink and shall be signed by the person filing the statement. A statement of dissolution filed electronically using the board's Web site is deemed signed when filed.

4.55(2) *Place of filing.* Statements of dissolution mandated by statute to be filed electronically with the board shall be filed through the board's Web site at www.iowagov/ethics. A statement of dissolution not mandated by statute to be filed electronically may be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319; by fax at (515)281-4073; or as an E-mail attachment.

4.55(3) *Time of filing.* A committee seeking dissolution shall file a statement of dissolution within 30 days of terminating activity, disposing of funds and assets, and discharging all loans and debts. A statement must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the required due date. Faxed or electronically filed statements must be submitted at or before 11:59 p.m. on the required due date. If the due date falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date is extended to the next working day.

4.55(4) *Final report.* The committee shall file a final report disclosing the committee's closing transactions. Once the board staff reviews the report and determines that the committee has complied with all of the requirements of Iowa Code chapter 68A, the committee is no longer required to file campaign reports. If the board staff determines that the committee has not complied with all of the requirements of Iowa Code chapter 68A, the committee, prior to being dissolved, shall resolve all issues.

4.55(5) *Final bank statement.* A copy of the committee's final bank statement showing the committee's closing transactions and a zero balance shall be attached to or submitted with the committee's final report. A committee participating in an election at the county, city, school, or other political subdivision level, an independent expenditure committee, or a sole individual making an independent expenditure is not required to file a final bank statement unless requested to do so by the

board. A committee seeking a waiver from the requirements of this subrule may do so in accordance with 351—Chapter 15.

This rule is intended to implement Iowa Code section 68A.402B as amended by 2010 Iowa Acts, Senate File 2354, section 2.

[**ARC 8826B**, IAB 6/2/10, effective 5/17/10; **ARC 9031B**, IAB 8/25/10, effective 9/29/10]

351—4.56(68A,68B) Disposition of property for dissolution of committee. Rescinded IAB 6/22/05, effective 7/27/05.

351—4.57(68A,68B) Assumption or settlement of debts and obligations. Rescinded IAB 6/22/05, effective 7/27/05.

DIVISION VII
CIVIL PENALTIES FOR LATE REPORTS

351—4.58(68B) Late-filed campaign disclosure reports. A campaign disclosure report is deemed filed late if it is not received by the board on or before the date and time the report is mandated to be filed pursuant to statute or board rule.

This rule is intended to implement Iowa Code section 68B.32A(8).

[**ARC 8290B**, IAB 11/18/09, effective 12/23/09]

351—4.59(68B) Routine civil penalty assessment for late-filed disclosure reports.

4.59(1) *Administrative resolution.* In administrative resolution of violations for late-filed disclosure reports, the board shall assess and collect monetary penalties for all late-filed disclosure reports. The board shall notify any person assessed a penalty of the amount of the assessment and the person's ability to request a waiver under rule 351—4.60(68B). A person using the board's electronic filing system shall not be assessed a civil penalty if the board's electronic filing system is not properly functioning and causes the person to be unable to timely file the report.

4.59(2) *County and local committee assessments.* County, county statutory, city, school, other political subdivision, and local ballot issue committees shall be assessed civil penalties for late-filed reports in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same committee in 12-month period
1 to 14 consecutive days delinquent	$20	$50
15 to 30 consecutive days delinquent	$50	$100
31 to 45 consecutive days delinquent	$100	$200

4.59(3) *State committee assessments.* Statewide, general assembly, state statutory, and state political committees, and a judge standing for retention shall be assessed civil penalties for late-filed reports, except for supplementary and special election reports, in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same committee in 12-month period
1 to 14 consecutive days delinquent	$50	$100
15 to 30 consecutive days delinquent	$100	$200
31 to 45 consecutive days delinquent	$200	$300

4.59(4) *Supplementary report assessments.* General assembly candidates' committees required to file supplementary disclosure reports shall be assessed a $200 civil penalty for filing a supplementary report one or more days late. Statewide committees required to file supplementary disclosure reports shall be assessed a $400 civil penalty for filing a supplementary report one or more days late.

4.59(5) *Special election assessments.* The committees of general assembly candidates to fill vacancies in special elections shall be assessed a $100 civil penalty for filing a special election report

one or more days late. The committees of statewide candidates to fill vacancies in special elections shall be assessed a $200 civil penalty for filing a special election report one or more days late.

4.59(6) *Verified statement of registration assessments.* An out-of-state committee that chooses to file a verified statement of registration (VSR) as provided in Iowa Code Supplement section 68A.201 and rule 351—4.32(68A), but fails to file the VSR on or before the fifteenth day after the date of the contribution, shall be assessed a $25 civil penalty per late-filed VSR. However, if there is a repeat delinquency by the committee in a 12-month period, the penalty shall be $50.

For purposes of this subrule, "date of the contribution" means the day, month and year the contribution check is dated.

4.59(7) *Independent expenditure assessment.* An individual who is delinquent in timely filing Form Ind-Exp-I shall be assessed a $25 civil penalty. If there is a repeat delinquency by the individual in timely filing Form Ind-Exp-I within a 12-month period, the penalty shall be $50. A person that is designated by the board as an independent expenditure committee that fails to timely file Form Ind-Exp-O shall be assessed a $50 civil penalty. If there is a repeat delinquency by the person in timely filing Form Ind-Exp-O within a 12-month period, the penalty shall be $100.

4.59(8) *Form DR-OTC assessment.* A permanent organization that has not previously made a contribution in excess of $750 and that fails to file Form DR-OTC within ten days of notice to do so by the board shall be assessed a $20 civil penalty. A permanent organization that has previously made a contribution in excess of $750 and that fails to file Form DR-OTC within ten days of the date on which the contribution check is issued shall be assessed a $20 civil penalty.

4.59(9) *Additional sanctions.* The issuance of a civil penalty under this rule does not prohibit the board from imposing sanctions pursuant to the process set out in Iowa Code chapter 68B and rule 351—9.4(68B) if the board determines that there was evidence of an intentional failure to timely file the report.

This rule is intended to implement Iowa Code section 68B.32A(8).

[**ARC 7645B**, IAB 3/25/09, effective 4/29/09; **ARC 8826B**, IAB 6/2/10, effective 5/17/10]

351—4.60(68B) Requests for waiver of penalties. If a person believes that there are mitigating circumstances that prevented the timely filing of a report, the person may make a written request to the board for waiver of the penalty by filing a Petition for Waiver of Civil Penalty form. A person seeking a waiver must submit the request to the board within 30 days of receiving a civil penalty assessment order. Waivers may be granted only under exceptional or very unusual circumstances. The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty is waived based on the circumstances. If a denial or partial waiver is issued, the person shall promptly pay the assessed penalty or seek a contested case proceeding pursuant to rule 351—4.61(68B).

This rule is intended to implement Iowa Code section 68B.32A(8).

[**ARC 7996B**, IAB 7/29/09, effective 9/2/09]

351—4.61(68B) Contested case challenge.

4.61(1) *Request.* If the person accepts administrative resolution of a matter through the payment of the assessed penalty, the matter shall be closed. If the person chooses to contest the board's decision to deny the request or grant a partial waiver of an assessed penalty, the person shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

4.61(2) *Procedure.* Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The hearing shall be conducted in accordance with the provisions of Iowa Code section 68B.32C and the board's rules. The burden shall be on the board's legal counsel to prove that a violation occurred.

4.61(3) *Failure to request hearing.* Failure to request a contested case proceeding to appeal the board's decision on a waiver request is failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A and Iowa Code section 68B.33.

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.62(68B) Payment of penalty.

4.62(1) *Where payment made.* Checks or money orders shall be made payable and forwarded to: Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Such funds shall be deposited in the general fund of the state of Iowa.

4.62(2) *Who may make payment.* Payment may be made at the person's discretion, including from funds of a committee or from personal funds of an officer of a committee.

4.62(3) *Disclosure of payment.* Rescinded IAB 3/25/09, effective 4/29/09.

This rule is intended to implement Iowa Code Supplement sections 68A.503 and 68B.32A(8).

[**ARC 7648B**, IAB 3/25/09, effective 4/29/09]

[Filed 10/17/95, Notice 8/25/75—published 11/3/75, effective under emergency provision 11/21/75]
[Filed 10/28/75, Notice 8/25/75—published 11/17/75, effective 12/22/75]
[Filed 11/26/75, Notice 8/25/75—published 12/15/75, effective 2/1/76]
[Amendment filed without notice 11/26/75—published 12/15/75]
[Filed emergency 2/11/76—published 3/8/76, effective 2/11/76]
[Filed 2/19/76, Notice 11/17/75—published 3/8/76, effective 4/12/76]
[Filed 4/1/76, Notice 11/17/75—published 4/19/76, effective 5/24/76]
[Filed 6/4/76—published 6/28/76, effective 8/2/76]
[Filed emergency 7/14/76—published 8/9/76, effective 7/14/76]
[Filed 1/7/77, Notice 12/1/76—published 1/26/77, effective 3/2/77]
[Filed 4/30/79, Notice 3/21/79—published 5/30/79, effective 7/4/79[1]]
[Filed 8/29/80, Notice 5/28/80—published 9/17/80, effective 10/22/80]
[Filed 11/6/81, Notice 9/3/81—published 11/25/81, effective 1/1/82]
[Filed 11/4/83, Notice 8/3/83—published 11/23/83, effective 1/1/84]
[Filed 5/16/86, Notice 3/12/86—published 6/4/86, effective 9/3/86]
[Filed 8/21/87, Notice 6/17/87—published 9/9/87, effective 10/14/87]
[Filed 4/26/89, Notice 2/22/89—published 5/17/89, effective 6/21/89]
[Filed 4/23/92, Notice 2/19/92—published 5/13/92, effective 6/17/92]
[Filed 11/17/92, Notice 9/16/92—published 12/9/92, effective 1/13/93]
[Filed emergency 1/15/93—published 2/3/93, effective 1/15/93]
[Filed 9/23/93, Notice 4/28/93—published 10/13/93, effective 11/17/93]
[Filed 3/11/94, Notice 1/5/94—published 3/30/94, effective 5/4/94]
[Filed emergency 6/16/94—published 7/6/94, effective 6/16/94]
[Filed 7/29/94, Notice 5/25/94—published 8/17/94, effective 9/21/94]
[Filed 12/16/94, Notice 8/17/94—published 1/4/95, effective 2/8/95]◊
[Filed 7/28/95, Notice 5/24/95—published 8/16/95, effective 9/20/95]
[Filed 7/28/95, Notice 6/21/95—published 8/16/95, effective 9/20/95]◊
[Filed 10/6/95, Notice 7/19/95—published 10/25/95, effective 11/29/95]
[Filed 7/12/96, Notice 4/24/96—published 7/31/96, effective 9/4/96]◊
[Filed 10/18/96, Notice 8/28/96—published 11/6/96, effective 12/11/96]
[Filed 12/24/96, Notice 11/6/96—published 1/15/97, effective 2/19/97]
[Filed 6/13/97, Notice 5/7/97—published 7/2/97, effective 8/6/97]
[Filed 5/15/98, Notice 3/11/98—published 6/3/98, effective 7/8/98]◊
[Filed 7/10/98, Notice 6/3/98—published 7/29/98, effective 9/2/98]
[Filed 3/3/99, Notice 1/13/99—published 3/24/99, effective 4/28/99]
[Filed emergency 6/9/99—published 6/30/99, effective 6/9/99]
[Filed 6/21/02, Notice 5/15/02—published 7/10/02, effective 8/14/02]◊
[Filed 8/1/02, Notice 6/12/02—published 8/21/02, effective 9/25/02]◊
[Filed 8/1/02, Notice 6/26/02—published 8/21/02, effective 9/25/02]
[Filed 8/30/02, Notice 7/10/02—published 9/18/02, effective 10/23/02]
[Filed 11/1/02, Notice 8/21/02—published 11/27/02, effective 1/1/03]◊
[Filed 11/1/02, Notice 9/4/02—published 11/27/02, effective 1/1/03]◊

[Filed 4/23/03, Notice 3/5/03—published 5/14/03, effective 7/1/03]
[Filed 8/28/03, Notice 7/9/03—published 9/17/03, effective 10/22/03]◊
[Filed 8/28/03, Notice 7/23/03—published 9/17/03, effective 10/22/03]
[Filed 10/9/03, Notice 8/20/03—published 10/29/03, effective 12/3/03]◊
[Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03]◊
[Filed 1/14/04, Notice 11/26/03—published 2/4/04, effective 3/10/04]◊
[Filed 2/6/04, Notice 12/24/03—published 3/3/04, effective 4/7/04]◊
[Filed 4/23/04, Notice 3/3/04—published 5/12/04, effective 6/16/04]◊
[Filed without Notice 4/29/04—published 5/26/04, effective 7/1/04]
[Filed without Notice 5/3/04—published 5/26/04, effective 7/1/04]
[Filed without Notice 5/4/04—published 5/26/04, effective 7/1/04]
[Filed 6/24/04, Notice 5/12/04—published 7/21/04, effective 8/25/04]◊
[Filed 8/26/04, Notice 7/21/04—published 9/15/04, effective 10/20/04]
[Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]
[Filed 1/28/05, Notice 11/10/04—published 2/16/05, effective 3/23/05]◊
[Filed 1/28/05, Notice 12/22/04—published 2/16/05, effective 3/23/05]
[Filed 5/23/05, Notice 3/16/05—published 6/22/05, effective 7/27/05]◊
[Filed without Notice 5/24/05—published 6/22/05, effective 7/27/05]◊
[Filed 8/17/05, Notice 5/11/05—published 9/14/05, effective 10/19/05]
[Filed 12/2/05, Notice 9/14/05—published 12/21/05, effective 1/25/06]
[Filed 12/2/05, Notice 10/26/05—published 12/21/05, effective 1/25/06]
[Filed 2/8/06, Notice 12/21/05—published 3/1/06, effective 4/5/06]◊
[Filed 7/13/06, Notice 4/26/06—published 8/2/06, effective 9/6/06]◊
[Filed 9/25/06, Notice 8/2/06—published 10/25/06, effective 11/29/06]◊
[Filed 3/7/07, Notice 1/17/07—published 3/28/07, effective 5/2/07]
[Filed without Notice 7/11/07—published 8/1/07, effective 9/5/07]◊
[Filed without Notice 7/12/07—published 8/1/07, effective 9/5/07]◊
[Filed 4/2/08, Notice 2/13/08—published 4/23/08, effective 5/28/08]
[Filed 9/2/08, Notice 6/18/08—published 9/24/08, effective 10/29/08]
[Filed without Notice 9/5/08—published 9/24/08, effective 10/29/08]◊
[Filed without Notice 11/11/08—published 12/3/08, effective 1/7/09]◊
[Filed 12/8/08, Notice 9/24/08—published 12/31/08, effective 2/4/09]◊
[Filed ARC 7646B (Notice ARC 7377B, IAB 12/3/08), IAB 3/25/09, effective 4/29/09]
[Filed ARC 7647B (Notice ARC 7373B, IAB 12/3/08), IAB 3/25/09, effective 4/29/09]
[Filed ARC 7648B (Notice ARC 7380B, IAB 12/3/08), IAB 3/25/09, effective 4/29/09]
[Filed ARC 7645B (Notice ARC 7455B, IAB 12/31/08), IAB 3/25/09, effective 4/29/09]
[Filed Without Notice ARC 7800B, IAB 6/3/09, effective 7/8/09]
[Filed Without Notice ARC 7801B, IAB 6/3/09, effective 7/8/09]
[Filed ARC 7866B (Notice ARC 7705B, IAB 4/8/09), IAB 6/17/09, effective 7/22/09]
[Filed ARC 7995B (Notice ARC 7806B, IAB 6/3/09), IAB 7/29/09, effective 9/2/09]
[Filed ARC 7994B (Notice ARC 7807B, IAB 6/3/09), IAB 7/29/09, effective 9/2/09]
[Filed ARC 7992B (Notice ARC 7809B, IAB 6/3/09), IAB 7/29/09, effective 9/2/09]
[Filed ARC 7998B (Notice ARC 7803B, IAB 6/3/09), IAB 7/29/09, effective 9/2/09]
[Filed ARC 7996B (Notice ARC 7805B, IAB 6/3/09), IAB 7/29/09, effective 9/2/09]
[Filed ARC 8286B (Notice ARC 7999B, IAB 7/29/09), IAB 11/18/09, effective 12/23/09]
[Filed Without Notice ARC 8290B, IAB 11/18/09, effective 12/23/09]
[Filed Without Notice ARC 8289B, IAB 11/18/09, effective 12/23/09]
[Filed Emergency ARC 8826B, IAB 6/2/10, effective 5/17/10]
[Filed Without Notice ARC 8787B, IAB 6/2/10, effective 7/7/10]
[Filed Without Notice ARC 8788B, IAB 6/2/10, effective 7/7/10]

[Filed ARC 9031B (Notice ARC 8795B, IAB 6/2/10), IAB 8/25/10, effective 9/29/10]

◊ Two or more ARCs

1 Effective date of rule 4.16 delayed by the Administrative Rules Review Committee 45 days after convening of the next General Assembly pursuant to §17A.8(9).

CHAPTER 6
EXECUTIVE BRANCH ETHICS

DIVISION I
GENERAL PROVISIONS

351—6.1(68B) Scope of chapter. Pursuant to Iowa Code section 68B.32(1), the Iowa ethics and campaign disclosure board is to set standards for, investigate complaints relating to, and monitor the ethics of officials, employees, and candidates for office in the executive branch of state government. Pursuant to Iowa Code section 68B.32A(13), the board is required to establish rules relating to ethical conduct for the executive branch of state government. This chapter sets the standards and establishes the rules for the ethical conduct of persons in the executive branch of state government.

This rule is intended to implement Iowa Code sections 68B.32(1) and 68B.32A(13).

[Editorial change: IAC Supplement 4/8/09]

351—6.2(68B) Definitions. For purposes of this chapter, the following definitions apply:

"Agency of state government" or *"state agency"* means any authority, board, bureau, commission, community college, department, division, office of a statewide elected official, or regents university.

"Board" means the Iowa ethics and campaign disclosure board.

"Candidate for statewide office" means a candidate for governor, lieutenant governor, secretary of state, auditor of state, treasurer of state, secretary of agriculture, or attorney general.

"Employee" means an individual who is a paid employee of any agency of state government. "Employee" includes an individual employed in an interim or acting capacity. "Employee" does not include an official or an independent contractor.

"Executive branch of state government" means an agency of state government.

"Official" means a statewide elected official, an executive or administrative head or heads of a state agency, a deputy executive or administrative head or heads of a state agency, a member of a board or commission as defined under Iowa Code section 7E.4, or a head of a major subunit of a state agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds. "Official" includes an individual serving in an interim or acting capacity.

"State duties" means the official duties, responsibilities, or activities of an official or employee that are mandated by law, rule, or court order, or that otherwise lawfully aid an agency of state government in carrying out the statutory functions of the agency.

This rule is intended to implement Iowa Code section 68B.2.

[**ARC 7649B**, IAB 3/25/09, effective 4/29/09; Editorial change: IAC Supplement 4/8/09]

351—6.3(68B) Complaints or filing information alleging a violation.

6.3(1) *Who may file.* Any person may file a complaint or provide information to the board alleging a violation of Iowa Code chapter 68B or this chapter by officials, employees, and candidates for statewide office.

6.3(2) *Procedure.* The procedure for filing a complaint or providing information to the board alleging a violation of Iowa Code chapter 68B or this chapter is set out in Iowa Code section 68B.32B and 351—Chapter 9.

6.3(3) *Whistleblower protection.* A person who discharges or discriminates against an official or employee because the official or employee filed a complaint or provided information to the board shall be subject to the board's complaint process if the official or employee filed the complaint or provided the information in good faith. If it is determined after a contested case proceeding that a person has impermissibly discharged or discriminated against an official or employee, the board may impose sanctions as set out in Iowa Code section 68B.32D.

For purposes of this subrule, "good faith" means that any statements or materials in a complaint or included as part of information provided to the board were made or provided with a reasonable belief that such statements or materials were true and accurate.

This rule is intended to implement Iowa Code sections 68B.32A(14) and 68B.32B.

[Editorial change: IAC Supplement 4/8/09]

351—6.4(68B) Board advice. Persons subject to the authority of the board under Iowa Code chapter 68B or this chapter may seek advice or guidance from the board concerning the legality of any action or conduct potentially affected by Iowa Code chapter 68B or this chapter.

6.4(1) *Advisory opinion.* A board advisory opinion applies a statute or rule under the board's jurisdiction to a particular factual situation. The procedure for requesting a board opinion is set out in rules 351—1.2(68B) and 351—1.3(68B). Pursuant to Iowa Code section 68B.32A(12), a board opinion, if followed, constitutes a defense to a subsequent complaint or information provided to the board concerning the same facts and circumstances.

6.4(2) *Declaratory order.* Persons may also seek board guidance concerning the application of a statute or rule under the board's jurisdiction to a specific factual situation through the petition for declaratory order procedure set out in 351—Chapter 12.

6.4(3) *Routine administrative advice.* A person may also receive oral or written routine administrative advice from board staff concerning the application of Iowa Code chapter 68B or this chapter. Routine administrative advice is not binding on the board, but may be offered as a defense to a subsequent complaint or information provided to the board concerning the same facts and circumstances.

This rule is intended to implement Iowa Code section 68B.32A(12).

[Editorial change: IAC Supplement 4/8/09]

DIVISION II
CONFLICT OF INTEREST AND MISUSE OF PROPERTY

351—6.5 Reserved.

351—6.6(68B) Dual executive branch compensation prohibited. Pursuant to Iowa Code section 68B.2B, an executive branch official or employee shall not receive compensation simultaneously from more than one executive branch agency unless the official or employee provides notice to the board within 20 business days of accepting employment with another executive branch agency.

6.6(1) *Definitions.* For purposes of Iowa Code section 68B.2B and this rule, the following definitions apply:

"Executive branch agency" means "agency of state government" or "state agency" as defined in Iowa Code section 68B.2(2). However, the "legislative branch" is not considered an "agency of state government" or "state agency" for purposes of Iowa Code section 68B.2B or this rule.

"Employment with a second executive branch agency" includes services provided as an independent contractor with another executive branch agency.

6.6(2) *Exceptions.* The prohibitions in Iowa Code section 68B.2B and this rule do not apply to the following:

a. Employment with any governmental entity other than simultaneous employment with two or more executive branch agencies.

b. Service in the Iowa national guard.

c. An official or employee who is interchanged from one executive branch agency to another executive branch agency pursuant to Iowa Code chapter 28D unless the official or employee is simultaneously receiving compensation from both the "receiving agency" and the "sending agency."

d. Serving on the board, commission, or authority of two or more executive branch agencies.

6.6(3) *Reporting form.* An official or employee of the executive branch who accepts simultaneous employment with another executive branch agency shall file Form Dual-Comp within 20 business days of accepting employment with the second executive branch agency. The form shall be filed with the

board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319; by fax at (515)281-4073; or as an E-mail attachment. The failure to timely file Form Dual-Comp may subject the executive branch official or employee to board sanctions under Iowa Code chapter 68B and rule 351—9.4(68B).
[**ARC 9035B**, IAB 8/25/10, effective 9/29/10]

351—6.7 Reserved.

351—6.8(68B) Misuse of public property. Iowa Code section 68B.32A(13) directs the board to establish rules relating to the misuse of public property by officials, employees, and candidates for statewide office.

6.8(1) *Definition of public property.* "Public property" means any real or personal property owned or controlled by the state of Iowa including but not limited to buildings, facilities, equipment, supplies, funds, records, files, and materials.

6.8(2) *Prohibited uses.* The following are deemed to be the misuse of public property by an official, employee, or candidate for statewide office:

a. Using public property to engage in an outside employment or activity that leads to an unacceptable conflict of interest as prohibited in Iowa Code section 68B.2A(1)*"a."*

b. Using public property to knowingly and purposefully send, receive, or view obscene material. "Obscene material" means any material depicting or describing the genitals, sex acts, masturbation, excretory functions, or sadomasochistic abuse which the average person, taking the material as a whole and applying contemporary community standards with respect to what is suitable material, would find appeals to the prurient interest and is patently offensive; and the material, taken as a whole, lacks serious literary, scientific, political, or artistic value.

This paragraph shall not apply to obscene materials that are sent or received as part of a law enforcement investigation or are authorized by law to be sent or received.

c. Using public property for personal financial gain. This prohibition does not apply to the receipt of lawful compensation for the performance of official state duties.

d. Using public property for a personal benefit to the detriment of the state.

e. Removing public property from a state building or facility for personal use.

f. Using public property to engage in political activities as prohibited in 351—Chapter 5.

This rule is intended to implement Iowa Code section 68B.32A(13).
[Editorial change: IAC Supplement 4/8/09]

351—6.9(68B) Use of confidential information. No official or employee shall disclose or use confidential information, including the contents of a sealed bid acquired during the course of the official's or employee's state duties, for the personal gain or benefit of any person. This rule does not apply to the release of information that is mandated by law, rule, or court order.

This rule is intended to implement Iowa Code section 68B.32A(13).
[Editorial change: IAC Supplement 4/8/09]

DIVISION III
SALES OR LEASES OF GOODS OR SERVICES

351—6.10(68B) Prohibition on sales; when public bids required—disclosure of income. Pursuant to Iowa Code section 68B.3 as amended by 2010 Iowa Acts, Senate File 2067, sections 2 and 3, an official or employee shall not sell, in any one occurrence, goods or services having a value in excess of $2,000 to a state agency unless the sale is made pursuant to an award or contract let after public notice and competitive bidding and the official or employee making the sale files Form Public Bid with the board within 20 days of making the sale. This prohibition includes sales to the state agency in which the official or employee serves or is employed.

6.10(1) *Exceptions.* The prohibition in Iowa Code section 68B.3 and this rule shall not apply to any of the following:

a. Sales of goods or services done as part of the official's or employee's state duties.

b. The publication of resolutions, advertisements, or other legal propositions or notices in newspapers designated by law for the publication of such materials and for which publication rates are fixed by law.

c. Instruction at an accredited educational institution if the official or employee meets the minimum education and licensing requirements established for other instructors at the educational institution.

6.10(2) *Sales to political subdivisions.* An official who sells goods or services to a political subdivision of the state shall disclose on the official's Form PFD as provided in 351—Chapter 7 if income was received from the sale.

6.10(3) *Filing of report.* An official or employee making a sale to a state agency pursuant to Iowa Code section 68B.3 as amended by 2010 Iowa Acts, Senate File 2067, sections 2 and 3, shall file Form Public Bid within 20 days of making the sale. The form shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319; by fax at (515)281-4073; or as an E-mail attachment. The failure to timely file Form Public Bid with the board within 20 days of making the sale may subject the official or employee to board sanctions under Iowa Code chapter 68B and rule 351—9.4(68B).

This rule is intended to implement Iowa Code section 68B.3 as amended by 2010 Iowa Acts, Senate File 2067, sections 2 and 3.

[**ARC 7650B**, IAB 3/25/09, effective 4/29/09; **ARC 9036B**, IAB 8/25/10, effective 9/29/10]

351—6.11(68B) Sales or leases by regulatory agency officials or employees. An official or employee of a regulatory agency shall not directly or indirectly sell or lease any goods or services to individuals, associations, or corporations subject to the regulatory authority of the official's or employee's agency except as provided by Iowa Code section 68B.4 and this rule. This prohibition does not apply to sales or leases that are part of the official's or employee's state duties.

6.11(1) *Applicability.* Pursuant to Iowa Code section 68B.4, the board shall adopt rules specifying the method by which an official or employee of a regulatory agency may obtain consent to sell or lease a good or service to an individual, association, or corporation subject to the regulatory authority of the official's or employee's agency. This rule sets out the method of obtaining consent by a regulatory agency official or employee.

6.11(2) *Definitions.* For purposes of this rule, the following definitions apply:

"Agency" means a regulatory agency.

"Employee" means an employee of an executive branch regulatory agency and does not include an independent contractor or an official.

"Official" means a statewide elected official of a regulatory agency, an executive or administrative head or heads of a regulatory agency, a deputy executive or administrative head or heads of a regulatory agency, a member of a board or commission as defined under Iowa Code section 7E.4, or a head of a major subunit of a regulatory agency whose position involves a substantial exercise of administrative discretion or the expenditure of public funds.

"Regulatory agency" means the department of agriculture and land stewardship, department of workforce development, department of commerce, Iowa department of public health, department of public safety, department of education, state board of regents, department of human services, department of revenue, department of inspections and appeals, department of administrative services, public employment relations board, state department of transportation, civil rights commission, department of public defense, Iowa ethics and campaign disclosure board, and department of natural resources.

6.11(3) *Request for consent.* An official's or employee's request for an agency's consent to the sale or lease of goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed with the official's or employee's agency at least 20 calendar days in advance of the proposed sale or lease of any goods or services.

b. The request shall include all of the following:

(1) The name of the individual, association, or corporation to which the goods or services are to be sold or leased;

(2) The relationship of the individual, association, or corporation to the agency;

(3) A description of the goods or services;

(4) The date or dates that the goods or services will be delivered; and

(5) A statement by the official or employee explaining how the proposed sale or lease of the goods or services will not violate the provisions of Iowa Code section 68B.4 or create a conflict of interest under Iowa Code section 68B.2A.

6.11(4) *Agency guidelines.* Iowa Code section 68B.4 and the guidelines in this subrule shall be the sole legal authorities to be used by an agency in considering the granting of consent. In determining whether to grant consent, the agency shall take the following guidelines into consideration:

a. The official or employee seeking consent is not the person with the authority to determine whether consent should be granted.

b. The duties and functions performed by the official or employee seeking consent are not related to the regulatory authority of the agency over the individual, association, or corporation to which the goods or services will be sold or leased.

c. The selling or leasing of the goods or services does not affect the official's or employee's duties or functions at the agency.

d. The selling or leasing of the goods or services will not cause the official or employee to advocate on behalf of the individual, association, or corporation to the agency.

e. The selling or leasing of the goods or services does not cause the official or employee to sell or lease goods or services to the agency on behalf of the individual, association, or corporation.

f. The selling or leasing of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.

g. The request complies with the procedural requirements of subrule 6.11(3).

h. A regulatory agency may grant blanket consent for sales or leases to classes of individuals, associations, or persons when such blanket consent is consistent with subrule 6.11(4) and the granting of single consents is impractical or impossible to determine.

These guidelines shall be publicized and made known to all personnel throughout the agency.

6.11(5) *Agency decision.* The official's or employee's agency shall issue a written consent or denial within 14 calendar days following the date the request was filed. The deadline may be extended by agreement of both the official or employee and the agency. If the request is denied or granted conditionally, the agency shall state the reasons for the denial or conditional consent.

6.11(6) *Appeal of denial.* An official or employee who receives a denial or conditional consent may file a request with the board for a contested case proceeding pursuant to 351—Chapter 11 for a determination of whether the situation described in the request complies with the requirements of Iowa Code section 68B.2A, Iowa Code section 68B.4 and this rule. The final order of the board constitutes final agency action for purposes of seeking judicial review.

6.11(7) *Copy of consent filed with board.* Pursuant to Iowa Code section 68B.4, an agency granting consent shall file a copy of the consent with the board within 20 days of the granting of consent. The board shall treat the consent as a public record. The failure to provide a copy of the consent may result in the imposition of board sanctions against the individual who granted the consent.

6.11(8) *Consent not a defense.* Consent granted by an agency under this rule shall not constitute a defense to a complaint alleging a violation of any law or rule. It is the responsibility of the official or employee to ensure compliance with all applicable laws and rules.

This rule is intended to implement Iowa Code section 68B.4.

[Editorial change: IAC Supplement 4/8/09]

351—6.12(68B) Sales or leases by members of the office of the governor. A permanent full-time member of the office of the governor shall not directly or indirectly sell or lease any goods or services to registered lobbyists before the general assembly or the executive branch or to individuals, associations, or corporations that employ persons who are registered lobbyists before the general assembly or the executive branch except as provided in Iowa Code section 68B.4B and this rule. This prohibition does not apply to sales or leases that are part of the member's state duties.

6.12(1) *Request for consent.* A request submitted by a member of the office of the governor for consent to sell or lease goods or services shall comply with all of the following:

a. The request shall be in writing and shall be filed at least 20 calendar days in advance of the proposed sale or lease of any goods or services with the person responsible for hiring or approving the hiring of the member.

b. The request shall include all of the following:

(1) The name of the lobbyist, individual, association, or corporation to which the goods or services are to be sold or leased;

(2) The relationship of the lobbyist, individual, association, or corporation to the office of the governor;

(3) A description of the goods or services;

(4) The date or dates that the goods or services will be delivered; and

(5) A statement by the member explaining how the proposed sale or lease of the goods or services will not violate the provisions of Iowa Code section 68B.4B or create a conflict of interest under Iowa Code section 68B.2A.

6.12(2) *Guidelines for granting consent.* In determining whether to grant consent, the person responsible for hiring or approving the hiring of the member shall take the following guidelines into consideration:

a. The duties and functions performed by the member are not related to the authority of the office of the governor over the lobbyist, individual, association, or corporation.

b. The selling or leasing of goods or services by the member to the lobbyist, individual, association, or corporation does not affect the member's duties or functions at the office of the governor.

c. The selling or leasing of any goods or services by the member to a lobbyist, individual, association, or corporation does not include lobbying the office of the governor.

d. The selling or leasing of any goods or services by the member does not cause the member to sell or lease goods or services to the office of the governor on behalf of the lobbyist, individual, association, or corporation.

e. The selling or leasing of the goods or services will not result in a conflict of interest as provided in Iowa Code section 68B.2A.

f. The request complies with the procedural requirements of subrule 6.12(1).

g. A blanket consent may be granted for sales or leases to classes of lobbyists, individuals, associations, or corporations when such blanket consent is consistent with subrule 6.12(2) and the granting of single consents is impractical or impossible to determine.

These guidelines shall be publicized and made known to members of the office of the governor.

6.12(3) *Decision.* The person responsible for hiring or approving the hiring of the member shall issue a written consent or denial within 14 calendar days following the date the request was filed. The deadline may be extended by agreement of both the member and the person. If the request is denied, the person shall state the reasons for the denial.

6.12(4) *Appeal of denial.* A member who receives a denial may file a request with the board for a contested case proceeding pursuant to 351—Chapter 11 for a determination of whether the situation described in the request complies with the requirements of Iowa Code section 68B.2A, Iowa Code section 68B.4B and this rule. The final order of the board constitutes final agency action for purposes of seeking judicial review.

6.12(5) *Copy of consent filed with board.* Pursuant to Iowa Code section 68B.4B, a copy of the consent granted to a member shall be filed with the board within 20 days of the granting of consent. The board shall treat the consent as a public record. The failure to provide a copy of the consent may result in the imposition of board sanctions against the person who granted the consent.

6.12(6) *Consent not a defense.* Consent granted under this rule shall not constitute a defense to a complaint alleging a violation of any law or rule. It is the responsibility of the member of the office of the governor to ensure compliance with all applicable laws and rules.

This rule is intended to implement Iowa Code section 68B.4B.

[Editorial change: IAC Supplement 4/8/09]

DIVISION IV
EMPLOYMENT RESTRICTIONS

351—6.13 Reserved.

351—6.14(68B) Engaging in services against the interest of the state prohibited. Except for a member of a board or commission, no official or employee shall receive compensation in any form, or enter into any type of agreement to receive compensation in any form, to appear on behalf of any person or otherwise render services against the interest of the state except as set out in Iowa Code section 68B.6 and this rule. This prohibition relates to any case, proceeding, application, or other matter before any federal court, federal bureau, federal agency, federal commission, federal department, any agency of state government, or any court of the state of Iowa.

6.14(1) *Definitions.* For purposes of this rule, the following definitions apply:

"Board" means a policy-making body that has the power to hear contested cases or a policy-making body that has powers for both rule making and hearing contested cases.

"Commission" means a policy-making body that has rule-making powers.

6.14(2) *Member of board or commission.* No member of a board or commission shall receive compensation in any form, or enter into any type of agreement to receive compensation in any form, to appear on behalf of any person or otherwise render services against the interest of the state in relation to any case, proceeding, application, or other matter before the subunit of a state agency in which the member serves or is employed, or with which the member has substantial and regular contact as part of the member's state duties.

6.14(3) *Exception for attorney general and public defender.* As provided in 2004 Iowa Acts, Senate File 2179, sections 1 and 2, officials and employees carrying out the official duties of the office of the attorney general or the office of the state public defender are not subject to the provisions of Iowa Code section 68B.6 or this rule.

This rule is intended to implement Iowa Code section 68B.6.

[Editorial change: IAC Supplement 4/8/09]

351—6.15 Reserved.

DIVISION V
GIFTS AND OFFERS

351—6.16 to **6.18** Reserved.

351—6.19(68B) Prohibition on receipt of an honorarium. Pursuant to Iowa Code section 68B.23, an official or employee shall not accept an honorarium from a restricted donor.

6.19(1) *Definitions.* For purposes of this rule, the following definitions apply:

"Honorarium" means a payment of compensation or the giving of anything of value to an official or employee in relation to a speaking engagement.

"Restricted donor" means a person as defined in Iowa Code section 68B.2(24).

6.19(2) *Exceptions.* An official or employee may receive and accept an honorarium provided that the honorarium consists of:

a. Payment of actual expenses for registration, food, beverages, travel, or lodging paid in return for participation on a panel or for a speaking engagement at a meeting. The expenses shall relate directly to the day or days on which the official or employee has participation or speaking responsibilities.

b. Receipt of a nonmonetary item or a series of nonmonetary items that the official or employee donates within 30 days of receipt to any of the following:

(1) A public body;

(2) A bona fide educational or charitable organization; or

(3) The department of administrative services. Items donated to the department of administrative services shall be disposed of by assignment to state agencies for official use or by public sale.

c. Payment to an official or employee for services rendered as part of a bona fide private business, trade, or profession in which the official or employee is engaged so long as both of the following conditions are met:

(1) The payment is commensurate with the actual services rendered; and

(2) The payment is being made due to a special expertise or other qualification the recipient possesses separate from the recipient's status as a public official or public employee.

6.19(3) *Solicitation prohibited.* An official or employee shall not solicit, demand, or otherwise request an honorarium from a restricted donor.

This rule is intended to implement Iowa Code sections 68B.23 and 68B.32A(13).

[Editorial change: IAC Supplement 4/8/09]

351—6.20(68B) Loans from executive branch lobbyists prohibited. Pursuant to Iowa Code section 68B.24, officials, employees, and candidates for statewide office shall not directly or indirectly seek or accept a loan from a person who is an executive branch lobbyist.

6.20(1) *Definitions.* For purposes of this rule, the following definitions apply:

"Executive branch lobbyist" means an individual who is registered as a lobbyist with the board or is an "executive branch lobbyist" as defined in rule 351—8.2(68B).

"Loan" means a sum of money upon agreement, express or implied, to be repaid with or without interest.

6.20(2) *Offer of loan prohibited.* An executive branch lobbyist shall not directly or indirectly offer or make a loan to an official, an employee, or a candidate for statewide office as prohibited in Iowa Code section 68B.24(2) and rule 351—8.16(68B).

6.20(3) *Exceptions.* The prohibitions in Iowa Code section 68B.24 and this rule do not apply to a loan made in either of the following circumstances:

a. A loan made in the ordinary course of business. For purposes of Iowa Code section 68B.24 and this rule, "ordinary course of business" means the loan is made by a person regularly engaged in a business that makes loans to members of the public, and the finance charges and other terms of the loan are the same as or substantially similar to the finance charges and loan terms that are available to members of the public.

b. A loan made to the campaign committee of a candidate for statewide office that is subject to the campaign laws in Iowa Code chapter 68A.

This rule is intended to implement Iowa Code sections 68B.24 and 68B.32A(13).

[Editorial change: IAC Supplement 4/8/09]

[Filed 8/26/04, Notice 7/21/04—published 9/15/04, effective 10/20/04]
[Filed 1/28/05, Notice 11/10/04—published 2/16/05, effective 3/23/05]
[Filed 3/11/05, Notice 12/22/04—published 3/30/05, effective 5/4/05]
[Filed 5/23/05, Notice 3/16/05—published 6/22/05, effective 7/27/05]
[Filed without Notice 5/24/05—published 6/22/05, effective 7/27/05]
[Filed 2/8/06, Notice 12/21/05—published 3/1/06, effective 4/5/06]
[Filed 9/25/06, Notice 8/2/06—published 10/25/06, effective 11/29/06]◊
[Filed without Notice 7/11/07—published 8/1/07, effective 9/5/07]
[Filed ARC 7649B (Notice ARC 7378B, IAB 12/3/08), IAB 3/25/09, effective 4/29/09]
[Filed ARC 7650B (Notice ARC 7375B, IAB 12/3/08), IAB 3/25/09, effective 4/29/09]
[Editorial change: IAC Supplement 4/8/09]
[Filed ARC 9035B (Notice ARC 8793B, IAB 6/2/10), IAB 8/25/10, effective 9/29/10]
[Filed ARC 9036B (Notice ARC 8794B, IAB 6/2/10), IAB 8/25/10, effective 9/29/10]

◊ Two or more ARCs

CHAPTER 9
COMPLAINT, INVESTIGATION, AND RESOLUTION PROCEDURES

[Prior to 9/9/87, Campaign Finance Disclosure[190] Ch 1]
[Prior to 3/30/94, Campaign Finance Disclosure Commission[121] Ch 1]
[Prior to 8/21/02, see 351—Ch 1]
[Prior to 9/17/03, see 351—Ch 5]

351—9.1(68B) Complaints.

9.1(1) *Form.* A complaint shall be on forms provided by the board and shall be certified under penalty of perjury. The complaint shall contain all information required by Iowa Code section 68B.32B(1).

9.1(2) *Board acceptance.* A complaint shall not be deemed accepted by the board until completion of the legal review required by Iowa Code section 68B.32B(4). If the board's legal counsel opines that the complaint contains a legally sufficient allegation, the complaint is deemed accepted. If the board's legal counsel opines that the complaint does not contain a legally sufficient allegation and the board, upon review, makes a determination that the complaint does contain a legally sufficient allegation, the complaint is then deemed accepted. If both the board's legal counsel and the board opine that the complaint does not contain a legally sufficient allegation, the complaint shall be dismissed.

9.1(3) *Notice.* Notice to the subject of a complaint is made only when a complaint is accepted, subject to the conditions of Iowa Code section 68B.32B(3). A complaint is a public record, subject to the conditions of Iowa Code section 68B.32B(11).

9.1(4) *Board review.* The board's review of a formal complaint for legal sufficiency is not a contested case proceeding and shall be made solely on the facts alleged in the complaint.

9.1(5) *Information provided to board.* The board may, on its own motion and without the filing of a complaint, initiate investigations into matters that the board believes may be subject to the board's jurisdiction. As provided in Iowa Code section 68B.32B(7), persons may provide information to the board for possible board-initiated investigation instead of filing a complaint.

351—9.2(68B) Investigations—board action.

9.2(1) *Referral to staff.* Upon a determination that a complaint contains a legally sufficient allegation, the board shall refer the complaint to staff for investigation.

9.2(2) *Board-initiated investigation.* On its own motion the board may refer to staff for investigation matters that the board believes may be subject to the board's jurisdiction, including matters brought to the board's attention by members of the public.

9.2(3) *Subpoenas.* Investigations may include the issuance and enforcement of investigative subpoenas requiring the production of books, papers, records, and other real evidence, as well as requiring the attendance and testimony of witnesses.

9.2(4) *Completion.* Upon completion of an investigation, staff shall make a report to the board and may provide a recommendation for board action.

9.2(5) *Board action.* Upon receipt and review of the staff investigative report and any recommendations, the board may:

a. Redirect the matter for further investigation;

b. Dismiss the matter for lack of probable cause to believe a violation has occurred;

c. Dismiss the matter without a determination regarding probable cause as an exercise of administrative discretion;

d. Make a determination that probable cause exists to believe a violation has occurred and direct administrative resolution of the matter as provided in subrule 9.4(2); or

e. Make a determination that probable cause exists to believe a violation has occurred and direct the issuance of a statement of charges to initiate a contested case proceeding.

351—9.3(68B) Grounds for disciplinary action. The board may impose discipline against a person subject to the board's jurisdiction who commits a violation of Iowa Code chapter 68A, Iowa Code chapter 68B, Iowa Code section 8.7, or rules adopted by the board.

This rule is intended to implement Iowa Code section 68B.32A(9).

[Editorial change: IAC Supplement 4/8/09]

351—9.4(68B) Disciplinary remedies; administrative resolution of enforcement matters.

9.4(1) *Action after hearing.* If it is determined after a contested case proceeding that a violation of statute or rule under the board's jurisdiction has occurred, the board may impose any of the actions set out in Iowa Code section 68B.32D, including as a remedial action the assessment of direct costs related to the hearing for printing, postage, long-distance telephone charges, witness fees, and compensation paid to the presiding officer.

9.4(2) *Administrative resolution.* Violations may be handled by administrative resolution rather than through the full investigative and contested case proceeding process. The board may order administrative resolution by directing that the person take specified remedial action. The board may also order administrative resolution by issuing a letter of reprimand or by imposing a civil penalty as set out in subrule 9.4(7).

9.4(3) *Response to administrative resolution.* A person subject to board discipline may accept administrative resolution, but is not required to do so. If the person accepts the administrative resolution by complying with the directed remedial action or accepting a letter of reprimand, the matter shall be closed. If the person wishes to appeal the administrative resolution, the person shall make a written request for a contested case proceeding and shall submit the request within 30 days of the date of the correspondence informing the person of the board's decision.

9.4(4) *Statement of charges.* The board shall issue a statement of charges upon timely receipt of a request for a contested case proceeding to appeal the administrative resolution. The contested case shall be conducted in accordance with the provisions in 351—Chapter 11. The board's legal counsel shall have the burden of proving the violation. Failure to challenge the administrative resolution through a request for a contested case proceeding is a failure to exhaust administrative remedies for purposes of seeking judicial review.

9.4(5) *Automatic civil penalties.* The board may administratively resolve late-filed reports by the assessment of automatic civil penalties, subject to the civil penalty waiver process, as set out by board rule. The board may retain two dollars of any civil penalty that is ultimately not waived by the board or by a court of law as return receipts covering incidental costs such as printing and postage. The remainder of the civil penalty shall be deposited in the state general fund.

9.4(6) *Admonishment.* The board may admonish any person who it believes has committed a minor violation to exercise care. An admonishment is not discipline and is not subject to a contested case proceeding appeal.

9.4(7) *Civil penalty for violation.* If the board determines that probable cause exists to believe that a violation of any statute or rule under its jurisdiction has occurred, except for a late-filed disclosure report, the board may order administrative resolution of the violation by imposing a civil penalty not to exceed $500. A person assessed a civil penalty may appeal the decision by requesting within 30 days of the date of the correspondence informing the person of the board's decision a contested case proceeding to be held under the process set out in subrule 9.4(4).

[**ARC 7993B**, IAB 7/29/09, effective 9/2/09; **ARC 7991B**, IAB 7/29/09, effective 9/2/09]

351—9.5(68B) Settlements. Settlements may be negotiated during an investigation or after the commencement of a contested case proceeding. Negotiations shall be conducted between the board's legal counsel and any person subject to the investigation or contested case proceeding. A settlement shall be in writing and is subject to approval of a majority of the board. If the board declines to approve a proposed settlement, the settlement shall be of no force or effect.

351—9.6(68B) Whistle-blower protection. A person who discharges or discriminates against an employee because the employee filed a complaint, provided information to the board for a possible

board-initiated investigation, or provided information during the course of a board investigation shall be subject to the board's complaint process if the employee filed the complaint or provided the information in good faith. If it is determined after a contested case proceeding that a person has impermissibly discharged or discriminated against an employee, the board may impose sanctions as set out in Iowa Code section 68B.32D.

For purposes of this rule, "good faith" means that any statements or materials in a complaint, in information provided to the board for a possible board-initiated investigation, or provided in information during the course of a board investigation were made or provided with a reasonable belief that such statements or materials were true and accurate.

This rule is intended to implement Iowa Code sections 68B.32A(14) and 68B.32B.

[Editorial change: IAC Supplement 4/8/09]

351—9.7(68B) Providing false information to the board during an investigation. A person providing false information to the board during a board investigation of a potential violation of Iowa Code chapter 68A or 68B, Iowa Code section 8.7, or rules adopted by the board may be subject to the complaint or administrative resolution process as provided under Iowa Code chapter 68B and rule 351—9.4(68B). For purposes of this rule, "providing false information" means the intentional providing of a false material statement of fact, falsely denying knowledge of a material fact, or providing a material statement of fact with a reckless disregard for the truth of the statement.

This rule is intended to implement 2009 Iowa Code Supplement section 68B.32A as amended by 2010 Iowa Acts, Senate File 2067, section 5.

[**ARC 9037B**, IAB 8/25/10, effective 9/29/10]

These rules are intended to implement Iowa Code section 68B.32B.

[Filed July 3, 1974]
[Filed 10/28/75, Notice 8/25/75—published 11/17/75, effective 12/22/75]
[Filed emergency 2/11/76—published 3/8/76, effective 2/11/76]
[Filed emergency 4/1/76—published 4/19/76, effective 4/1/76]
[Filed 11/6/81, Notice 9/30/81—published 11/25/81, effective 1/1/82]
[Filed 8/21/87, Notice 6/17/87—published 9/9/87, effective 10/14/87]
[Filed 4/23/92, Notice 2/19/92—published 5/13/92, effective 6/17/92]
[Filed 9/23/93, Notice 4/28/93—published 10/13/93, effective 11/17/93]
[Filed 3/11/94, Notice 1/5/94—published 3/30/94, effective 5/4/94]
[Filed 7/29/94, Notice 5/25/94—published 8/17/94, effective 9/21/94]
[Filed 12/1/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]
[Filed 3/3/99, Notice 1/13/99—published 3/24/99, effective 4/28/99]
[Filed 8/1/02, Notice 6/26/02—published 8/21/02, effective 9/25/02]
[Filed 8/28/03, Notice 7/23/03—published 9/17/03, effective 10/22/03]
[Filed 1/28/05, Notice 11/10/04—published 2/16/05, effective 3/23/05]
[Filed 9/25/06, Notice 8/2/06—published 10/25/06, effective 11/29/06]
[Filed 4/2/08, Notice 2/13/08—published 4/23/08, effective 5/28/08]
[Editorial change: IAC Supplement 4/8/09]
[Filed ARC 7993B (Notice ARC 7808B, IAB 6/3/09), IAB 7/29/09, effective 9/2/09]
[Filed ARC 7991B (Notice ARC 7810B, IAB 6/3/09), IAB 7/29/09, effective 9/2/09]
[Filed ARC 9037B (Notice ARC 8803B, IAB 6/2/10), IAB 8/25/10, effective 9/29/10]

RACING AND GAMING COMMISSION[491]

[Prior to 11/19/86, Chs 1 to 10, see Racing Commission[693]; Renamed Racing and Gaming Division [195] under the "umbrella" of Commerce, Department of [181], 11/19/86]
[Prior to 12/17/86, Chs 20 to 25, see Revenue Department[730] Chs 91 to 96]
[Transferred from Commerce Department[181] to the Department of Inspections and Appeals "umbrella"[481] pursuant to 1987 Iowa Acts, chapter 234, section 421]
[Renamed Racing and Gaming Commission[491], 8/23/89; See 1989 Iowa Acts, ch 67 §1(2), and ch 231 §30(1), 31]

CHAPTER 1
ORGANIZATION AND OPERATION

1.1(99D,99F) Function
1.2(99D,99F) Organization, meetings, and procedure
1.3(99D,99F) Administration of the commission
1.4(17A,22,99D,99F) Open records
1.5(17A,99D,99F) Forms
1.6 Reserved
1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates
1.8(17A,99D,99F) Granting of a waiver

CHAPTER 2
RULE MAKING AND DECLARATORY ORDERS

2.1(17A) Applicability
2.2(17A) Advice on possible rules before notice of proposed rule adoption
2.3(17A) Public rule-making docket
2.4(17A) Notice of proposed rule making
2.5(17A) Public participation
2.6(17A) Regulatory analysis
2.7(17A,25B) Fiscal impact statement
2.8(17A) Time and manner of rule adoption
2.9(17A) Variance between adopted rule and published notice of proposed rule adoption
2.10(17A) Exemption from public rule-making procedures
2.11(17A) Concise statement of reasons
2.12(17A) Contents, style, and form of rule
2.13(17A) Agency rule-making record
2.14(17A) Filing of rules
2.15(17A) Effectiveness of rules prior to publication
2.16(17A) General statements of policy
2.17(17A) Review by commission of rules
2.18(17A) Petition for rule making
2.19(17A) General
2.20(17A) Petition for declaratory order
2.21(17A) Notice of petition
2.22(17A,99D,99F) Intervention
2.23(17A) Briefs
2.24(17A) Inquiries
2.25(17A) Service and filing of petitions and other papers
2.26(17A) Consideration
2.27(17A) Action on petition
2.28(17A) Refusal to issue order
2.29(17A) Contents of declaratory order—effective date
2.30(17A) Copies of orders
2.31(17A) Effect of a declaratory order

CHAPTER 3
FAIR INFORMATION PRACTICES
(Uniform Rules)

3.1(17A,22)	Definitions
3.3(17A,22)	Requests for access to records
3.6(17A,22)	Procedure by which additions, dissents, or objections may be entered into certain records
3.9(17A,22)	Disclosures without the consent of the subject
3.10(17A,22)	Routine use
3.11(17A,22)	Consensual disclosure of confidential records
3.12(17A,22)	Release to subject
3.13(17A,22)	Availability of records
3.14(17A,22)	Personally identifiable information

CHAPTER 4
CONTESTED CASES AND OTHER PROCEEDINGS

4.1(17A)	Scope and applicability
4.2(17A)	Definitions
4.3(17A)	Time requirements

DIVISION I
GAMING REPRESENTATIVE, GAMING BOARD, AND BOARD OF STEWARDS

4.4(99D,99F)	Gaming representatives—licensing and regulatory duties
4.5(99D,99F)	Gaming board—duties
4.6(99D,99F)	Stewards—licensing and regulatory duties
4.7(99D,99F)	Penalties (gaming board and board of stewards)
4.8(99D,99F)	Effect of another jurisdiction's order
4.9(99D,99F)	Service of administrative actions
4.10(99D,99F)	Appeals of administrative actions
4.11 to 4.19	Reserved

DIVISION II
CONTESTED CASES

4.20(17A)	Requests for contested case proceedings not covered in Division I
4.21(17A)	Notice of hearing
4.22(17A)	Presiding officer
4.23(17A)	Waiver of procedures
4.24(17A)	Telephone proceedings
4.25(17A)	Disqualification
4.26(17A)	Consolidation—severance
4.27(17A)	Pleadings
4.28(17A)	Service and filing of pleadings and other papers
4.29(17A)	Discovery
4.30(17A)	Subpoenas
4.31(17A)	Motions
4.32(17A)	Prehearing conference
4.33(17A)	Continuances
4.34(17A)	Withdrawals
4.35(17A)	Intervention
4.36(17A)	Hearing procedures
4.37(17A)	Evidence
4.38(17A)	Default
4.39(17A)	Ex parte communication
4.40(17A)	Recording costs

4.41(17A) Interlocutory appeals
4.42(17A) Final decision
4.43(17A) Appeals and review
4.44(17A) Applications for rehearing
4.45(17A) Stays of commission actions
4.46(17A) No factual dispute contested cases
4.47(17A) Emergency adjudicative proceedings
4.48(17A) Contested case hearings before the commission

CHAPTER 5
TRACK, GAMBLING STRUCTURE, AND EXCURSION GAMBLING BOAT LICENSEES' RESPONSIBILITIES

5.1(99D,99F) In general
5.2(99D,99F) Annual reports
5.3(99D,99F) Information
5.4(99D,99F) Uniform requirements
5.5(99D) Pari-mutuel uniform requirements
5.6(99F) Excursion gambling boat uniform requirements

CHAPTER 6
OCCUPATIONAL AND VENDOR LICENSING

6.1(99D,99F) Definitions
6.2(99D,99F,252J) Occupational licensing
6.3(99D,99F) Waiver of privilege
6.4(99D,99F) License acceptance
6.5(99D,99F) Grounds for denial, suspension, or revocation of a license or issuance of a fine
6.6(99D,99F) Applications for license after denial, revocation, or suspension
6.7(99D,99F) Probationary period placed on a license
6.8(99D,99F) Duration of license
6.9(99D,99F) Licensed employees moving from one location to another
6.10(99D,99F) Required report of discharge of licensed employee
6.11(99D,99F,252J) Receipt of certificate of noncompliance from the child support recovery unit
6.12(99D,99F,261) Receipt of a certificate of noncompliance from the college student aid commission
6.13(99D,99F,272D) Receipt of certificate of noncompliance from the centralized collection unit of the department of revenue
6.14(99D,99F) Vendor's license
6.15(99D,99F) Applicability of rules—exceptions
6.16(99D) Disclosure of ownership of racing animals
6.17(99D) Owners of racing animals
6.18(99D) Kennel/stable name
6.19(99D) Leases (horse racing only)
6.20(99D) Partnerships owning racing animals
6.21(99D) Corporations owning racing animals
6.22(99D) Authorized agents for owner entities of racing animals
6.23(99D) Trainers and assistant trainers of racing animals
6.24(99D) Jockeys and apprentice jockeys
6.25(99D) Jockey agent
6.26(99D) Driver
6.27(99D) Practicing veterinarians
6.28(99D,99F) Alcohol and drug testing
6.29(99D) Time by which owner and trainer must be licensed

CHAPTER 7
GREYHOUND RACING

7.1(99D) Terms defined
7.2(99D) Facility's responsibilities
7.3(99D) Racing officials—duties
7.4(99D) Lead-outs
7.5(99D) Trainers and assistant trainers
7.6(99D) Registration
7.7(99D) Entries
7.8(99D) Withdrawals and scratches
7.9(99D) Weights and weighing
7.10(99D) Qualifying time
7.11(99D) Schooling
7.12(99D) Running of the race
7.13(99D) Race reckless/interfered/ruled off
7.14(99D) Medication and administration, sample collection, chemists, and practicing veterinarians

CHAPTER 8
WAGERING AND SIMULCASTING

8.1(99D) Definitions
8.2(99D) General
8.3(99D) Calculation of payoffs and distribution of pools
8.4(99D) Simulcast wagering
8.5(99D) Interstate common-pool wagering

CHAPTER 9
HARNESS RACING

9.1(99D) Terms defined
9.2(99D) Facilities' responsibilities
9.3(99D) Facility policies
9.4(99D) Racing officials
9.5(99D) Trainer and driver responsibilities
9.6(99D) Conduct of races
9.7(99D) Medication and administration, sample collection, chemists, and practicing veterinarian

CHAPTER 10
THOROUGHBRED AND QUARTER HORSE RACING

10.1(99D) Terms defined
10.2(99D) Facilities' responsibilities
10.3(99D) Facility policies
10.4(99D) Racing officials
10.5(99D) Trainer, jockey, and jockey agent responsibilities
10.6(99D) Conduct of races
10.7(99D) Medication and administration, sample collection, chemists, and practicing veterinarian

CHAPTER 11
GAMBLING GAMES

11.1(99F) Definitions
11.2(99F) Conduct of all gambling games
11.3(99F) Gambling games approved by the commission

11.4(99F) Approval for distribution, operation, or movement of gambling games and implements of gambling
11.5(99F) Gambling games authorized
11.6(99F) Gambling game-based tournaments
11.7(99F) Table game requirements
11.8(99F) Keno
11.9(99F) Slot machine requirements
11.10(99F) Slot machine hardware and software specifications
11.11 Reserved
11.12(99F) Progressive slot machines
11.13(99F) Licensing of manufacturers and distributors of gambling games or implements of gambling

CHAPTER 12
ACCOUNTING AND CASH CONTROL

12.1(99F) Definitions
12.2(99F) Accounting records
12.3(99F) Facility internal controls
12.4(99F) Accounting controls within the cashier's cage
12.5(99F) Gaming table container
12.6(99F) Accepting currency at gaming tables
12.7(99F) Procedures for the movement of gaming chips to and from gaming tables
12.8(99F) Dropping or opening a gaming table
12.9(99F) Slot machine container and key
12.10(99F) Procedures for hopper fills and attendant payouts
12.11(99F) Attendant and ticket payout accounting
12.12(99F) Computer recording requirements and monitoring of slot machines
12.13(99F) Transportation of containers
12.14(99F) Count room—characteristics
12.15(99F) Opening, counting, and recording contents of containers in the count room

CHAPTER 5
TRACK, GAMBLING STRUCTURE, AND EXCURSION GAMBLING BOAT LICENSEES' RESPONSIBILITIES

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]
[Prior to 8/9/00, see also 491—Chs 20 and 25]

491—5.1(99D,99F) In general. For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license to race or operate a gaming facility has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of the license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.

491—5.2(99D,99F) Annual reports. Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13. The audit of financial transactions and condition of licensee's operation shall include an internal control letter, documentation that the county board of supervisors selected the auditing firm, a balance sheet, and a profit-and-loss statement pertaining to the licensee's activities in the state, including a breakdown of expenditures and subsidies. If the licensee's fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar-year basis shall be included in the report. In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

5.2(1) The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; attendance; regulatory fee; total mutuel handle and taxes paid to state, city, county and gambler's treatment fund; unclaimed winnings; purses paid indicating sources; total breakage and disbursements; and the disbursements of 1 percent of exotic wagers on three or more racing animals.

5.2(2) The annual audit report required by Iowa Code section 99F.13 shall include:

a. A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, county endowment fund, and gambler's treatment fund; and regulatory fees.

b. A report on whether material weaknesses in internal accounting control exist.

c. A report on whether the licensee has followed the system of internal accounting control approved by the administrator.

491—5.3(99D,99F) Information. The licensee shall submit all information specifically requested by the commission or commission representative.

491—5.4(99D,99F) Uniform requirements.

5.4(1) *Maintenance of premises and facilities.* Each licensee shall at all times maintain its premises and facilities so as to be neat and clean, well landscaped, painted and in good repair, handicapped accessible, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance.

5.4(2) *Facilities for commission.* Each licensee shall provide reasonable, adequately furnished office space, including utilities, direct long-distance access for voice and data lines, custodial services, and necessary office equipment, and, if applicable, work space on the boat for the exclusive use of the

commission employees and officials. The licensee shall also make available appropriate parking places for commission staff.

5.4(3) *Sanitary facilities for patrons.* Each licensee shall, on every day of operation, provide adequate and sanitary toilets and washrooms and furnish free drinking water for patrons and persons having business on the licensee's premises.

5.4(4) *First-aid room.* Each licensee shall equip and maintain adequate first-aid facilities and have in attendance, during live racing at racetracks and while excursion gaming boats are cruising, either a physician, a physician assistant, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician, all properly licensed according to requirements of the Iowa department of public health. During all other hours of operation, the licensee shall have, at a minimum, one employee trained in CPR, in first aid, and in the use of the automated external defibrillator (AED). Each licensee is required to have an AED at the licensee's facility.

5.4(5) *Security force.*

a. *Peace officer.* Each licensee shall ensure that a person who is a certified peace officer is present during all gaming hours, unless permission is otherwise granted by the administrator. A certified peace officer pursuant to this rule must be employed by a law enforcement agency and have police powers.

b. *Employ adequate security.* Each licensee shall employ sufficient security to remove from the licensed premises a person violating a provision of Iowa Code chapter 99D or 99F, commission rules, or orders; any person deemed to be undesirable by racing and gaming commission officials; or any person engaging in a fraudulent practice. Security shall also be provided in and about the premises to secure restricted areas including, but not limited to, the barn area, kennel area, paddock, and racing animal drug testing area.

c. *Incident reports.* The licensee shall be required to file a written report, within 72 hours, detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99D or 99F, a commission rule or order, or internal controls; or is removed for reasons specified under paragraph 5.4(5)*"b."* In addition to the written report, the licensee shall provide immediate notification to the commission and DCI representatives on duty or, if representatives are not on duty, provide notification on each office's messaging system if the incident involved employee theft, criminal activity, Iowa Code chapter 99D or 99F violations, or gaming receipts.

d. *Ejection or exclusion.* A licensee may eject or exclude any person, licensed or unlicensed, from the premises or a part thereof of the licensee's facility, solely of the licensee's own volition and without any reason or excuse given, provided ejection or exclusion is not founded on constitutionally protected grounds such as race, creed, color, disability, or national origin.

Reports of all ejections or exclusions for any reason, other than voluntary exclusions, shall be made promptly to the commission representative and DCI and shall state the circumstances. The name of the person must be reported when the person is ejected or excluded for more than one gaming day.

The commission may exclude any person ejected by a licensee from any or all pari-mutuel facilities, gambling structures, or excursion gambling boats controlled by any licensee upon a finding that attendance of the person would be adverse to the public interest.

5.4(6) *Firearms possession within licensed facility.*

a. No patron or employee of the licensee, including the security department members, shall possess or be permitted to possess any pistol or firearm within a licensed facility without the express written approval of the administrator unless:

(1) The person is a peace officer, on duty, acting in the peace officer's official capacity; or

(2) The person is a peace officer possessing a valid peace officer permit to carry weapons who is employed by the licensee and who is authorized by the administrator to possess such pistol or firearm while acting on behalf of the licensee within that licensed facility.

b. Each licensee shall post in a conspicuous location at each entrance a sign that may be easily read stating, "Possession of any firearm within the licensed facility without the express written permission of the Iowa racing and gaming commission is prohibited".

5.4(7) *Video recording.* Licensees shall conduct continuous surveillance with the capability of video recording all gambling activities under Iowa administrative rules 661—Chapter 141, promulgated by the department of public safety.

a. "Gambling activities" means participating in or wagering on gambling games on the gaming floor; the movement, storage, and handling of uncounted gambling revenues; manual exchange of moneys for forms of wagering credit on the gaming floor; entrance of the public onto the gaming floor; and any other activity as determined by the commission administrator or administrator's designee.

b. Commission and DCI representatives shall have unrestricted access to and use of, including independent access capabilities, both live and recorded views and images of the surveillance system.

c. A commission representative may allow a gambling game to be placed in operation pending approval under 661—Chapter 141.

d. A surveillance department shall develop a standard operating procedure manual, which shall include surveillance system maintenance and emergency plans. This manual shall be made available for inspection by the commission and DCI.

e. A facility may include capabilities within the surveillance system for video recording of other areas of a facility and grounds, provided that commission and DCI access is unrestricted.

5.4(8) *Commission approval of contracts and business arrangements.*

a. *Qualifying agreements.*

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds $100,000 are agreements that qualify for submission to and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

1. Any obligation that expends, encumbers, or loans facility assets to anyone other than a not-for-profit entity or a unit of government for the payment of taxes or utilities.

2. Any disposal of facility assets or provision of goods and services at less than market value to anyone other than a not-for-profit entity or a unit of government.

3. A previously approved qualifying agreement, if consideration exceeds the approved amount in a calendar year by the greater of $100,000 or 25 percent.

4. Any type of contract, regardless of value or term, where a third party provides electronic or mechanical access to cash or credit for a patron of the facility. The contract must contain a clause that provides for immediate notification and implementation when technology becomes available to allow a person to voluntarily bar the person's access to receive cash or credit from such devices located on the licensed premises.

(2) A qualifying agreement must be submitted within 30 days of execution. Commission approval must be obtained prior to implementation, unless the qualifying agreement contains a written clause stating that the agreement is subject to commission approval. Qualifying agreements that are ongoing or open-ended need only be submitted on initiation, unless there is a material change in terms or noncompliance with 5.4(8)*"b"*(4).

b. *Purpose of review.* The commission conducts reviews to serve the public interest to ensure that:

(1) Gaming is free from criminal and corruptive elements.

(2) Gaming-related funds are directed to the lawful recipient.

(3) Gaming profits are not improperly distributed.

(4) Iowa resources, goods and services are utilized. Resources, goods, and services shall be considered to be made in Iowa, be provided by Iowans, or emanate from Iowa if one or more of the following apply:

1. Goods are manufactured in Iowa.

2. Goods are distributed through a distributor located in Iowa.

3. Goods are sold by a retailer/wholesaler located in Iowa.

4. Resources are produced or processed in Iowa.

5. Services are provided by a vendor whose headquarters/home office is in Iowa.

6. Goods, resources or services are provided by a vendor whose headquarters/home office is located outside Iowa, but which has a tangible business location (not simply a post office box) and does business in Iowa.

7. Services beyond selling are provided by employees who are based in Iowa.

A facility shall be considered to have utilized a substantial amount of Iowa resources, goods, services and entertainment in compliance with Iowa Code sections 99D.9 and 99F.7(4) as amended by 2004 Iowa Acts, House File 2302, section 11 and section 43, respectively, if the facility demonstrates to the satisfaction of the commission that preference was given to the extent allowed by law and other competitive factors.

c. Related parties. Other submittal requirements notwithstanding, agreements negotiated between the facility and a related party must be accompanied by an economic and qualitative justification. For the purpose of this subrule, related party shall mean any one of the following having any beneficial interest in any other party with whom the facility is seeking to negotiate an agreement:

(1) Any corporate officer or member of a facility's board of directors.

(2) Any owner with more than a 5 percent interest in a facility.

(3) A member of either the qualified sponsoring organization or the qualifying organization under Iowa Code section 99D.8 associated with a facility.

d. Review criteria. The commission shall approve all qualifying agreements that, in the commission's sole opinion, represent a normal business transaction and may impose conditions on an approval. The commission may deny approval of any agreement that, in the commission's sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. This subrule does not prohibit the commission from changing the approved ownership or beneficial interest.

5.4(9) *Checks.* The acceptance of personal checks shall be allowed; however, "counter" checks shall not be allowed. All checks accepted must be deposited in a bank by the close of the banking day following acceptance.

5.4(10) *Taxes and fees.*

a. Annual taxes and fees. All taxes and fees, whose collection by the state is authorized under Iowa Code chapters 99D and 99F, shall be accounted for on a fiscal-year basis, each fiscal year beginning on July 1 and ending on June 30.

b. Submission of taxes and fees. All moneys collected for and owed to the commission or state of Iowa under Iowa Code chapter 99F shall be accounted for and itemized on a weekly basis in a format approved by the commission. A week shall begin on Monday and end on Sunday. The reporting form must be received in the commission office by noon on Wednesday following the week's end. The moneys owed, according to the reporting form, must be received in the treasurer's office by 11 a.m. on the Thursday following the week's end. Additionally, each licensee shall file a monthly report indicating adjusted gross receipts received from gambling games, total number of admissions, and amount of regulatory fees paid. These reports shall be by calendar month and filed by noon on the first Wednesday following the end of the month unless the end of the month is a Monday or Tuesday, in which case the reports shall be filed by noon on the second Wednesday following the end of the month.

5.4(11) *Rate of tax revenue.* Each licensee shall prominently display at the licensee's gambling facility the annual percentage rate of state and local tax revenue collected by state and local government from the gambling facility annually.

5.4(12) *Problem gambling.*

a. The holder of a license to operate gambling games shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; and

(2) Allow persons to be voluntarily excluded for life from all facilities. Each facility will disseminate information regarding the exclusion to all other facilities.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

(1) Training of key employees to identify and report suspected problem gamblers;

(2) Procedures for recording and tracking identified problem gamblers;

(3) Policies designed to prevent serving alcohol to intoxicated casino patrons;

(4) Steps for removing problem gamblers from the casino; and

(5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include information on the availability of the gambling treatment program in a substantial number of its advertisements and printed materials.

5.4(13) *Records regarding ownership.*

a. In addition to other records and information required by these rules, each licensee shall maintain the following records regarding the equity structure and owners:

(1) If a corporation:

1. A certified copy of articles of incorporation and any amendments thereto.

2. A copy of bylaws and amendments thereto.

3. A current list of officers and directors.

4. Minutes of all meetings of stockholders and directors.

5. A current list of all stockholders and stockholders of affiliates, including their names and the names of beneficial shareholders.

6. A complete record of all transfers of stock.

7. A record of amounts paid to the corporation for issuance of stock and other capital contributions and dates thereof.

8. A record, by stockholder, of all dividends distributed by the corporation.

9. A record of all salaries, wages, and other remuneration (including perquisites), direct and indirect, paid by the corporation during the calendar or fiscal year to all officers, directors, and stockholders with an ownership interest at any time during the calendar or fiscal year, equal to or greater than 5 percent of the outstanding stock of any class of stock.

(2) If a partnership:

1. A schedule showing the amounts and dates of capital contributions, the names and addresses of the contributors, and percentage of interest in net assets, profits, and losses held by each.

2. A record of the withdrawals of partnership funds or assets.

3. A record of salaries, wages, and other remuneration (including perquisites), direct and indirect, paid to each partner during the calendar or fiscal year.

4. A copy of the partnership agreement and certificate of limited partnership, if applicable.

(3) If a sole proprietorship:

1. A schedule showing the name and address of the proprietor and the amount and date of the original investment.

2. A record of dates and amounts of subsequent additions to the original investment and withdrawals therefrom.

3. A record of salaries, wages, and other remuneration (including perquisites), direct or indirect, paid to the proprietor during the calendar or fiscal year.

b. All records regarding ownership shall be located in a place approved by the commission.

c. If the licensee is publicly held, upon the request of the administrator, the licensee shall submit to the commission one copy of any report required to be filed by such licensee or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency. If the licensee is privately held, upon the request of the administrator, the licensee shall submit financial, ownership, or other entity records for an affiliate.

5.4(14) *Retention, storage, and destruction of books, records, and documents.*

a. Except as otherwise provided, all original books, records, and documents pertaining to the licensee's operations shall be:

(1) Prepared and maintained in a complete and accurate form.

(2) Retained at a site approved by the administrator until audited.

(3) Held immediately available for inspection by the commission during business hours of operations.

(4) Organized and indexed in such a manner as to provide immediate accessibility to the commission.

b. For the purpose of this subrule, "books, records, and documents" shall be defined as any book, record, or document pertaining to or prepared or generated by the licensee including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, contracts, and personnel records, including information concerning a refusal to submit to drug testing and test results conducted pursuant to Iowa Code section 730.5.

c. All original books, records, and documents may be copied and stored on microfilm, microfiche, or other suitable media system approved by the administrator.

d. No original book, record, document, or suitable media copy may be destroyed by a licensee, for three years, without the prior approval of the administrator.

5.4(15) *Remodeling.* For any change to be made to the facility itself directly associated with racing or gaming or in the structure of the boat itself, the licensee must first submit plans to and receive the approval of the administrator.

5.4(16) *Officers, agents, and employees.* Licensees are accountable for the conduct of their officers, agents, and employees. The commission or commission representative reserves the right to impose penalties against the license holder or its officer, agent, employee, or both as the commission or commission representative determines appropriate. In addition, the licensee shall be responsible for the conduct of nonlicensed persons in nonpublic areas of the excursion gambling boat, gambling structure, or racetrack enclosure.

5.4(17) *Designated gaming floor.* The designated gaming floor is all areas occupied by or accessible from a gambling game, not otherwise obstructed by a wall, door, partition, barrier, or patron entrance. A patron entrance shall be identified by a sign visible to patrons approaching the gaming floor. The sign shall denote entrance to the gaming floor and specify that the gaming floor is not accessible to persons under the age of 21. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

5.4(18) *State fire and building codes.*

a. Barges, as defined in 5.6(1)*"c,"* and other land-based gaming facilities and such facilities that undergo major renovation shall comply with the state building code created by Iowa Code chapter 103A, if there is no local building code in force in the local jurisdiction in which the facility is located. A licensee shall submit construction documents and plans to the state building code commissioner and receive approval prior to construction, if a facility is subject to the state building code.

b. If there is no enforcement of fire safety requirements by a local fire department, a licensee shall also submit construction plans and documents to the state fire marshal and receive approval prior to construction. The fire marshal may cause a facility subject to this paragraph to be inspected for compliance with fire marshal rules prior to operation of the facility and shall notify the commission and the licensee of the results of any such inspection.

c. If a proposed new or renovated facility is subject to both paragraphs *"a"* and *"b,"* a single submission of construction plans and documents to the building code commissioner, with a cover letter stating that review and approval are required with respect to both the state building code and rules of the fire marshal, is sufficient to meet both requirements. Facilities subject to both paragraphs *"a"* and *"b"* shall have received approval from both the fire marshal and the building code commissioner prior to construction.

5.4(19) *Gambling setoff.* Each licensee shall adopt and implement policies and procedures designed to set off winnings of patrons who have a valid lien established under Iowa Code chapters 99D and 99F.
[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—5.5(99D) Pari-mutuel uniform requirements.

5.5(1) *Insect and rodent control.* The licensee shall provide systematic and effective insect and rodent control, including control of flies, mosquitoes, fleas, and mice, to all areas of licensee's premises at all times during a race meeting.

5.5(2) *Results boards, totalizators required.* Each licensee shall provide and maintain computerized totalizators and electronic boards showing odds, results, and other racing information located in plain view of patrons.

5.5(3) *Photo finish camera.* A licensee shall provide two electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each racing animal in at least hundredths of a second. The location and operation of the photo finish device must be approved by the commission before its first use in a race. The licensee shall promptly post a photograph, on a monitor, of each photo finish for win, place or show, or for fourth place in superfecta races, in an area accessible to the public. The licensee shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the licensee shall provide, without cost, a print of a photo finish to the commission. A photo finish of each race shall be maintained by the licensee for not less than six months after the end of the race meeting, or such other period as may be requested by the commission.

5.5(4) *Electric timing device.* Any electric timing device used by the licensee shall be approved by the commission.

5.5(5) *Official scale.* The licensee shall provide and maintain in good working order official scales or other approved weighing devices. The licensee shall provide to the stewards certification of the accuracy of the scales at the beginning of each race meeting or more frequently if requested by the stewards.

5.5(6) *Lighting.* Each licensee shall provide and maintain adequate illumination in the barn/kennel area, parking area, and racetrack area.

5.5(7) *Fencing.* The stable and kennel areas should be properly fenced as defined by the commission and admission permitted only in accord with rules of the commission.

5.5(8) *Guest passes.* The licensee shall develop a policy to be approved by the stewards for the issuance of guest passes for entrance to the kennel or stable area. The guest pass is not an occupational license and does not permit the holder to work in any capacity or in any way confer the benefits of an occupational license to participate in racing. The license holder sponsoring or escorting the guest shall be responsible for the conduct of the guest pass holder.

5.5(9) *Stewards.* There shall be three stewards for each racing meet, two appointed by the commission and one nominated by the licensee for approval by the commission. The names of licensees' nominees for steward and biographical information describing the experience and qualifications of the nominees shall be submitted no later than 45 days before commencement of a race meeting. The commission may consider for appointment or approval a person who meets all of the following requirements. The person shall have:

a. Engaged in pari-mutuel racing in a capacity and for a period satisfactory to the commission.

b. Satisfactorily passed an optical examination within one year prior to approval as a steward evidencing corrected 20/20 vision and the ability to distinguish colors correctly.

c. Satisfied the commission that income, other than salary as a steward, is independent of and unrelated to patronage of or employment by any occupational licensee under the supervision of the steward, so as to avoid the appearance of any conflict of interest or suggestion of preferential treatment of an occupational licensee.

5.5(10) *Purse information.* Each licensee shall provide to the commission at the close of each racing meet the following purse information:

a. The identity of each person or entity to which purse money is paid by the licensee for purses won by racing animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.

b. The identity of each person or entity to which purse money is paid by the licensee for purses won by Iowa-bred animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity in supplemental funds for ownership of Iowa-bred animals. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.

5.5(11) *Designated wagering area.* The designated wagering area is a rectangular area within a minimum of five feet from the front and from either side of a stationary wagering window or self-service wagering device, not otherwise obstructed by a wall or other barrier. The facility shall either section off or clearly delineate the floor of the area and post a sign near the area, which is visible to patrons approaching the area, denotes the wagering area and specifies that the wagering area is not accessible to persons under the age of 21. The designation applies only when the wagering window or device is open to transact wagering. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

491—5.6(99F) Excursion gambling boat uniform requirements.

5.6(1) *Excursion gambling boat.*

a. *Capacity.* The minimum passenger capacity necessary for an excursion gambling boat is 250.

b. *Excursion boat.* A self-propelled, floating "vessel" as defined by the U.S. Coast Guard may contain more than one vessel. In order to be utilized for gaming purposes, the vessel containing the casino must either contain a permanent means of propulsion or have its means of propulsion contained in an attached vessel. In the event that the vessel containing the casino is propelled by a second vessel, the boat will be considered self-propelled only when the vessels are designed, constructed, and operated as a single unit.

c. *Moored barge.* "Barge" means any stationary structure approved by the commission, where the entire gaming floor is located on or near a body of water as defined under Iowa Code section 99F.7, subsection 1, and which facility is subject to land-based building codes rather than maritime or Iowa department of natural resources inspection laws and regulations.

5.6(2) *Excursions.*

a. *Length.* The excursion season shall be from April 1 through October 31 of each calendar year. An excursion boat must operate at least one excursion during the excursion season to operate during the off-season, although a waiver may be granted by the commission in the first year of a boat's operation if construction of the boat was not completed in time for the boat to qualify. Excursions shall consist of a minimum of one hour in transit during the excursion season. The number of excursions per day is not limited. During the excursion season and the off-season, while the excursion gambling boat is docked, passengers may embark or disembark at any time during business hours pursuant to Iowa Code section 99F.4(17).

b. *Dockside completion of excursions.* If, during the excursion season, the captain determines that it would be unsafe to complete any portion of an excursion, or if mechanical problems prevent the completion of any portion of an excursion, the boat may be allowed to remain at the dock or, if the excursion is underway, return to the dock and conduct the gaming portion of the excursion while dockside, unless the captain determines that passenger safety is threatened.

c. *Notification.* If an excursion is not completed due to reasons specified in paragraph 5.6(2)*"b,"* a commission representative shall be notified as soon as is practical.

5.6(3) *Drug testing of boat operators.* Captains, pilots, and physical operators of excursion gambling boats shall be drug tested, as permitted by Iowa Code section 730.5, on a continuous basis with no more than 60 days between tests. The testing shall be conducted by a laboratory certified by the United States Department of Health and Human Services or approved under the rules adopted by the Iowa department of public health. The facility shall report positive test results to a commission representative.

These rules are intended to implement Iowa Code chapters 99D and 99F.

[Filed emergency 2/24/84—published 3/14/84, effective 4/1/84]
[Filed 8/24/84, Notice 3/14/84—published 9/12/84, effective 10/17/84]
[Filed 4/5/85, Notice 2/27/85—published 4/24/85, effective 5/29/85]
[Filed emergency 10/20/86—published 11/19/86, effective 10/20/86]
[Filed 10/23/87, Notice 9/9/87—published 11/18/87, effective 12/23/87]
[Filed 11/4/88, Notice 9/21/88—published 11/30/88, effective 1/4/89]
[Filed 2/16/90, Notice 12/27/89—published 3/7/90, effective 4/11/90]

[Filed 2/15/91, Notice 1/9/91—published 3/6/91, effective 4/10/91]
[Filed emergency 3/22/93—published 4/14/93, effective 3/22/93][◊]
[Filed 4/19/93, Notice 3/3/93—published 5/12/93, effective 6/16/93]
[Filed 5/21/93, Notice 4/14/93—published 6/9/93, effective 7/14/93]
[Filed 7/22/94, Notice 6/8/94—published 8/17/94, effective 9/21/94]
[Filed 5/18/95, Notice 3/29/95—published 6/7/95, effective 7/12/95]
[Filed 10/18/96, Notice 9/11/96—published 11/6/96, effective 12/11/96]
[Filed 4/10/97, Notice 2/12/97—published 5/7/97, effective 6/11/97]
[Filed 8/22/97, Notice 7/16/97—published 9/10/97, effective 10/15/97]
[Filed 5/22/98, Notice 3/25/98—published 6/17/98, effective 7/22/98]
[Filed 7/24/98, Notice 6/17/98—published 8/12/98, effective 9/16/98]
[Filed 10/26/98, Notice 9/9/98—published 11/18/98, effective 12/23/98[1]]
[Filed 1/21/99, Notice 12/16/98—published 2/10/99, effective 3/17/99]
[Filed 1/20/00, Notice 11/17/99—published 2/9/00, effective 3/15/00]
[Filed 7/20/00, Notice 6/14/00—published 8/9/00, effective 9/13/00]
[Filed 4/24/01, Notice 2/7/01—published 5/16/01, effective 6/20/01]
[Filed 8/22/01, Notice 6/27/01—published 9/19/01, effective 10/24/01]
[Filed 1/11/02, Notice 11/14/01—published 2/6/02, effective 3/13/02]
[Filed 7/18/02, Notice 6/12/02—published 8/7/02, effective 9/11/02]
[Filed 10/21/02, Notice 8/7/02—published 11/13/02, effective 12/18/02]
[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]
[Filed 4/21/04, Notice 2/4/04—published 5/12/04, effective 6/16/04]
[Filed 9/7/04, Notice 7/7/04—published 9/29/04, effective 11/3/04]
[Filed 10/15/04, Notice 7/7/04—published 11/10/04, effective 12/15/04]
[Filed 10/17/05, Notice 8/3/05—published 11/9/05, effective 12/14/05]
[Filed 4/20/07, Notice 2/14/07—published 5/9/07, effective 6/13/07]
[Filed 1/11/08, Notice 11/7/07—published 1/30/08, effective 3/5/08]
[Filed 10/10/08, Notice 8/13/08—published 11/5/08, effective 12/10/08]
[Filed ARC 8029B (Notice ARC 7758B, IAB 5/6/09), IAB 8/12/09, effective 9/16/09]
[Editorial change: IAC Supplement 2/10/10]
[Filed ARC 9018B (Notice ARC 8726B, IAB 5/5/10), IAB 8/25/10, effective 9/29/10]

◊ Two or more ARCs

1 Effective date of 5.1(5)*"c"* delayed until the end of the 1999 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held December 8, 1998.

CHAPTER 11
GAMBLING GAMES

491—11.1(99F) Definitions.

"Administrator" means the administrator of the commission.

"Coin" means tokens, nickels, and quarters of legal tender.

"Commission" means the racing and gaming commission.

"Currency" means any coin or paper money of legal tender and paper forms of cashless wagering.

"Discount rate" means either the current prime rate as published in the Wall Street Journal or a blended rate computed by obtaining quotes for the purchase of qualified investments at least three times per month.

"Distributor's license" means a license issued by the administrator to any entity that sells, leases, or otherwise distributes gambling games or implements of gambling to any entity licensed to conduct gambling games pursuant to Iowa Code chapter 99F.

"Facility" means an entity licensed by the commission to conduct gaming operations in Iowa.

"Facility grounds" means all real property utilized by the facility in the conduct of its gaming activity, including the grandstand, concession stands, offices, parking lots, and any other areas under the jurisdiction of the commission.

"Gambling game" means any game of chance approved by the commission for wagering, including, but not limited to, gambling games authorized by this chapter.

"Government sponsored enterprise debt instrument" means a negotiable, senior, noncallable debt obligation issued by an agency of the United States or an entity sponsored by an agency of the United States that on the date of funding possesses an issuer credit rating equivalent to the highest investment grade rating given by Standard & Poor's or Moody's Investment Services.

"Implement of gambling" means any device or object determined by the administrator to directly or indirectly influence the outcome of a gambling game; collect wagering information while directly connected to a slot machine; or be integral to the conduct of a commission-authorized gambling game, possession or use of which is otherwise prohibited by statute.

"Manufacturer's license" means a license issued by the administrator to any entity that assembles, fabricates, produces, or otherwise constructs a gambling game or implement of gambling used in the conduct of gambling games pursuant to Iowa Code chapter 99F.

"Present value" means the current value of a future payment or series of payments, discounted using the discount rate.

"Qualified investment" means an Iowa state issued debt instrument, a United States Treasury debt instrument or a government sponsored enterprise debt obligation.

"Reserve" means an account with an independent financial institution or brokerage firm consisting of cash and qualified investments used to satisfy periodic payments of prizes.

"Slot machine" means a mechanical or electronic gambling game device into which a player may deposit currency or forms of cashless wagering and from which certain numbers of credits are awarded when a particular configuration of symbols or events is displayed on the machine.

"Storage media" means EPROMs, ROMs, flash-ROMs, DVDs, CD-ROMs, compact flashes, hard drives and any other types of program storage device.

[**ARC 7757B**, IAB 5/6/09, effective 6/10/09; **ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—11.2(99F) Conduct of all gambling games.

11.2(1) *Commission policy.* It is the policy of the commission to require that all facilities conduct gambling games in a manner suitable to protect the public health, safety, morals, good order, and general welfare of the state. Responsibility for the employment and maintenance of suitable methods of operation rests with the facility. Willful or persistent use or toleration of methods of operation deemed unsuitable in the sole discretion of the commission will constitute grounds for disciplinary action, up to and including license revocation.

11.2(2) *Activities prohibited.* A facility is expressly prohibited from the following activities:

a. Failing to conduct advertising and public relations activities in accordance with decency, dignity, good taste, and honesty.

b. Permitting persons who are visibly intoxicated to participate in gaming activity.

c. Failing to comply with or make provision for compliance with all federal, state, and local laws and rules pertaining to the operation of a facility including payment of license fees, withholding payroll taxes, and violations of alcoholic beverage laws or regulations.

d. Possessing, or permitting to remain in or upon any facility grounds, any associated gambling equipment which may have in any manner been marked, tampered with, or otherwise placed in a condition or operated in a manner which might affect the game and its payouts.

e. Permitting, if the facility was aware of, or should have been aware of, any cheating.

f. Possessing or permitting to remain in or upon any facility grounds, if the facility was aware of, or should have been aware of, any cheating device whatsoever; or conducting, carrying on, operating, or dealing any cheating or thieving game or device on the grounds.

g. Possessing or permitting to remain in or upon any facility grounds, if the facility was aware of, or should have been aware of, any gambling device which tends to alter the normal random selection of criteria which determines the results of the game or deceives the public in any way.

h. Failing to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; or permitting any type of conduct that reflects negatively on the state or acts as a detriment to the gaming industry.

i. Denying a commissioner or commission representative, upon proper and lawful demand, information or access to inspect any portion of the gaming operation.

11.2(3) *Gambling aids.* No person shall use, or possess with the intent to use, any calculator, computer, or other electronic, electrical, or mechanical device that:

a. Assists in projecting the outcome of a game.

b. Keeps track of cards that have been dealt.

c. Keeps track of changing probabilities.

11.2(4) *Wagers.* Wagers may only be made:

a. By a person present at a facility.

b. In the form of chips, coins, or other cashless wagering.

c. By persons 21 years of age or older.

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—11.3(99F) Gambling games approved by the commission. The commission may approve a gambling game by administrative rule, resolution, or motion.

491—11.4(99F) Approval for distribution, operation, or movement of gambling games and implements of gambling.

11.4(1) *Approval.* Prior to distribution, a distributor shall request that the administrator inspect, investigate, and approve a gambling game or implement of gambling for compliance with commission rules and the standards required by a commission-designated independent testing facility. The distributor, at its own expense, must provide the administrator and independent testing facility with information and product sufficient to determine the integrity and security of the product, including independent testing conducted by a designated testing facility. The commission shall designate up to two independent testing facilities for the purpose of certifying electronic gambling games or implements of gambling.

11.4(2) *Trial period.* Prior to or after commission approval and after completing a review of a proposed gambling game, the administrator may require a trial period of up to 180 days to test the gambling game in a facility. During the trial period, minor changes in the operation or design of the gambling game may be made with prior approval of the administrator. During the trial period, a gambling game distributor shall not be entitled to receive revenue of any kind from the operation of that gambling game.

11.4(3) *Gambling game submissions.* Prior to conducting a commission-authorized gambling game or for a trial period, a facility shall submit proposals for game rules, procedures, wagers, shuffling procedures, dealing procedures, cutting procedures, and payout odds. The gambling game submission, or requests for modification to an approved submission, shall be in writing and approved by the administrator or a commission representative prior to implementation.

11.4(4) *Public notice.* The public shall have access to the rules of play, payout schedules, and permitted wagering amounts. Signage shall be conspicuously posted on the gaming floor to direct patrons to the gaming floor area where this information can be viewed. All participants in all licensed gambling games are required to know and follow the rules of play. No forms of cheating shall be permitted.

11.4(5) *Operation.* Each gambling game shall operate and play in accordance with the representation made to the commission and the public at all times. The administrator or commission representative may order the withdrawal of any gambling game suspected of malfunction or misrepresentation, until all deficiencies are corrected. The administrator or commission representative may require additional testing by an independent testing facility at the expense of the licensee or distributor for the purpose of complying with this subrule.

11.4(6) *Distribution, movement and disposal.*

a. Any entity providing slot machines, gambling games or implements of gambling to a licensed facility must file written notice with the commission at least five calendar days prior to receipt by the facility. A licensed facility selling or an owner removing slot machines or gambling games from the facility must file written notice with the commission at least one day prior to removal. All methods of disposal for slot machines, gambling games or implements of gambling are subject to administrator approval. Notification by facsimile or electronic mail shall be considered written notice.

b. The administrator may approve licensee transfers of slot machines, gambling games, or implements of gambling among subsidiaries of the licensee's parent company.

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—11.5(99F) Gambling games authorized.

11.5(1) Dice, craps, roulette, twenty-one (blackjack), big six—roulette, red dog, baccarat, and poker are authorized as table games. The administrator is authorized to approve multiplayer electronic devices simulating these games, subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3).

11.5(2) Slot machines, video poker, and other video games of chance, both progressive and nonprogressive, shall be allowed as slot machine games, subject to the administrator's approval of individual slot machine prototypes and game variations. For racetrack enclosures without a table games license, video machines which simulate table games of chance shall not be allowed.

11.5(3) The administrator is authorized to approve variations of approved gambling games and bonus features or progressive wagers associated with approved gambling games, subject to the requirements of rule 491—11.4(99F).

a. Features utilizing a controller or a system linked to gambling games that do not require direct monetary consideration and are not otherwise integrated within a slot machine game theme may be allowed as bonus features. Payouts from these bonus features may be included in winnings for the calculation of wagering tax adjusted gross receipts when the following conditions are met:

(1) The only allowable nonmonetary consideration to be expended by a participant shall be active participation in a gambling game with a bonus feature or use of a player's club card, or both.

(2) The actual bonus payout deductible in any month from all qualified system bonuses requiring no additional direct monetary consideration shall be:

1. No more than 2 percent of the coin-in for all slot machines linked to any system bonuses for that month, if slot machines linked to system bonuses exceed 20 percent of the total number of slot machines; or

2. No more than 3 percent of the coin-in for all slot machines linked to any system bonuses for that month, if slot machines linked to system bonuses are less than or equal to 20 percent of the total number of slot machines; or

3. No more than 3 percent of the amount wagered on the qualifying bets for all table games linked to any system bonus for that month.

(3) The probability of winning a system bonus award shall be the same for all persons participating in the bonus feature.

b. Noncashable credit payouts may be allowed as bonus feature payouts subject to the administrator's approval of individual accounting, expiration and redemption practices.

11.5(4) Gambling games of chance involving prizes awarded to participants through promotional activities at a facility.

a. Proposals. Gambling games of chance involving prizes awarded to participants through promotional activities occurring at a facility shall be authorized and approved by the commission. Before a facility may conduct such gambling games, all proposals for terms, game rules, prizes, dates of operation and procedures for any gambling games of chance involving prizes awarded through promotional activities occurring at a facility shall be submitted in writing to a commission representative for approval. The written submission shall be submitted to the commission representative at least 14 days in advance of the planned activity. Any changes to an approved gambling game of chance involving prizes awarded to participants through promotional activities shall also require the approval of the commission representative. Gambling games of chance involving prizes awarded to participants through promotional activities occurring at a facility shall meet the following requirements:

(1) All rules of play shall be in writing and posted for public inspection;

(2) Such games shall be limited to participants 21 years of age or older;

(3) All games shall be conducted in a fair and honest manner, and all prizes advertised shall be awarded in accordance with the posted rules of play;

(4) All such games shall be conducted within the regulated area of the facility and shall be conducted in accordance with the submission approved by the commission representative;

(5) No entry fees shall be permitted; and

(6) All employees of the facility shall be prohibited from participation.

b. Limits. Gambling games of chance involving prizes awarded to participants through promotional activities conducted at a facility shall be subject to the wagering tax pursuant to Iowa Code section 99F.11. However, in determining the adjusted gross receipts, the facility may consider all nonmonetary consideration expended by a participant and shall certify to the commission that the nonmonetary consideration is at least equal to the value of the prizes awarded.

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—11.6(99F) Gambling game-based tournaments.

11.6(1) *Proposals.* Proposals for terms, game rules, entry fees, prizes, dates, and procedures must be submitted in writing and approved by a commission representative before a facility conducts any tournament. Any changes to approved tournaments must be submitted to the commission representative for review and approval prior to being implemented. The written proposal or change shall be submitted to a commission representative at least 14 days in advance of the planned activity. Rules, fees, and a schedule of prizes must be made available to the player prior to entry.

11.6(2) *Limits.* Tournaments must be based on gambling games authorized by the commission. Entry fees, less prizes paid, are subject to the wagering tax pursuant to Iowa Code section 99F.11. In determining adjusted gross receipts, to the extent that prizes paid out exceed entry fees received, the facility shall be deemed to have paid the fees for the participants.

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—11.7(99F) Table game requirements.

11.7(1) Removable storage media in a table game device which controls the randomness of card shufflers or progressive table game meters shall be verified and sealed with evidence tape by a commission representative prior to implementation.

11.7(2) Wagers. All wagers at table games shall be made by placing gaming chips or coins on the appropriate areas of the layout.

11.7(3) Craps. Wagers must be made before the dice are thrown. "Call bets," or the calling out of bets between the time the dice leave the shooter's hand and the time the dice come to rest, not accompanied by the placement of gaming chips, are not allowed.

11.7(4) Twenty-one.

a. Before the first card is dealt for each round of play, each player shall make a wager against the dealer. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager. Once a wager on the insurance line, a wager to double down, or a wager to split pairs has been made and confirmed by the dealer, no player shall handle, remove, or alter the wagers until a decision has been rendered and implemented with respect to that wager, except as explicitly permitted. A facility or licensee shall not permit any player to engage in conduct that violates this paragraph.

b. At the conclusion of a round of play, all cards still remaining on the layout shall be picked up by the dealer in a prescribed order and in such a way that they can be readily arranged to indicate each player's hand in case of question or dispute. The dealer shall pick up the cards beginning with those of the player to the far right and moving counterclockwise around the table. The dealer's hand will be the last hand collected. The cards will then be placed on top of the discard pile. No player or spectator shall remove or alter any cards used to game at twenty-one or be permitted to do so by a casino employee.

c. Each player at the table shall be responsible for correctly computing the point count of the player's hand. No player shall rely on the point counts announced by the dealer without checking the accuracy of such announcement.

11.7(5) Roulette.

a. No person at a roulette table shall be issued or permitted to game with nonvalue gaming chips that are identical in color and design to value gaming chips or to nonvalue gaming chips being used by another person at that same table.

b. Each player shall be responsible for the correct positioning of the player's wager on the roulette layout, regardless of whether the player is assisted by the dealer. Each player must ensure that any instructions the player gives to the dealer regarding the placement of the player's wager are correctly carried out.

c. Each wager shall be settled strictly in accordance with its position on the layout when the ball falls to rest in a compartment of the wheel.

11.7(6) Big six—roulette.

a. Each player shall be responsible for the correct positioning of the player's wager on the layout regardless of whether the player is assisted by the dealer.

b. Each wager shall be settled strictly in accordance with its position on the layout when the wheel stops with the winning indicator in a compartment of the wheel.

11.7(7) Poker.

a. When a facility conducts poker with an imprest dealer gaming chip bank, the rules in 491—Chapter 12 for closing and distributing or removing gaming chips to or from gaming tables do not apply. The entire amount of the table rake is subject to the wagering tax pursuant to Iowa Code section 99F.11. Proposals for imprest dealer gaming chip banks must be submitted in writing and approved by a commission representative prior to use.

b. All games shall be played according to table stakes game rules as follows:

(1) Only gaming chips or coins on the table at the start of a deal shall be in play for that pot.

(2) Concealed gaming chips or coins shall not play.

(3) A player with gaming chips may add additional gaming chips between deals, provided that the player complies with any minimum buy-in requirement.

(4) A player is never obliged to drop out of contention because of insufficient gaming chips to call the full amount of a bet, but may call for the amount of gaming chips the player has on the table. The excess part of the bet made by other players is either returned to the players or used to form a side pot.

c. Each player in a poker game is required to act only in the player's own best interest. The facility has the responsibility of ensuring that any behavior designed to assist one player over another is prohibited. The facility may prohibit any two players from playing in the same game.

d. Poker games where winning wagers are paid by the facility according to specific payout odds or pay tables are permitted.

11.7(8) Red dog. Before the first card is dealt for each round of play, each player shall make a wager against the dealer. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager. Once a wager to double down has been made and confirmed by the dealer, no player shall handle, remove, or alter the wagers until a decision has been rendered and implemented with respect to that wager, except as explicitly permitted.

491—11.8(99F) Keno.

11.8(1) Keno shall be conducted using an automated ticket writing and redemption system where a game's winning numbers are selected by a random number generator.

11.8(2) Each game shall consist of the selection of 20 numbers out of 80 possible numbers, 1 through 80.

11.8(3) For any type of wager offered, the payout must be at least 70 percent.

11.8(4) Multigame tickets shall be limited to 20 games.

11.8(5) Writing or voiding tickets for a game after that game has closed is prohibited.

11.8(6) All winning tickets shall be valid up to a maximum of one year from the date of purchase. All expired, unclaimed winning tickets shall be subject to the requirements in 491—paragraph 12.11(2)*"b."*

11.8(7) The administrator shall determine minimum hardware and software requirements to ensure the integrity of play. An automated keno system must be proven to accurately account for adjusted gross receipts to the satisfaction of the administrator.

11.8(8) Adjusted gross receipts from keno games shall be the difference between dollar value of tickets written and dollar value of winning tickets as determined from the automated keno system. The wagering tax pursuant to Iowa Code section 99F.11 shall apply to adjusted gross receipts of keno games.

11.8(9) An area of a facility shall not be designated as gaming floor for the sole purpose of keno runners, who accept patron wagering funds remotely from the keno game location.

[**ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—11.9(99F) Slot machine requirements.

11.9(1) *Payout percentage.* A slot machine game must meet the following maximum and minimum theoretical percentage payouts during the expected lifetime of the game.

a. A slot machine game's theoretical payout must be at least 80 percent and no more than 100 percent of the amount wagered. The theoretical payout percentage is determined using standard methods of probability theory. Slot machine games with a bonus feature that is available with varying payouts based on the player's ability shall be allowed if the difference between the minimum and maximum payout for all ability-based outcomes does not exceed a 4 percent contribution to the overall theoretical payout of the slot machine game.

b. A slot machine game shall have a probability of obtaining the highest single advertised payout, which must statistically occur at least once in 50 million games.

11.9(2) *Features.* Unless otherwise authorized by the administrator, each slot machine in a casino shall have the following features:

a. A casino number at least two inches in height permanently imprinted, affixed, or impressed on the outside of the machine so that the number may be observed by the surveillance camera.

b. A clear description displayed on the slot machine of any merchandise or thing of value offered as a payout including the cash equivalent value of the merchandise or thing of value offered, the dates the merchandise or thing of value will be offered if the facility establishes a time limit upon initially offering the merchandise or thing of value, and the availability or unavailability to the patron of the optional cash equivalent value. A cash equivalent value shall be at least 75 percent of the fair market value of the merchandise or thing of value offered.

c. Devices, equipment, features, and capabilities, as may be required by the commission, that are specific to each slot machine after the prototype model is approved by the commission.

11.9(3) *Storage media.* Hardware media devices which contain game functions or characteristics, including but not limited to pay tables and random number generators, shall be verified and sealed with evidence tape by a commission representative prior to being placed in operation, as determined by the administrator.

11.9(4) *Posting of the actual aggregate payout percentage.* The actual aggregate payout percentage to the nearest one-tenth of 1 percent (0.1%) of all slot machine games in operation during the preceding three calendar months shall be posted at the main casino entrance, cashier cages, and slot booths by the fifteenth day of each calendar month. For the purpose of this calculation, the actual aggregate payout percentage shall be the slot revenue reported to the commission during the preceding three calendar months divided by the slot coin-in reported to the commission during the preceding three calendar months subtracted from 100 percent.

11.9(5) *Communication equipment.* Equipment must be installed in each slot machine that allows for communication to an online monitoring and control system accessible, with read-only access, to the commission representatives using a communications protocol provided to each licensed manufacturer by the commission for the information and control programs approved by the administrator.

11.9(6) *Meter clears.* Prior to the clearing of electronic accounting meters detailed in paragraph 11.10(2)*"c,"* a licensee must notify a commission representative. All meters recorded by the game must be retained according to the requirements in 491—subrule 5.4(14).

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—11.10(99F) Slot machine hardware and software specifications.

11.10(1) *Hardware specifications.*

a. Electrical and mechanical parts and design principles shall not subject players to physical hazards.

b. The battery backup, or an equivalent, for the electronic meters must be capable of maintaining accuracy of all required information for 30 days after power is discontinued from a slot machine. The backup shall be kept within the locked logic board compartment.

c. An identification badge permanently affixed by the manufacturer to the exterior of the cabinet shall include the following information:

(1) The manufacturer;

(2) A unique serial number;

(3) The gaming device model number; and

(4) The date of manufacture.

d. The operations and outcomes of each slot machine must not be adversely affected by influences from outside the device.

e. The internal space of a slot machine shall not be readily accessible when the front door is both closed and locked.

f. Logic boards and software storage media which significantly influence the operation of the game must be in a locked compartment within the slot machine.

g. The currency drop container must be in a locked compartment within or attached to the slot machine. Access to the currency storage areas shall be secured by separate locks which shall be fitted with sensors that indicate door open/closed or stacker removed.

h. No hardware switches may be installed that alter the pay tables or payout percentages in the operation of a slot machine. Hardware switches may be installed to control graphic routines, speed of play, and sound.

i. A display which automatically illuminates when a player has won a jackpot or other award not paid automatically and totally by the slot machine and which advises players that they will be paid by an attendant shall be located conspicuously on the slot machine.

j. A payglass/video display shall be clearly identified and shall accurately state the rules of the game and the award that will be paid to the player when the player obtains a specific combination of symbols or other criteria. All information required in this paragraph must be available and readable at all times the slot machine is in service.

k. A light that automatically illuminates when a player has won an amount or is redeeming credits that the machine cannot automatically pay, an error condition has occurred, or a "Call attendant" condition has been intitiated by the player shall be located conspicuously on top of the gaming device. At the discretion of the administrator, tower lights may be shared among certain machines or substituted by an audible alarm.

l. If credits are collected and the total credit value is unable to be paid automatically by the gaming device, the device shall lock up until the credits have been paid and the amount collected has been cleared by an attendant handpay or normal operation has been restored.

11.10(2) *Software specifications.*

a. *Random number generator.* Each slot machine must have a random number generator to determine the results of the game symbol selections or production of game outcomes. The selection shall:

(1) Be statistically independent.
(2) Conform to the desired random distribution.
(3) Pass various recognized statistical tests.
(4) Be unpredictable.
(5) Have a testing confidence level of 99 percent.

b. *Continuation of game after malfunction is cleared.* Each slot machine must be capable of continuing the current game with all current game features after a malfunction is cleared. This paragraph does not apply if a slot machine is rendered totally inoperable; however, the current wager and all credits appearing on the screen prior to the malfunction must be returned to the player.

c. *Electronic accounting meters.* Each slot machine must maintain electronic accounting meters at all times, regardless of whether the slot machine is being supplied with power. For each meter recording values, the slot machine must be capable of maintaining no fewer than ten digits. For each meter recording occurrences, the slot machine must be capable of maintaining no fewer than eight digits. No slot machine may have a mechanism that will cause the electronic accounting meters to automatically clear due to an error. The electronic meters must record, at a minimum, the following:

(1) Coin-in.
(2) Coin-out.
(3) Drop.
(4) Attendant-paid jackpots.
(5) Currency in.
(6) Currency out.
(7) External door.
(8) Bill validator door.
(9) Machine-paid external bonus payout.
(10) Attendant-paid external bonus payout.
(11) Attendant-paid progressive payout.
(12) Machine-paid progressive payout.

d. *Error conditions.* Each slot machine shall display and report error conditions to the online monitoring system. For machines that display only a code, definitions for all codes must be permanently affixed to the interior of the slot machine. Error conditions that must be displayed and reported include but are not limited to:

(1) Currency in.
(2) Currency out.
(3) Door open.
(4) RAM.
(5) Low battery.
(6) Program authentication.
(7) Reel spin.
(8) Power reset.

11.10(3) *Previous slot machine models.* Subject to administrator approval of specific gaming devices, slot machines may be used that do not meet the requirements of subrules 11.10(1) and 11.10(2) but have been certified under previously approved specifications by a commission-designated independent testing facility and maintain a current certification.
[**ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—11.11(99F) Slot machine specifications. Rescinded IAB 8/12/09, effective 9/16/09.

491—11.12(99F) Progressive slot machines.

11.12(1) *Meter required.* A progressive machine is a slot machine game with an award amount that increases based on a function of credits bet on the slot machine and that is awarded when a particular configuration of symbols or events is displayed on the slot machine. Random events generating awards independent of the base slot machine game and not dependent on any specific slot machine game shall be considered bonus features. A progressive slot machine or group of linked progressive slot machines must have a meter showing the progressive jackpot payout.

11.12(2) *Progressive controllers.* The reset or base value and the rate of increment of a progressive jackpot game must be filed with a commission representative prior to implementation. A reset or base value must equal or exceed the equivalent nonprogressive jackpot payout.

11.12(3) *Limits.* A facility may impose a limit on the progressive jackpot payout of a slot machine if the limit imposed is greater than the progressive jackpot payout at the time the limit is imposed. The facility must prominently display a notice informing the public of the limit. No progressive meter may be turned back to a lesser amount unless one of the following circumstances occurs:

a. The amount shown on the progressive meter is paid to a player as a jackpot.

b. It is necessary to adjust the progressive meter to prevent it from displaying an amount greater than the limit imposed by the facility.

c. It is necessary to change the progressive indicator because of game malfunction.

11.12(4) *Transfer of jackpots.* In the event of malfunction, replacement, or other reason approved by the commission, a progressive jackpot that is removed shall be transferred, less the reset value, to other progressive slot machine jackpots of similar progressive wager and probability at the same facility within 30 days from the removal date. In the event a similar progressive jackpot at the same facility is unavailable, other transfers shall be allowed. A commission representative shall be notified in writing prior to a removal or transfer.

11.12(5) *Records required.* Records must be maintained that record the amount shown on a progressive jackpot meter. Supporting documents must be maintained to explain any reduction in the payoff amount from a previous entry. The records and documents must be retained for a period of three years unless permission to destroy them earlier is given in writing by the administrator.

11.12(6) *Transfer of progressive slot machines.* A progressive slot machine, upon permission of the administrator, may be moved to a different facility if a bankruptcy, loss of license, or other good cause warrants.

11.12(7) *Linked machines.* Each machine on the link shall have the same probability of winning the progressive jackpot, adjusted for the total amount wagered. The product of the odds of winning the progressive jackpot multiplied by the maximum amount wagered shall be equal for all games on the link.

11.12(8) *Wide area progressive systems.* A wide area progressive system is a method of linking progressive slot machines or electronic gaming machines across telecommunication lines as part of a network connecting participating facilities. The purpose of a wide area progressive system is to offer a common progressive jackpot (system jackpot) at all participating locations. The operation of a wide area progressive system (multilink) is permitted subject to the following conditions:

a. The method of communication over the multilink must consist of dedicated on-line communication lines (direct connect) or equivalent as determined by the administrator, dial-tone lines, or wireless communication which may be subject to certain restrictions imposed by the administrator.

b. All communication between each facility location and the central system site must be encrypted.

c. All meter reading data must be obtained in real time in an on-line automated fashion. When requested to do so, the system must return meter readings on all slot machines or electronic gaming machines attached to the multilink within a reasonable time of the meter acquisition request. Manual reading of meter values may not be substituted for these requirements. There is no restriction as to the acceptable method of obtaining meter reading values, provided that the methods consist of either pulses from any machine computer board or associated wiring, or the use of serial interface to the machine's random access memory (RAM) or other nonvolatile memory.

d. The multilink must have the ability to monitor entry into the front door of the machine as well as the logic area of the machine and report such data to a central system.

e. The central system site must be located in the state of Iowa, be equipped with a noninterruptible power supply, and the central computer must be capable of on-line data redundancy should hard disk peripherals fail during operation. The office containing the central computer shall be equipped with a surveillance system that has been approved by the administrator. Any person authorized to provide a multilink shall be required to keep and maintain an entry and exit log for the office containing the central computer. Any person authorized to provide a multilink shall provide access to the office containing the central computer to the administrator and shall make available to the administrator all books, records, and information required by the administrator in fulfilling its regulatory purpose.

f. Any person authorized to provide a multilink must suspend play on the multilink if a communication failure of the system cannot be corrected within 24 consecutive hours.

g. Approval by a commission representative of any multilink shall occur only after the administrator has reviewed the multilink software and hardware and is satisfied that the operation of the system meets accepted industry standards for multilink products, as well as any other requirements that the administrator may impose to ensure the integrity, security, and legal operation of the multilink.

h. A meter that shows the amount of the system jackpot must be conspicuously displayed at or near the machines to which the jackpot applies. The system jackpot meter need not precisely show the actual moneys in the system jackpot award at each instant. Nothing shall prohibit the use of odometer or other paced updating progressive displays. In the case of the use of paced updating displays, the system jackpot meter must display the winning value after the jackpot broadcast is received from the central system, providing the remote site is communicating to the central computer. If a system jackpot is recognized in the middle of a systemwide poll cycle, the system jackpot display may contain a value less than the aggregated amount calculated by the central system. The coin values from the remaining portion of the poll cycle will be received by the central system but not the local site, in which case the system jackpot amount paid will always be the higher of the two reporting amounts.

i. When a system jackpot is won, a person authorized to provide the multilink shall have the opportunity to inspect the machine, storage media, the error events received by the central system, and any other data which could reasonably be used to ascertain the validity of the jackpot.

(1) The central system shall produce reports that will clearly demonstrate the method of arriving at the payoff amount. This shall include the coins contributed beginning with the polling cycle immediately following the previous jackpot and will include all coins contributed up to, and including, the polling cycle, which includes the jackpot signal. Coins contributed to and registered by the system before the jackpot message is received will be deemed to have been contributed to the progressive amount prior to the current jackpot. Coins contributed to the system subsequent to the jackpot message's being received as well as coins contributed to the system before the jackpot message is received by the system, but registered after the jackpot message is received at the system, will be deemed to have been contributed to the progressive amount of the next jackpot.

(2) The system jackpot may be disbursed in periodic payments as long as each machine clearly displays the fact that the jackpot will be paid in such periodic payments. In addition, the number of periodic payments and time between payments must be clearly displayed on the face of the slot machine in a nonmisleading manner.

(3) Two system jackpots which occur in the same polling cycle before the progressive amount can reset will be deemed to have occurred simultaneously; therefore, each winner shall receive the full amount shown on the system jackpot meter.

j. Any person authorized to provide a multilink must supply to the commission, as requested, reports which support and verify the economic activity of the system.

(1) Any person authorized to provide a multilink must supply to the commission, as requested, reports and information indicating the amount of, and basis for, the current system jackpot. Such reports may include an aggregate report and a detail report. The aggregate report may show only the balancing of the system with regard to systemwide totals. The detail report shall be in such form as to indicate for each machine, summarized by location, the coin-in totals as such terms are commonly understood in the industry.

(2) In addition, upon the invoicing of any facility participating in a multilink, each such facility must be given a printout of each machine operated by that facility, the coins contributed by each machine to the system jackpot for the period for which an invoice is remitted, and any other information required by the commission to confirm the validity of the facility's contributions to the system jackpot.

k. In calculating adjusted gross receipts, a facility may deduct its pro-rata share of the present value of any system jackpots awarded. Such deduction shall be listed on the detailed accounting records provided by the person authorized to provide the multilink. A facility's pro-rata share is based on the number of coins in from that facility's machines on the multilink, compared to the total amount of coins in on the whole system for the time period(s) between jackpot(s) awarded.

l. In the event a facility ceases operations and a progressive jackpot is awarded subsequent to the last day of the final month of operation, the facility may not file an amended wagering tax submission or make a claim for a wagering tax refund based on its contributions to that particular progressive prize pool.

m. A facility, or an entity that is licensed as a manufacturer or distributor, shall provide the multilink, in accordance with a written agreement which shall be reviewed and approved by the commission prior to offering the jackpots.

n. The payment of any system jackpot offered on a multilink shall be administered by the person authorized to provide the multilink, and such person shall have primary liability for payment of any system jackpot the person administers. In addition, any facility shall have secondary liability for the payment of system jackpots won on a multilink in which the licensee is or was a participant if and to the extent that the person authorized to provide the multilink fails to make payment when due.

o. A person who is authorized to provide the multilink shall comply with the following:

(1) A reserve shall be established and maintained by the provider of the multilink in an amount of not less than the sum of the following amounts:

1. The present value of the aggregate remaining balances owed on all jackpots previously won by patrons on the multilink.
2. The present value of the amount currently reflected on the jackpot meters of the multilink.
3. The present value of one additional reset (start amount) of the multilink.

(2) The reserve shall continue to be maintained until all payments owed to winners of the system jackpots have been made.

(3) For system jackpots disbursed in periodic payments, any qualified investment shall be purchased within 90 days following notice of the win of the system jackpot, and a copy of such qualified investment will be provided to the commission office within 30 days of purchase. Any qualified investment shall have a surrender value at maturity, excluding any interest paid before the maturity date, equal to or greater than the value of the corresponding periodic jackpot payment, and shall have a maturity date prior to the date the periodic jackpot payment is required to be made.

(4) The person authorized to provide the multilink shall not be permitted to sell, trade, or otherwise dispose of any qualified investments prior to their maturity unless approval to do so is first obtained from the commission.

(5) Upon becoming aware of an event of noncompliance with the terms of the reserve requirement mandated by subparagraph (1) above, the person authorized to provide the multilink must immediately notify the commission of such event. An event of noncompliance includes a nonpayment of a jackpot periodic payment or a circumstance which may cause the person authorized to provide the multilink to

be unable to fulfill, or which may otherwise impair the person's ability to satisfy, the person's jackpot payment obligations.

(6) On a quarterly basis, the person authorized to provide the multilink must deliver to the commission office a calculation of system reserves required under subparagraph (1) above. The calculation shall come with a certification of financial compliance signed by a duly authorized financial officer of the person authorized to provide the multilink, on a form prescribed by the commission, validating the calculation.

(7) The reserve required under subparagraph (1) must be examined by an independent certified public accountant according to procedures approved by the commission. Two copies of the report must be submitted to the commission office within 90 days after the conclusion of the fiscal year of the person authorized to provide the multilink.

p. For system jackpots disbursed in periodic payments, subsequent to the date of the win, a winner may be offered the option to receive, in lieu of periodic payments, a discounted single cash payment in the form of a "qualified prize option," as that term is defined in Section 451(h) of the Internal Revenue Code. The person authorized to provide the multilink shall calculate the single cash payment based on the discount rate. Until the new discount rate becomes effective, the discount rate selected by the person authorized to provide the multilink shall be used to calculate the single cash payment for all qualified prizes that occur subsequent to the date of the selected discount rate.

[**ARC 7757B**, IAB 5/6/09, effective 6/10/09; **ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—11.13(99F) Licensing of manufacturers and distributors of gambling games or implements of gambling.

11.13(1) *Impact on gambling.* In considering whether a manufacturer or distributor applicant will be licensed or a specific product will be distributed, the administrator shall give due consideration to the economic impact of the applicant's product, the willingness of a licensed facility to offer the product to the public, and whether its revenue potential warrants the investigative time and effort required to maintain effective control over the product.

11.13(2) *Licensing standards.* Standards which shall be considered when determining the qualifications of an applicant shall include, but are not limited to, financial stability; business ability and experience; good character and reputation of the applicant as well as all directors, officers, partners, and employees; integrity of financial backers; and any effect on the Iowa economy.

11.13(3) *Application procedure.* Application for a manufacturer's or a distributor's license shall be made to the commission for approval by the administrator. In addition to the application, the following must be completed and presented when the application is filed:

a. Disclosure of ownership interest, directors, or officers of licensees.

(1) An applicant or licensee shall notify the administrator of the identity of each director, corporate officer, owner, partner, joint venture participant, trustee, or any other person who has any beneficial interest of 5 percent or more, direct or indirect, in the business entity. For any of the above, as required by the administrator, the applicant or licensee shall submit background information on forms supplied by the division of criminal investigation and any other information the administrator may require.

For purposes of this rule, beneficial interest includes all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

(2) For ownership interests of less than 5 percent, the administrator may request a list of these interests. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The administrator may request the same information required of those individuals in subparagraph (1) above.

b. Investigative fees.

(1) Advance payment. The department of public safety may request payment of the investigative fee in advance as a condition to beginning investigation.

(2) Payment required. The administrator may withhold final action with respect to any application until all investigative fees have been paid in full.

c. A bank or cashier's check made payable to the Iowa Racing and Gaming Commission for the annual license fee as follows:

(1) A manufacturer's license shall be $250.

(2) A distributor's license shall be $1,000.

d. A copy of each of the following:

(1) Articles of incorporation and certificate of incorporation, if the business entity is a corporation.

(2) Partnership agreement, if the business entity is a partnership.

(3) Trust agreement, if the business entity is a trust.

(4) Joint venture agreement, if the business entity is a joint venture.

(5) List of employees of the aforementioned who may have contact with persons within the state of Iowa.

e. A copy of each of the following types of proposed distribution agreements, where applicable:

(1) Purchase agreement(s).

(2) Lease agreement(s).

(3) Bill(s) of sale.

(4) Participation agreement(s).

f. Supplementary information. Each applicant shall promptly furnish the administrator with all additional information pertaining to the application or the applicant which the administrator may require. Failure to supply the information requested within five days after the request has been received by the applicant shall constitute grounds for delaying consideration of the application.

g. Any and all changes in the applicant's legal structure, directors, officers, or the respective ownership interests must be promptly filed with the administrator.

h. The administrator may deny, suspend, or revoke the license of an applicant or licensee in which a director, corporate officer, or holder of a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through want of character, moral fitness, financial responsibility, professional qualifications, or due to failure to meet other criteria employed by the administrator, to participate in gaming regardless of the percentage of ownership interest involved. The administrator may order the ineligible person or entity to terminate all relationships with the licensee or applicant, including divestiture of any ownership interest or beneficial interest at acquisition cost.

i. Disclosure. Disclosure of the full nature and extent of all beneficial interests may be requested by the administrator and shall include the names of individuals and entities, the nature of their relationships, and the exact nature of their beneficial interest.

j. Public disclosure. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership filed with the administrator shall be available for public inspection.

11.13(4) *Temporary license certificates.*

a. A temporary license certificate may be issued at the discretion of the administrator.

b. Temporary licenses—period valid. Any certificate issued at the discretion of the administrator shall be valid for a maximum of 120 calendar days from the date of issue.

Failure to obtain a permanent license within the designated time may result in revocation of the license eligibility, fine, or suspension.

11.13(5) *Withdrawal of application.* A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

11.13(6) *Record keeping.*

a. *Record storage required.* Distributors and manufacturers shall maintain adequate records of business operations, which shall be made available to the administrator upon request. These records shall include:

(1) All correspondence with the administrator and other governmental agencies on the local, state, and federal level.

(2) All correspondence between the licensee and any of its customers who are applicants or licensees under Iowa Code chapter 99F.

(3) A personnel file on each employee of the licensee, including sales representatives.

(4) Financial records of all transactions with facilities and all other licensees under these regulations.

b. Record retention. The records listed in 11.13(6)*"a"* shall be retained as required by 491—subrule 5.4(14).

11.13(7) *Violation of laws or regulations.* Violation of any provision of any laws of the state or of the United States of America or of any rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking or suspending the license, or fining the licensee, or any combination of the above.

11.13(8) *Consent to inspections, searches, and seizures.* Each manufacturer or distributor licensed under this chapter shall consent to inspections, searches, and seizures deemed necessary by the administrator and authorized by law in order to enforce licensing requirements.

These rules are intended to implement Iowa Code chapter 99F.

[Filed 10/13/00, Notice 9/6/00—published 11/1/00, effective 12/6/00]
[Filed 4/24/01, Notice 2/7/01—published 5/16/01, effective 6/20/01]
[Filed 5/17/02, Notice 4/3/02—published 6/12/02, effective 7/17/02]
[Filed 7/18/02, Notice 6/12/02—published 8/7/02, effective 9/11/02]
[Filed 1/17/03, Notice 12/11/02—published 2/5/03, effective 3/12/03]
[Filed 9/7/04, Notice 7/7/04—published 9/29/04, effective 11/3/04]
[Filed 4/21/06, Notice 2/15/06—published 5/10/06, effective 6/14/06]
[Filed 4/20/07, Notice 2/14/07—published 5/9/07, effective 6/13/07]
[Filed 1/11/08, Notice 11/7/07—published 1/30/08, effective 3/5/08]
[Filed 6/6/08, Notice 3/26/08—published 7/2/08, effective 8/6/08]
[Filed 10/10/08, Notice 8/13/08—published 11/5/08, effective 12/10/08]
[Filed ARC 7757B (Notice ARC 7554B, IAB 2/11/09), IAB 5/6/09, effective 6/10/09]
[Filed ARC 8029B (Notice ARC 7758B, IAB 5/6/09), IAB 8/12/09, effective 9/16/09]
[Filed ARC 9018B (Notice ARC 8726B, IAB 5/5/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 12
ACCOUNTING AND CASH CONTROL

491—12.1(99F) Definitions.

"Casino" means all areas of a facility where gaming is conducted.

"Coin" means tokens, nickels, and quarters of legal tender.

"Commission" means the racing and gaming commission.

"Container" means:

1. A box attached to a gaming table in which shall be deposited all currency in exchange for gaming chips, fill and credit slips, requests for fill forms, and table inventory forms.

2. A canister in a slot machine cabinet in which currency is retained by slot machines and not used to make change or automatic jackpot payouts.

"Count room" means an area in the facility where contents of containers are counted and recorded.

"Currency" means any coin or paper money of legal tender and paper forms of cashless wagering.

"Drop" means removing the containers from the casino to the count room.

"Facility" means an entity licensed by the commission to conduct gaming operations in Iowa.

"Hopper" means a payout reserve container in which coins are retained by a slot machine to automatically pay jackpots.

"Internal controls" means the facility's system of internal controls.

"Request" means a request for credit slip, request for fill slip, or request for jackpot payout slip.

"Slip" means a credit slip, fill slip, or jackpot payout slip.

"Slot machine" means a mechanical or electronic gambling game device into which a player may deposit currency or other forms of cashless wagering and from which certain numbers of credits are awarded when a particular configuration of symbols or events is displayed on the machine.

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—12.2(99F) Accounting records.

12.2(1) Each facility shall maintain complete and accurate records of all transactions pertaining to revenues and costs.

12.2(2) General accounting records shall be maintained on a double entry system of accounting with transactions recorded on an accrual basis.

12.2(3) Detailed, supporting, and subsidiary records shall be maintained. The records shall include, but are not limited to:

a. Statistical game records by gaming day to reflect drop and win amounts by table for each game.

b. Records of all investments, advances, loans, and receivable balances due the facility.

c. Records related to investments in property and equipment.

d. Records which identify the handle, payout, win amounts and percentages, theoretical win amounts and percentages; and differences between theoretical and actual win amounts and percentages for each slot machine on a week-to-date, month-to-date, and year-to-date basis.

e. Records of all loans and other amounts payable by the facility.

f. Records that identify the purchase, receipt, and disposal of gaming chips and tokens. All methods of disposal are subject to administrator approval.

12.2(4) Whenever forms or serial numbers are required to be accounted for or copies of forms are required to be compared for agreement and exceptions are noted, irreconcilable gambling revenue exceptions shall be reported immediately and in writing to the commission. All other exceptions shall be recorded in a log, accessible to commission representatives, maintained according to the requirements in 491—subrule 5.4(14).

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—12.3(99F) Facility internal controls.

12.3(1) Each facility shall submit a description of internal controls to the commission. The submission shall be made at least 90 days before gaming operations are to commence unless otherwise directed by the administrator. The submission shall include and provide for the following:

a. Administrative control that includes, but is not limited to, the plan of organization and the procedures and records that are concerned with the decision processes leading to management's levels of authorization of transactions.

b. Accounting control that includes the plan of organization and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records. The accounting control shall be designed to provide reasonable assurance that:

(1) Transactions are executed in accordance with management's general and specific authorization, which shall be consistent with the requirements of this chapter.

(2) Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets.

(3) Access to assets is permitted only in accordance with management authorization, which shall be consistent with the requirements of this chapter.

(4) The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

c. Competent personnel with integrity and an understanding of prescribed internal controls.

d. The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of the employee's duties.

e. Surveillance internal controls that include:

(1) Surveillance departments that shall be operated in an autonomous fashion, as separate and distinct entities from all other departments. A gaming facility's organizational structure shall place the director of the surveillance department directly under the span of control and authority of the operator's board of directors or appropriate parent company executive where practical. Under no circumstances will the director of surveillance report to or take direction from any authority at a level below the general manager.

(2) Administration of the network for the purpose of utilizing and transmitting live or recorded views or images of a video surveillance system for asset protection, loss prevention, investigation of tort/liability claims, game protection, employee oversight, resolution of patron disputes, corporate governance, management analysis, or other use consistent with a licensee's statutory responsibilities as approved by the administrator.

f. Game control, including but not limited to procedures for the storage, removal and record of implements of gambling. The gaming control shall be designed to document:

(1) Access to implements of gambling not in use.

(2) Method for removal of implements of gambling from an active gambling game.

(3) Procedures governing the record of total inventory of implements of gambling, documenting both additions to and removal from storage and active use.

12.3(2) A commission representative shall review each submission required by subrule 12.3(1) and determine whether it conforms to the requirements of Iowa Code chapter 99F and is consistent with the intent of this chapter and whether the internal controls submitted provide adequate and effective control for the operations of the facility. If the commission representative finds any insufficiencies, the insufficiencies shall be specified in writing to the facility, which shall make appropriate alterations. No facility shall commence gaming operations unless and until the internal controls are approved.

12.3(3) Each facility shall submit to the commission any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by a commission representative. The proposed changes shall be submitted to the commission and the changes may be approved or disapproved by the commission representative. No facility shall alter its internal controls until the changes are approved.

12.3(4) It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with all internal controls.

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—12.4(99F) Accounting controls within the cashier's cage.

12.4(1) The assets for which the cashiers are responsible shall be maintained on an imprest basis. At the end of each shift, the cashiers assigned to the outgoing shift shall record on a cashier's count sheet the face value of each cage inventory item counted and the total of the opening and closing cage inventories and shall reconcile the total closing inventory with the total opening inventory.

12.4(2) At the conclusion of gaming activity each gaming day, a copy of the cashiers' count sheets and related documentation shall be forwarded to the accounting department for agreement of opening and closing inventories; agreement of amounts thereon to other forms, records, and documents required by this chapter; and the recording of all transactions.

12.4(3) Each facility shall place on file with the commission the names of all persons authorized to enter the cashier's cage, persons who possess the combination or keys to the locks securing the entrance to the cage, and persons who possess the ability to operate alarm systems.

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—12.5(99F) Gaming table container. Each gaming table in a casino shall have attached to it a container.

12.5(1) Each container shall have:

a. A lock securing the contents of the container, the key to which shall be logged out by the count team.

b. A separate lock securing the container to the gaming table, the key to which shall be different from the key in paragraph 12.5(1)*"a"* and shall be logged out by the drop team, count team, or emergency drop personnel pursuant to subrule 12.13(1).

c. A slot opening through which currency, forms, records, and documents can be inserted.

d. A mechanical device that will close and lock the slot opening upon removal of the container from the gaming table.

12.5(2) Keys referred to in this rule shall be maintained and controlled in a secured area by the security department. The facility shall establish a sign-out procedure for all keys removed from the secured area.

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—12.6(99F) Accepting currency at gaming tables. Whenever currency is presented by a patron at a gaming table in exchange for gaming chips, the following procedures and requirements shall be observed:

12.6(1) The dealer or boxperson accepting the currency shall spread the currency on the top of the gaming table.

12.6(2) The dealer or boxperson shall verbalize the currency value in a tone of voice necessary to be heard by the patron and the casino supervisor assigned to the gaming table.

12.6(3) The dealer or boxperson shall take the currency from the top of the gaming table and place it into the container immediately after verbalizing the amount.

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—12.7(99F) Procedures for the movement of gaming chips to and from gaming tables.

12.7(1) *Slips.* Each slip shall be sequentially numbered, shall be simultaneously printed in two or three copies, and shall discharge in the cashier's cage. Casino supervisors or casino clerks shall input data for each slip, and each prepared copy shall contain the following information:

a. The type of transfer.

b. The sequentially ordered slip number.

c. The date and time of preparation.

d. The total amount of each denomination.

e. The total amount of all denominations.

f. The game and table number.

12.7(2) *Distribution of chips to a gaming table.* On receipt of a slip in the cashier's cage for distribution of gaming chips to a table, the following procedures shall apply:

a. A cashier shall prepare the gaming chips and sign all copies of the slip attesting to the accuracy of the totals.

b. A security employee, or other employee authorized by the internal controls, shall compare the slip to the gaming chips prepared and sign all copies of the slip attesting to the accuracy. One copy of the slip shall remain with the cashier, if applicable, while two copies are transported with the gaming chips to the gaming table.

c. The dealer or boxperson assigned to the gaming table and the casino supervisor assigned to the gaming table shall sign all copies of the slip attesting to the accuracy of the fill.

d. Upon verification and placement of the gaming chips, the employee responsible for transporting the chips to the gaming table shall observe as the dealer or boxperson places one copy of the slip in the container of the gaming table. The employee shall then transport the remaining copy of the slip to the cashier's cage to be maintained and controlled by a cashier.

12.7(3) *Removal of chips from a gaming table.* On receipt of a slip in the cashier's cage for removal of gaming chips from a table, the following procedures shall apply:

a. A security employee, or other employee authorized by the internal controls, shall transfer all copies of the slip to the gaming table.

b. The dealer or boxperson assigned to the gaming table and the casino supervisor assigned to the gaming table shall prepare the removal and sign all copies of the slip attesting to the accuracy.

c. The security employee, or other employee authorized by internal controls, shall compare the slip to the gaming chips prepared and sign all copies of the slip attesting to the accuracy.

d. When using three copies, one copy of the slip shall be placed in public view on the gaming table from which the gaming chips were removed. The copy shall not be removed until a slip is returned from the cashier.

e. The security employee, or other employee authorized by internal controls, shall transport the chips and the remaining two copies of the slip to the cashier's cage.

f. The cashier shall compare the slip to the gaming chips received and shall sign both remaining copies attesting to the accuracy. One slip shall be maintained and controlled by the cashier.

g. The security employee, or other employee authorized by internal controls, shall transport the slip to the gaming table and shall observe as the dealer or boxperson places both this copy and the copy required by paragraph 12.7(3)*"d"* into the container of the gaming table.

12.7(4) *Slip reconciliation.* At the end of each gaming day, copies of each of the slips maintained by the cashier's cage shall be forwarded to the accounting department for agreement with the copies of the slips obtained by the count team from the gaming table containers. Copies shall also be compared for agreement with the stored data.

12.7(5) *Stored data.* All information required by subrule 12.7(1) shall be stored in machine-readable format. The stored data shall not be susceptible to change or removal by any personnel after preparation of a slip.

12.7(6) *Manual process.* In the event the online monitoring and control system is unavailable, the facility staff shall perform transfers of gaming chips to and from gaming tables using manual requests and slips.

a. Requests shall be prepared by the casino supervisor or casino clerk. For the distribution of chips to the gaming table, the request shall be signed by the security employee, or other employee authorized by the internal controls, and shall be left with the cashier prior to the transfer of gaming chips and slips required by paragraph 12.7(6)*"b."* For the removal of chips from the gaming table, the request shall be signed at the gaming table by the security employee, or other employee authorized by the internal controls, prior to the transfer of gaming chips and slips required by paragraph 12.7(6)*"b"* and shall be placed in the container when the slip signed by the cashier has been returned to the gaming table.

b. Slips shall be prepared by cashiers in the cage using a three-part serially prenumbered form in a locked dispenser. The dispenser shall discharge two copies of the slip that have been filled out and signed by the cashier and shall retain the third copy in a continuous form in the dispenser. The same procedures shall be followed and the same set of signatures shall be utilized as required by subrules 12.7(2) and 12.7(3).

c. The copies remaining in the dispenser shall be removed each gaming day where a manual process had to be performed for gaming chip movements and to replace the stored data used pursuant to subrule 12.7(4). Access to the locked dispenser shall be maintained and controlled by independent employees responsible for accounting for the unused slips, placing slips in the dispensers, and removing slips from the dispensers.

12.7(7) *Modifications.* Modifications to the procedures described in subrules 12.7(2), 12.7(3), and 12.7(4) may be substituted as internal controls, subject to the approval process of subrule 12.3(2), if the procedures comply with the intent of this rule.

12.7(8) *Voided transactions.* Whenever it becomes necessary to void a slip, all copies shall be clearly marked "void" and shall require the signature of the preparer. All void slips shall be maintained and controlled in conformity with subrules 12.7(2), 12.7(3), and 12.7(5).
[**ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—12.8(99F) Dropping or opening a gaming table.

12.8(1) The table inventory slips shall be a two-part form, a "closer" and an "opener," containing the following:

a. The date and time of preparation.

b. The game and table number.

c. The total value of each denomination of gaming chips.

d. The total value of all denominations of gaming chips.

12.8(2) Whenever a gaming table is dropped or upon initial opening after a drop, the gaming chips at the gaming table shall be counted by the dealer or boxperson assigned to the gaming table while observed by a casino supervisor assigned to the gaming table.

12.8(3) Signatures attesting to the accuracy of the information recorded on the table inventory slips at the time of dropping or opening of the gaming tables shall be of the dealer or boxperson and the casino supervisor assigned to the gaming table who observed the dealer or boxperson count the contents of the table inventory.

12.8(4) Upon meeting the signature requirements described in subrule 12.8(3):

a. The closer, at dropping, shall be deposited in the container immediately prior to the closing of the table. The opener and the gaming chips remaining at the table shall be placed in a secured, locked area on the table.

b. The opener, at opening, shall be immediately deposited in the container.

12.8(5) Upon opening a gaming table, if the totals on the gaming inventory form vary from the opening count, the casino supervisor shall fill out an error notification slip. The casino supervisor and dealer or boxperson shall sign the error notification slip and deposit the slip in the container.
[**ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—12.9(99F) Slot machine container and key. Each slot machine shall have a container(s) that is housed in a locked compartment(s) separate from any other compartment of the slot machine.

12.9(1) Each container shall:

a. Have a lock securing the contents of the container, the key to which shall be logged out by the count team or employees authorized by the internal controls to address container malfunction issues.

b. Have a lock to each compartment securing the container to the slot machine, the key to which shall be different from the key in paragraph 12.9(1)*"a"* and shall be logged out by the drop team, employees authorized by the internal controls to address container malfunction issues, or employees transporting container(s) according to rule 491—12.13(99F).

c. Be identified at the time of removal by a number corresponding to the number of the slot machine from which the container is removed.

12.9(2) Keys referred to in subrule 12.9(1) shall be maintained and controlled by the security department in a secured area. The facility shall establish a log-out procedure for all keys removed from the secured area.

12.9(3) Other keys to each slot machine or any device connected thereto which may affect the operation of the slot machine shall be maintained in a secure place and controlled by the slot department.
[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—12.10(99F) Procedures for hopper fills and attendant payouts.

12.10(1) *Slips.* Each slip shall be sequentially numbered, and two copies shall be simultaneously printed. An employee authorized by the internal controls shall input data for each slip, and each prepared copy shall contain the following information:

a. The type of transaction.

b. The sequentially ordered slip number.

c. The date and time of preparation.

d. For attendant payouts, the amount to be paid and the cage location from which the amount is to be paid.

e. For jackpots, the winning combination to be paid.

f. For hopper fills, the denomination and amount of currency to be distributed.

12.10(2) *Hopper fills.* A slip shall be prepared by a person authorized by the internal controls whenever a slot machine fill is required. On receipt or preparation of a slip in the cashier's cage, the following procedures shall apply:

a. The cashier, upon providing the coins to an employee authorized by the internal controls, shall sign all copies of the slip attesting to the accuracy of the amount provided and the information contained on the slip.

b. The employee authorized by the internal controls, upon receipt of the coins, shall sign all copies of the slip and transport the coins and one copy of the slip to the slot machine. The remaining copy shall remain with the cashier.

c. An additional employee authorized by the internal controls, other than the employees listed in paragraphs 12.10(2)*"a"* and 12.10(2)*"b,"* shall observe the deposit of the coins into the slot machine hopper and the closing and locking of the slot machine door. This employee shall then sign the copy of the slip at the slot machine.

d. Upon completion of the fill, the copy of the slip at the slot machine shall be deposited in a secure area controlled by the accounting department.

12.10(3) *Attendant payouts.* Whenever a patron wins a jackpot or has accumulated credits not totally and automatically paid directly from a slot machine, a slip shall be prepared by a person authorized by the internal controls. On receipt or preparation of a slip for an attendant payout in the cashier's cage, the following procedures shall apply:

a. The cashier, upon providing the payment to an employee authorized by the internal controls, shall sign all copies of the slip attesting to the accuracy of the amount provided and the information contained on the slip.

b. The employee authorized by the internal controls, upon receipt of the payment, shall sign all copies of the slip and transport the payment and one copy of the slip to the slot machine. The remaining copy of the slip shall remain with the cashier.

c. An additional employee authorized by the internal controls, other than the employees listed in paragraphs 12.10(3)*"a"* and 12.10(3)*"b,"* shall observe the payment of the patron. For jackpots, the employee shall verify the symbols on the slot machine. For jackpots in excess of $10,000, the employee shall be a supervisor or higher authority. In either case, the employee shall then sign the copy of the slip at the slot machine.

d. Upon completion of the payout, the copy of the slip at the slot machine shall be deposited in a secure area controlled by the accounting department.

e. For a slot machine jackpot in excess of $100,000, a facility shall notify a commission representative in accordance with the immediate notification process established by 491—subrule 5.4(5).

12.10(4) *Overrides.* System overrides shall be authorized by a slot supervisor or an employee authorized by the internal controls. This employee shall not perform the duties and signature

requirements of subrules 12.10(2) and 12.10(3) in any transaction where the employee authorizes a system override. In addition to the signature requirements of subrules 12.10(2) and 12.10(3), the signature of the authorizing employee shall be on all copies of the slip.

12.10(5) *Slip reconciliation.* At the end of each gaming day, copies of the slip retained by the cashier's cage shall be forwarded to the accounting department for agreement with the copies of the slips deposited in the area controlled by the accounting department and for recording on the slot win sheet. Copies shall also be compared for agreement with the stored data.

12.10(6) *Stored data.* All information required by subrule 12.10(1) shall be stored in the online monitoring and control system in machine-readable format. The stored data shall not be susceptible to change or removal by any personnel after preparation of the slip.

12.10(7) *Modifications.* Modifications to the procedures described in subrules 12.10(2) to 12.10(5) may be substituted as internal controls, subject to the approval process of subrule 12.3(2), if the procedures comply with the intent of this rule.

12.10(8) *Manual process.* In the event the online monitoring and control system is unavailable, the facility staff shall perform hopper fills and manual payouts using manual slips. Manual slips shall be three-part serially prenumbered forms. For use of manual slips, the following shall apply:

a. Slips shall be placed in a locked dispenser. Once prepared, the dispenser shall discharge two copies of the slip, while retaining the third copy in a continuous form. They shall be prepared in the cashier's cage at the request of an employee authorized by the internal controls. Procedures for the two dispensed copies shall follow subrules 12.10(2) and 12.10(3).

b. The copies remaining in the dispenser shall be removed each gaming day where a manual process had to be performed for hopper fills or manual payouts and to replace the stored data used pursuant to subrule 12.10(5). Access to the locked dispenser shall be maintained and controlled by independent employees responsible for accounting for the unused slips, placing slips in the dispensers, and removing slips from the dispensers.

12.10(9) *Voided transactions.* Whenever it becomes necessary to void a slip, all the copies shall be clearly marked "void" and shall require the signature of the preparer. All void slips shall be maintained and controlled in conformity with subrules 12.10(2) to 12.10(5).

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—12.11(99F) Attendant and ticket payout accounting.

12.11(1) *Attendant payouts.* Under this rule, unless otherwise subject to Iowa Code chapter 556, jackpots and accumulated credits paid by a slip that are unpaid or unclaimed at the close of a facility's fiscal year shall be disallowed as a deduction from gross receipts for the calculation of adjusted gross revenue for the wagering tax. A facility shall make this adjustment to revenue within 90 days of the close of the facility's fiscal year.

12.11(2) *Ticket payouts.* Payouts dispensed by a ticket issued directly from a gaming device must have a minimum payout redemption period of 90 days from the date of issuance.

a. Notwithstanding 491—subrule 5.4(14), an issued ticket redeemed for cash or deposited in a slot machine for machine credits shall be retained for a minimum of 90 days from the redemption date. The ticket may be subsequently destroyed if record of the transaction is retrievable by other means.

b. At the close of the facility's fiscal year, tickets issued in previous fiscal years and tickets with expired redemption periods that remain outstanding and unredeemed are subject to the requirements of subrule 12.11(1).

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—12.12(99F) Computer recording requirements and monitoring of slot machines.

12.12(1) A facility shall have an online monitoring and control system connected to each slot machine in the casino to record and monitor the slot machine's activities.

12.12(2) The online monitoring and control system shall be designed and operated to automatically perform the functions relating to slot machine meters in the casino as follows:

a. Record the number and total of currency placed in the slot machine for the purpose of activating play.

b. Record the number and total of currency in the container(s).

c. Record the number and total of currency to be paid manually as the result of a jackpot.

d. Record the electronic meter information required by 491—paragraph 11.10(2)*"c."*

12.12(3) The online monitoring and control system shall monitor and detect machine exception codes and error messages as required by 491—paragraph 11.10(2)*"d."*

12.12(4) The online monitoring and control system shall store in machine-readable form all information required by subrules 12.12(2) and 12.12(3), and the stored data shall not be susceptible to change or removal.

12.12(5) The licensee shall maintain a current log, accessible to commission representatives, of all changes and updates made to the online monitoring and control system that affect any part of the system's message digest. These changes and updates shall be approved as required by 491—subrule 11.4(1).
[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—12.13(99F) Transportation of containers.

12.13(1) Each facility shall place on file with a commission representative a schedule setting forth the specific times at which the containers will be brought to or removed from the gaming tables or slot machines for transport to the count room. An emergency drop that deviates from the schedule shall be permissible for instances of full containers or container malfunctions provided that representatives from the security department and another department conduct the drop and the process is recorded by the surveillance department from the time of machine entry until the container is secured in the count room or other approved secure location. The commission representative shall be notified after each occurrence.

12.13(2) A security employee shall accompany and observe the drop team. For table games, all containers removed from the gaming tables shall be transported by a security employee and a table game supervisor.

12.13(3) All containers removed from slot machine cabinets shall:

a. Be removed by a drop team wearing uniforms or outer garments as required by subrule 12.15(2).

b. Be replaced immediately with an empty container that shall be secured in the cabinet.

12.13(4) All containers removed shall be transported directly to, and secured in, the count room or in a secure area within the facility until the containers can be transferred to the count room.

12.13(5) Empty containers not secured to the gaming tables or slot machine compartment shall be stored in the count room or an approved secured location. Empty containers may be removed from the count room or secured area for repair or destruction provided the surveillance department is notified and the inside of the container is held up to the full view of a closed circuit television camera prior to removal.
[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

491—12.14(99F) Count room—characteristics.

12.14(1) Each facility shall have a count room that shall:

a. Be designed and constructed to provide maximum security for materials housed within and the activities conducted therein.

b. Have an alarm device connected to the entrance of the room that causes a signaling to the monitors of the closed circuit surveillance system and to the commission representative's office whenever the door to the room is opened.

c. Have, if currency is counted within the count room, a count table constructed of clear glass or similar material for the emptying, counting, and recording of the contents of containers.

12.14(2) All room keys shall be maintained and controlled in a secured area by the security department. The facility shall establish a sign-out procedure for all keys removed from the secured area.
[**ARC 8029B**, IAB 8/12/09, effective 9/16/09]

491—12.15(99F) Opening, counting, and recording contents of containers in the count room.

12.15(1) Each facility shall file with a commission representative the specific times and procedures for opening, counting, and recording the contents of containers.

12.15(2) All persons present in the count room during the counting process, unless expressly exempted by a commission representative, shall wear a full-length, one-piece, pocketless outer garment

with openings only for the arms, feet, and neck that extends over any other garments and covers the tops of any footwear.

12.15(3) Persons shall not:

a. Carry a pocketbook or other container into the count room, unless it is transparent.

b. Remove their hands from or return them to a position on or above the count table unless the backs and palms of the hands are first held straight out and exposed to the view of other members of the count team and the closed circuit surveillance camera.

12.15(4) Requirements for conducting the count.

a. Immediately prior to the commencement of the count, the count team shall notify the person assigned to the surveillance room that the count is about to begin, after which the surveillance department shall make a video recording with the time and date inserted thereon of the entire counting process.

b. Prior to counting the contents of the containers, the doors to the count room shall be locked and no person shall be permitted to enter or leave the count room, except during an emergency or on scheduled breaks, until the entire counting, recording, and verification process is completed. During this time, a commission representative shall have unrestricted access.

c. When a container is placed on a count table or coin scale, the count team shall ensure that the table or machine number associated with a container is identified to the surveillance department.

d. A machine may be used to automatically count the contents of a container.

e. The contents of each container shall be emptied on the count table or coin scale and either manually counted separately on the count table or counted in an approved currency counting machine located in a conspicuous location on, near, or adjacent to the count table or coin scale. These procedures shall at all times be conducted in full view of the closed circuit surveillance cameras located in the count room.

f. Immediately after the contents of a container are emptied onto the count table or coin scale, the inside of the container shall be held up to the full view of a closed circuit surveillance camera and shall be shown to at least one other count team member to ensure all contents of the container have been removed and, if applicable, the container shall then be locked. By the end of the count process, empty containers shall be secured in a container cart or an area separate from uncounted containers.

g. If the original count is being performed by a machine that automatically counts and records the amounts of the contents of each individual container, an aggregate count may be permitted in substitution of a second container count.

h. For manually counted containers:

(1) The count team members shall place the contents of each container into separate stacks on the count table by denomination of currency and by type of form, record, or document, except that a machine may be used to automatically sort currency by denomination.

(2) Each denomination of currency shall be counted separately by one count team member who shall group currency of the same denomination on the count table in full view of a closed circuit surveillance camera. The currency shall then be counted by a second count team member who is unaware of the result of the original count. The second count team member, after completing this count, shall confirm the accuracy of the total, either orally or in writing, with that reached by the first count team member.

12.15(5) Table games.

a. As the contents of each container from a table game are counted, one count team member shall record the following information by game, table number, date, and time on a master game report or supporting documents:

(1) The amount of each denomination of currency.

(2) The amount of all denominations of currency.

(3) The total amounts of currency.

(4) The total amount of gaming chips.

(5) The amount of the opener.

(6) The amount of the closer.

(7) The serial number and amount of each fill.

(8) The amount of all fills.

(9) The serial number and amount of each credit.

(10) The amount of all credits.

(11) The win or loss.

b. After the contents of each container are counted and recorded, one member of the count team shall record by game on the master game report the total amounts of currency, table inventory slips, fills, credits, and win or loss together with any other required information.

c. Notwithstanding the requirements of paragraphs 12.15(5)*"a"* and *"b,"* if the internal controls allow for the recording of fills, credits, and table inventory slips on the master game report or supporting documents prior to commencement of the count, a count team member shall compare for agreement the totals of the amounts recorded thereon to the fills, credits, and table inventory slips removed from the containers.

d. After preparation of the master game report, each count team member shall sign the report attesting to the accuracy of the information contained thereon.

e. Currency and gaming chips shall not be removed from the count room after commencement of the count until the total has been verified and accepted by a cashier. At the conclusion of the count, all currency and gaming chips removed from the containers shall be counted by a cashier in the presence of a count team member prior to having access to the information recorded on the master game report. The cashier shall attest to the accuracy of the amount received from the gaming tables by signature on the master game report, after which a count team member shall sign the master game report evidencing the fact that both the cashier and count team have agreed on the total counted. The verified funds shall then remain in the custody of the cashier.

f. After the master game report has been signed, the requests, slips, and table inventory slips removed from the containers shall be attached. The report, with attachments, shall then be transported directly to the accounting department or shall be maintained in locked storage until the master game report can be delivered to the accounting department. Upon meeting the signature requirements described in paragraph 12.15(5)*"e,"* the report shall not be available to any cashier's cage personnel.

g. Unless the internal controls provide for the forwarding of the original requests and original slips from the cashier's cage directly to the accounting department, the original requests and original slips recorded or to be recorded on the master game report shall be transported from the count room directly to the accounting department.

h. The originals and copies of the master game report, requests, slips, table inventory slips, and the test receipts from the currency counting equipment shall, on a gaming day basis in the accounting department, be:

(1) Compared for agreement with each other on a test basis if the originals are received from the count room by persons with no recording responsibilities and, if applicable, to copies remaining in the dispenser or stored data.

(2) Reviewed for the appropriate number and propriety of signatures on a test basis.

(3) Accounted for by series numbers, if applicable.

(4) Verified for proper calculation, summarization, and recording.

(5) Recorded.

(6) Maintained and controlled by the accounting department as a permanent accounting record.

12.15(6) Slot machines.

a. Currency shall not be removed from the count room after commencement of the count until the currency total has been verified and accepted by a cashier. At the conclusion of the count, all currency removed from the containers shall be counted by a cashier in the presence of a count team member prior to the recording of information on the slot drop sheet. The cashier shall attest to the accuracy of the amount of currency received from the slot machines by signature on the slot drop sheet, after which a count team member shall sign the slot drop sheet evidencing the fact that both the cashier and count team have agreed on the total amount of currency counted. The verified funds shall remain in the custody of the cashier.

b. The slot drop sheet and supporting documents shall be transported directly to the accounting department and shall not be available, except for signing, to any cashier's cage or slot personnel or shall be maintained in locked storage until they can be delivered to the accounting department.

c. The preparation of the slot drop sheet shall be completed by accounting employees as follows:

(1) Compare the amount of currency counted and the drop meter reading for agreement for each slot machine.

(2) Record the hopper fills for each slot machine.

(3) Record for each slot machine the payouts and compare for agreement the payouts to the manual jackpot meter reading recorded on the slot meter sheet.

(4) Calculate and record the win or loss for each slot machine.

(5) Explain and report for corrections of apparent meter malfunctions to the slot department all significant differences between meter readings and amounts recorded.

(6) Calculate statistics by slot machine.

d. The slot drop sheet, the slot meter sheet, payouts, and hopper fills shall be:

(1) Compared for agreement with each other and to copies or stored data on a test basis.

(2) Reviewed for the appropriate number and propriety of signatures on a test basis.

(3) Accounted for by series numbers, if applicable.

(4) Verified for proper calculation, summarization, and recording.

(5) Recorded.

(6) Maintained and controlled by accounting department employees.

[**ARC 8029B**, IAB 8/12/09, effective 9/16/09; **ARC 9018B**, IAB 8/25/10, effective 9/29/10]

These rules are intended to implement Iowa Code chapter 99F.

[Filed 10/13/00, Notice 9/6/00—published 11/1/00, effective 12/6/00]
[Filed 4/24/01, Notice 2/7/01—published 5/16/01, effective 6/20/01]
[Filed 4/21/04, Notice 2/4/04—published 5/12/04, effective 6/16/04]
[Filed 4/21/06, Notice 2/15/06—published 5/10/06, effective 6/14/06]
[Filed 4/20/07, Notice 2/14/07—published 5/9/07, effective 6/13/07]
[Filed 6/6/08, Notice 3/26/08—published 7/2/08, effective 8/6/08]
[Filed 10/10/08, Notice 8/13/08—published 11/5/08, effective 12/10/08]
[Filed ARC 8029B (Notice ARC 7758B, IAB 5/6/09), IAB 8/12/09, effective 9/16/09]
[Filed ARC 9018B (Notice ARC 8726B, IAB 5/5/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 135
TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—135.1(455B) Authority, purpose and applicability.

135.1(1) *Authority.* Iowa Code chapter 455B, division IV, part 8, authorizes the department to regulate underground tanks used for storage of regulated substances, and to adopt rules relating to detection, prevention and correction of releases of regulated substances from such tanks, maintenance of financial responsibility by owners or operators of such tanks, new tank performance standards, notice and reporting requirements, and designation of regulated substances.

135.1(2) *Purpose.* The purpose of these rules is to protect the public health and safety and the natural resources of Iowa by timely and appropriate detection, prevention and correction of releases of regulated substances from underground storage tanks (UST).

135.1(3) *Applicability.*

a. The requirements of this chapter apply to all owners and operators of a UST system as defined in 135.2(455B) except as otherwise provided in paragraphs *"b," "c,"* and *"d"* of this subrule. Any UST system listed in paragraph *"c"* of this subrule must meet the requirements of 135.1(4).

b. The following UST systems are excluded from the requirements of this chapter:

(1) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the federal Clean Water Act.

(3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(4) Any UST system whose capacity is 110 gallons or less.

(5) Any UST system that contains a de minimus concentration of regulated substances.

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

c. Deferrals. Rules 567—135.3(455B), 567—135.4(455B), 567—135.5(455B), 567—135.6(455B) and 567—135.9(455B) do not apply to any of the following types of UST systems:

(1) Wastewater treatment tank systems;

(2) Any UST systems containing radioactive material that are regulated under the federal Atomic Energy Act of 1954 (42 U.S.C. 2011 and following);

(3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A;

(4) Airport hydrant fuel distribution systems; and

(5) UST systems with field-constructed tanks.

d. Deferrals. Rule 567—135.5(455B) does not apply to any UST system that stores fuel solely for use by emergency power generators. All new and replacement UST systems for emergency power generators must meet the secondary containment requirements in subrule 135.3(9) and the leak detection and delivery prohibition requirements in subrule 135.3(8).

e. Nonpetroleum underground storage tank systems. Rules 567—135.8(455B) to 567—135.12(455B) do not apply to any nonpetroleum underground storage tank system except as otherwise provided for by the department.

135.1(4) *Interim prohibition for deferred UST systems.*

a. No person may install a UST system listed in 135.1(3)*"c"* for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

b. Notwithstanding paragraph *"a"* of this subrule, a UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

NOTE: The National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used as guidance for complying with 135.1(4)*"b."*

567—135.2(455B) Definitions.

"Aboveground release" means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

"Active remediation" means corrective action undertaken to reduce contaminant concentrations by other than passive remediation or monitoring.

"Ancillary equipment" means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from a UST.

"Appurtenances" means devices such as piping, fittings, flanges, valves, dispensers and pumps used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

"Asbestos-cement pipe" (AC refers to asbestos-cement) means a pipe or conduit constructed of asbestos fiber, Portland cement, and water, which can be used to transport water.

"ASTM" means the American Society of Testing and Materials.

"Backflow preventer" means a check valve used to ensure water flows in one direction and designed to prevent contamination from an end user, such as a home, from getting into the general water supply. An approved backflow preventer shall be a reduced-pressure backflow preventer or an antisiphon device which complies with the standards of the American Water Works Association and has been approved by the Foundation for Cross-Connection Control and Hydraulic Research.

"Bedrock" means the rock, usually solid, underlying soil or any other unconsolidated surficial cover.

"Below-ground release" means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the below-ground portions of an underground storage tank system and below-ground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

"Beneath the surface of the ground" means beneath the ground surface or otherwise covered with earthen materials.

"Best available technology" means those practices which most appropriately remove, treat, or isolate contaminants from groundwater, soil or associated environment, as determined through professional judgment considering actual equipment or techniques currently in use, published technical articles, site hydrogeology and research results, engineering and groundwater professional reference materials, consultation with experts in the field, capital and operating costs, and guidelines or rules of other regulatory agencies.

"Best management practices" means maintenance procedures, schedule of activities, prohibition of practices, and other management practices, or a combination thereof, which, after problem assessment, is determined to be the most effective means of monitoring and preventing additional contamination of the groundwater and soil.

"Carcinogenic risk" means the incremental risk of a person developing cancer over a lifetime as a result of exposure to a chemical, expressed as a probability such as one in a million (10^{-6}). For

carcinogenic chemicals of concern, probability is derived from application of certain designated exposure assumptions and a slope factor.

"Cast iron pipe" means a pipe or conduit used as a pressure pipe for transmission of water, gas, or sewage or as a water drainage pipe. It comprises predominantly a gray cast iron tube historically used uncoated, with newer types having various coatings and linings to reduce corrosion and improve hydraulics.

"Cathodic protection" is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

"Cathodic protection tester" means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

"Certified groundwater professional" means a person certified pursuant to 1995 Iowa Code section 455G.18 and 567—Chapter 134.

"Change-in-service" means changing the use of a tank system from a regulated to a nonregulated use.

"Chemicals of concern" means the compounds derived from petroleum-regulated substances which are subject to evaluation for purposes of applying risk-based corrective action decision making. These compounds are benzene, ethylbenzene, toluene, and xylenes (BTEX) and naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. (NOTE: Measurement of these last four constituents may be done by a conversion method from total extractable hydrocarbons, see subrule 135.8(3).)

"Class A operator" means a person responsible for managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter. This includes ensuring appropriate individuals are trained in the proper operation and maintenance of the underground storage tank system, the maintenance of all required records, the procedures for response to emergencies caused by releases or spills, and assuring financial responsibility and documentation to the department or its representatives as required.

"Class B operator" means a person who implements applicable underground storage tank regulatory requirements and standards. This includes implementing the day-to-day aspects of operating, maintaining, and record keeping for underground storage tanks at one or more facilities. A Class B operator typically monitors, maintains and ensures that release detection methods, record-keeping, and reporting requirements are met; release prevention equipment, record-keeping, and reporting requirements are met; all relevant equipment complies with performance standards; and appropriate individuals are trained to properly respond to emergencies caused by releases and spills.

"Class C operator" means an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and who is the first line of response to events indicating emergency conditions.

"Compatible" means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

"Conduit" means underground structures which act as pathways and receptors for chemicals of concern, including but not limited to gravity drain lines and sanitary or storm sewers.

"Connected piping" means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

"Consumptive use" with respect to heating oil means consumed on the premises.

"Corrective action" means an action taken to reduce, minimize, eliminate, clean up, control or monitor a release to protect the public health and safety or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purpose of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, technological controls and site management practices. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

"Corrective action meeting process" means a series of meetings organized by department staff with owners or operators and other interested parties such as certified groundwater professionals, funding source representatives, and affected property owners. The purpose of the meeting process is to develop and agree on a corrective action plan and the terms for implementation of the plan.

"Corrective action plan" means a plan which specifies the corrective action to be undertaken by the owner or operator in order to comply with requirements in this chapter and which is incorporated into a memorandum of agreement or other written agreement between the department and the owner or operator. The plan may include but is not limited to provisions for additional site assessment, site monitoring, Tier 2 revisions, Tier 3 assessment, excavation, and other soil and groundwater remedial action.

"Corrosion expert" means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

"Department" means Iowa department of natural resources.

"Dielectric material" means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST systems (e.g., tank from piping).

"Dispenser" means equipment that is used to transfer a regulated substance from underground piping through a rigid or flexible hose or piping located aboveground to a point of use outside the underground storage tank system, such as a motor vehicle.

"Drinking water well" means any groundwater well used as a source for drinking water by humans and groundwater wells used primarily for the final production of food or medicine for human consumption in facilities routinely characterized with the Standard Industrial Codes (SIC) group 283 for drugs and 20 for foods.

"Ductile iron pipe" means a pipe or conduit commonly used for potable water distribution and for the pumping of sewage. The predominant wall material is ductile iron, a spheroidized graphite cast iron, and commonly has an internal cement mortar lining to inhibit corrosion from the carried water and various types of external coatings to inhibit corrosion from the environment.

"Electrical equipment" means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

"Enclosed space" means space which can act as a receptor or pathway capable of creating a risk of explosion or inhalation hazard to humans and includes "explosive receptors" and "confined spaces." Explosive receptors means those receptors designated in these rules which are evaluated for explosive risk. Confined spaces means those receptors designated in these rules for evaluation of vapor inhalation risks.

"Excavation zone" means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

"Existing tank system" means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before January 14, 1987. Installation is considered to have commenced if:

The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

1. Either a continuous on-site physical construction or installation program has begun; or,

2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

"Farm tank" is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. "Farm" includes fish hatcheries, rangeland and nurseries with growing operations.

"Flow-through process tank" is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

"Free product" refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

"Gasket" means any type of pipe seals made of a variety of rubbers including but not necessarily limited to styrene-butadiene rubber (SBR), nitrile-butadiene rubber (NBR or nitrile), ethylene propylene diene monomer (EPDM), neoprene (CR), and fluoroelastomer rubber (FKM), which are used to seal pipe connections.

"Gathering lines" means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

"Groundwater ingestion pathway" means a pathway through groundwater by which chemicals of concern may result in exposure to a human receptor as specified in rules applicable to Tier 1, Tier 2 and Tier 3.

"Groundwater plume" means the extent of groundwater impacted by the release of chemicals of concern.

"Groundwater to water line pathway" means a pathway through groundwater which leads to a water line.

"Groundwater vapor to enclosed space pathway" means a pathway through groundwater by which vapors from chemicals of concern may lead to a receptor creating an inhalation or explosive risk hazard.

"Hazardous substance UST system" means an underground storage tank system that contains a hazardous substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

"Hazard quotient" means the ratio of the level of exposure of a chemical of concern over a specified time period to a reference dose for that chemical of concern derived for a similar exposure period. Unless otherwise specified, the hazard quotient designated in these rules is one.

"Heating oil" means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

"Highly permeable soils" means for the purpose of UST closures: fractured bedrock, any soils with a hydraulic conductivity rate greater than 0.3 meters per day, or any soil material classified by the Unified Soil Classification System as published by the United States Department of the Interior or ASTM designation as (1) GW - well graded gravel, gravel-sand mixtures, little or no fines, (2) GP - poorly graded gravel, gravel-sand mixtures, little or no fines, (3) SW - well graded sands, gravelly sands, little or no fines, or (4) SP - poorly graded sands, gravelly sands, little or no fines.

"Hydraulic conductivity" means the rate of water movement through the soil measured in meters per day (m/d) as determined by the following methods. For a saturated soil, the Bouwer-Rice method or its equivalent shall be used. For unsaturated soil, use a Guelph permeameter or an equivalent in situ

constant-head permeameter in a boring finished above the water table. If an in situ method cannot be used for unsaturated soil because of depth, or if the soil is homogeneous and lacks flow-conducting channels, fractures, cavities, etc., laboratory measurement of hydraulic conductivity is acceptable.

If laboratory methods are used, collect undisturbed soil samples using a thin-walled tube sampler in accordance with American Society of Testing and Materials (ASTM) Standard D1587. Samples shall be clearly marked, preserved and transported to the laboratory. The laboratory shall measure hydraulic conductivity using a constant-head permeameter in accordance with ASTM Standard D2434 or a falling-head permeameter in accordance with accepted methodology.

"Hydraulic lift tank" means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

"Institutional controls" means the restriction on use or access (for example, fences, deed restrictions, restrictive zoning) to a site or facility to eliminate or minimize potential exposure to a chemical(s) of concern. Institutional controls include any of the following:

1. A law of the United States or the state;
2. A regulation issued pursuant to federal or state laws;
3. An ordinance or regulation of a political subdivision in which real estate subject to the institutional control is located;
4. A restriction on the use of or activities occurring at real estate which are embodied in a covenant running with the land which:

- Contains a legal description of the real estate in a manner which satisfies Iowa Code section 558.1 et seq.;
- Is properly executed, in a manner which satisfies Iowa Code section 558.1 et seq.;
- Is recorded in the appropriate office of the county in which the real estate is located;
- Adequately and accurately describes the institutional control; and
- Is in the form of a covenant as set out in Appendix C or in such a manner reasonably acceptable to the department.

5. Any other institutional control the owner or operator can reasonably demonstrate to the department which will reduce the risk from a release throughout the period necessary to ensure that no applicable target risk is likely to be exceeded.

"Liquid trap" means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

"Maintenance" means the normal operational upkeep to prevent an underground storage tank system from releasing product.

"MCLs" means the drinking water primary maximum contaminant levels set out in 567—41.3(455B).

"Memorandum of agreement" means a written agreement between the department and the owner or operator which specifies the corrective action that will be undertaken by the owner or operator in order to comply with requirements in this chapter and the terms for implementation of the plan. The plan may include but is not limited to provisions for additional site assessment, site monitoring, Tier 2 revisions, Tier 3 assessment, excavation, and other soil and groundwater remedial action.

"Motor fuel" means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

"New tank system" means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after January 14, 1987. (See also "Existing Tank System.")

"Noncarcinogenic risk" means the potential for adverse systemic or toxic effects caused by exposure to noncarcinogenic chemicals of concern, expressed as the hazard quotient.

"Noncommercial purposes" with respect to motor fuel means not for resale.

"Non-drinking water well" means any groundwater well (except an extraction well used as part of a remediation system) not defined as a drinking water well including a groundwater well which is not properly plugged in accordance with department rules in 567—Chapters 39 and 49.

"Nonresidential area" means land which is not currently used as a residential area and which is zoned for nonresidential uses.

"On the premises where stored" with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

"Operational life" refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under rule 567—135.15(455B).

"Operator" means any person in control of, or having responsibility for, the daily operation of the UST system.

"Overfill release" is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

"Owner" means:

1. In the case of a UST system in use on July 1, 1985, or brought into use after that date, any person who owns a UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before July 1, 1985, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

"Owner" does not include a person, who, without participating in the management or operation of the underground storage tank or the tank site, holds indicia of ownership primarily to protect that person's security interest in the underground storage tank or the tank site property, prior to obtaining ownership or control through debt enforcement, debt settlement, or otherwise.

"Pathway" means a transport mechanism by which chemicals of concern may reach a receptor(s) or the location(s) of a potential receptor.

"Permanent closure" means removing all regulated substances from the tank system, assessing the site for contamination, and permanently removing tank and piping from the ground or filling the tank in place with a solid inert material and plugging all piping. Permanent closure also includes partial closure of a tank system such as removal or replacement of tanks or piping only.

"Person" means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. "Person" also includes a consortium, a joint venture, a commercial entity, and the United States government.

"Person who conveys or deposits a regulated substance" means a person who sells or supplies the owner or operator with the regulated substance and the person who transports or actually deposits the regulated substance in the underground tank.

"Petroleum UST system" means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimus quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Pipe" or *"piping"* means a hollow cylinder or tubular conduit that is constructed of nonearthen materials and that routinely contains and conveys regulated substances from the underground tank(s) to the dispenser(s) or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the underground tank(s) to the dispenser(s). This definition does not include vent, vapor recovery, or fill lines.

"Pipeline facilities (including gathering lines)" are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

"Point of compliance" means the location(s) at the source(s) of contamination or at the location(s) between the source(s) and the point(s) of exposure where concentrations of chemicals of concern must meet applicable risk-based screening levels at Tier 1 or other target level(s) at Tier 2 or Tier 3.

"Point of exposure" means the location(s) at which an actual or potential receptor may be exposed to chemicals of concern via a pathway.

"Polybutylene pipe" (PB refers to polybutylene) means a water supply pipe comprised of a form of plastic resin that was used extensively from 1978 until 1995. The piping systems were used for

underground water mains and as interior water distribution piping. Polybutylene mains are usually blue in color, but may be gray, black, or white. The pipe is usually ½ inch or 1 inch in diameter, and it may be found entering a residence through the basement wall or floor, concrete slab or through the crawlspace; frequently it enters the residence near the water heater.

"Polyethylene pipe" (PE refers to polyethylene) means a water supply pipe comprised of thermoplastic material produced from the polymerization of ethylene. PE pipe is manufactured by extrusion in sizes ranging from ½ inch to 63 inches. PE pipe is available in rolled coils of various lengths or in straight lengths of up to 40 feet. PE pipe is available in many forms and colors, including single-extrusion colored or black pipe, black pipe with co-extruded color striping, and black or natural pipe with a co-extruded colored layer. PE pipe has been demonstrated to be very permeable to petroleum while still retaining its flexible structure.

"Polyvinyl chloride pipe" (PVC refers to polyvinyl chloride) means a pipe made from a plastic and vinyl combination material. The pipes are durable, hard to damage, and long-lasting. A PVC pipe is very resistant and does not rust, nor is it likely to rot or wear over time. PVC piping is most commonly used in water systems, underground wiring, and sewer lines.

"Portland cement" means hydraulic cement (cement that not only hardens by reacting with water but also forms a water-resistant product) and is produced by pulverizing clinkers consisting essentially of hydraulic calcium silicates, usually containing one or more forms of calcium sulfate as an inter ground addition.

"Potential receptor" means a receptor not in existence at the time a Tier 1, Tier 2 or Tier 3 site assessment is prepared, but which could reasonably be expected to exist within 20 years of the preparation of the Tier 1, Tier 2 or Tier 3 site assessment or as otherwise specified in these rules.

"Preferential pathway" means conditions which act as a pathway permitting contamination to migrate through soils and to groundwater at a faster rate than would be expected through naturally occurring undisturbed soils or unfractured bedrock including but not limited to wells, cisterns, tile lines, drainage systems, utility lines and envelopes, and conduits.

"Protected groundwater source" means a saturated bed, formation, or group of formations which has a hydraulic conductivity of at least 0.44 meters per day (m/d) and a total dissolved solids of less than 2,500 milligrams per liter (mg/l) or a bedrock aquifer with total dissolved solids of less than 2,500 milligrams per liter (mg/l) if bedrock is encountered before groundwater.

"Public water supply well" means a well connected to a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

"Receptor" means enclosed spaces, conduits, protected groundwater sources, drinking and non-drinking water wells, surface water bodies, and public water systems which when impacted by chemicals of concern may result in exposure to humans and aquatic life, explosive conditions or other adverse effects on health, safety and the environment as specified in these rules.

"Reference dose" means a designated toxicity value established in these rules for evaluating potential noncarcinogenic effects in humans resulting from exposure to a chemical(s) of concern. Reference doses are designated in Appendix A.

"Regulated substance" means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes:

1. Substances designated in Table 302.4 of 40 CFR Part 302 (September 13, 1988),

2. Substances which exhibit the characteristics identified in 40 CFR 261.20 through 261.24 (May 10, 1984) and which are not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) (May 10, 1984),

3. Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and

4. Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term

"regulated substance" includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

"Release" means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of a regulated substance, including petroleum, from a UST into groundwater, surface water or subsurface soils.

"Release detection" means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

"Repair" means to restore a tank or UST system component that has caused a release of product from the UST system.

"Replace" or *"replacement"* means the installation of a new underground tank system or component, including dispensers, in substantially the same location as an existing tank system or component in lieu of that tank system or component.

"Residential area" means land used as a permanent residence or domicile, such as a house, apartment, nursing home, school, child care facility or prison, land zoned for such uses, or land where no zoning is in place.

"Residential tank" is a tank located on property used primarily for dwelling purposes.

"Risk-based screening level (RBSL)" means the risk-based concentration level for chemicals of concern developed for a Tier 1 analysis to be met at the point(s) of compliance and incorporated in the Tier 1 Look-up Table in Appendix A.

"SARA" means the federal Superfund Amendments and Reauthorization Act of 1986.

"Secondary containment tank" or *"secondary containment piping"* means a tank or piping which is designed with an inner primary shell and a liquid-tight outer secondary shell or jacket which extends around the entire inner shell, and which is designed to contain any leak through the primary shell from any part of the tank or piping that routinely contains product, and which also allows for monitoring of the interstitial space between the shells and the detection of any leak.

"Septic tank" is a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

"Service line" means a pipe connected to a business or residence from a water main, typically of a size not exceeding 6 inches in diameter, and including its gaskets and other appurtenances. For purposes of this chapter, service lines refer to pipes specifically used for drinking water transmission.

"Site assessment investigation" means an investigation conducted by a registered groundwater professional to determine relevant site historical data, the types, amounts, and sources of petroleum contaminants present, hydrogeological characteristics of the site, full vertical and horizontal extent of the contamination in soils and groundwater, direction and rate of flow of the contamination, ranges of concentration of the contaminants by analysis of soils and groundwater, the vertical and horizontal extent of the contamination exceeding department standards, and the actual or potential threat to public health and safety and the environment.

"Site cleanup report" means the report required to be submitted by these rules and in accordance with department guidance which may include the results of Tier 2 or Tier 3 assessment and analysis.

"Site-specific target level (SSTL)" means the risk-based target level(s) for chemicals of concern developed as the result of a Tier 2 or Tier 3 assessment which must be achieved at applicable point(s) of compliance at the source to meet the target level(s) at the point(s) of exposure.

"Soil leaching to groundwater pathway" means a pathway through soil by which chemicals of concern may leach to groundwater and through a groundwater transport pathway impact an actual or potential receptor.

"Soil plume" means the vertical and horizontal extent of soil impacted by the release of chemicals of concern.

"Soil to water line pathway" means a pathway which leads from soil to a water line.

"Soil vapor to enclosed space pathway" means a pathway through soil by which vapors from chemicals of concern may lead to a receptor creating an inhalation or explosive risk hazard.

"Storm water or wastewater collection system" means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

"Surface impoundment" is a natural topographic depression, constructed excavation, or diked area formed primarily of earthen materials (although it may be lined with manufactured materials) that is not an injection well.

"Surface water body" means general use segments as provided in 567—paragraph 61.3(1)*"a"* and designated use segments of water bodies as provided in 567—paragraph 61.3(1)*"b"* and 567—subrule 61.3(5).

"Surface water criteria" means, for chemicals of concern, the Criteria for Chemical Constituents in Table 1 of rule 567—61.3(455B), except that "1,000 ug/L" will be substituted for the chronic levels for toluene for Class B designated use segments.

"Surface water pathway" means a pathway which leads to a surface water body.

"Tank" is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

"Target level" means the allowable concentrations of chemicals of concern established to achieve an applicable target risk which must be met at the point(s) of compliance as specified in these rules.

"Target risk" refers to an applicable carcinogenic and noncarcinogenic risk factor designated in these rules and used in determining target levels (for carcinogenic risk assessment, target risk is a separate factor, different from exposure factors, both of which are used in determining target levels).

"Technological controls" means a physical action which does not involve source removal or reduction, but severs or reduces exposure to a receptor, such as caps, containment, carbon filters, point of use water treatment, etc.

"Tier 1 level" means the groundwater and soil levels in the Tier 1 Look-up Table set out in rule 135.9(455B) and Appendix A.

"Tier 1 site assessment" means the evaluation of limited site-specific data compared to the Tier 1 levels established in these rules for the purpose of determining which pathways do not require assessment and evaluation at Tier 2 and which sites warrant a no further action required classification without further assessment and evaluation.

"Tier 2 site assessment" means the process of assessing risk to actual and potential receptors by using site-specific field data and designated Tier 2 exposure and fate and transport models to determine the applicable target level(s).

"Tier 3 site assessment" means a site-specific risk assessment utilizing more sophisticated data or analytic techniques than a Tier 2 site assessment.

"Under-dispenser containment (UDC)" means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater. Such containment must:

- Be intact and liquid-tight on its sides and bottom and at any penetrations;
- Be compatible with the substance conveyed by the piping; and
- Allow for visual inspection and monitoring and access to the components in the containment system.

"Underground area" means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

"Underground release" means any below-ground release.

"Underground storage tank" or *"UST"* means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances,

and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

a. Farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes. Iowa Code section 455B.471 requires those tanks existing prior to July 1, 1987, to be registered. Tanks installed on or after July 1, 1987, must comply with all 567—Chapter 135 rules;

b. Tank used for storing heating oil for consumptive use on the premises where stored;

c. Septic tank;

d. Pipeline facility (including gathering lines) regulated under:

(1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or

(2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or

(3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in *"d"*(1) or *"d"*(2) of this definition;

e. Surface impoundment, pit, pond, or lagoon;

f. Storm-water or wastewater collection system;

g. Flow-through process tank;

h. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

i. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term "underground storage tank" or "UST" does not include any pipes connected to any tank which is described in paragraphs *"a"* through *"j"* of this definition.

"Underground utility vault" means any constructed space accessible for inspection and maintenance associated with subsurface utilities.

"Unreasonable risk to public health and safety or the environment" means the Tier 1 levels for a Tier 1 site assessment, the applicable target level for a Tier 2 site assessment, and the applicable target level for a Tier 3 site assessment.

"Upgrade" means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overfill controls to improve the ability of an underground storage tank system to prevent the release of product.

"UST system" or *"tank system"* means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

"Utility envelope" means the backfill and trench used for any subsurface utility line, drainage system and tile line.

"Wastewater treatment tank" means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

"Water line" means a hollow cylinder or tubular conduit that routinely contains and conveys potable water and is constructed of nonearthen materials, including but not limited to asbestos-cement, copper, high-density polyethylene (HDPE), polybutylene, polyethylene, and wood. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures, as well as the gaskets, which contain and convey potable water.

"Water main pipe" means a main line to the water distribution system with feeder lines or service lines connected to it and which typically is 6 inches or greater in diameter, and includes its gaskets and other appurtenances.

[**ARC 7621B**, IAB 3/11/09, effective 4/15/09; **ARC 8124B**, IAB 9/9/09, effective 10/14/09; **ARC 9011B**, IAB 8/25/10, effective 9/29/10]

567—135.3(455B) UST systems—design, construction, installation and notification.

135.3(1) *Performance standards for new UST systems.* In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

a. Tanks. Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The tank is constructed of fiberglass-reinforced plastic; or

NOTE: The following industry codes may be used to comply with 135.3(1)*"a"*(1): Underwriters Laboratories Standard 1316, "Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products"; Underwriters Laboratories of Canada CAN4-S615-M83, "Standard for Reinforced Plastic Underground Tanks for Petroleum Products"; or American Society of Testing and Materials Standard D4021-86, "Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks."

(2) The tank is constructed of steel and cathodically protected in the following manner:

1. The tank is coated with a suitable dielectric material;

2. Field-installed cathodic protection systems are designed by a corrosion expert;

3. Impressed current systems are designed to allow determination of current operating status as required in 135.4(2)*"c"*; and

4. Cathodic protection systems are operated and maintained in accordance with 135.4(2) or according to guidelines established by the department; or

NOTE: The following codes and standards may be used to comply with 135.3(1)*"a"*(2): Steel Tank Institute "Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks"; Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks"; Underwriters Laboratories of Canada CAN4-S603-M85, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids," and CAN4-GO3.1-M85, "Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids," and CAN4-S631-M84, "Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems"; or National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," and Underwriters Laboratories Standard 58, "Standard for Steel Underground Tanks for Flammable and Combustible Liquids."

(3) The tank is constructed of a steel-fiberglass-reinforced plastic composite; or

NOTE: The following industry codes may be used to comply with 135.3(1)*"a"*(3): Underwriters Laboratories Standard 1746, "Corrosion Protection Systems for Underground Storage Tanks," or the Association for Composite Tanks ACT-100, "Specification for the Fabrication of FRP Clad Underground Storage Tanks."

(4) The tank is constructed of metal without additional corrosion protection measures provided that:

1. The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

2. Owners and operators maintain records that demonstrate compliance with the requirements of 135.3(1)*"a"*(4)"1" for the remaining life of the tank; or

(5) The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than 135.3(1)*"a"*(1) to (4).

b. Piping. The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

(1) The piping is constructed of fiberglass-reinforced plastic; or

NOTE: The following codes and standards may be used to comply with 135.3(1)*"b"*(1): Underwriters Laboratories Subject 971, "UL Listed Non-Metal Pipe"; Underwriters Laboratories Standard 567, "Pipe Connectors for Flammable and Combustible and LP Gas"; Underwriters Laboratories of Canada Guide ULC-107, "Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids"; and Underwriters Laboratories of Canada Standard CAN 4-S633-M81, "Flexible Underground Hose Connectors."

(2) The piping is constructed of steel and cathodically protected in the following manner:

1. The piping is coated with a suitable dielectric material;

2. Field-installed cathodic protection systems are designed by a corrosion expert;

3. Impressed current systems are designed to allow determination of current operating status as required in 135.4(2)*"c"*; and

4. Cathodic protection systems are operated and maintained in accordance with 135.4(2) or guidelines established by the department; or

NOTE: The following codes and standards may be used to comply with 135.3(1)*"b"*(2): National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage Systems"; American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems."

(3) The piping is constructed of metal without additional corrosion protection measures provided that:

1. The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and

2. Owners and operators maintain records that demonstrate compliance with the requirements of 135.3(1)*"b"*(3)"1" for the remaining life of the piping; or

NOTE: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; and National Association of Corrosion Engineers Standard RP-01-69, "Control of External Corrosion on Submerged Metallic Piping Systems," may be used to comply with 135.3(1)*"b"*(3).

(4) The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in 135.3(1)*"b"*(1) to (3).

c. Spill and overfill prevention equipment.

(1) Except as provided in subparagraph (2), to prevent spilling and overfilling associated with product transfer to the UST system, owners and operators must use the following spill and overfill prevention equipment:

1. Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and

2. Overfill prevention equipment that will:

Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

Restrict flow 30 minutes prior to overfilling, alert the operator with a high-level alarm one minute before overfilling, or automatically shut off the flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overfilling.

(2) Owners and operators are not required to use the spill and overfill prevention equipment specified in subparagraph (1) if:

1. Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in subparagraph (1)"1" or "2" of this paragraph; or

2. The UST system is filled by transfers of no more than 25 gallons at one time.

d. Installation. All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer's instructions.

NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of 135.3(1)*"d"*: American Petroleum Institute Publication 1615, "Installation of Underground Petroleum Storage System"; Petroleum Equipment Institute Publication RP100, "Recommended Practices for Installation of Underground Liquid Storage Systems"; or American National Standards Institute Standard 831.3, "Petroleum Refinery Piping,"

and American National Standards Institute Standard 831.4, "Liquid Petroleum Transportation Piping System."

e. Certification of installation. All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with paragraph *"d"* of this subrule by providing a certification of compliance on the UST notification form in accordance with 135.3(3).

(1) The installer has been certified by the tank and piping manufacturers; or

(2) The installer has been certified or licensed by the department as provided in 567—Chapter 134, Part C; or

(3) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or

(4) The installation has been inspected and approved by an inspector certified or licensed by the Iowa comprehensive petroleum underground storage tank fund board; or

(5) All work listed in the manufacturer's installation checklists has been completed; or

(6) The owner and operator have complied with another method for ensuring compliance with paragraph *"d"* that is determined by the department to be no less protective of human health and the environment.

135.3(2) *Upgrading of existing UST systems.*

a. Alternatives allowed. Not later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

(1) New UST system performance standards under 135.3(1);

(2) The upgrading requirements in paragraphs *"b"* through *"d"* below; or

(3) Closure requirements under rule 567—135.15(455B), including applicable requirements for corrective action under rules 567—135.7(455B) to 567—135.12(455B).

Replacement or upgrade of a tank system on a petroleum contaminated site classified as a high or low risk in accordance with subrule 135.12(455B) shall be a double wall tank or a tank equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures in accordance with 135.5(4)*"g"* or other approved tank system or methodology approved by the Iowa comprehensive petroleum underground storage tank fund board.

b. Tank upgrading requirements. Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

(1) *Interior lining.* A tank may be upgraded by internal lining if:

1. The lining is installed in accordance with the requirements of 135.4(4), and

2. Within ten years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) *Cathodic protection.* A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of 135.3(1)*"a"*(2)"2," "3," and "4" and the integrity of the tank is ensured using one of the following methods:

1. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or

2. The tank has been installed for less than ten years and is monitored monthly for releases in accordance with 135.5(4)*"d"* through *"h"*; or

3. The tank has been installed for less than ten years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of 135.5(4)*"c."* The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three and six months following the first operation of the cathodic protection system; or

4. The tank is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than 135.3(2)*"b"*(2)"1" to "3."

(3) *Internal lining combined with cathodic protection.* A tank may be upgraded by both internal lining and cathodic protection if:

1. The lining is installed in accordance with the requirements of 135.4(4); and
2. The cathodic protection system meets the requirements of 135.3(1)*"a"*(2)"2," "3," and "4."

NOTE: The following codes and standards may be used to comply with subrule 135.3(2): American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10-Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection"; National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems"; and American Petroleum Institute Publication 1632, "Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems."

c. *Piping upgrading requirements.* Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of 135.3(1)*"b"*(2)"2," "3," and "4."

NOTE: The codes and standards listed in the note following 135.3(1)*"b"*(2) may be used to comply with this requirement.

d. *Spill and overfill prevention equipment.* To prevent spilling and overfilling associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overfill prevention equipment requirements specified in 135.3(1)*"c."*

135.3(3) *Notification requirements.*

a. Except as provided in 135.3(3)*"b,"* the owner of an underground storage tank existing on or before July 1, 1985, shall complete and submit to the department a copy of the notification form provided by the department by May 1, 1986.

b. The owner of an underground storage tank taken out of operation between January 1, 1974, and July 1, 1985, shall complete and submit to the department a copy of the notification form provided by the department by May 8, 1986, unless the owner knows the tank has been removed from the ground. For purposes of this subrule, "owner" means the person who owned the tank immediately before the discontinuation of the tank's use.

c. An owner or operator who brings into use an underground storage tank after July 1, 1985, shall complete and submit to the department a copy of the notification form provided by the department within 30 days of installing the tank in the ground. The owner or operator shall not allow the deposit of any regulated substance into the tank without prior approval of the department or until the tank has been issued a tank registration tag and is covered by an approved financial responsibility mechanism in accordance with 567—Chapter 136.

d. All owners and operators of new UST systems must certify in the notification form compliance with the following requirements:

(1) Installation of tanks and piping under 135.3(1)*"e"*;
(2) Cathodic protection of steel tanks and piping under 135.3(1)*"a"* and *"b"*;
(3) Financial responsibility under 567—Chapter 136, Iowa Administrative Code;
(4) Release detection under 135.5(2) and 135.5(3).

e. All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping comply with the requirements in 135.3(1)*"d."*

f. Exemption from reporting requirement. Paragraphs *"a"* to *"c"* do not apply to an underground storage tank for which notice was given pursuant to Section 103, Subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980. (42 U.S.C. Subsection 9603(c))

g. Reporting fee. The notice by the owner to the department under paragraphs *"a"* to *"c"* shall be accompanied by a fee of $10 for each tank included in the notice.

h. Notification requirement for installing a tank. A person installing an underground storage tank and the owner or operator of the underground storage tank must notify the department of their intent to install the tank 30 days prior to installation. Notification shall be on a form provided by the department.

i. Notification requirements for a person who sells, installs, modifies or repairs a tank. A person who sells, installs, modifies, or repairs a tank used or intended to be used in Iowa shall notify, in writing, the purchaser and the owner or operator of the tank of the obligations specified in paragraphs 135.3(3)*"c"* and *"j"* and the financial assurance requirements in 567—Chapter 136. The notification must include the prohibition on depositing a regulated substance into tanks which have not been registered and issued tags by the department. A standard notification form supplied by the department may be used to satisfy this requirement.

j. It is unlawful for a person to deposit or accept a regulated substance in an underground storage tank that has not been registered and issued permanent or annual tank management tags in accordance with rule 567—135.3(455B). It is unlawful for a person to deposit or accept a regulated substance into an underground storage tank if the person has received notice from the department that the underground storage tank is subject to a delivery prohibition or if there is a "red tag" attached to the UST fill pipe or fill pipe cap as provided in subrule 135.3(8).

(1) The department may provide written authorization to receive a regulated substance when there is a delay in receiving tank tags or at new tank installations to allow for testing the tank system.

(2) The department may provide known depositors of regulated substances lists of underground storage tank sites that have been issued tank tags, those that have not been issued tank tags, and those subject to a delivery prohibition pursuant to subrule 135.3(8). These lists do not remove the requirement for depositors to verify that current tank tags are affixed to the fill pipe prior to delivering product. Regulated substances cannot be delivered to underground storage tanks without current tank tags or those displaying a delivery prohibition "red tag" as provided in subrule 135.3(8).

(3) A person shall not deposit a regulated substance in an underground storage tank after receiving written or oral notice from the department that the tank is not covered by an approved form of financial responsibility in accordance with 567—Chapter 136.

k. If an owner or operator fails to register an underground storage tank within 30 days after installation or obtain annual renewal tags by April 1, the owner or operator shall pay an additional $250 upon registration of the tank or application for tank tag renewal. The imposition of this fee does not preclude the department from assessing an additional administrative penalty in accordance with Iowa Code section 455B.476.

135.3(4) *Farm and residential tanks.*

a. The owner or operator of a farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes is subject to the requirements of this subrule.

b. Farm and residential tanks, installed before July 1, 1987, shall be reported on a notification form by July 1, 1989, but owners or operators are not required to pay a registration fee.

c. Farm and residential tanks that were installed on or after July 1, 1987, shall be in compliance with all the underground storage tank regulations.

135.3(5) *Registration tags and annual management fee.*

a. Tanks of 1100 gallons or less capacity that have registered with the department will be issued a permanent registration tag.

b. The owner or operator of tanks over 1100-gallon capacity must submit a tank management fee of $65 per tank by January 15 of each year. The owner or operator must also submit written proof that the tanks are covered by an approved form of financial responsibility in accordance with 567—Chapter 136. Upon proper payment of the fee and acceptable proof of financial responsibility, a one-year registration tag will then be issued for the period from April 1 to March 31. The department shall refund a tank management fee if the tank is permanently closed prior to the effective date of April 1 for that year.

c. The owner or operator shall affix the tag to the fill pipe of the underground storage tank where it will be readily visible.

d. A person who conveys or deposits a regulated substance shall inspect the underground storage tank to determine the existence or absence of a current registration tag, a current annual tank management

fee tag, or a delivery prohibition "red tag" as provided in subrule 135.3(8). If the tag is not affixed to the fill pipe or fill pipe cap or if a delivery prohibition "red tag" is displayed, the person shall not deposit the substance in the tank.

e. The owner or operator must return the tank tags upon request of the department for failure to meet the requirements of rules 567—135.3(455B) to 567—135.5(455B) or the financial responsibility rules in 567—Chapter 136 after permanent tank closure or when tanks are temporarily closed for over 12 months, or when the tank system is suspected to be leaking and the responsible party fails to respond as required in subrule 135.8(1). The department will not return the tags until the tank system is in full compliance with the technical requirements of this chapter and financial responsibility requirements of 567—Chapter 136.

135.3(6) *Petroleum underground storage tank registration amnesty program.*

a. A petroleum underground storage tank required to be registered under 135.3(3) and 135.3(4), which has not been registered prior to July 1, 1988, may be registered under the following conditions:

(1) The tank registration fee under 135.3(3)*"g"* shall accompany the registration.

(2) The storage tank management fee under 135.3(5) shall be paid for past years in which the tank should have been registered.

b. If a tank is registered under this subrule on or prior to October 1, 1989, penalties under Iowa Code section 455B.477 shall be waived.

135.3(7) *Exemption certificates from the environmental charge on petroleum diminution.*

a. An owner or operator of a petroleum underground storage tank that is exempt, deferred, or excluded from regulation under Iowa Code sections 455G.1 to 455G.17, can apply for an exemption certificate from the department to exempt a tank from the environmental charge on petroleum diminution. Exempted tanks include those listed in 135.1(3)*"b"* and *"c"* and those excluded in the definition of "underground storage tank" in 567—135.2(455B). Application for the exemption certificate shall be made on the form provided by the department.

b. An exemption certificate is not required for those classes of tanks that the Iowa comprehensive petroleum underground storage tank fund board has waived from the exemption certificate requirement.

c. The department shall revoke and require the return of the exemption certificate if the petroleum underground storage tank becomes subject to Iowa Code sections 455G.1 to 455G.17.

135.3(8) *Delivery prohibition process.*

a. Identifying sites subject to delivery response prohibition action.

(1) Annual registration tag and tank management fee process. Owners and operators shall certify to the following on a form prepared by the department when applying for annual tank tags pursuant to subrule 135.3(5):

1. Installation and performance of an approved UST and piping release detection method as provided in rule 567—135.5(455B), including an annual line tightness test and a line leak detector test if applicable.

2. Installation of an approved overfill and spill protection system as provided in paragraph 135.3(1)*"c."*

3. Installation of an approved corrosion protection system as provided in paragraphs 135.3(1)*"a"* and *"b."*

4. If the UST system has been out of operation for more than three months, that the UST system has been temporarily closed in accordance with rule 567—135.15(455B) and a certification of temporary closure has been submitted to the department.

5. If the UST system has been removed or filled in place within the last 12 months, the date of removal or filling in place and whether a closure report has been submitted as provided in rule 567—135.15(455B).

(2) Sites with provisional status. If the UST system has been classified as operating under provisional status as provided in paragraph 135.3(8)*"c,"* owners and operators when applying for annual tank tags pursuant to subrule 135.3(5) must certify on a form prepared by the department that the owners and operators are in compliance with an approved provisional status remedial plan as provided in paragraph 135.3(8)*"c."*

(3) Compliance inspections. The department may initiate a delivery prohibition response action based on: (1) a finding resulting from a third-party compliance inspection conducted pursuant to rule 567—135.20(455B); (2) a department investigation and inspection conducted pursuant to Iowa Code section 455B.475; or (3) review of a UST system check or other documentation submitted in response to a suspected release under rule 567—135.6(455B) or in response to a confirmed release under rule 567—135.7(455B).

b. Delivery prohibition eligibility criteria. A delivery prohibition response action may be initiated upon a finding that the UST system is out of compliance with department rules and meets the eligibility criteria as specified below. Reinstatement criteria define the standards and process for owners and operators to document that they have taken corrective action sufficient to authorize resumption of fuel to the USTs. Prior to initiation of the delivery prohibition, owners and operators are afforded a minimum level of procedural due process such as prior notice and the opportunity to present facts to dispute the finding. Where notice and the opportunity to take corrective action prior to initiation of a delivery prohibition response action are required, notice by the department or by a certified compliance inspector as provided in rule 567—135.20(455B) shall be sufficient.

If the department finds that any one of the following criteria has been satisfied, the department may initiate a delivery prohibition response action following the notice procedures outlined in paragraph *"e"* of this subrule. After initiation of the delivery prohibition response action, the department will offer the owner or operator an opportunity to establish reinstatement criteria by written documentation and, if requested, an in-person meeting.

(1) An approved release detection method for USTs or UST piping is not installed, such as automatic tank gauging, groundwater monitoring wells and line leak detectors, and there is no record that an approved method such as inventory control, statistical inventory reconciliation, or interstitial space monitoring has been employed during the previous three months. If the owner or operator claims to have documentation that an approved release detection method has been conducted, the owner or operator will be given two business days to produce the documentation.

REINSTATEMENT CRITERIA: The owner or operator must submit results of a passing UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4)*"c"* and 135.5(5)*"b."* The owner or operator must also document installation and operation of an approved release detection system. This may include proof that a contract has been signed with a qualified statistical inventory reconciliation provider or that a qualified inventory control method has been implemented and training has been provided to onsite supervisory personnel.

(2) No documentation of a required annual line tightness test or line leak detector test has been provided, and the owner or operator has failed to conduct the required testing within 14 days of written notice by the department or a certified compliance inspector as provided in rule 567—135.20(455B).

REINSTATEMENT CRITERIA: The owner or operator must provide documentation of a passing line precision tightness test at the 0.1 gallon-per-hour leak rate in paragraph 135.5(5)*"b"* and a line leak detector test as provided in paragraph 135.5(5)*"a."*

(3) Overfill and spill protection is not installed.

REINSTATEMENT CRITERION: The owner or operator must provide documentation that overfill and spill protection equipment has been installed.

(4) A corrosion protection system is not installed or there is no record that an impressed current corrosion protection system has been in operation for the prior six months.

REINSTATEMENT CRITERIA: A manned entry tank integrity inspection must be completed prior to installation of a corrosion protection system, and the owner or operator must submit results of a passing UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4)*"c"* and 135.5(5)*"b."* A corrosion protection analysis must be completed and approved by the department.

(5) The owner or operator has failed to provide proof of financial responsibility in accordance with 567—Chapter 136.

REINSTATEMENT CRITERION: The owner or operator must submit acceptable proof of financial responsibility in accordance with 567—Chapter 136.

(6) A qualified UST system release detection method is installed and is being used but the documentation or the absence of documentation is sufficient to question the reliability of the release detection over the past 12-month period. The owner or operator shall be notified of the deficiencies, shall be given at least two business days to produce documentation of compliance and, if necessary, shall be required to conduct a leak detection system analysis and a system tightness test within 14 days. If the owner or operator fails to produce documentation of compliance or to conduct the system analysis and the UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4)*"c"* and 135.5(5)*"b,"* the department may initiate a delivery prohibition response action. Notice by the department or a compliance inspector as provided in rule 567—135.20(455B) shall be sufficient to initiate a delivery prohibition response action.

REINSTATEMENT CRITERIA: The owner or operator must submit documentation that the leak detection method analysis sufficiently documents compliance and explains the reasons for the accuracy and reliability concerns. If necessary, the owner or operator must submit passing results of a UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4)*"c"* and 135.5(5)*"b."*

(7) The owner or operator has failed to document completion of a three-year corrosion protection test or to repair defective corrosion protection equipment within 30 days after notice of the violation by the department or a certified compliance inspector as provided in rule 567—135.20(455B).

REINSTATEMENT CRITERION: The owner or operator must submit documentation of a three-year corrosion protection test as provided in rule 567—135.3(455B).

(8) The owner or operator has failed to complete a compliance inspection required by rule 567—135.20(455B) within 60 days after written notice of the violation by the department.

REINSTATEMENT CRITERION: The owner or operator must submit a compliance inspection report as provided in rule 567—135.20(455B).

(9) The owner or operator has failed to take necessary abatement action in response to a confirmed release as provided in subrules 135.7(2) and 135.7(3).

REINSTATEMENT CRITERION: The owner or operator must document compliance with the abatement provisions in subrules 135.7(2) and 135.7(3).

(10) The owner or operator has failed to undertake and document release investigation and confirmation steps within seven days in response to a suspected release as provided in paragraph 135.6(3)*"a."*

REINSTATEMENT CRITERION: The owner or operator must document release confirmation and system check as provided in paragraph 135.6(3)*"a."*

c. Provisional status. The department may classify a UST system as operating under a provisional status when the department documents a pattern of UST operation and maintenance violations under rules 567—135.3(455B) through 567—135.5(455B) and suspected release and confirmed release response actions under rules 567—135.6(455B) and 567—135.7(455B). The department shall provide the owner or operator with a notice specifying the basis for the proposed classification and a proposed remedial action plan. The objective of the remedial action plan is to provide the owner and operator an opportunity to undertake certain remedial actions sufficient to establish a reasonable likelihood that future regulatory compliance will be achieved.

The remedial action plan may include but is not limited to provisions for owner/operator training, development of a facility-specific compliance manual, more frequent third-party compliance inspections than otherwise required under rule 567—135.20(455B), monthly reporting, and retention of a third-party compliance manager/consultant. If the owner or operator and the department cannot reach agreement on a remedial action plan, the department may initiate enforcement action by issuance of an administrative order pursuant to 567—Chapter 10. This provision does not grant the owner or operator an entitlement to this procedure, and the department reserves all discretion to undertake an enforcement action and assess penalties as provided in Iowa Code sections 455B.476 and 455B.477.

d. Administrative orders. The department may impose a delivery prohibition as a remedy for violations of the operation and maintenance provisions in rules 567—135.3(455B) through 567—135.5(455B) and the suspected and confirmed release response actions in rules 567—135.6(455B)

and 567—135.7(455B). This remedy may be in addition to the assessment of penalties as provided in Iowa Code section 455B.476 and other appropriate injunctive relief necessary to correct violations.

e. Due process prior to initiation of a delivery prohibition response action.

(1) Prior to imposing a delivery prohibition response action under paragraph 135.3(8)*"b"* above, the department will provide notice to the owner or operator or, if notice to the owner or operator cannot be confirmed, to a person in charge at the UST facility of the basis for the finding and the intent to initiate a delivery prohibition response action. Notice may be by verbal contact, by facsimile, or by regular or certified mail to the UST facility address or the owner's or operator's last-known address. The owner and operator will be given a minimum of one business day to provide documentation that the finding is inaccurate or that reinstatement criteria in subparagraphs 135.3(8)*"b"*(1) through (5) have been satisfied. Additional days and the opportunity for a telephone or in-person conference may be provided the owner and operator to contest the factual basis for a finding under subparagraphs 135.3(8)*"b"*(6) through (10). Additional procedural due process may be afforded the owner and operator on a case-by-case basis sufficient to satisfy Constitutional due process standards.

If insufficient information is submitted to change the finding, the department will notify the owner or operator and a person in charge at the UST facility of the final decision to impose the delivery prohibition response action.

(2) Provisional status. Upon a finding that an owner or operator under provisional status has failed to comply with the terms of a remedial action plan as provided above, the department may initiate a delivery prohibition response action by giving actual notice to the owner or operator of the basis for the finding of noncompliance and the department's intent to initiate a delivery prohibition response action. The delivery prohibition response action shall not be imposed without providing the owner or operator the opportunity for an evidentiary hearing consistent with the provisions for suspension and revocation of licenses under 567—Chapter 7.

f. Delivery prohibition procedure. Upon oral or written notice that the delivery prohibition response action has been imposed, the owner or operator and any person in charge of the UST facility shall be notified that they are not authorized to receive any further delivery of regulated substances until conditions for reinstatement of eligibility are satisfied. Owners and operators are required to immediately remove and return to the department the current annual tank management fee tags or the tank registration tags if there are no tank management fee tags. Owners and operators are required to provide the department with names and contact information for all persons who convey or deposit regulated substances to the USTs. The department will attempt to notify known persons who convey or deposit regulated substances to the USTs that they are not authorized to deliver to the USTs until further notice by the department as provided in paragraph 135.3(3)*"j"* and subrule 135.3(5).

If the tank tags are not returned within three business days, the department shall visit the site, remove the tags, and affix a "red tag" to the fill pipes or fill pipe caps of all affected USTs. It is unlawful for any person to deposit or accept a regulated substance into a UST that has a "red tag" affixed to the fill pipe or fill pipe cap. The department may allow the owner and operator to dispense and sell the remainder of existing fuel unless the department determines there is an immediate risk of a release or other risk to human health, safety or the environment. The department shall confirm in writing the basis for the delivery prohibition response action, contacts made prior to the action, and steps the owner or operator must take to reinstate fuel delivery.

135.3(9) *Secondary containment requirements for new and replacement UST system installations.* All new and replacement underground storage tank systems and appurtenances used for the storage and dispensing of petroleum products installed after November 28, 2007, shall have secondary containment in accordance with this subrule. The secondary containment provision includes the installation of turbine sumps, transition or intermediate sumps and under-dispenser containment (UDC).

a. The secondary containment may be manufactured as an integral part of the primary containment or constructed as a separate containment system.

b. Installation of any new or replacement turbine pumps involving the direct connection to the tank shall have secondary containment.

c. Any replacement of ten feet or more of piping shall have secondary containment.

d. All piping replacements requiring secondary containment shall be constructed with transition or intermediate containment sumps.

e. The design and construction of all primary and secondary containment shall meet the performance standards in subrule 135.3(1) and paragraphs 135.5(3)*"b"* and 135.5(4)*"g."* At a minimum, the secondary containment must:

(1) Contain regulated substances released from the tank system until detected and removed;

(2) Prevent the release of regulated substances into the environment at any time during the operational life of the underground storage tank system; and

(3) Be checked for evidence of a release at least every 30 days as provided in paragraph 135.5(2)*"a."*

f. Secondary containment with interstitial monitoring in accordance with paragraphs 135.5(3)*"b,"*135.5(4)*"g"* and 135.5(5)*"d"* shall become the primary method of leak detection for all new and replacement tanks and piping installed after November 28, 2007.

g. Testing and inspection. Secondary containment systems shall be liquid-tight and must be inspected and tested every two years. The sensing devices must be tested every two years.

(1) Inspections for secondary containment sumps (spill catchment basins, turbine sumps, transition or intermediate sumps, and under-dispenser containment) shall:

1. Consist of a visual inspection by an Iowa-licensed installer or Iowa-certified inspector every two years. Sumps must be intact (no cracks or perforations) and liquid-tight, including sides and bottom.

2. Sumps must be maintained and kept free of debris, liquid and ice at all times.

3. Regulated substances spilled into any spill catchment basin, turbine sump, transition/intermediate sump or under-dispenser containment shall be immediately removed.

(2) Sensing devices used to monitor the interstitial space shall be tested at least every two years for proper function.

h. Under-dispenser containment. When installing a new motor fuel dispenser or replacing a motor fuel dispenser, a UDC shall be installed whenever:

(1) A motor fuel dispenser is installed at a location where there previously was no dispenser (new UST system or new dispenser location at an existing UST system); or

(2) An existing motor fuel dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes flexible connectors or risers or other transitional components that are beneath the dispenser and connect the dispenser to the piping. A UDC is not required when only the emergency shutoff or shear valves or check valves are replaced.

(3) A UDC shall also be installed beneath the motor fuel dispenser whenever ten feet or more of piping is repaired or replaced within ten feet of a motor fuel dispenser.

i. Exceptions from secondary containment standards. A tank owner or operator may request an exception from the secondary containment standard if the location of the UST system is greater than 1,000 feet from a community water system or potable drinking water well. A community water system includes the distribution piping.

(1) "Community water system (CWS)" means a public water system which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. "Public water supply system" means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any "special irrigation district." A "public water supply system" is either a "community water system" or a "noncommunity water system."

(2) "Potable drinking water well" means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater and that supplies water for a noncommunity public water

system or supplies water for household use (consisting of drinking, bathing, and cooking or other similar uses). Such wells may provide water to entities such as a single-family residence, a group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities. A "noncommunity water system" is defined in rule 567—40.2(455B) as a public water system that is not a community water system. A "noncommunity water system" is either a "transient noncommunity water system (TNC)" or a "nontransient noncommunity water system (NTNC)."

(3) To determine if a new or replacement underground storage tank, piping, or motor fuel dispenser system is within 1,000 feet of an existing community water system or an existing potable drinking water well, at a minimum the distance must be measured from the closest part of the new or replacement underground storage tank or piping or the motor fuel dispenser system to:

1. The closest part of the nearest existing community water system, including:

- The location of the wellhead(s) for groundwater and the location of the intake point(s) for surface water;
- Water lines, processing tanks, and water storage tanks; and
- Water distribution/service lines under the control of the community water system operator.

2. The wellhead of the nearest existing potable drinking water well.

(4) If a new or replacement underground storage tank, piping, or motor fuel dispenser that is not within 1,000 feet of an existing community water system will be installed, and a community water system that will be within 1,000 feet of the UST system is planned or a permit application has been submitted to the department under 567—Chapter 40, secondary containment and under-dispenser containment are required unless the permit is denied.

(5) If a new or replacement underground storage tank, piping, or motor fuel dispenser that is not within 1,000 feet of an existing potable drinking water well will be installed and the owner will be installing a potable drinking water well at the new facility, or a private water well permit has been submitted pursuant to 567—Chapter 38 and pursuant to applicable county and municipal ordinances for a potable drinking water well that will be within 1,000 feet of the UST system, secondary containment and under-dispenser containment are required unless the permit is denied.

j. Documentation for exception from secondary containment. The following documentation must be provided by the tank owner or operator when requesting an exception from the UST system secondary containment requirement.

(1) A statement from the manager of the local community water system that the community water system is not located or planned within 1,000 feet of the UST system location. This would include rural water systems.

(2) A map showing homes and businesses within 1,000 feet of the UST system location.

(3) Identification of the source of water for the business at the UST system location.

(4) The results of an on-foot search around businesses and homes within a 1,000-foot radius for possible potable drinking water wells. Documentation that there are no pending nonpublic water well permit applications within 1,000 feet of the UST system from any applicable municipal permitting authority, county department of health with department-delegated authority, or the department if there is not delegated permitting authority.

(5) Search results from the Geographic Information System (GIS) well mapping for well locations available from the Iowa Geological Survey.

(6) Documentation that the department's water supply section has no pending applications for a public water supply construction permit within 1,000 feet of a proposed UST system installation or replacement or motor fuel dispenser installation or replacement.

567—135.4(455B) General operating requirements.

135.4(1) *Spill and overfill control.*

a. Owners and operators must ensure that releases due to spilling or overfilling do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overfilling and spilling.

NOTE: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with 135.4(1)*"a."* Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

b. The owner and operator must report, investigate, and clean up any spills and overfills in accordance with 135.6(4).

135.4(2) *Operation and maintenance of corrosion protection.* All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

a. All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

b. All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) *Frequency.* All cathodic protection systems must be tested within six months of installation and at least every three years thereafter or according to another reasonable time frame established by the department; and

(2) *Inspection criteria.* The criteria that are used to determine that cathodic protection is adequate as required by this subrule must be in accordance with a code of practice developed by a nationally recognized association.

NOTE: National Association of Corrosion Engineers Standard RP-02-85, "Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems," may be used to comply with 135.4(2)*"b"*(2).

c. UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

d. For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with 135.4(5)) to demonstrate compliance with the performance standards in this subrule. These records must provide the following:

(1) The results of the last three inspections required in paragraph *"c"*; and

(2) The results of testing from the last two inspections required in paragraph *"b."*

135.4(3) *Compatibility.* Owners and operators must use a UST system made of or lined with materials that are compatible with the substance stored in the UST system.

NOTE: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of subrule 135.4(3): American Petroleum Institute Publication 1626, "Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations"; and American Petroleum Institute Publication 1627, "Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations."

135.4(4) *Repairs allowed.* Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

a. Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

NOTE: The following codes and standards may be used to comply with 135.4(4)*"a"*: National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code"; American Petroleum Institute Publication 2200, "Repairing Crude Oil, Liquified Petroleum Gas, and Product Pipelines"; American Petroleum Institute Publication 1631, "Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks"; and National Leak Prevention Association Standard 631, "Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection."

b. Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

c. Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

d. Repaired tanks and piping must be tightness tested in accordance with 135.5(4)*"c"* and 135.5(5)*"b"* within 30 days following the date of the completion of the repair except as provided in subparagraphs (1) to (3) below:

(1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in 135.5(4)*"d"* through *"h"*; or

(3) Another test method is used that is determined by the department to be no less protective of human health and the environment than those listed above.

e. Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with 135.4(2)*"b"* and *"c"* to ensure that it is operating properly.

f. UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this subrule.

135.4(5) *Reporting and record keeping.* Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

a. *Reporting.* Owners and operators must submit the following information to the department:

(1) Notification for all UST systems (135.3(3)), which includes certification of installation for new UST systems (135.3(1)*"e"*);

(2) Reports of all releases including suspected releases (135.6(1)), spills and overfills (135.6(4)), and confirmed releases (135.7(2));

(3) Corrective actions planned or taken including initial abatement measures (135.7(3)), initial site characterization (567—135.9(455B)), free product removal (135.7(5)), investigation of soil and groundwater cleanup and corrective action plan (567—135.8(455B) to 567—135.12(455B)); and

(4) A notification before permanent closure or change-in-service (135.15(2)).

b. *Record keeping.* Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (135.3(1)*"a"*(4); (135.3(1)*"b"*(3)).

(2) Documentation of operation of corrosion protection equipment (135.4(2));

(3) Documentation of UST system repairs (135.4(4)*"f"*);

(4) Recent compliance with release detection requirements (135.5(6)); and

(5) Results of the site investigation conducted at permanent closure (135.15(5)).

c. *Availability and maintenance of records.* Owners and operators must keep the records required either:

(1) At the UST site and immediately available for inspection by the department; or

(2) At a readily available alternative site and be provided for inspection to the department upon request.

NOTE: In the case of permanent closure records required under 135.15(5), owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

135.4(6) *Training required for UST operators.*

a. An owner or operator shall designate Class A, Class B, and Class C operators for each underground storage tank system or facility that has underground storage tanks regulated by the department, except for unstaffed facilities, which may designate only Class A and Class B operators.

b. A facility may not operate after December 31, 2011, unless operators have been designated and trained as required in this rule, or unless otherwise agreed upon by the department based on a finding of good cause for failure to meet this requirement and a plan for designation and training at the earliest practicable date.

c. Trained operators must be readily available to respond to suspected or confirmed releases, equipment shut-offs or failures, and other unusual operating conditions.

d. A Class A or Class B operator should be immediately available for telephone consultation with the Class C operator when a facility is in operation. Class A or Class B operators should be able to be on site at the storage tank facility within four hours.

e. For staffed facilities, a Class C operator must be on site whenever the UST facility is in operation.

f. For unstaffed facilities, a Class B operator must be geographically located such that the person can be on site within two hours of being contacted by the public, the owner or operator of the facility, or the department. Emergency contact information and emergency procedures must be prominently displayed at the site. An unstaffed facility shall have an emergency shutoff device as provided in 135.5(1) and a sign posted in a conspicuous place that includes the name and telephone number of the facility owner, an emergency response telephone number to contact the Class B operator, and information on local emergency responders.

g. Designated operators must successfully complete required training under subrule 135.4(9) no later than December 31, 2011.

h. A person may be designated for more than one class of operator.

i. When a facility is found to be out of compliance, the department may require the owner and operator to retrain the designated UST system Class A, B, or C operator under a plan approved by the department. The retraining must occur within 60 days from departmental notice for Class A and Class B operators and within 15 days for Class C operators.

135.4(7) *UST operator responsibilities.*

a. *Class A operator.*

(1) Class A operators have the primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator's responsibilities include managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter in the following ways:

1. Class A operators assist the owner by ensuring that underground storage tank systems are properly installed and expeditiously repaired and inspected; financial responsibility is maintained; and records of system installation, modification, inspection and repair are retained and made available to the department and licensed compliance inspectors. The Class A operator shall properly respond to and report emergencies caused by releases or spills from UST systems, ensure that the annual tank management fees are paid, and ensure that Class B and Class C operators are properly trained.

2. Class A operators shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

3. Class A operators shall provide site drawings that indicate equipment locations for Class B and Class C operators.

(2) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class A operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class A operators pursuant to subrules 135.4(9) through 135.4(11). Class A operators who are also licensed compliance inspectors under 567—Chapter 134, Part C, may perform in-house facility inspections of the UST system, but shall not perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility required by rule 567—135.20(455B) must be completed by a third-party compliance inspector licensed under 567—Chapter 134, Part B.

(3) When there is a change in ownership or operator status, the new owner or operator is responsible for designating a Class A operator prior to bringing the UST system into operation. The Class A operator is responsible for ensuring that all necessary documentation for change of ownership is completed and

submitted to the department and that all compliance requirements of this chapter are satisfied prior to bringing the UST system into operation. The compliance requirements may be provided to the owner or operator using the department's checklist.

If the UST system was temporarily closed, the designated Class A operator must ensure the department's checklist for returning a UST into service is followed, all compliance requirements of this chapter have been met, and the necessary documentation is submitted to the department.

(4) When there is a change in UST ownership, property ownership or operator status, the designated Class A operator for the current owner and operator is responsible for notifying the department when the change is final and, if possible, prior to the new owner or operator taking possession of the site.

b. Class B operator.

(1) A Class B operator implements applicable underground storage tank regulatory requirements and standards in the field or at the tank facility. A Class B operator oversees and implements the day-to-day aspects of operation, maintenance, and record keeping for the underground storage tanks at facilities within four hours of travel time from the Class B operator's principal place of business. A Class B operator's responsibilities include, but are not limited to:

1. Performing mandated system tests at required intervals and making sure spill prevention, overfill control equipment, and corrosion protection equipment are properly functioning.

2. Assisting the owner by ensuring that release detection equipment is operational, release detection monitoring and tests are performed at the proper intervals, and release detection records are retained and made available to the department and compliance inspectors.

3. Making sure record-keeping and reporting requirements are met and that relevant equipment manufacturers' or third-party performance standards are available and followed.

4. Properly responding to, investigating, and reporting emergencies caused by releases or spills from USTs.

5. Performing UST release detection in accordance with rule 567—135.5(455B).

6. Monitoring the status of UST release detection.

7. Meeting spill prevention, overfill prevention, and corrosion protection requirements.

8. Reporting suspected and confirmed releases and taking release prevention and response actions according to the requirements of rule 567—135.6(455B).

9. Training and documenting Class C operators to make sure at least one Class C operator is on site during operating hours. Class B operators shall be familiar with Class C operator responsibilities and may provide required training for Class C operators.

(2) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class B operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class B operators under subrules 135.4(9) through 135.4(11). Class B operators who are also licensed compliance inspectors under 567—Chapter 134, Part C, may perform in-house facility inspections of the UST system, but cannot perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility pursuant to rule 567—135.20(455B) must be completed by a third-party compliance inspector licensed under 567—Chapter 134, Part B.

(3) The owner or operator of a site undergoing a change in ownership shall designate a Class B operator prior to bringing the UST system into operation. The Class B operator must conduct an inspection using the department's inspection checklist and submit the completed checklist along with the change of ownership form prior to operation. If a UST system was temporarily closed, the Class B operator shall ensure that the department's checklist for returning a UST to service is followed and that the necessary documentation is submitted to the department prior to operation of the UST system.

c. Class C operator. A Class C operator is an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and is the first to respond to events indicating emergency conditions. A Class C operator must be present at the facility at all times during normal operating hours. A Class C operator monitors product transfer operations to ensure that spills and overfills do not occur. The Class C operator must know how to properly respond to spills, overfills and alarms when they do

occur. In the event of a spill, overfill or alarm, a Class C operator shall notify the Class A and Class B operators, as well as the department and appropriate local emergency authorities as required by rule.

(1) Within six months after October 14, 2009, written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site.

(2) There may be more than one Class C operator at a storage tank facility, but not all employees of a facility need be Class C operators.

135.4(8) *UST operator training course requirements.* Individuals must attend a department-approved training course covering material designated for each operator class. Individuals must attend every session of the training, take the examination, and attend examination review.

a. Class A operators. To be certified as a Class A operator, the applicant must successfully complete a department-approved training course that covers underground storage tank system requirements as outlined in 567—Chapters 134 to 136. The course must also provide a general overview of the department's UST program, purpose, groundwater protection goals, public safety and administrative requirements. The training must include, but is not limited to, the following:

(1) Components and materials of underground storage tank systems.

(2) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems, and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.

(3) Spill and overfill prevention, to include the American Petroleum Institute (API) Publication RP1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(4) Ensuring product delivery to the correct tank by using color-symbol codes in the API Standard RP1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals."

(5) Proper fuel ordering and delivery, including procedures in API RP1007, "Loading and Unloading of MC/DOT 406 Cargo Tank Motor Vehicles."

(6) Release detection methods and related reporting requirements.

(7) Corrosion protection and inspection requirements, including the requirement to have a department-licensed cathodic protection tester.

(8) Discussion of the benefits of monthly or frequent inspections and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

(9) Requirement and content of third-party compliance inspections.

(10) How to properly respond to an emergency, including hazardous conditions.

(11) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(13) Notification of installation and storage tank registration requirements.

(14) Requirement to use department-licensed companies and individuals for UST installation, testing, lining, and removal.

(15) Temporary and permanent closure procedures and requirements.

(16) NESHAP vapor recovery requirements.

(17) Conditions under which the department may stop fuel delivery and take enforcement action.

(18) Ensuring that annual tank management fees are paid.

(19) Ensuring that suspected and confirmed releases are investigated and reported according to subrule 135.6(1).

b. Class B operators. To be certified as a Class B operator, the individual must successfully complete a department-approved training course that provides in-depth understanding of UST system regulations applicable to this class. Training must also provide a general overview of the department's

UST program, purpose, groundwater protection goals, public safety and administrative requirements. Training shall cover the operation and maintenance requirements set forth in this chapter, including, but not limited to, the following:

(1) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems, and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.

(2) Components and materials of underground storage tank systems.

(3) Spill and overfill prevention.

(4) Ensuring product delivery to the correct tank by using color-symbol codes in the API Standard RP1637.

(5) Proper fuel ordering and delivery, including procedures from API RP1007.

(6) Methods of release detection and related reporting requirements.

(7) Corrosion protection and related testing.

(8) Discussion of the benefits of monthly or frequent inspections and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

(9) Requirement and content of third-party compliance inspections.

(10) Emergency response, reporting and investigating releases.

(11) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(13) Notification of installation and storage tank registration requirements.

(14) Requirement to use department-licensed companies and individuals for UST installation, testing, lining, and removal.

(15) Reporting and record-keeping requirements.

(16) Overview of Class C operator training requirements.

(17) NESHAP vapor recovery requirements.

(18) Conditions under which the department may stop fuel delivery and take enforcement action.

c. *Class C operators.* To be certified as a Class C operator, an individual must complete a department-approved training course that covers, at a minimum, a general overview of the department's UST program and purpose; groundwater protection goals; public safety and administrative requirements; and action to be taken in response to an emergency condition due to a spill or release from a UST system. Training must include written procedures for the Class C operator, including notification instructions necessary in the event of emergency conditions. The written instructions and procedures must be readily available on site. A Class A or Class B operator may provide Class C training.

135.4(9) *Examination and review requirement.* Class A and Class B operators must complete the department-approved training course and take an examination to verify their understanding and knowledge. The examination may include both written and practical (hands-on) testing activities. The trainer must follow up the examination with a review of missed test questions with the class or individual to ensure understanding of problem areas. Upon successful completion of the training course, the applicant will receive a certificate verifying the applicant's status as a Class A, Class B, or Class C operator.

a. *Reciprocity.* The department may waive the training course for operators upon a showing of successful completion of a training course and examination approved by another state or regulatory agency that the department determines are substantially equivalent to the UST requirements contained in this chapter.

b. *Transferability to another UST site.* Class A and Class B operators may transfer to other UST facilities in Iowa provided the operator is properly designated by the facility owner as a Class A or Class B operator according to 567—subrule 134.4(13). Class A and Class B operators transferring from other

states shall seek prior approval of training qualifications, unless the department has preapproved the out-of-state program as substantially equivalent to the requirements of this chapter.

135.4(10) *Timing of UST operator training.*

a. An owner shall ensure that Class A, Class B, and Class C operators are trained as soon as practicable after October 14, 2009, contingent upon availability of approved training providers, but not later than December 31, 2011, except as provided in paragraph 135.4(6)*"b."*

b. When a Class A or Class B operator is replaced, a new operator must be trained prior to assuming duties for that class of operator.

c. Class C operators must be trained before assuming the duties of a Class C operator. Within six months after October 14, 2009, written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site. A Class C operator may be briefed on these procedures concurrent with annual safety training required under Occupational Safety and Health Administration regulations, 29 CFR, Part 1910.

135.4(11) *Documentation of operator training.*

a. The owner of an underground storage tank facility shall maintain a list of designated operators. The list shall be made available to the department in accordance with subrule 135.4(5). The list shall represent the current Class A, Class B and Class C operators for the UST facility and must include:

(1) The name of each operator and the operator's class(es); contact information for Class A and Class B operators; the date each operator successfully completed initial training and refresher training, if any; the name of the company providing the training; and the name of the trainer.

(2) For all classes of operators, the site(s) for which an operator is responsible if more than one site.

b. A copy of the certificates of training for Class A and Class B operators shall be on file and readily available for inspection in accordance with subrule 135.4(5).

c. A copy of the certificates of training for Class B and Class C operators shall be available at each facility for which the operator is responsible.

d. Class A and Class B operator contact information, including names and telephone numbers and any emergency information, shall be conspicuously posted at unstaffed facilities near the dispensers and the station building.

[**ARC 8124B**, IAB 9/9/09, effective 10/14/09]

567—135.5(455B) Release detection.

135.5(1) *General requirements for all UST systems.*

a. Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer's instructions, including routine maintenance and service checks for operability or running condition; and

(3) Meets the performance requirements in 135.5(4) or 135.5(5), with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods conducted in accordance with 135.5(4)*"b," "c,"* and *"d"* and 135.5(5)*"b"* after December 22, 1990, and 135.5(5)*"a"* after September 22, 1991, except for methods permanently installed prior to those dates, must be capable of detecting the leak rate or quantity specified for that method with a probability of detection of 0.95 and a probability of false alarm of 0.05.

b. When a release detection method operated in accordance with the performance standards in 135.5(4) and 135.5(5) indicates a release may have occurred, owners and operators must notify the department in accordance with rule 567—135.6(455B).

c. Owners and operators of all UST systems must comply with the release detection requirements of this rule by December 22 of the year listed in the following table:

Scheduled for Phase-in of Release Detection					
Year System Was Installed	Year When Release Detection is Required (by December 22 of the Year Indicated)				
	1989	1990	1991	1992	1993
Before 1965 or Date Unknown	RD	P			
1965-1969		P/RD			
1970-1974		P	RD		
1975-1979		P		RD	
1980-1988		P			RD
New Tanks	Immediately upon installation				

P = Must begin release detection for all pressurized piping in accordance with 135.5(2)*"b"*(1).

RD = Must begin release detection for tanks and suction piping in accordance with 135.5(2)*"a,"* 135.5(2)*"b"*(2), and 135.5(3).

d. Any existing UST system that cannot apply a method of release detection that complies with the requirements of this rule must complete the closure procedures in rule 567—135.15(455B) by the date on which release detection is required for that UST system under paragraph *"c."*

e. **[See Objection at end of chapter]** UST systems using pressurized piping that operate with no on-site personnel shall comply with the following requirements:

(1) Whenever an in-line leak detector is installed or replaced, it must be capable of shutting down the submersible pump.

(2) Existing sites with an in-line leak detection system in place on February 17, 2010, may continue operation provided that, by January 1, 2013, either of the following UST system modifications is made:

1. An in-line leak detector capable of shutting off the submersible pump is installed; or

2. The UST system is equipped with a device that immediately alerts the Class B operator or designee when a leak is detected. The Class B operator or designee shall be on site within two hours of notification and shut down the submersible pump. The UST system cannot be returned to service until the problem that caused the release response is resolved.

3. A temporary extension of time to meet these upgrade requirements may be granted if it can be shown that there is no reasonable alternative fueling source in the vicinity or fueling is needed to satisfy emergency or public safety considerations. The request for temporary extension must include documentation and a plan for upgrading prior to January 1, 2013.

(3) At sites with secondary containment sumps and continuous automatic sump sensors for leak detection monitoring, the continuous automatic sump sensors must shut off product flow when a leak is detected. If it is determined that a malfunction of the leak detection system is the cause of the shutdown, the UST system must be immediately repaired but may continue to be operated while the repairs are made.

135.5(2) *Requirements for petroleum UST systems.* Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

a. *Tanks.* Tanks must be monitored at least every 30 days for releases using one of the methods listed in 135.5(4)*"d"* to *"h"* except that:

(1) UST systems that meet the performance standards in 135.3(1) or 135.3(2), and the monthly inventory control requirements in 135.5(4)*"a"* or *"b,"* may use tank tightness testing (conducted in accordance with 135.5(4)*"c"*) at least every five years until December 22, 1998, or until ten years after the tank is installed or upgraded under 135.3(2)*"b,"* whichever is later;

(2) UST systems that do not meet the performance standards in 135.3(1) or 135.3(2) may use monthly inventory controls (conducted in accordance with 135.5(4)*"a"* or *"b"*) and annual tank tightness testing (conducted in accordance with 135.5(4)*"c"*) until December 22, 1998, when the tank must be upgraded under 135.3(2) or permanently closed under 135.15(2); and

(3) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with 135.5(4)*"b"*).

b. *Piping.* Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(1) *Pressurized piping.* Underground piping that conveys regulated substances under pressure must:

1. Be equipped with an automatic line leak detector conducted in accordance with 135.5(5)*"a"*; and

2. Have an annual line tightness test conducted in accordance with 135.5(5)*"b"* or have monthly monitoring conducted in accordance with 135.5(5)*"c."*

(2) *Suction piping.* Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with 135.5(5)*"b,"* or use a monthly monitoring method conducted in accordance with 135.5(5)*"c."* No release detection is required for suction piping that is designed and constructed to meet the following standards:

1. The below-grade piping operates at less than atmospheric pressure;

2. The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

3. Only one check valve is included in each suction line;

4. The check valve is located directly below and as close as practical to the suction pump; and

5. A method is provided that allows compliance with "2" through "4" to be readily determined.

135.5(3) *Requirements for hazardous substance UST systems.* Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

a. Release detection at existing UST systems must meet the requirements for petroleum UST systems in 135.5(2). By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in paragraph *"b"* below.

b. Release detection at new hazardous substance UST systems must meet the following requirements:

(1) Secondary containment systems must be designed, constructed and installed to:

1. Contain regulated substances released from the tank system until they are detected and removed;

2. Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

3. Be checked for evidence of a release at least every 30 days.

NOTE: The provisions of 40 CFR 265.193, Containment and Detection of Releases, as of September 13, 1988, may be used to comply with these requirements.

(2) Double-walled tanks must be designed, constructed, and installed to:

1. Contain a release from any portion of the inner tank within the outer wall; and

2. Detect the failure of the inner wall.

(3) External liners (including vaults) must be designed, constructed, and installed to:

1. Contain 100 percent of the capacity of the largest tank within its boundary;

2. Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

3. Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(4) Underground piping must be equipped with secondary containment that satisfies the requirements of 135.5(3)*"b"*(1) above (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with 135.5(5)*"a"*;

(5) Other methods of release detection may be used if owners and operators:

1. Demonstrate to the department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in 135.5(4)*"b"* to *"h"* can detect a release of petroleum;

2. Provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

3. Obtain approval from the department to use the alternate release detection method before the installation and operation of the new UST system.

135.5(4) *Methods of release detection for tanks.* Each method of release detection for tanks used to meet the requirements of 135.5(2) must be conducted in accordance with the following:

a. Inventory control. Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(2) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch;

(3) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(4) Deliveries are made through a drop tube that extends to within 1 foot of the tank bottom;

(5) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and

(6) The measurement of any water level in the bottom of the tank is made to the nearest 1/8 of an inch at least once a month.

NOTE: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of subrule 135.5(4), paragraph *"a,"* subparagraphs (1) to (6).

b. Manual tank gauging. Manual tank gauging must meet the following requirements:

(1) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch;

(4) A leak is suspected and subject to the requirements of rule 567—135.6(455B) if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard (average of four tests)
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons

(5) Only tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 551 to 2000 gallons may use the method in place of manual inventory control in 135.5(4)*"a."* Tanks of greater than 2000 gallons nominal capacity may not use this method to meet the requirements of this rule.

c. Tank tightness testing. Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon-per-hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

d. Automatic tank gauging. Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(1) The automatic product level monitor test can detect a 0.2 gallon-per-hour leak rate from any portion of the tank that routinely contains product; and

(2) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of 135.5(4)*"a."*

e. Vapor monitoring. Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(3) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in 135.5(4)*"e"*(1) to (4) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

f. Groundwater monitoring. Testing or monitoring for liquids on the groundwater must meet the following requirements:

(1) The regulated substance stored is immiscible in water and has a specific gravity of less than 1;

(2) Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(3) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

(4) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(6) The continuous monitoring devices or manual methods used can detect the presence of at least 1/8 of an inch of free product on top of the groundwater in the monitoring wells;

(7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in 135.5(4)*"f"*(1) to (5) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

(8) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

g. Interstitial monitoring. Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(1) For secondary containment systems, the sampling or testing method must be able to detect a release through the inner wall in any portion of the tank that routinely contains product:

1. Continuously, by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space; or

2. Monthly, by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space.

3. The interstitial space shall be maintained and kept free of liquid, debris or anything that could interfere with leak detection capabilities.

NOTE: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier:

1. The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least 10^{-6} cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

2. The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

3. For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

4. The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

5. The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

6. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

h. Other methods. Any other type of release detection method, or combination of methods, can be used if:

(1) It can detect a 0.2 gallon-per-hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(2) The department may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs *"c"* to *"h."* In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the department on its use to ensure the protection of human health and the environment.

135.5(5) *Methods of release detection for piping.* Each method of release detection for piping used to meet the requirements of 135.5(2) must be conducted in accordance with the following:

a. Automatic line leak detectors. Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

b. Line tightness testing. A periodic test of piping may be conducted only if it can detect a 0.1 gallon-per-hour leak rate at one and one-half times the operating pressure.

c. Applicable tank methods. Any of the methods in 135.5(4)*"e"* through *"h"* may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

d. Interstitial monitoring of secondary containment. Interstitial monitoring may be used for any piping with secondary containment designed for and capable of interstitial monitoring.

(1) Leak detection shall be conducted:

1. Continously, by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space or containment sump; or

2. Monthly, by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space or containment sump, such as visual inspection.

(2) The interstitial space or sump shall be maintained and kept free of water, debris or anything that could interfere with leak detection capabilities.

(3) At least every two years, any sump shall be visually inspected for integrity of sides and floor and tightness of piping penetration seals. Any automatic sensing device shall be tested for proper function.

135.5(6) *Release detection record keeping.* All UST system owners and operators must maintain records in accordance with 135.4(5) demonstrating compliance with all applicable requirements of this rule. These records must include the following:

a. All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for five years, or for another reasonable period of time determined by the department, from the date of installation;

b. The results of any sampling, testing, or monitoring must be maintained for at least one year, or for another reasonable period of time determined by the department, except that the results of tank tightness testing conducted in accordance with 135.5(4)*"c"* must be retained until the next test is conducted; and

c. Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation.

[**ARC 8469B**, IAB 1/13/10, effective 2/17/10 (See Delay note at end of chapter)]

567—135.6(455B) Release reporting, investigation, and confirmation.

135.6(1) *Reporting of suspected releases.* Owners and operators of UST systems must report to the department within 24 hours, or within 6 hours in accordance with 567—Chapter 131 if a hazardous condition exists as defined in 567—131.1(455B), or another reasonable time period specified by the department, and follow the procedures in 135.8(1) for any of the following conditions:

a. The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);

b. Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and

c. Monitoring results from a release detection method required under 135.5(2) and 135.5(3) that indicate a release may have occurred unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(2) In the case of inventory control, a second month of data does not confirm the initial result.

135.6(2) *Investigation due to off-site impacts.* When required by the department, owners and operators of UST systems must follow the procedures in 135.6(3) to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the department or brought to its attention by another party.

135.6(3) *Release investigation and confirmation steps.* Owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 135.6(1) within seven days, or another reasonable time period specified by the department, using either the following steps or another procedure approved by the department:

a. System test. Owners and operators must conduct tests (according to the requirements for tightness testing in 135.5(4)*"c"* and 135.5(5)*"b"*) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping or both.

(1) Owners and operators must repair, replace or upgrade the UST system and begin corrective action in accordance with rule 567—135.9(455B) if the test results for the system, tank, or delivery piping indicate a leak exists.

(2) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate a leak exists and if environmental contamination is not the basis for suspecting a release.

(3) Owners and operators must conduct a site check as described in paragraph *"b"* of this subrule if the test results for the system, tank, and delivery piping do not indicate a leak exists but environmental contamination is the basis for suspecting a release.

b. Site check. A certified groundwater professional must conduct a site check in accordance with the tank closure in place procedures as provided in 135.15(3) or they may conduct a Tier 1 assessment in accordance with subrule 135.9(3). Under either procedure, the certified groundwater professional must follow the policies and procedures applicable to sites where bedrock is encountered before groundwater as provided in 135.8(5) to avoid creating a preferential pathway for soil or groundwater contamination to reach a bedrock aquifer. The certified groundwater professional must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, the certified groundwater professional must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release.

(1) If the test results of the site check indicate action levels in 567—135.14(455B) have been exceeded, owners and operators must begin corrective action in accordance with rules 567—135.7(455B) to 567—135.12(455B).

(2) If the test results for the excavation zone or the UST site do not indicate a release has occurred, further investigation is not required.

135.6(4) *Reporting and cleanup of spills and overfills.*

a. Reportable releases. Owners and operators of UST systems must contain and immediately clean up a spill, overfill or any aboveground release, and report to the department within 24 hours, or within 6 hours in accordance with 567—Chapter 131 if a hazardous condition exists as defined in rule 567—131.1(455B) and begin corrective action in accordance with rules 567—135.7(455B) to 567—135.12(455B) in the following cases:

(1) Spill, overfill or any aboveground release of petroleum that results in a release to the environment that exceeds 25 gallons, causes a sheen on nearby surface water, impacts adjacent property, or contaminates groundwater; and

(2) Spill, overfill or any aboveground release of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR 302) as of September 13, 1988.

b. Nonreportable releases. Owners and operators of UST systems must contain and immediately clean up a spill, overfill or any aboveground release of petroleum that is less than 25 gallons and a spill, overfill or any aboveground release of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the department.

NOTE: Any spill or overfill that results in a hazardous condition as defined in rule 567—131.1(455B) must be reported within 6 hours. This includes the transporter of the product. A release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.

567—135.7(455B) Release response and corrective action for UST systems containing petroleum or hazardous substances.

135.7(1) *General.* Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this rule except

for USTs excluded under 135.1(3)*"b"* and UST systems subject to RCRA Subtitle C corrective action requirements under Section 3004(u) of the Resource Conservation and Recovery Act, as amended.

135.7(2) *Initial response.* Upon confirmation of a release in accordance with 135.6(3) or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release or within another reasonable period of time specified by the department:

a. Report the release to the department (e.g., by telephone or electronic mail);

b. Take immediate action to prevent any further release of the regulated substance into the environment; and

c. Identify and mitigate fire, explosion, and vapor hazards.

135.7(3) *Initial abatement measures and site check.*

a. Unless directed to do otherwise by the department, owners and operators must perform the following abatement measures:

(1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;

(2) Visually inspect any aboveground releases or exposed below-ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

(3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

(4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;

(5) Rescinded IAB 7/17/96, effective 8/15/96.

(6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with 135.7(5).

b. Within 20 days after release confirmation, or within another reasonable period of time determined by the department, owners and operators must submit a report to the department summarizing the initial abatement steps taken under paragraph *"a"* and any resulting information or data.

135.7(4) *Initial site characterization.* Rescinded IAB 7/17/96, effective 8/15/96.

135.7(5) *Free product assessment and removal.* At sites where investigations under 135.7(3)*"a"*(6) indicate 0.01 ft. or more of free product, owners and operators must immediately initiate a free product recovery assessment and submit a report in accordance with paragraph *"d"* and initiate interim free product removal while continuing, as necessary, any actions initiated under 135.7(2) to 135.7(4), or preparing for actions required under 567—135.8(455B) to 567—135.12(455B). Owners and operators must immediately begin interim free product removal by bailing or by installation and maintenance of passive skimming equipment until an alternative removal method is required by or approved by the department. A certified groundwater professional must initially determine the frequency of bailing and proper installation and maintenance of the skimming equipment based on a determination of the recharge rate of the free product. The department may approve implementation of this interim removal process by persons not certified as groundwater professionals. For approval a certified groundwater professional must submit (1) sufficient documentation establishing that the bailing or skimming system has been adequately designed and tested, and (2) a written plan for regular maintenance, reporting and supervision by a certified groundwater professional. Interim free product recovery reports must be submitted to the department on a monthly basis and on forms provided by the department. In meeting the requirements of this subrule, owners and operators must:

a. Conduct free product removal at a frequency determined by the recharge rate of the product and in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in compliance with applicable local,

state and federal regulations. Unless approved by the department, free product assessment and recovery activities must be conducted by a certified groundwater professional. Owners and operators must report the results of free product removal activities on forms designated by the department;

b. Use abatement of free product migration as a minimum objective for the design of the free product removal system. Free product recovery systems must be designed to remove free product to the maximum extent practicable;

c. Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

d. Free product recovery assessment and report. Unless directed to do otherwise by the department, prepare and submit to the department, within 45 days after confirming a release, a free product recovery assessment report and a proposal for subsequent free product removal activities. The free product recovery assessment report and removal proposal must contain at least the following information:

(1) The name of the person(s) responsible for implementing the free product removal measures;

(2) The estimated quantity, type and thickness of free product observed or measured in monitoring wells, boreholes, and excavations, the recharge rate in all affected monitoring wells and a detailed description of the procedures used to determine the recharge rate;

(3) A detailed justification for the free product removal technology proposed for the site. Base the justification narrative on professional judgment considering the characteristics of the free product plume (i.e., estimated volume, type of product, thickness, extent), an assessment of cost effectiveness based on recovery costs compared to alternative methods, site hydrology and geology, when the release event occurred, testing conducted to verify design assumptions and the potential for petroleum vapors or explosive conditions to occur in enclosed spaces. Proposals for removal systems other than hand bailing or passive skimming systems must be completed and submitted on a format consistent with the department's corrective action design report.

(4) A schematic and narrative description of the free product recovery system used;

(5) Whether any discharge will take place on site or off site during the recovery operation and where this discharge will be located;

(6) A schematic and narrative description of the treatment system, and the effluent quality expected from any discharge;

(7) The steps that have been or are being taken to obtain necessary permits for any discharge;

(8) The disposition of the recovered free product;

(9) Free product plume definition and map. The extent of free product in groundwater must be assessed. The number and location of wells and separation distance between the wells used to define the free product plume must be based on the receptors present and the site hydrology and geology. A minimum of five monitoring wells are required to construct the plume map. If the groundwater professional can adequately define the plume using other technology as specified in department guidance, fewer than five wells may be used. The boundary of the plume may be determined by linear interpolation consistent with the methods described in 135.10(2)*"f"*(3); and

(10) The estimated volume of free product present, how the volume was calculated, recoverable volume and estimated recovery time.

e. The department will review the free product assessment report; and, if approved, the owner or operator must implement the installation of the approved recovery system within 60 days or other time period approved by the department.

f. Termination of free product recovery activities. Owners and operators may propose to the department to terminate free product recovery activities when significant amounts of hydrocarbons are not being recovered. The department will consider proposals to terminate free product recovery when the amount of product collected from a monitoring well is equal to or less than 0.1 gallon each month for a year unless another plan is approved by the department. When free product activities have been terminated, owners and operators must inspect the monitoring wells monthly for at least a year. The department must be notified and free product recovery activities reinitiated if during the monthly well

inspections it is determined the product thickness in a monitoring well exceeds 0.02 foot. The monthly well inspection records must be kept available for review by the department.

g. Unless directed to do otherwise by the department, prepare and submit to the department within 180 days after confirming a release, a Tier 2 site cleanup report.

567—135.8(455B) Risk-based corrective action.

135.8(1) *General.* The objective of risk-based corrective action is to effectively evaluate the risks posed by contamination to human health, safety and the environment using a progressively more site-specific, three-tiered approach to site assessment and data analysis. Based on the tiered assessment, a corrective action response is determined sufficient to remove or minimize risks to acceptable levels. Corrective action response includes a broad range of options including reduction of contaminant concentrations through active or passive methods, monitoring of contamination, use of technological controls or institutional controls.

a. Tier 1. The purpose of a Tier 1 assessment is to identify sites which do not pose an unreasonable risk to public health and safety or the environment based on limited site data. The objective is to determine maximum concentrations of chemicals of concern at the source of a release(s) in soil and groundwater. The Tier 1 assessment assumes worst-case scenarios in which actual or potential receptors could be exposed to these chemicals at maximum concentrations through certain soil and groundwater pathways. The point of exposure is assumed to be the source showing maximum concentrations. Risk-based screening levels (Tier 1 levels) contained in the Tier 1 Look-Up Table have been derived from models which use conservative assumptions to predict exposure to actual and potential receptors. (These models and default assumptions are contained in Appendix A.) If Tier 1 levels are not exceeded for a pathway, that pathway may not require further assessment. If the maximum concentrations exceed a Tier 1 level, the options are to conduct a more extensive Tier 2 assessment, apply an institutional control, or in limited circumstances excavate contaminated soil to below Tier 1 levels. If all pathways clear the Tier 1 levels, it is possible for the site to obtain a no action required classification.

b. Tier 2. The purpose of a Tier 2 assessment is to use site-specific data to assess the risk from chemicals of concern to existing receptors and potential receptors using fate and transport models in accordance with 567—135.10(455B). See 135.10(2)*"a."*

c. Tier 3. Where site conditions may not be adequately addressed by Tier 2 procedures, a Tier 3 assessment may provide more accurate risk assessment. The purpose of Tier 3 is to identify reasonable exposure levels of chemicals of concern and to assess the risk of exposure to existing and potential receptors based on additional site assessment information, probabilistic evaluations, or sophisticated chemical fate and transport models in accordance with 567—135.11(455B).

d. Notification. Whenever the department requires a tiered site assessment and a public water supply well is within 2,500 feet of a leaking underground storage tank site, the department will notify the public water supply operator.

e. Pathway reevaluation. Prior to issuance of a no further action certificate in accordance with 135.12(10) and Iowa Code section 455B.474(1)*"h"*(3), if it is determined that the conditions for an individual pathway that has been classified as "no action required" no longer exist, or the site presents an unreasonable risk to a public water supply well and the model used to obtain the pathway clearance underpredicts the actual contaminant plume, the individual pathway shall be further assessed consistent with the risk-based corrective action provisions in rules 567—135.8(455B) through 567—135.12(455B).

135.8(2) *Certified groundwater professional.* All assessment, corrective action, data analysis and report development required under rules 567—135.6(455B) to 567—135.12(455B) must be conducted by or under the supervision of a certified groundwater professional in accordance with these rules and department guidance as specified.

135.8(3) *Chemicals of concern.* Soil and groundwater samples from releases of petroleum regulated substances must always be analyzed for the presence of benzene, ethylbenzene, toluene, and xylenes. In addition, if the release is suspected to include any petroleum regulated substance other than gasoline or gasoline blends, or if the source of the release is unknown, the samples must be tested for the presence of Total Extractable Hydrocarbons (TEH). Appendices A and B and department Tier 2 guidance define

a method for converting TEH values to a default concentration for naphthalene, benzo(a)pyrene, benz(a)anthracene and chrysene and conversion back to a representative TEH value. These default values must be used in order to apply Tier 2 modeling to these constituents in the absence of accurate laboratory analysis. At Tier 2 and Tier 3, owners and operators have the option of analyzing for these specific constituents and applying them to the specific target levels in Appendices A and B instead of using the TEH conversion method if an approved laboratory and laboratory technique are used.

135.8(4) *Boring depth for sampling.* When drilling for the placement of groundwater monitoring wells, if groundwater is encountered, drilling must continue to the maximum of 10 feet below the first encountered groundwater or to the bottom of soil contamination as estimated by field screening. If groundwater is not encountered, drilling must continue to the deeper of 10 feet below the soil contamination as estimated by field screening or 75 feet from the ground surface.

135.8(5) *Bedrock aquifer assessment.* Prior to conducting any groundwater drilling, a groundwater professional must determine if there is a potential to encounter bedrock before groundwater. These potential areas include (1) areas where karst features or outcrops exist in the vicinity and (2) areas with bedrock less than 50 feet from the surface as illustrated in Tier 1 and Tier 2 guidance. The purpose of this determination is to prevent drilling through contaminated subsurface areas thereby creating a preferential pathway to a bedrock aquifer. If the first encountered groundwater is above bedrock but near the bedrock surface or fluctuates above and below bedrock, the groundwater professional should evaluate the subsurface geology and aquifer characteristics to determine the potential for creating a preferential pathway. If it is determined that the aquifer acts like a nongranular aquifer as provided in 135.10(3)*"a"* or bedrock is encountered before groundwater, the groundwater professional must conduct a Tier 2 assessment for all pathways under 567—135.10(455B), including the specified bedrock procedures under 135.10(3).

If the first encountered groundwater is above bedrock with sufficient separation and aquifer characteristics to establish that it acts as a granular aquifer, site assessment may proceed under the site check procedure in 567—135.6(455B), the Tier 1 procedure in 567—135.9(455B) or the Tier 2 procedure in 567—135.10(455B) as would be customary regardless of the bedrock designation. However, even under this condition, drilling through bedrock should be avoided in contaminated areas.
[**ARC 7621B**, IAB 3/11/09, effective 4/15/09]

567—135.9(455B) Tier 1 site assessment policy and procedure.

135.9(1) *General.* The main objective of a Tier 1 site assessment is to reasonably determine the highest concentrations of chemicals of concern which would be associated with any suspected or confirmed release and an accurate identification of applicable receptors. In addition, the placement and depth of borings and the construction of monitoring wells must be sufficient to determine the sources of all releases, the vertical extent of contamination, an accurate description of site stratigraphy, and a reliable determination of groundwater flow direction.

a. *Pathway assessment.* The pathways to be evaluated at Tier 1 are the groundwater ingestion pathway, soil leaching to groundwater pathway, groundwater vapor to enclosed space pathway, soil vapor to enclosed space pathway, soil to water line pathway, groundwater to water line pathway and the surface water pathway. Assessment requires a determination of whether a pathway is complete, an evaluation of actual and potential receptors, and a determination of whether conditions are satisfied for obtaining no further action clearance for individual pathways or for obtaining a complete site classification of "no action required." A pathway is considered complete if a chemical of concern has a route which could be followed to reach an actual or potential receptor.

b. *Pathway clearance.* If field data for an individual pathway does not exceed the applicable Tier 1 levels or if a pathway is incomplete, no further action is required to evaluate the pathway unless otherwise specified in these rules. If the field data for a pathway exceeds the applicable Tier 1 level(s) in the "Iowa Tier 1 Look-up Table," the response is to conduct further assessment under Tier 2 or Tier 3 unless an effective institutional control is approved. In limited circumstances excavation of contaminated soils may be used as an option to obtain pathway clearance. If further site assessment indicates site data exceeds an applicable Tier 1 level(s) for a previously cleared pathway or the conditions justifying a

determination of pathway incompleteness change, that pathway must be reevaluated as part of a Tier 2 or Tier 3 assessment.

c. Chemical group clearance. If field data for all chemicals of concern within a designated group of chemicals is below the Tier 1 levels, no further action is required as to the group of chemicals unless otherwise specified in these rules. Group one consists of benzene, ethylbenzene, toluene, and xylenes (BTEX). Group two consists of naphthalene, benzo(a)pyrene, benz(a)anthracene and chrysene; TEH default values are incorporated into the Iowa Tier 1 Look-Up Table and Appendix A for group two chemicals.

d. Site classification. A site can be classified as no action required only after all pathways have met the conditions for pathway clearance as provided in this rule.

e. Groundwater sampling procedure. Groundwater sampling and field screening must be conducted in accordance with department Tier 1 guidance. A minimum of three properly constructed groundwater monitoring wells must be installed, subject to the limitations on maximum drilling depths, for the purpose of identifying maximum concentrations of groundwater contamination, suspected sources of releases, and groundwater flow direction.

(1) Field screening must be used to locate suspected releases and to determine locations with the greatest concentrations of contamination. Field screening is required as per department guidance at each former and current tank basin, each former and current pump island, along the piping, and at any other areas of actual or suspected releases. In placing monitoring wells, the following must be considered: field screening data, available current and historical information regarding the releases, tank and piping layout, site conditions, and drilling data available from sites in the vicinity. At least one well must be placed at each suspected source of release which shall include at a minimum: the pump island with the greatest field screening level, each current and former underground storage tank basin, and if field screening shows greater levels than at the pump islands or tank basins, at other suspected sources of releases. As a general rule, wells should be installed outside of the tank basin through native soils but as close to the tank basin as feasible. A well must be installed in a presumed downgradient direction and within 30 feet of the sample with the greatest field screening level. Three of the wells must be placed in a triangular arrangement to determine groundwater flow direction.

(2) Where the circumstances which prompt a Tier 1 assessment identify a discrete source and cause of a release, and the groundwater professional is able to rule out other suspected sources or contributing sources such as pump islands, piping runs and tank basins, the application of field screening and groundwater well placement may be limited to the known source.

f. Soil sampling procedure. The objective of soil sampling is to identify the maximum concentrations of soil contamination in the vadose and saturated zones and to identify sources of releases. The same principles stated above apply to soil sampling. Soil samples must be taken from borings with the greatest field screening levels even if the boring will not be converted to a monitoring well. At a minimum, soil and groundwater samples must be collected for analysis from all borings which are converted to monitoring wells.

Iowa Tier 1 Look-Up Table

Media	Exposure Pathway	Receptor	Group 1				Group 2: TEH	
			Benzene	Toluene	Ethylbenzene	Xylenes	Diesel*	Waste Oil
Groundwater (µg/L)	Groundwater Ingestion	Actual	5	1,000	700	10,000	1,200	400
		Potential	290	7,300	3,700	73,000	75,000	40,000
	Groundwater Vapor to Enclosed Space	All	1,540	20,190	46,000	NA	2,200,000	NA
	Groundwater to Water Line	PVC or Gasketed Mains	7,500	6,250	40,000	48,000	75,000	40,000
		PVC or Gasketed Service Lines	3,750	3,120	20,000	24,000	75,000	40,000
		PE/PB/AC Mains or Service Lines	200	3,120	3,400	19,000	75,000	40,000
	Surface Water	All	290	1,000	3,700	73,000	75,000	40,000
Soil (mg/kg)	Soil Leaching to Groundwater	All	0.54	42	15	NA	3,800	NA
	Soil Vapor to Enclosed Space	All	1.16	48	79	NA	47,500	NA
	Soil to Water Line	All	2.0	3.2	45	52	10,500	NA

NA: Not applicable. There are no limits for the chemical for the pathway, because for groundwater pathways the concentration for the designated risk would be greater than the solubility of the pure chemical in water, and for soil pathways the concentration for the designated risk would be greater than the soil concentration if pure chemical were present in the soil.

TEH: Total Extractable Hydrocarbons. The TEH value is based on risks from naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. Refer to Appendix B for further details.

Diesel*: Standards in the Diesel column apply to all low volatile petroleum hydrocarbons except waste oil.

135.9(2) *Conditions requiring Tier 1 site assessment.* Unless owners and operators choose to conduct a Tier 2 assessment, the presence of bedrock requires a Tier 2 assessment as provided in 135.8(5), or these rules otherwise require preparation of a Tier 2 site assessment, a Tier 1 site assessment must be completed in response to release confirmation as provided in rule 567—135.6(455B), or tank closure investigation under 567—135.15(455B), or other reliable laboratory analysis which confirms the presence of contamination above the action levels in 567—135.14(455B).

135.9(3) *Tier 1 assessment report.* Unless directed to do otherwise by the department or the owners or operators choose to prepare a Tier 2 site cleanup report, owners and operators must assemble information about the site and the nature of the release in accordance with the department Tier 1 guidance, including information gained while confirming the release under 567—135.6(455B), tank closure under 567—135.15(455B) or completing the initial abatement measures in 135.7(1) and 135.7(2). This information must include, but is not necessarily limited to, the following:

a. Data on the nature and estimated quantity of release.

b. Results of any release investigation and confirmation actions required by subrule 135.6(3).

c. Results of the free product investigations required under 135.7(3)*"a"*(6), to be used by owners and operators to determine whether free product must be recovered under 135.7(5).

d. Chronology of property ownership and underground storage tank ownership, identification of the person(s) having control of, or having responsibility for the daily operation of the underground storage tanks and the operational history of the underground storage tank system. The operational history shall include, but is not limited to, a description of or suspected known subsurface or aboveground releases, past remediation or other corrective action, type of petroleum product stored, recent tank and

piping tightness test results, any underground storage tank system repairs, upgrades or replacements and the underground storage tank and piping leak detection method being utilized. The operational history shall confirm that current release detection methods and record keeping comply with the requirements of 567—135.5(455B), that all release detection records have been reviewed and report any evidence that a release detection standard has been exceeded as provided in 135.5(4) and 135.5(5).

e. Appropriate diagrams of the site and the underground storage tank system and surrounding land use, identifying site boundaries and existing structures and uses such as residential properties, schools, hospitals, child care facilities and a general description of relevant land use restrictions and known future land use.

f. Current proof of financial responsibility as required by 567—136.19(455B) and 567—136.20(455B) and the status of coverage for corrective action under any applicable financial assurance mechanism or other financial assistance program.

g. A receptor survey including but not limited to the following: existing buildings, enclosed spaces (basements, crawl spaces, utility vaults, etc.), conduits (gravity drain lines, sanitary and storm sewer mains and service lines), water lines and other utilities within 500 feet of the source. For conduits and enclosed spaces, there must be a description of construction material, conduit backfill material, slope of conduit and trenches (include flow direction of sewers), burial depth of utilities or subsurface enclosed spaces, and the relationship to groundwater elevations.

h. An explosive vapor survey of enclosed spaces where there may be the potential for buildup of explosive vapors. The groundwater professional must provide a specific justification for not conducting an explosive vapor survey.

i. A survey of all surface water bodies within 200 feet of the source.

j. A survey of all active, abandoned and plugged groundwater wells within 1,000 feet of the source with a description of construction and present or future use.

k. Accurate and legible site maps showing the location of all groundwater monitoring wells, soil borings, field screening locations and screening values, and monitoring well and soil boring construction logs.

l. A tabulation of all laboratory analytical results for chemicals of concern and copies of the laboratory analytical reports.

m. Results of hydraulic conductivity testing and description of the procedures utilized.

n. A Tier 1 site assessment in accordance with the department's Tier 1 guidance. The Tier 1 report shall be submitted on forms and in a format prescribed by this guidance. The Tier 1 data analysis shall be performed by using computer software developed by the department or by using the computer software's hard-copy version.

135.9(4) *Groundwater ingestion pathway assessment.* The groundwater ingestion pathway addresses the potential for human ingestion of petroleum-regulated substances from existing groundwater wells or potential drinking water wells.

a. *Pathway completeness.* This pathway is considered complete if: (1) there is a drinking or non-drinking water well within 1,000 feet of the source(s) exhibiting the maximum concentrations of the chemicals of concern; or (2) the first encountered groundwater is a protected groundwater source.

b. *Receptor evaluation.* A drinking or non-drinking water well within 1,000 feet of the source(s) is an actual receptor. The Tier 1 levels for actual receptors apply to drinking water wells and the Tier 1 levels for potential receptors apply to non-drinking water wells. Potential receptor points of exposure exist if the first encountered groundwater is a protected groundwater source but no actual receptors presently exist within 1,000 feet of the source.

c. *Pathway clearance.* If the pathway is incomplete, no further action is required for this pathway. If the Tier 1 level for actual or potential receptors is not exceeded, no further action is required for this pathway. Groundwater wells that are actual or potential receptors may be plugged in accordance with 567—Chapter 39 and 567—Chapter 49 and may result in no further action clearance if the groundwater is not a protected groundwater source and the pathway is thereby incomplete.

d. *Corrective action response.* If maximum concentrations exceed the applicable Tier 1 levels for either actual or potential receptors, a Tier 2 assessment must be conducted unless effective institutional

controls are implemented as provided below. Technological controls are not acceptable at Tier 1 for this pathway. Abandonment and plugging of drinking and non-drinking water wells in accordance with 567—Chapters 39 and 49 is an acceptable corrective action response.

e. Use of institutional controls. To apply an effective institutional control, if drinking or non-drinking water wells are present within 1,000 feet of the source, and the applicable Tier 1 level is exceeded, the well(s) for which there is an exceedence must be properly plugged. If the groundwater is a protected groundwater source and the maximum concentrations do not exceed the Tier 1 level for potential receptors but do exceed the Tier 1 level for actual receptors, the owner or operator must provide notification of site conditions on a department form to the department water supply section, or if a county has delegated authority, then the designated county authority responsible for issuing private water supply construction permits or regulating non-public water well construction as provided in 567—Chapters 38 and 49.

If the groundwater is a protected source and the maximum concentrations exceed the Tier 1 level for potential receptors, the owner or operator must (1) implement an institutional control prohibiting the use of the groundwater for installation of drinking and non-drinking water wells within 1,000 feet of the source; and (2) provide notification as provided above. If an effective institutional control is not feasible, a Tier 2 assessment must be performed for this pathway in accordance with rule 567—135.10(455B).

f. Receptor evaluation for public water supply wells. Rescinded IAB 3/11/09, effective 4/15/09.

135.9(5) *Soil leaching to groundwater pathway assessment.* This pathway addresses the potential for soil contamination to leach to groundwater creating a risk of human exposure through the groundwater ingestion pathway.

a. Pathway completeness. If the groundwater ingestion pathway is complete, the soil leaching to groundwater pathway is considered complete.

b. Receptor evaluation. There is a single receptor type for this pathway and one applicable Tier 1 level.

c. Pathway clearance. If the pathway is incomplete or the pathway is complete and the maximum concentrations of chemicals of concern do not exceed the Tier 1 levels, no further action is required for assessment of this pathway.

d. Corrective action response. If the Tier 1 levels are exceeded for this pathway, a Tier 2 assessment must be conducted or alternatively, institutional controls or soil excavation may be undertaken in accordance with 135.9(7)*"h."*

e. Use of institutional controls. Institutional controls must satisfy the conditions applicable to the groundwater ingestion pathway as provided in 135.9(4)*"e."*

135.9(6) *Groundwater vapor to enclosed space pathway assessment.* This pathway addresses the potential for vapors from contaminated groundwater to migrate to enclosed spaces where humans could inhale chemicals of concern at unacceptable levels. This pathway assessment assumes the health-based Tier 1 levels will adequately protect against any associated short- and long-term explosive risks.

a. Pathway completeness. This pathway is always considered complete for purposes of Tier 1 and must be evaluated.

b. Explosive vapor survey. An explosive vapor survey must be conducted in accordance with procedures outlined in the department Tier 1 guidance. If potentially explosive levels are detected, the groundwater professional must notify the owner or operator with instructions to report the condition in accordance with 567—Chapter 131. The owner or operator must begin immediate response and abatement procedures in accordance with 567—135.7(455B) and 567—Chapter 133.

c. Receptor evaluation. For purposes of Tier 1, there is one receptor type for this pathway and the Tier 1 level applies regardless of the existence of actual or potential receptors.

d. Pathway clearance. No further action is required for this pathway, if the maximum groundwater concentrations do not exceed the Tier 1 levels for this pathway.

e. Corrective action response. If the maximum concentrations exceed the Tier 1 levels for this pathway, a Tier 2 assessment of this pathway must be conducted unless institutional controls are implemented. Technological controls are not acceptable at Tier 1 for this pathway.

f. *Use of institutional controls.* An institutional control must be effective to prohibit the placement of enclosed space receptors within 500 feet of the source.

135.9(7) *Soil vapor to enclosed space pathway assessment.* This pathway addresses the potential for vapors from contaminated soils to migrate to enclosed spaces where humans could inhale chemicals of concern at unacceptable levels. This pathway assessment assumes health-based screening levels at Tier 1 will adequately protect against short- and long-term explosive risks.

a. *Pathway completeness.* This pathway is always considered complete for purposes of Tier 1 and must be evaluated.

b. *Explosive vapor survey.* An explosive vapor survey must be conducted in accordance with procedures outlined in the department Tier 1 guidance. If potentially explosive levels are detected, the groundwater professional must notify the owner or operator with instructions to report the condition in accordance with 567—Chapter 131. The owner or operator must begin immediate response and abatement procedures in accordance with 567—135.7(455B) and 567—Chapter 133.

c. *Receptor evaluation.* For purposes of Tier 1, there is one receptor type for this pathway, and the Tier 1 level applies regardless of existing or potential receptors.

d. *Pathway clearance.* No further action is required for this pathway, if the maximum soil concentrations do not exceed the Tier 1 levels for this pathway. If the Tier 1 levels are exceeded, soil gas measurements may be taken in accordance with the Tier 2 guidance at the area(s) of maximum concentration. Subject to confirmation sampling, if the soil gas measurements do not exceed the target levels in 135.10(7)*"f,"* no further action is required for this pathway. If the Tier 1 level is not exceeded but the soil gas measurement exceeds the target level, further action is required for the pathway.

e. *Soil gas samples.* To establish that the soil gas measurement is representative of the highest expected levels, a groundwater professional must obtain two soil gas samples taken at least two weeks apart. One of the samples must be taken below the typical frostline depth during a seasonal period of lowest groundwater elevation.

f. *Corrective action response.* If the maximum concentrations exceed the Tier 1 levels and the soil gas measurements exceed target levels for this pathway, or if no soil gas measurement was taken, a Tier 2 assessment of this pathway must be conducted unless institutional controls are implemented or soil excavation is conducted as provided below. Technological controls are not acceptable at Tier 1 for this pathway.

g. *Use of institutional controls.* An institutional control must be effective to eliminate the placement of enclosed space receptors within 500 feet of the source.

h. *Soil excavation.* Excavation of contaminated soils for the purpose of removing soils contaminated above the Tier 1 levels is permissible as an alternative to conducting a Tier 2 assessment. Adequate field screening methods must be used to identify maximum concentrations during excavation. At a minimum, one soil sample must be taken for field screening every 100 square feet of the base and each sidewall. Soil samples must be taken for laboratory analysis at least every 400 square feet of the base and each sidewall of the excavated area to confirm that remaining concentrations are below Tier 1 levels. If the excavation is less than 400 square feet, a minimum of one sample must be analyzed for each sidewall and the base.

135.9(8) *Groundwater to water line pathway assessment.* This pathway addresses the potential for creating a drinking water ingestion risk due to contact with water lines and causing infusion to the drinking water.

a. *Pathway completeness and receptor evaluation.*

(1) Actual receptors. This pathway is considered complete for an actual receptor if there is an existing water line within 200 feet of the source and the first encountered groundwater is less than 20 feet below ground surface.

(2) Potential receptors. This pathway is considered complete for a potential receptor if the first encountered groundwater is less than 20 feet below ground surface.

b. *Pathway clearance.* If the pathway is not complete, no further action is required for this pathway. If the pathway is complete and the maximum concentrations of all chemicals of concern do not exceed the Tier 1 levels for this pathway, no further action is required for this pathway.

c. Utility company notification. The utility company which supplies water service to the area must be notified of all actual and potential water line impacts as soon as knowledge of a potential risk is determined.

d. Corrective action response.

(1) For actual receptors, if the Tier 1 levels are exceeded for this pathway, all water lines within 200 feet must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards set forth in 567—Chapter 43 and with no less than nitrile or FKM gaskets or as otherwise approved by the department, or the water lines must be relocated beyond the 200-foot distance from the source. A Tier 2 assessment must be conducted for this pathway if lines are not replaced or relocated.

(2) For potential receptors, upon utility company notification, no further action will be required for this pathway.

135.9(9) *Soil to water line pathway assessment.* This pathway addresses the potential for creating a drinking water ingestion risk due to contact with water lines and infusion into the drinking water.

a. Pathway completeness and receptor evaluation.

(1) Actual receptors. This pathway is considered complete for an actual receptor if a water line exists within 200 feet of the source.

(2) Potential receptors. This pathway is always considered complete for potential receptors.

b. Pathway clearance. If the pathway is not complete for actual receptors, no further action is required for this pathway. If the pathway is complete for actual receptors and the maximum concentrations of all chemicals of concern do not exceed Tier 1 levels for this pathway, no further action is required. For potential receptors, upon utility company notification, no further action will be required for this pathway for potential receptors.

c. Utility company notification. The utility company which supplies water service to the area must be notified of all actual and potential water line impacts as soon as knowledge of a potential risk is determined.

d. Corrective action response. For actual receptors, if the Tier 1 levels are exceeded for this pathway, all water lines within 200 feet must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards set forth in 567—Chapter 43 and with no less than nitrile or FKM gaskets or as otherwise approved by the department, or the water lines must be relocated beyond the 200-foot distance from the source. Excavation of soils to below Tier 1 levels may be undertaken in accordance with 135.9(7)*"h."* If none of these options is implemented, a Tier 2 assessment must be conducted for this pathway.

135.9(10) *Surface water pathway assessment.* This pathway addresses the potential for contaminated groundwater to impact surface water bodies creating risks to human health and aquatic life.

a. Pathway completeness. This pathway is considered complete if a surface water body is present within 200 feet of the source. For purposes of Tier 1, surface water bodies include both general use segments and designated use segments as provided in 567—subrule 61.3(1).

b. Receptor evaluation. The Tier 1 levels for this pathway only apply to designated use segments of surface water bodies as provided in 567—subrules 61.3(1) and 61.3(5). The point of compliance is the source with the highest concentrations of chemicals of concern. General use segments of surface water bodies as provided in 567—paragraph 61.3(1)*"a"* are only subject to the visual inspection criteria.

c. Visual inspection requirements. A visual inspection of all surface water bodies within 200 feet of the source must be conducted to determine if there is evidence of a sheen on the water or there is evidence of petroleum residue along the bank. If a sheen or residue is evident or has been reported to be present, the groundwater professional must make a sufficient investigation to reasonably determine its source. If in the opinion of the groundwater professional, the sheen is not associated with the underground storage tank site, the professional must report and reasonably justify this opinion. If in the opinion of the groundwater professional the sheen is not a petroleum-regulated substance, a sample must be laboratory tested in accordance with 567—135.16(455B) to confirm it is not a petroleum-regulated substance.

d. *Pathway clearance.* If the pathway is not complete or it is complete and the maximum concentrations of all chemicals of concern at the point of compliance do not exceed the Tier 1 levels and there is no petroleum sheen or residue attributable to the site, no further action is required for assessment of this pathway.

e. *Corrective action response.* If a Tier 1 level is exceeded for any chemical of concern for a designated use segment within 200 feet of the source, or the groundwater professional determines the presence of a petroleum-regulated substance sheen or residue, a Tier 2 assessment of this pathway must be conducted.

135.9(11) *Tier 1 submission and review procedures.*

a. Within 90 calendar days of release confirmation or another reasonable period of time determined by the department, owners and operators must submit to the department a Tier 1 report in a format prescribed by the department and in accordance with these rules and the department Tier 1 guidance.

b. If the owner or operator elects to prepare a Tier 2 site cleanup report instead of a Tier 1 assessment, the department must be notified in writing prior to the expiration of the Tier 1 submission deadline. The Tier 2 site cleanup report must be submitted to the department in accordance with rule 567—135.10(455B) within 180 calendar days of release confirmation or another reasonable period of time determined by the department.

c. Tier 1 report completeness and accuracy. A Tier 1 report is considered to be complete if it contains all the information and data required by this rule and the department Tier 1 guidance. The report is accurate if the information and data is reasonably reliable based first on application of the standards in these rules and department guidance and second, generally accepted industry standards.

d. The certified groundwater professional shall include the following certification with the Tier 1 site assessment report:

I, _____, Groundwater Professional Certification No. _____, am familiar with all applicable requirements of Iowa Code section 455B.474 and all rules and procedures adopted thereunder including, but not limited to, 567—Chapter 135 and the Department of Natural Resources Tier 1 guidance. Based on my knowledge of those documents and information I have prepared and reviewed regarding this site, UST Registration No. _____, LUST No._____ I certify that this document is complete and accurate as provided in 567 IAC 135.9(11)*"c"* and meets the applicable requirements of the Tier 1 site assessment.

Signature:

Date:

e. Upon receipt of the Tier 1 report, the department may review it by reliance on the groundwater professional's certification and a summary review for completeness and accuracy or may undertake a more complete review to determine completeness and accuracy and compliance with department rules and guidance. If the Tier 1 report proposes to classify the site "no action required," the department may review the report as provided in 135.9(11)*"g."*

f. If a "no action required" site classification is not proposed, the department must within 60 days approve the Tier 1 report for purposes of completeness or disapprove of the report upon a finding of incompleteness, inaccuracy or noncompliance with these rules. If no decision is made within this time period, the report is deemed to be accepted for purposes of completeness. The department retains the authority to review the report at the time a no action required site classification is proposed.

g. No action required site classification review. The department will review each Tier 1 report which proposes to classify a site as "no action required" to determine whether the data and information are complete and accurate, the data and information comply with department rules and guidance and the site classification proposal is reasonably supported by the data and information.

135.9(12) *Tier 1 site classification and corrective action response.*

a. No action required site classification. At Tier 1, a site is only eligible for a "no action required" classification. To be classified as no action required, each pathway must meet the requirements for pathway clearance as specified in this rule. If the department determines a no action required site classification is appropriate, a no further action certificate will be issued as provided in 135.12(10).

b. Where an individual pathway or a chemical group meets the requirements for clearance but the site is not entitled to a no action required classification, only those pathways and chemical groups which do not meet the no further action requirements must be evaluated as part of a Tier 2 assessment as provided in rule 567—135.10(455B).

c. Compliance monitoring and confirmation sampling. Compliance monitoring is not an acceptable corrective action at Tier 1. Except for soil gas sampling under 135.9(7), confirmation sampling to verify a sample does not exceed a Tier 1 level is not required. However, the department retains the authority to require confirmation sampling from existing groundwater monitoring wells if a no action required classification is being proposed at Tier 1 and the department has a reasonable basis to question the representative validity of the samples based on, for example, the seasonal bias of the sampling, evidence of multiple sources of releases, marginal groundwater monitoring well locations and analytical variability.

d. *Expedited corrective action.* Expedited corrective action is permissible in accordance with 135.12(11).

[**ARC 7621B**, IAB 3/11/09, effective 4/15/09; **ARC 9011B**, IAB 8/25/10, effective 9/29/10]

567—135.10(455B) Tier 2 site assessment policy and procedure.

135.10(1) *General conditions.* A Tier 2 site assessment must be conducted and a site cleanup report submitted for all sites which have not obtained a no action required site classification and for all pathways and chemicals of concern groups that have not obtained no further action clearance as provided in 567—135.9(455B). If in the course of conducting a Tier 2 assessment, data indicates the conditions for pathway clearance under Tier 1 no longer exist, the pathway shall be further assessed under this rule. The Tier 2 assessment and report must be completed whenever free product is discovered as provided in 567—135.7(455B). If the owner or operator elects to complete the Tier 2 site assessment without doing a Tier 1 assessment, all the Tier 1 requirements as provided in 135.9(455B) must be met in addition to requirements under this rule.

a. *Guidance.* The Tier 2 site assessment shall be conducted in accordance with the department's "Tier 2 Site Assessment Guidance" and these rules. The site cleanup report shall be submitted on forms and in a format prescribed by this guidance. The Tier 2 data analysis shall be performed by using computer software developed by the department or by using the computer software's hard-copy version.

b. *Classification.* At Tier 2, individual pathways may be classified as high risk or low risk or no action required and separate classification criteria may apply to actual and potential receptors for any pathway. A single pathway may have multiple classifications based on actual or potential receptor evaluations. A pathway must meet both the criteria for actual and potential receptors for the pathway to obtain a classification of no action required. Sites may have multiple pathway classifications. For a site to obtain a no action required classification, all pathways must meet the individual pathway criteria for no action required classification.

c. *Public right-of-way.* As a general rule, public right-of-way will not be considered an area of potential receptor exposure except for potential sanitary sewer evaluation under the soil and groundwater vapor pathways, subrules 135.10(6) and 135.10(7).

135.10(2) *General Tier 2 assessment procedures.*

a. *Objectives.* The objective of a Tier 2 assessment is to collect site-specific data and with the use of Tier 2 modeling determine what actual or potential receptors could be impacted by chemicals of concern and what concentrations at the source are predicted to achieve protection of these receptors. Both Tier 1 and Tier 2 are based on achieving similar levels of protection of human health, safety and the environment.

b. *Groundwater modeling.* Tier 2 uses fate and transport models to predict the maximum distance groundwater contamination is expected to move and the distribution of concentrations of chemicals of concern within this area. The model is used for two basic purposes. One, it is used to predict at what levels of concentration contamination would be expected to impact actual and potential receptors. Two, it is used to determine a concentration at the source which if achieved, and after dispersion and degradation, would protect actual and potential receptors at the point of exposure. In predicting the transport of

contaminants, the models assume the contaminant plume is at "steady state" such that concentrations throughout the plume have reached a maximum level and are steady or decreasing. The Tier 2 models are only designed to predict transport in a direct line between the source and downgradient to a receptor. In order to more reasonably define a modeled plume in all directions, paragraph *"i"* defines a method of decreasing modeled concentrations as a percentage of their distance in degrees from the downgradient direction.

c. Soil vapor models. The soil vapor models are vertical transport models and do not use modeling to predict soil contaminant transport horizontally to receptors.

d. Soil leaching to groundwater modeling. The soil leaching to groundwater model is a model that predicts the maximum concentrations of chemicals of concern that would be expected in groundwater due to vertical leaching from the area of maximum soil concentrations and then incorporates the groundwater transport models to predict contaminant transport through groundwater pathways.

e. Modeling default parameters. The Tier 2 model formulas and applicable parameters are designated in Appendix B and must be followed unless otherwise specified in these rules. Unless otherwise specified, target levels at a point of exposure may be the Tier 1 level(s) or may be determined using site-specific parameters. The target level at a point of exposure is calculated using the Tier 1 formulas in Appendix A and either site-specific measurements or the default values for those parameters identified as "optional" and "site-specific" in Appendix B.

f. Source width. The source width and source length are variables used in modeling and must be determined by the following criteria and as specified in the department's Tier 2 guidance. The following are not to be used as criteria for defining the extent of the contaminant plumes.

(1) Source width (equals S_w in models) for groundwater transport modeling. The sum of group one chemical (benzene, toluene, ethylbenzene, xylenes or "BTEX") concentrations for each groundwater sample is determined and the location of the sample with the maximum total BTEX is identified. Linear interpolation is used to estimate the area where groundwater concentrations would be expected to exceed 50 percent of the maximum BTEX value, and this area is considered for the source width measurement. The same procedure is used to determine source width for group two chemicals, using TEH in groundwater. The width of the groundwater contamination perpendicular to estimated groundwater flow direction (S_w) is determined, and the larger of either group one or group two chemicals is used in the groundwater transport model.

(2) Source width (S_w) and source length (equals W in models) for soil leaching to groundwater transport modeling. Both the source width perpendicular to the estimated groundwater flow direction (S_w) and the source length parallel to the estimated groundwater flow direction (W) are used in the soil leaching to groundwater model. The sum of BTEX concentrations for each soil sample is determined and the location of the sample with the maximum total BTEX is identified. Concentrations from both the vadose zone and the saturated zone must be considered when determining the maximum. Linear interpolation is used to estimate the area where soil concentrations would be expected to exceed 50 percent of the maximum BTEX value, and this area is considered for the source width and source length measurements. The same procedure is used to determine source width for group 2 chemicals, using TEH in soil. Source width and source length measurements for BTEX in groundwater are also taken following the same linear interpolation criteria in *"f"*(1) above. The source width value used in the model is the greatest of either the soil source width measurements or the groundwater source width measurement. The source length value used in the model is the greatest of either of the soil source length measurements or the groundwater length measurement.

(3) Estimating source width when free product is present. Groundwater from wells with free product must be analyzed for BTEX and the source width and source length are estimated using the criteria in 135.10(2)*"f"*(1) and 135.10(2)*"f"*(2) above. For those sites with approved site cleanup reports and free product present in wells but actual BTEX values are not available, source width and source length may be estimated in accordance with 135.10(2)*"f"*(1) and 135.10(2)*"f"*(2) using the default BTEX values for groundwater in 135.18(4) or estimated by using the area representing half the distance between wells with free product and wells without free product, whichever method is greater.

g. Modeled simulation line. The simulation line represents the predicted maximum extent of groundwater contamination and distribution of contaminant concentrations between the source(s) and actual or potential receptor locations. The model calculates the simulation line using maximum concentrations at the source(s) and predicting the amount of dispersion and degradation. Modeled data in the simulation line are compared with actual field data to verify the predictive validity of the model and to make risk classification decisions.

h. Modeled site-specific target level (SSTL) line. The modeled SSTL line represents acceptable levels of contaminant concentrations at points between and including the source(s) and an applicable point(s) of exposure or other point(s) of compliance (ex. a potential receptor point of exposure). The SSTL line is calculated by assuming an applicable target level concentration at the point(s) of exposure or point(s) of compliance and modeling back to the source to determine the maximum concentrations at the source (SSTL) that must be achieved to meet the target level at the point of exposure or compliance. Comparison of field data to this SSTL line is used to determine a risk classification and determine appropriate corrective action response.

i. Crossgradient and upgradient modeling. In determining the SSTL line and the simulation line in directions other than downgradient, the modeled contaminant concentrations are applied to reduced distances, as specified in the "Tier 2 Guidance." The modeled results are applied to 100 percent of the distance within an angle of 30 degrees on either side of the range of downgradient directions, as specified in Tier 2 guidance. The modeled results are applied to 20 percent of the distance in the upgradient direction and directly proportional distances between these two outer limits. If the groundwater gradient is less than 0.005 or the groundwater contaminant plume shows no definitive direction or shows directional reversals, the modeled concentrations are applied to 100 percent of the distance in all directions from the source. As the downgradient velocity increases, the upgradient modeled distance is reduced to less than 20 percent of the downgradient modeled distance.

j. Plume definition. The purpose of plume definition at Tier 2 is to obtain sufficient data to determine the impact on actual and potential receptors, to determine and confirm the highest levels of contamination, to verify the validity of the models, and to determine groundwater flow direction. The number and location of borings and monitoring wells and the specificity of plume definition will depend on the pathway or pathways being assessed and the actual or potential receptors of concern. Unless otherwise specified, groundwater and soil contamination shall be defined to Tier 1 levels for the applicable pathways. Linear interpolation between two known concentrations must be used to delineate plume extent. Samples with no concentrations detected shall be considered one-half the detection limit for interpolation purposes.

k. Pathway completeness. Unless a pathway has obtained clearance under Tier 1, each pathway must be evaluated at Tier 2. Pathways are generally considered complete (unless otherwise specified) and receptors affected if actual receptors or potential receptor points of exposure exist within the modeled contaminant plume using the modeled simulation line calculated to the applicable target level at a point of exposure. If the actual contaminant plume exceeds the modeled plume, the pathway is complete and must be evaluated if actual or potential points of exposure exist within a distance extending 10 percent beyond the edge of the defined plume.

l. Points of exposure and compliance. For actual receptors, the point(s) of exposure is the receptor. For potential receptors, the potential receptor point(s) of exposure is determined by using actual plume definition or the modeled simulation line to determine all points which exceed the target level(s) for potential receptors. The potential receptor point(s) of exposure is the location(s) closest to the source where a receptor could reasonably exist and which is not subject to an institutional control; for example, the source is the potential receptor point of exposure if not subject to an institutional control or an adjoining property boundary line if that property is not subject to an institutional control. At Tier 2, the point(s) of exposure or potential receptor point(s) of exposure is a point of compliance unless otherwise specified. Other points of compliance are specified by rules and will generally include all points along the SSTL line for purposes of pathway and site classification and corrective action response.

m. Group two chemicals. At Tier 2, chemical-specific values for the four chemicals may be used or the largest of the four TEH default values. (Refer to Appendix B and department Tier 2 guidance for

using the TEH conversion method for modeling.) If chemical-specific values are used, the analytical method must be approved by the department prior to its use.

135.10(3) *Bedrock assessment.*

a. General. As provided in 135.8(5), if bedrock is encountered before groundwater, special assessment procedures under this subrule apply. The Tier 2 assessment procedures apply to the extent they are not inconsistent with this subrule. The objectives of these special procedures are to avoid creating a preferential pathway for contamination through a confining layer to a bedrock aquifer; to avoid creating a preferential pathway to a fractured system, and to determine whether groundwater transport modeling can be used and, if not, what alternative procedures are required. The owner or operator may choose to conduct a Tier 3 assessment under 567—135.11(455B) as an alternative to proceeding under this subrule. For sites where bedrock is encountered before groundwater, there are three general categories of site conditions which determine the assessment procedures that apply:

(1) Nongranular bedrock. Nongranular bedrock is bedrock which is determined to not act as a granular aquifer as provided in subparagraph (2). Nongranular bedrock generally has some type of fractured system where groundwater transport modeling cannot be applied and which makes it difficult to define the extent of contamination.

(2) Granular bedrock. Granular bedrock is bedrock which is determined to act as a granular aquifer and for which monitoring wells do not exist at the source as of August 15, 1996. For purposes of this rule, a granular aquifer is one that shows no extraordinary variations or inconsistencies in groundwater elevations across the site, groundwater flow, hydraulic conductivities, or total dissolved solid concentrations among monitoring wells. Although the extent of contamination can be defined in granular bedrock, groundwater transport modeling cannot be used because there are no monitoring wells at the source.

(3) Exempt granular bedrock. Exempt granular bedrock is bedrock which is determined to act as a granular aquifer as provided in subparagraph (2) and for which monitoring wells exist at the source as of August 15, 1996. Sites in exempt granular bedrock shall be evaluated using the normal Tier 1 or Tier 2 procedures in this rule. Nongranular bedrock is not exempt from this subrule even if groundwater monitoring wells exist at the source.

b. Exempt soil pathways. The soil vapor to enclosed space pathway and the soil to plastic water lines pathway shall be assessed under the normal Tier 2 procedures in subrules 135.10(7) and 135.10(9) respectively. In all cases, the normal assessment must comply with the policy of avoiding a preferential pathway to groundwater consistent with 135.8(5) and this subrule.

c. Soil and groundwater assessment. The vertical and horizontal extent of soil contamination shall first be defined to Tier 1 levels for the soil leaching to groundwater pathway without drilling into bedrock. A minimum of three groundwater monitoring wells shall be located and installed between 50 to 100 feet beyond the soil contamination Tier 1 levels to avoid creating a preferential pathway. Analytical data as normally required by these rules and guidance must be obtained.

d. Soil contamination remediation. For all sites where soil contamination exceeds the soil leaching to groundwater Tier 1 levels, soil excavation or other active soil remediation technology must be conducted in accordance with department guidance to reduce concentrations to below this Tier 1 level. Soil remediation monitoring must be conducted in accordance with 567—135.12(455B).

e. Groundwater plume definition. If it is determined the groundwater acts in a manner consistent with a granular aquifer as provided in subparagraph *"a"*(2) and guidance but does not meet the criteria for exemption under subparagraph *"a"*(3), the plume must be defined. The policy of avoiding the creation of a preferential pathway to the bedrock aquifer in accordance with 135.8(5) must be followed.

f. Soil leaching to groundwater ingestion pathway. Under this subrule, the soil leaching to groundwater pathway only need be evaluated in combination with the groundwater ingestion pathway. Because of the policies requiring soil remediation to the soil leaching to groundwater Tier 1 levels under paragraphs *"d"* and *"k,"* the soil leaching pathway target levels applicable to other groundwater transport pathways and other soil pathways would not be exceeded. If a soil leaching to groundwater Tier 1 level is exceeded, the pathway is high risk.

g. Special procedures for the groundwater ingestion pathway.

(1) A protected groundwater source is assumed without measurements of hydraulic conductivity for all sites designated as granular or nongranular bedrock.

(2) Groundwater well receptor evaluation for granular and nongranular bedrock designations. All drinking and non-drinking water wells within 1,000 feet of the source must be identified and tested for chemicals of concern. All public water supply systems within one mile of the source must be identified and raw water tested for chemicals of concern. If no drinking water wells are located within 1,000 feet of the source, all the area within 1,000 feet is considered a potential receptor point of exposure.

(3) Target levels. The following target levels apply regardless of granular aquifer designation. If drinking water wells are within 1,000 feet of the source, the applicable target level is the groundwater ingestion pathway Tier 1 level for actual receptors. If non-drinking water wells are within 1,000 feet of the source, the applicable target level is the groundwater ingestion pathway Tier 1 level for potential receptors. For potential wells, the applicable target level is the groundwater ingestion pathway Tier 1 level for potential receptors.

(4) Sentry well. If the Tier 1 level for actual receptors is exceeded at sites designated as granular bedrock and the receptor has not yet been impacted, a monitoring well shall be placed between the source and an actual receptor, outside the defined plume and approximately 200 feet from the actual receptor. For alternative well placement, the certified groundwater professional must provide justification and obtain department approval. This monitoring well is to be used for monitoring potential groundwater contamination of the receptor.

(5) High risk classification. A site where bedrock is encountered before groundwater shall be classified high risk for this pathway if any of the following conditions exist regardless of granular aquifer determination: The target level at any actual receptor is exceeded; drinking water well receptors are present within 1,000 feet and groundwater concentrations in any monitoring well exceed the groundwater ingestion Tier 1 level for actual receptors; non-drinking water wells are within 1,000 feet and groundwater concentrations in any monitoring well exceed the groundwater ingestion pathway Tier 1 level for potential receptors; or for sites designated nongranular bedrock, if groundwater concentrations for chemicals of concern from any public water system well within one mile of the source exceed 40 percent of the Tier 1 level for actual receptors, and groundwater concentrations in any monitoring well exceed the groundwater ingestion Tier 1 level for actual receptors. Corrective action shall be undertaken as provided in paragraph *"k."*

(6) Low risk classification. Sites without an actual receptor within 1,000 feet shall be classified as low risk for this pathway if no high risk conditions exist, and the Tier 1 level for potential receptors is exceeded. The site is subject to monitoring as provided in paragraph *"l."* If an actual receptor exists within 1,000 feet, a site designated as granular or nongranular bedrock shall be classified low risk for this pathway when soil contamination has been removed or remediated to below the soil leaching to groundwater Tier 1 levels, and all groundwater monitoring wells are non-detect or below the applicable target level for actual and potential receptors. A site may be reclassified to no action required for this pathway after all monitoring wells meet the exit monitoring criteria as specified in paragraph *"l."* (NOTE: Exit monitoring is required because groundwater monitoring wells are not located at the source or if they are, the data is highly unreliable given the nature of bedrock.) If actual receptors do not exist or have been properly plugged and concentrations exceed the Tier 1 level for potential receptors, institutional controls and notification to permitting authorities may be employed in accordance with 135.10(4)*"i."* The institutional control must prohibit use of groundwater for 1,000 feet.

h. Special procedures for the groundwater vapor to enclosed space pathway.

(1) Soil gas plume. Soil gas measurements must be taken regardless of granular aquifer determination and in accordance with Tier 2 guidance to determine a soil gas plume. Soil gas where practical should be measured at the soil-bedrock interface. At a minimum, soil gas must be measured at the suspected area of maximum contamination and near the three monitoring wells with the highest concentrations that exceed the Tier 1 level for the groundwater to enclosed space pathway. Where the plume has been defined, soil gas measurements should be taken near wells exceeding the Tier 1 level. Other soil gas measurements must be taken as needed to define the extent of contamination where soil gas measurements exceed the soil gas vapor target levels.

(2) The soil gas target levels are those defined in 135.10(7)*"f."*

(3) High risk classification. A site designated as granular or nongranular bedrock shall be classified high risk for this pathway if an actual confined space receptor exists within 50 feet of the soil gas plume based on the soil gas target level as defined in 135.10(6).

(4) Low risk classification. A site designated as granular or nongranular bedrock shall be classified as low risk for this pathway if the soil gas exceeds the vapor target level at any point and no actual confined space receptors exist within 50 feet of the soil gas contaminant plume.

i. Special procedure for the groundwater to water line pathway.

(1) Target level. The applicable target level is the Tier 1 level for the specific type of water line.

(2) High risk classification. A site designated as granular or nongranular bedrock shall be classified high risk for this pathway if the highest groundwater elevation is higher than three feet below the bottom of a water line as provided in 135.10(8)*"a"*(1), risk classification cannot be determined as provided in 567—135.12(455B) due to limitations on placement of monitoring wells, and water lines exist within 200 feet of a monitoring well which exceeds the Tier 1 level.

j. Special procedures for the surface water pathway. Any surface water body within 200 feet of the source must be evaluated under the following for sites designated as granular or nongranular bedrock. The provisions of 135.10(10) apply to the extent they are not inconsistent with the following, including the visual inspection requirements.

(1) Point of compliance. The monitoring well closest to the surface water body must be used as the point of compliance to evaluate impacts to designated use segments as described in 135.10(10) and for general use segments that fail the visual inspection criteria of 135.10(10)*"b."* If the surface water criteria is exceeded for a designated use segment, an allowable discharge concentration must be calculated and met at the point of compliance. For general use segments failing the visual inspection criteria, the acutely toxic target level must be met at the point of compliance.

(2) High risk classification. A site designated as granular or nongranular bedrock shall be classified high risk for this pathway if the surface water body is within 200 feet of the source, risk classification cannot be determined as per 567—135.12(455B) due to limitations on placement of monitoring wells, and the monitoring well closest to the designated use segment exceeds the allowable discharge concentration. A general use segment failing the visual inspection criteria is high risk if, after the sheen is removed, the monitoring well closest to the general use segment exceeds the acutely toxic target level.

(3) Low risk classification. If the allowable discharge concentration is not exceeded at the point of compliance, the site shall be classified as low risk for this pathway and subject to monitoring under paragraph *"l."* The monitoring well closest to the receptor shall serve as the sentry well for monitoring purposes.

k. High risk corrective action response. Owners and operators have the option to conduct a Tier 3 assessment in accordance with 567—135.11(455B).

(1) Groundwater ingestion pathway. For high risk sites, where soil exceeds the soil leaching to groundwater Tier 1 level for actual receptors, soil excavation or other active remediation of soils must be conducted in accordance with department guidance to reduce soil concentrations below the soil leaching Tier 1 level. Corrective action other than monitoring of groundwater is required at sites designated as nongranular bedrock if the actual receptor has been or is likely to be impacted. Corrective action other than monitoring of groundwater is required at sites designated as granular bedrock if the actual receptor has been impacted or the sentry well required by 135.10(3)*"g"*(4) has been impacted above Tier 1 levels. Acceptable corrective action for impacted or vulnerable groundwater wells may include active remediation, technological controls, institutional controls, well plugging, relocation, and well reinstallation with construction measures sufficient to prevent contaminant infiltration to the well and to prevent formation of a preferential pathway.

(2) Groundwater ingestion pathway high risk monitoring. For high risk sites designated as nongranular or granular bedrock, if the soil concentrations do not exceed the soil leaching to groundwater Tier 1 levels or have been reduced to this level by corrective action, and corrective action of groundwater is not required as in subparagraph (1), these sites shall be subject to groundwater

monitoring as provided in paragraph *"l."* Corrective action other than monitoring of groundwater is required at sites designated as granular bedrock if groundwater concentrations exceed the applicable target level less than 200 feet from an actual receptor. Reevaluation of the potential for impact to actual receptors is required at sites designated as nongranular bedrock if concentrations from monitoring wells increases more than 20 percent of the previous samples.

(3) For water line pathways. For high risk sites, active remediation must be conducted to reduce concentrations below the applicable target levels, or water lines and gaskets must be replaced or relocated, including the use of institutional and technological controls. If lines are polybutylene, polyethylene, or asbestos-cement, the lines must be removed or relocated. All water lines that are replaced must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards set forth in 567—Chapter 43 and with no less than nitrile or FKM gaskets or as otherwise approved by the department.

(4) Other pathways. For high risk sites other than groundwater ingestion and water lines, active remediation must be conducted to reduce concentrations below the applicable target levels including the use of institutional and technological controls.

l. *Monitoring.* For high and low risk sites, annual monitoring at a minimum is required as specified below, and potential receptor status for low risk sites must be confirmed. Annual monitoring may be used to meet the exit requirements for no action required classification in accordance with paragraph *"m."*

(1) Groundwater in nongranular bedrock designations. All groundwater monitoring wells must be monitored at least annually.

(2) Groundwater in granular bedrock designations. The following monitoring wells must be monitored at least annually: a well with detected levels of contamination closest to the leading edge of the groundwater plume between the source and the receptor, and a sentry well with concentrations below the applicable target level consistent with subparagraph *"g"*(4) and paragraph *"j."*

(3) Soil gas. For sites where the soil gas target level is exceeded, annual monitoring of soil gas is required at the suspected area of maximum contamination and between the soil gas plume and any actual receptors within 100 feet of the soil gas plume.

m. *No action required classification.* A site may be given a no action required classification after conducting a Tier 2 assessment as provided in this subrule if maximum soil concentrations do not exceed the Tier 1 levels for the soil leaching pathway, and if groundwater exit monitoring criteria and soil gas confirmation sampling are met as specified below.

(1) Groundwater in nongranular bedrock designations. Exit monitoring requires that samples from all groundwater monitoring wells must not exceed the applicable target levels for annual sampling for three consecutive years.

(2) Groundwater in granular bedrock designations. Exit monitoring must be met in two ways: A monitoring well between the source and the receptor must not exceed applicable target levels for three sampling events, and samples must be separated by at least six months; and the three most recent consecutive groundwater samples from a monitoring well between the source and the receptor with detected levels of contamination must show a steady or declining trend and meet the following criteria: The first of the three samples must be more than detection limits, concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent of the previous sample; and samples must be separated by at least six months.

(3) Soil gas. Confirmation sampling for soil gas must be conducted as specified in 135.12(6)*"c."*

n. After receiving a no action required classification, all monitoring wells must be properly plugged in accordance with 567—Chapters 39 and 49.

135.10(4) *Groundwater ingestion pathway assessment.*

a. *Pathway completeness.* Unless cleared at Tier 1, this pathway is complete and must be evaluated under any of the following conditions: (1) the first encountered groundwater is a protected groundwater source; or (2) there is a drinking water well or a non-drinking water well within the modeled groundwater plume or the actual plume as provided in 135.10(2)*"j"* and 135.10(2)*"k."*

b. Receptor evaluation. All drinking and non-drinking water wells located within 100 feet of the largest actual plume (defined to the appropriate target level for the receptor type) must be tested, at a minimum, for chemicals of concern as part of the receptor evaluation. Actual plumes refer to groundwater plumes for all chemicals of concern. Untreated or raw water must be collected for analysis unless it is determined to be infeasible or impracticable.

All existing drinking water wells and non-drinking water wells within the modeled plume or the actual plume as provided in paragraph *"a"* must be evaluated as actual receptors. Potential receptors only exist if the groundwater is a protected groundwater source. Potential receptor points of exposure are those points within the modeled plume or actual plume that exceed the potential point of exposure target level. The point(s) of compliance for actual receptor(s) is the receptor. The point(s) of compliance for potential receptor(s) is the potential receptor point of exposure as provided in 135.10(2)*"j"* and 135.10(2)*"k."*

c. Target levels. For drinking water wells, the target level at the point(s) of exposure is the Tier 1 level for actual receptors. For non-drinking water wells, the target level at the point(s) of exposure is the Tier 1levels for potential receptors. For potential receptors, the target level at the potential receptor point(s) of exposure is the Tier 1 level for potential receptors.

d. The soil leaching to groundwater pathway must be evaluated in accordance with 135.9(5) if this pathway is complete.

e. Modeling. At Tier 2, the groundwater well located within the modeled plume is assumed to be drawing from the contaminated aquifer, and the groundwater transport model is designed to predict horizontal movement to the well. If the groundwater professional determines that assessment of the vertical movement of contamination is advisable to determine the potential or actual impact to the well source, a Tier 3 assessment of this vertical pathway may be conducted. The groundwater professional shall submit a work plan to the department specifying the assessment methods and objectives for approval in accordance with 135.11(455B). Factors which should be addressed include, but are not limited to, well depth and construction, radius of influence, hydrogeologic separation of aquifer, preferential pathways, and differing water quality characteristics.

f. Public water supply well assessment. Rescinded IAB 3/11/09, effective 4/15/09.

g. Plume definition. The groundwater plume shall be defined to the applicable Tier 1 level for actual receptors except, where there are no actual receptors and the groundwater is a protected groundwater source, the plume shall be defined to the Tier 1 level for potential receptors.

h. Pathway classification. This pathway shall be classified as high risk, low risk or no action required in accordance with 567—135.12(455B).

i. Corrective action response. Corrective action must be conducted in accordance with 567—135.12(455B). Abandonment and plugging of wells in accordance with 567—Chapters 39 and 49 is an acceptable corrective action response.

j. Use of institutional controls. The use of institutional controls may be used to obtain no action required pathway classification. If the pathway is complete and the concentrations exceed the applicable Tier 1 level(s) for actual receptors, the drinking or non-drinking water well must be properly plugged in accordance with 567—Chapters 39 and 49 and the institutional control must prohibit the use of a protected groundwater source (if one exists) within the actual or modeled plume as provided in 135.10(2)*"j"* and 135.10(2)*"k."* If the Tier 1 level is exceeded for potential receptors, the institutional control must prohibit the use of a protected groundwater source within the actual or modeled plume, whichever is greater. If concentrations exceed the Tier 1 level for drinking water wells and the groundwater is a protected groundwater source, the owner or operator must provide notification of the site conditions on a department form to the department water supply section, or if a county has delegated authority, then the designated county authority responsible for issuing private water supply construction permits or regulating non-public water well construction as provided in 567—Chapters 38 and 49.

k. Notification of well owners. Upon receipt of a Tier 2 site cleanup report and as soon as practicable, the department shall notify the owner of any public water supply well identified within the Tier 2 site cleanup report that a leaking underground storage tank site is within 2,500 feet and an assessment has been performed.

135.10(5) *Soil leaching to groundwater pathway assessment.*

a. General. The soil leaching to groundwater pathway is evaluated using a one-dimensional model which predicts vertical movement of contamination through soil to groundwater and transported by the groundwater to a receptor. The model is used to predict the maximum concentrations of chemicals of concern that would be present in groundwater beneath a source which is representative of residual soil contamination and maximum soil concentrations. The predicted groundwater concentrations then must be used as a groundwater source concentration to evaluate its impact on other groundwater transport pathways, including the groundwater ingestion pathway, the groundwater vapor pathway, the groundwater water line pathway and the surface water pathway.

b. Pathway completeness. This pathway is complete whenever a groundwater transport pathway is complete as provided in this rule.

c. Plume definition. The soil plume shall be defined to the Tier 1 levels for the soil leaching to groundwater pathway.

d. Receptor evaluation. Receptors for this pathway are the same as the receptors for each complete groundwater transport pathway.

e. Modeling and target levels. The soil and groundwater parameters shall be measured as provided in 135.10(2).

The soil leaching to groundwater model shall be used to calculate the predicted groundwater source concentration. Each applicable groundwater transport pathway model shall then be used in accordance with the rules for that pathway to predict potential impact to actual receptors, the location of potential receptor points of exposure and the site-specific target level (SSTL) in groundwater at the source. This SSTL then is used to calculate a SSTL for soil at the source. If the soil concentrations exceed the SSTL for soil, corrective action response shall be evaluated.

f. Corrective action response. If the maximum soil concentration at the source exceeds the SSTL for soil for actual or potential receptors, corrective action must be taken in accordance with 567—135.12(455B).

135.10(6) *Groundwater vapor to enclosed space pathway assessment.*

a. Pathway completeness. Unless cleared at Tier 1, this pathway is always considered complete for purposes of Tier 2.

b. Explosive vapor survey. If an explosive vapor survey has not been conducted as part of a Tier 1 assessment, an explosive vapor survey of enclosed spaces must be conducted during the Tier 2 assessment in accordance with 135.9(6)*"b"* and procedures outlined in the department's Tier 1 guidance.

c. Confined space receptor evaluation. Actual and potential receptors are evaluated at Tier 2 for this pathway.

(1) Actual receptors. An existing confined space within the modeled groundwater plume or the actual groundwater plume as provided in 135.10(2)*"j"* and 135.10(2)*"k"* is an actual receptor. For the purpose of Tier 2, a confined space is a basement in a building occupied by humans. Buildings constructed with a concrete slab on grade or buildings constructed without a concrete slab, but with a crawl space are not considered confined spaces. Sanitary sewers are considered confined space receptors and preferential pathways if an occupied building exists within 200 feet of where the sewer line crosses over or through actual or modeled groundwater contamination which exceeds the target levels calculated for sewers. The sanitary sewer includes its utility envelope. The point of exposure is the receptor and points of compliance include the locations where target level measurements may be taken as provided in paragraphs *"f"* and *"g."*

(2) Potential receptors. Potential receptors are confined spaces that do not presently exist but could exist in the future. Areas within the actual groundwater plume perimeter or modeled groundwater plume perimeter are considered potential receptor points of exposure. Potential receptors are evaluated and target levels established based on the current zoning as provided in paragraph *"f."* The potential receptor point of exposure is a point of compliance.

d. Owners and operators may be required to address vapor inhalation hazards in occupied spaces other than confined spaces as defined in these rules when evidence arises which would give the department a reasonable basis to believe vapor hazards are present or may occur.

e. Plume definition.

(1) The soil plume must be defined in accordance with 135.10(2)*"f"* for the purposes of estimating source width and source length used in soil leaching to groundwater and groundwater transport models.

(2) The groundwater plume must be defined to the target levels derived from site-specific data as provided in paragraph *"f."*

f. Target levels. Target levels can be based on groundwater concentrations, soil gas measurements, and indoor vapor measurements as provided below.

(1) For actual receptors and potential receptors, groundwater modeling as provided in 135.10(2) is used to calculate the groundwater concentration target level at the point of exposure. Default residential exposure factors, default residential building parameters, and a target risk of 10^{-4} are used to determine target levels for actual receptors and potential receptor points of exposure in residential areas and areas with no zoning. Default nonresidential exposure factors, default nonresidential building parameters, and a target risk of 10^{-4} are used to determine target levels for actual receptors and potential receptor points of exposure in nonresidential areas. Default values are provided in Appendices A and B.

(2) For actual receptors, the indoor vapor target levels are designated in 135.10(7)*"f."* For actual and potential receptors, the soil gas target levels are designated in 135.10(7)*"f."*

(3) Sanitary sewers are treated as human health receptors, and groundwater concentration target levels at the point of exposure are based on the application of a target risk of 2×10^{-4} for carcinogens and a hazard quotient of 2 for noncarcinogens.

g. Pathway evaluation and classification. Upon completion of analysis of field data and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B).

(1) Actual receptors. If it can be demonstrated that the groundwater plume has reached steady state concentrations under a confined space, indoor vapor measurements at the point(s) of exposure and soil gas measurements at an alternative point(s) of compliance may be used for the pathway evaluation. When assessing sanitary sewers for pathway clearance, soil gas measurements may be evaluated against the soil gas target levels; however, indoor vapor cannot be used as criteria for pathway clearance. Soil gas measurements shall be taken and analyzed in accordance with 135.16(5) and the department's Tier 2 guidance, and at locations in the plume where measured groundwater concentrations exceed the levels which are projected by modeling to exist beneath the actual receptor. If measured groundwater concentrations beneath the actual receptor exceed the levels projected from modeling, then the soil gas measurements may be taken either adjacent to the actual receptor in areas expected to exhibit the greatest soil gas measurements or at an alternative point of compliance between the source and receptor where the actual groundwater concentrations exceed the groundwater concentrations which exist beneath the confined space. If the soil gas measurements and confirmation samples taken in accordance with 135.12(6)*"c"* do not exceed the soil gas target levels, the pathway as to actual receptors shall be classified no action required. If the soil gas target levels are exceeded, either the pathway shall be classified high risk, or indoor vapor measurements may be taken in accordance with the department's Tier 2 guidance. If indoor vapor measurements and confirmation samples do not exceed the indoor vapor target levels, the pathway as to actual confined space receptors shall be classified no action required. If the Tier 1 indoor vapor target levels are exceeded, the pathway shall be classified high risk.

(2) Potential receptors. If the potential receptor groundwater concentration target level(s) is exceeded at any potential receptor point of exposure based on actual data or modeling, the pathway shall be classified low risk. However, if soil gas measurements taken at the potential receptor point(s) of exposure and alternate point(s) of compliance and confirmation samples do not exceed the target levels in 135.10(7)*"f,"* the pathway, as to potential receptors, shall be classified no action required. If the target level(s) for potential sanitary sewer receptors is exceeded, the pathway shall be classified as low risk. Where the area of potential receptor exposure includes public right-of-way, the pathway may be classified as no action required if the owner or operator provides sufficient documentation to establish that there are no foreseeable plans for construction of sanitary sewers through the area of potential receptor exposure. The municipal authority must acknowledge consent to the no action required classification whenever target levels are exceeded. If the municipal authority reports that it has

confirmed plans for construction of sanitary sewers through the area of potential receptor exposure, the pathway shall be reevaluated as an actual receptor.

h. Corrective action response. Unless the pathway is classified as no action required, corrective action for this pathway must be conducted as provided in 567—135.12(455B). Actual receptors are subject to corrective actions which: (1) reduce groundwater concentrations beneath the enclosed space to below the target level; (2) reduce the measured soil gas levels to below the soil gas target levels; (3) reduce the indoor vapor concentrations to below the indoor vapor target level; or (4) reduce the vapor level to below 10 percent of the lower explosive limit (LEL), if applicable. Potential receptors are subject to the monitoring requirements in 135.12(5). Soil vapor monitoring may be conducted in lieu of groundwater monitoring for this pathway. Institutional or technological controls as provided in 567—135.12(455B) may be used.

i. Municipal authority notification for potential sewer receptors. The municipal authority responsible for sewer construction must be notified of the environmental conditions whenever target level(s) is exceeded for potential sanitary sewers. The notification must show the area where groundwater concentrations and soil gas samples exceed target levels. The owner or operator must acknowledge what plans, if any, exist for construction of sanitary sewers through the area of potential receptor exposure.

135.10(7) *Soil vapor to enclosed space pathway assessment.*

a. Pathway completeness. Unless cleared at Tier 1, this pathway is always considered complete for purposes of Tier 2.

b. Explosive vapor survey. If an explosive vapor survey has not been conducted as part of a Tier 1 assessment, an explosive vapor survey of enclosed spaces must be conducted during the Tier 2 assessment in accordance with 135.9(6)*"b"* and procedures outlined in the department's Tier 1 guidance.

c. Confined space receptor evaluation. Actual and potential receptors are evaluated at Tier 2 for this pathway.

(1) Actual receptors. An existing confined space within 50 feet of the edge of the plume is an actual receptor. For the purpose of Tier 2, a confined space is a basement in a building occupied by humans. Buildings constructed with a concrete slab on grade or buildings constructed without a concrete slab, but with a crawl space are not considered receptors. Sanitary sewers are considered confined space receptors and preferential pathways if an occupied building exists within 200 feet of where the sewer line crosses over or through soil contamination which exceeds the target levels calculated for sewers. The sanitary sewer includes its utility envelope. The point of exposure is the receptor and points of compliance include the locations where target level measurements may be taken as provided in paragraphs *"f"* and *"g."*

(2) Potential receptors. Potential receptors are confined spaces that do not presently exist but could exist in the future. Areas where soil concentrations are greater than the Tier 1 level applicable to residential areas or alternative target levels for nonresidential areas as specified in paragraph *"f"* are considered potential receptor points of exposure. Potential receptors are evaluated and target levels established based on the current zoning. An area with no zoning is considered residential. The potential receptor point of exposure is a point of compliance.

d. Owners and operators may be required to address vapor inhalation hazards in occupied spaces other than confined spaces as defined in these rules when evidence arises which would give the department a reasonable basis to believe vapor hazards are present or may occur.

e. Plume definition. The soil plume must be defined to the Tier 1 level for this pathway unless vapor measurements taken at the area(s) with the maximum levels of soil contamination do not exceed the soil gas target level in 135.10(7)*"f."* If soil gas measurements taken from the area(s) of maximum soil concentration do not exceed target levels, confirmation sampling must be conducted in accordance with 135.12(6)*"c"* prior to proposing a no action pathway classification.

f. Target levels. Target levels can be based on soil concentrations, soil gas measurements, and indoor vapor measurements as provided below:

(1) For actual receptors, the soil concentration target level is the Tier 1 level. For potential receptors, the soil concentration target level for residential areas and areas with no zoning is the Tier

1 level. For areas zoned nonresidential, the target level is calculated using the default nonresidential exposure factors and building parameters from Appendix A and a target risk of 10^{-4} .

(2) The following indoor vapor target levels apply to actual receptors other than sanitary sewers and the soil gas target levels apply to all actual and potential receptors. These levels were derived from the ASTM indoor air inhalation and the soil vapor to enclosed space models designated in Appendix A.

	Indoor Vapor ($\mu g/m^3_{air}$)	**Soil Gas ($\mu g/m^3$)**
Benzene	39.2	600,000
Toluene	555	9,250,000

(3) Sanitary sewers are treated as human health receptors, and soil concentration target levels at the point of exposure are based on application of a target risk of 2×10^{-4} for carcinogens and hazard quotient of 2 for noncarcinogens.

g. Pathway evaluation and classification.

(1) Actual receptors. Confined space receptors may be evaluated using soil gas measurements and indoor vapor measurements. When assessing sanitary sewers for pathway clearance, soil gas measurements may be evaluated against the soil gas target levels, however, indoor vapor cannot be used as criteria for pathway clearance. Soil gas measurements shall be taken adjacent to the actual receptor or at an alternative point of compliance between the source and receptor such as the property boundary, and in accordance with 135.16(5) and the department's Tier 2 guidance. If the soil gas measurements and confirmation samples taken in accordance with 135.12(6)*"c"* do not exceed the soil gas target levels, the pathway as to actual receptors shall be classified no action required. If the soil gas target levels are exceeded, either the pathway shall be classified high risk, or indoor vapor measurements may be taken in accordance with the department's Tier 2 guidance. If indoor vapor measurements and confirmation samples do not exceed the indoor vapor target levels, the pathway as to actual receptors shall be classified no action required. If the indoor vapor target levels are exceeded, the pathway shall be classified high risk.

(2) Potential receptors. If the potential receptor target level(s) based on soil concentrations is exceeded at any potential receptor point of exposure, the pathway shall be classified low risk. However, if soil gas measurements taken at the potential receptor point(s) of exposure and alternate point(s) of compliance and confirmation samples do not exceed the target levels in paragraph *"f,"* the pathway shall be classified no action required as to potential receptors. If the target level(s) for potential sanitary sewer receptors is exceeded, the pathway shall be classified as low risk. Where the area of potential receptor exposure includes public right-of-way, the pathway may be classified as no action required if the owner or operator provides sufficient documentation to establish that there are no foreseeable plans for construction of sanitary sewers through the area of potential receptor exposure. The municipal authority must acknowledge consent to the no action required classification whenever target levels are exceeded. If the municipal authority reports that it has confirmed plans for construction of sanitary sewers through the area of potential receptor exposure, the pathway shall be reevaluated as an actual receptor.

h. Corrective action response. Unless the pathway is classified as no action required, corrective action for this pathway must be conducted as provided in 567—135.12(455B) and in accordance with department Tier 2 guidance. Actual receptors are subject to corrective actions which: (1) reduce the indoor vapor concentrations to below the target level; (2) reduce measured soil gas levels to below the soil gas target levels; and (3) if applicable, reduce the vapor level to below 10 percent of the lower explosive limit (LEL). Potential receptors are subject to monitoring requirements as provided in 135.12(5). Soil vapor monitoring may be conducted in lieu of soil monitoring for this pathway. Institutional or technological controls as provided in 567—135.12(455B) may be used.

i. Municipal authority notification for potential sewer receptors. The municipal authority responsible for sewer construction must be notified of the environmental conditions whenever target level(s) is exceeded for potential sanitary sewers. The notification must show the area where soil

concentrations and soil gas samples exceed target levels. The owner or operator must acknowledge what plans, if any, exist for construction of sanitary sewers through the area of potential receptor exposure.

135.10(8) *Groundwater to water line pathway assessment.*

a. Pathway completeness and receptor evaluation.

(1) Actual receptors include all water lines where the highest groundwater elevation is higher than three feet below the bottom of the water line at the measured or predicted points of exposure. The highest groundwater elevation is the estimated average of the highest measured groundwater elevations for each year. All water lines must be evaluated for this pathway regardless of distance from the source and regardless of the Tier 1 evaluation, if the lines are in areas with actual data above the applicable Tier 1 level and modeled data above the SSTL line. If actual data exceeds modeled data, then all water lines are considered actual receptors if they are within a distance extending 10 percent beyond the edge of the contaminant plume defined by the actual data.

(2) Potential receptors include all areas where the first encountered groundwater is less than 20 feet deep and where actual data or modeled data are above Tier 1 levels.

(3) The point(s) of exposure is the water line, and the points of compliance are monitoring wells between the source and the water line which would be effective in monitoring whether the line has been or may be impacted by chemicals of concern.

b. Plume definition. If this pathway is complete for an actual receptor, the groundwater plume must be defined to the Tier 1 levels, with an emphasis between the source and any actual water lines. The water inside the water lines shall be analyzed for all chemicals of concern.

c. Target levels. Groundwater modeling as provided in 135.10(2) must be used to calculate the projected concentrations of chemicals of concern and site-specific target levels. The soil leaching to groundwater pathway must be evaluated to ensure contaminated soil will not cause future groundwater concentrations to exceed site-specific target levels. The target level at the point(s) of exposure is the Tier 1 level.

d. Pathway classification. Upon completion of analysis of field data and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B). The water quality inside the water lines is not a criterion for clearance of this pathway.

e. Utility company notification. The utility company which supplies water service to the area must be notified of all actual and potential water line impacts as soon as knowledge of a potential risk is determined. If the extent of contamination has been defined, this information must be included in utility company notification, and any previous notification made at Tier 1 must be amended to include this information.

f. Corrective action response.

(1) For actual receptors, unless the pathway is classified as no further action, corrective action for this pathway must be conducted as provided in 567—135.12(455B). If the concentrations of chemicals of concern in a water line exceed the Tier 1 levels for actual receptors for the groundwater ingestion pathway, immediate corrective action must be conducted to eliminate exposure to the water, including but not limited to replacement of the line with an approved material.

(2) For potential receptors, upon utility company notification, no further action will be required for this pathway for potential receptors.

135.10(9) *Soil to water line pathway assessment.*

a. Pathway completeness and receptor evaluation.

(1) Actual receptors include all water lines within ten feet of the soil plume defined to the Tier 1 level. All water lines must be evaluated for this pathway regardless of distance from the source if the lines are in areas where Tier 1 levels are exceeded.

(2) Potential receptors include all areas where Tier 1 levels are exceeded.

b. Plume definition. The extent of soil contamination must be defined to Tier 1 levels for the chemicals of concern.

c. Target level. The point(s) of exposure includes all areas within ten feet of the water line. The target level at the point(s) of exposure is the Tier 1 level.

d. Pathway classification. Upon completion of analysis of field data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B). Measurements of water quality inside the water lines may be required, but are not allowed as criteria to clear this pathway.

e. Utility company notification. The utility company which supplies water service to the area must be notified of all actual and potential water line impacts as soon as knowledge of the potential risk is determined. If the extent of contamination has been defined, this information must be included in utility company notification, and any previous notification made at Tier 1 must be amended to include this information.

f. Corrective action response.

(1) For actual receptors, unless the pathway is classified as no further action, corrective action for this pathway must be conducted as provided in 567—135.12(455B).

(2) For potential receptors, upon utility company notification, no further action will be required for this pathway for potential receptors.

135.10(10) *Surface water pathway assessment.*

a. Pathway completeness. Unless maximum concentrations are less than the applicable Tier 1 levels, this pathway is complete and must be evaluated under any of the following conditions: (1) there is a designated use surface water within the modeled groundwater plume or the actual plume as provided in 135.10(2)*"f"* and 135.10(2)*"g"*; or (2) any surface water body which failed the Tier 1 visual inspection as provided in 135.9(10).

b. Visual inspection. A visual inspection must be conducted according to 135.9(10)*"c."* If a sheen or residue from a petroleum-regulated substance is present, soil and groundwater sampling must be conducted to identify the source of the release and to define the extent of the contaminant plume to the levels acutely toxic to aquatic life as provided in 567—subrule 61.3(2).

c. Receptor evaluation.

(1) Surface water criteria apply only to designated use segments of surface water bodies as provided in 567—subrules 61.3(1) and 61.3(5). If the surface water body is a designated use segment and if maximum groundwater concentrations exceed applicable surface water criteria, the extent of contamination must be defined as provided in paragraph *"d."* The point of compliance for measuring chemicals of concern at the point of exposure is the groundwater adjacent to the surface water body because surface water must be protected for low flow conditions. In-stream measurements of concentrations are not allowed as a basis for no further action.

(2) If the visual inspection indicates the presence of a petroleum sheen in a general use segment within 200 feet of the source, as defined in 567—paragraph 61.3(1)*"a,"* the segment must be evaluated as an actual receptor. The point of compliance for measuring chemicals of concern at the point of exposure is the groundwater adjacent to the general use segment.

d. Plume definition. The groundwater plume must be defined to the surface water criteria levels for designated use segment receptors and to the acutely toxic levels for general use segment receptors, with an emphasis between the source and the surface water body.

e. Target levels. Determining target levels for this pathway involves a two-step process.

(1) Groundwater modeling as provided in 135.10(2) must be used to calculate the projected concentrations of chemicals of concern at the point of compliance. If the modeled concentrations or field data at the point of compliance exceed surface water criteria for designated use segments, an allowable discharge concentration must be calculated. If the projected concentrations and field data at the point of compliance do not exceed surface water criteria, no further action is required to assess this pathway.

(2) The department water quality section will calculate the allowable discharge concentration using information provided by the certified groundwater professional on a department form. Required information includes, at a minimum, the site location and a discharge flow rate calculated according to the department's Tier 2 guidance. The allowable discharge concentration is the target level which must be met adjacent to the surface water body which is the point of compliance.

(3) The target level at the point of exposure/compliance for general use segments subject to evaluation is the acutely toxic levels established by the department under 567—Chapter 61 and 567—subrule 62.8(2). If the modeled concentrations of field data at the point of exposure/compliance

exceed the acutely toxic levels, modeling must be used to determine site classifications and corrective action in accordance with 567—135.12(455B).

f. *Pathway classification.* Upon completion of analysis of field data and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B).

(1) For general use segments, as defined in 567—subrule 61.3(1), if the groundwater professional determines there is no sheen or residue present or if the site is not the source of the sheen or residue or if the sheen does not consist of petroleum-regulated substances, no further action is required for assessment of this pathway. If a petroleum-regulated substance sheen is present, the pathway is high risk and subject to classification in accordance with 567—135.12(455B).

(2) For designated use segments, as provided in 567—subrules 61.3(1) and 61.3(5), if projected concentrations of chemicals of concern and field data at the point of compliance do not exceed the target level adjacent to the surface water, and the groundwater professional determines there is no sheen or residue present, no further action is required for assessment of this pathway.

g. *Corrective action response.* Unless the pathway is classified as no further action, corrective action for this pathway must be conducted as provided in 567—135.12(455B). For surface water bodies failing the visual inspection criteria, corrective action must eliminate the sheen and reduce concentrations to below the site specific target level in accordance with 567—135.12(455B).

135.10(11) *Tier 2 submission and review procedures.*

a. Owners and operators must submit a Tier 2 site cleanup report within 180 days of the date the department approves or is deemed to approve a Tier 1 assessment report under 135.9(12). If the owner or operator has elected to conduct a Tier 2 assessment instead of a Tier 1, or a Tier 2 assessment is required due to the presence of free product under 135.7(5), the Tier 2 site cleanup report must be submitted within 180 days of the date the release was confirmed. The department may establish an alternative schedule for submittal.

b. Site cleanup report completeness and accuracy. A Tier 2 site cleanup report is considered to be complete if it contains all the information and data required by this rule and the department's Tier 2 guidance. The report is considered accurate if the information and data are reasonably reliable based first on the standards in these rules and department guidance, and second, on generally accepted industry standards.

c. The certified groundwater professional responsible for completion of the Tier 2 site assessment and preparation of the report must accompany each Tier 2 site cleanup report with a certification as set out below:

I, _____, groundwater professional certification number _____, am familiar with all applicable requirements of Iowa Code section 455B.474 and all rules and procedures adopted thereunder including, but not limited to, the Department of Natural Resources' Tier 2 guidance. Based on my knowledge of those documents and the information I have prepared and reviewed regarding this site, UST registration number _____, LUST No._____, I certify that this document is complete and accurate as provided in 135.10(11) and meets the applicable requirements of the Tier 2 site cleanup report.

Signature

Date

d. *Review.* Unless the report proposes to classify the site as no action required, the department must approve the report within 60 days for purposes of completeness or disapprove the report upon a finding of incompleteness, inaccuracy or noncompliance with these rules. If no decision is made within this 60-day period, the report is deemed to be approved for purposes of completeness. The department retains the authority to review the report at any time a no action required site classification is proposed.

e. No action required site classification review. The department will review each Tier 2 site cleanup report which proposes to classify a site as no action required to determine the data and information are complete and accurate, the data and information comply with department rules and guidance and the site classification proposal is reasonably supported by the data and information.

f. Upon approval of the Tier 2 site cleanup report or as directed by the department, owners and operators must either implement the corrective action recommendations, including any modifications

required by the department, or prepare a Tier 3 site analysis. Owners and operators must monitor, evaluate, and report the results of corrective action activities in accordance with the schedule and on a form or in a format required by the department.

g. The department may, in the interest of minimizing environmental or public health risks and promoting a more effective cleanup, require owners and operators to begin cleanup of soil and groundwater before the Tier 2 site cleanup report is approved.

h. *Review of the public water supply receptor risk assessment.* Rescinded IAB 3/11/09, effective 4/15/09.

[**ARC 7621B**, IAB 3/11/09, effective 4/15/09; **ARC 9011B**, IAB 8/25/10, effective 9/29/10]

567—135.11(455B) Tier 3 site assessment policy and procedure.

135.11(1) *General.* Tier 3 site assessment. Unless specifically limited by rule or an imminent hazard exists, an owner or operator may choose to prepare a Tier 3 site assessment as an alternative to completion of a Tier 2 assessment under 567—135.10(455B) or as an alternative to completion of a corrective action design report under 567—135.12(455B). Prior to conducting a Tier 3 site assessment, a groundwater professional must submit a work plan to the department for approval. The work plan must contain an evaluation of the specific site conditions which justify the use of a Tier 3 assessment, an outline of the proposed Tier 3 assessment procedures and reporting format and a method for determining a risk classification consistent with the policies underlying the risk classification system in 567—135.12(455B). Upon approval, the groundwater professional may implement the assessment plan and submit a report within a reasonable time designated by the department.

135.11(2) *Tier 3 site assessment.* A Tier 3 assessment may include but is not limited to the use of more site-specific or multidimensional models and assessment data, methods for calibrating Tier 2 models to make them more predictive of actual site conditions, and more extensive assessment of receptor construction and vulnerability to contaminant impacts. If use of Tier 2 models is proposed with substitution of other site-specific data (as opposed to the Tier 2 default parameters), the groundwater professional must adequately justify how site-specific data is to be measured and why it is necessary. The groundwater professional must demonstrate that the proposal has a proven applicability to underground storage tank sites or similar conditions or has a strong theoretical basis for applicability and is not biased toward underestimating assessment results. The Tier 3 assessment report shall make a recommendation for site classification as high risk, low risk or no action required, at least two corrective action response technologies and provide justification consistent with the standards and policies underlying risk classification and corrective action response under 567—135.12(455B) and Iowa Code chapter 455B, Division 4, Part 8.

135.11(3) *Review and submittal.* The department will review the Tier 3 assessment for compliance with the terms of the approved work plan and based on principles consistent with these rules and Iowa Code chapter 455B, Division IV, Part 8. Upon approval of the Tier 3 assessment, the department may require corrective action in accordance with 567—135.12(455B).

567—135.12(455B) Tier 2 and 3 site classification and corrective action response.

135.12(1) *General.* 1995 Iowa Code section 455B.474(1)*"d"*(2) provides that sites shall be classified as high risk, low risk and no action required. Risk classification is accomplished by comparing actual field data to the concentrations that are predicted by the use of models. Field data must be compared to the simulation model which uses the maximum concentrations at a source and predicts at what levels actual or potential receptors could be impacted in the future. Field data must also be compared to the site-specific target level line which assumes a target level concentration at the point of exposure and is used to predict the reduction in concentration that must be achieved at the source in order to meet the applicable target level at the point of exposure. These models not only predict concentrations at points of exposure or a point of compliance at a source but also predict a distribution of concentrations between the source and the point of exposure which may also be points of compliance. The comparison of field data with these distribution curves primarily is considered for purposes of

judging whether the modeled data is reasonably predictive and what measures such as monitoring are prudent to determine the reliability of modeled data and actual field data.

For the soil vapor to enclosed space and soil to water line pathways, there are no horizontal transport models to use for predicting future impacts. Therefore, for these pathways, sites are classified as high risk, low risk or no action required based on specified criteria below and in 567—135.10(455B).

135.12(2) *High risk classification.* Except as provided below, sites shall be classified as high risk if, for any pathway, any actual field data exceeds the site-specific target level line at any point for an actual receptor.

a. For the soil vapor to enclosed space and soil to water line pathways, sites shall be classified as high risk if the target levels for actual receptors are exceeded as provided in 135.10(7) and 135.10(9).

b. For the soil vapor or groundwater vapor to enclosed space pathways, sites shall be classified as high risk if the explosivity levels at applicable points of compliance are exceeded as provided in 135.10(6) and 135.10(7).

c. Generally, sites are classified as low risk if only potential receptor points of compliance are exceeded. The following is an exception. For the soil leaching to groundwater ingestion pathway for potential receptor conditions, the site shall be classified as high risk if the groundwater concentration(s) exceeds the groundwater Tier 1 level for potential receptor and the soil concentration exceeds the soil leaching site-specific target level at the source.

135.12(3) *High risk corrective action response.*

a. Objectives. The primary objectives of corrective action in response to a high risk classification are both short- term and long-term. The short-term goal is to eliminate or reduce the risk of exposure at actual receptors which have been or are imminently threatened with exposure above target levels. The longer term goal is to prevent exposure to actual receptors which are not currently impacted or are not imminently threatened with exposure. To achieve these objectives, it is the intent of these rules that concentrations of applicable chemicals of concern be reduced by active remediation to levels below the site-specific target level line at all points between the source(s) and the point(s) of exposure as well as to undertake such interim corrective action as necessary to eliminate or prevent exposure until concentrations below the SSTL line are achieved. If it is shown that concentrations at all applicable points have been reduced to below the SSTL line, the secondary objective is to establish that the field data can be reasonably relied upon to predict future conditions at points of exposure rather than reliance on the modeled data. Reliance on field data is achieved by establishing through monitoring that concentrations within the contaminant plume are steady or declining. Use of institutional control and technological controls may be used to sever pathways or control the risk of receptor impacts.

b. For the groundwater to water line and soil to water line receptors, these objectives are achieved by active remediation, replacement or relocation of water line receptors from areas within the actual plume plus some added site-specific distance to provide a safety factor to areas outside the site-specific target level line. In areas of free product, all water lines regardless of construction material must be relocated unless there is no other option and the department has approved an alternate plan of construction. If water lines and gaskets are replaced in an area of contamination, they must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards set forth in 567—Chapter 43 and with no less than nitrile or FKM gaskets or as otherwise approved by the department. If a service line is replaced and remains in a contaminated area, a backflow preventer shall be installed to prevent impacts to the larger water distribution system.

c. For the soil vapor pathway, these objectives are achieved by active remediation of soil contamination below the target level at the point(s) of exposure or other designated point(s) of compliance using the same measurement methods for receptor evaluation under 135.10(7) and 135.10(9).

d. For a site classified as high risk or reclassified as high risk for the soil leaching to groundwater ingestion pathway, these objectives are achieved by active remediation of soil contamination to reduce the soil concentration to below the site-specific target level at the source.

e. A corrective action design report (CADR) must be submitted by a certified groundwater professional for all high risk sites unless the terms of a corrective action plan are formalized in a

memorandum of agreement within a reasonable time frame specified by the department. The CADR must be submitted on a form provided by the department and in accordance with department CADR guidance within 60 days of site classification approval as provided in 135.10(11). The CADR must identify at least two principally applicable corrective action options designed to meet the objectives in 135.12(3), an outline of the projected timetable and critical performance benchmarks, and a specific monitoring proposal designed to verify its effectiveness and must provide sufficient supporting documentation consistent with industry standards that the technology is effective to accomplish site-specific objectives. The CADR must contain an analysis of its cost-effectiveness in relation to other options. The department will review the CADR in accordance with 135.12(9).

f. *Interim monitoring.* From the time a Tier 2 site cleanup report is submitted and until the department determines a site is classified as no action required, interim monitoring is required at least annually for all sites classified as high risk. Groundwater samples must be taken: (1) from a monitoring well at the maximum source concentration; (2) from a transition well, meaning a monitoring well with detected levels of contamination closest to the leading edge of the groundwater plume as defined to the pathway-specific target level, and between the source(s) and the point(s) of exposure; and (3) from a guard well, meaning a monitoring well between the source(s) and the point(s) of exposure with concentrations below the SSTL line. If a receptor is located within an actual plume contoured to the applicable target level for that receptor, the point of exposure must be monitored. If concentrations at the receptor already exceed the applicable target level for that receptor, corrective actions must be implemented as soon as practicable. Monitoring conducted as part of remediation or as a condition of establishing a no action required classification may be used to the extent it meets these criteria. Soil monitoring is required at least annually for all applicable pathways in accordance with 135.12(5)*"d."* All drinking water wells and non-drinking water wells within 100 feet of the largest actual plume (defined to the appropriate target level for the receptor type) must be tested annually for chemicals of concern. Actual plumes refer to groundwater plumes for all chemicals of concern.

g. Remediation monitoring. Remediation monitoring during operation of a remediation system is required at least four times each year to evaluate effectiveness of the system. A remediation monitoring schedule and plan must be specified in the corrective action design report and approved by the department.

h. Technological controls. The purpose of a technological control is to effectively sever a pathway by use of technologies such that an applicable receptor could not be exposed to chemicals of concern above an applicable target risk level. Technological controls are an acceptable corrective action response either alone or in combination with other remediation systems. The purpose of technological controls may be to control plume migration through use of containment technologies, barriers, etc., both as an interim or permanent corrective action response or to permanently sever a pathway to a receptor. Controls may also be appropriate to treat or control contamination at the point of exposure. Any technological control proposed as a permanent corrective action option without meeting the reduction in contaminant concentrations objectives must establish that the pathway to a receptor will be permanently severed or controlled. The effectiveness of a technological control must be monitored under a department approved plan until concentrations fall below the site-specific target level line or its effectiveness as a permanent response is established, and no adverse effects are created.

i. Following completion of corrective action, the site must meet exit monitoring criteria to be reclassified as no action required as specified in 135.12(6)*"c."* At any point where an institutional or technological control is implemented and approved by the department, the site may be reclassified as no action required consistent with 135.12(6).

135.12(4) *Low risk classification.* A site shall be classified as low risk if none of the pathways are high risk and if any of the pathways are low risk. A pathway shall be classified low risk if it meets one of the following conditions:

a. For actual and potential receptors, if the modeled data and the actual field data are less than the site-specific target level line, and any of the field data is greater than the simulation line.

b. For potential receptors, if any actual field data exceeds the site-specific target level line at any point.

c. For the soil leaching to groundwater ingestion pathway where modeling predicts that the Tier 1 levels for potential receptors would be exceeded in groundwater at applicable potential receptor points of compliance and the soil concentration exceeds the soil leaching to groundwater site-specific target level but groundwater concentrations are currently below the Tier 1 level for potential receptors, the site shall be initially classified as low risk and subject to monitoring under 135.12(5)*"d"*(2). If at any time during the three-year monitoring period, groundwater concentrations exceed the Tier 1 level for potential receptors, the site shall be classified as high risk requiring soil remediation in accordance with 135.12(3)*"c."*

135.12(5) *Low risk corrective action response.*

a. Purpose. For sites or pathways classified as low risk, the purpose of monitoring is to determine if concentrations are decreasing such that reclassification to no action required may be appropriate or if the contaminant plume is stable such that reclassification to no action required can be achieved with implementation of an institutional control in accordance with 135.12(8), or if concentrations are increasing above the site-specific target level line such that reclassification to high risk is appropriate. Monitoring is necessary to evaluate impacts to actual receptors and assess the continued status of potential receptor conditions. Low risk monitoring shall be conducted and reported by a certified groundwater professional.

b. For sites or pathways classified as low risk, provide a best management practices plan. The plan must include maintenance procedures, schedule of activities, prohibition of practices, and other management practices, or a combination thereof, which, after problem assessment, are determined to be the most effective means of monitoring and preventing additional contamination of the groundwater and soil. The plan will also contain a contamination monitoring proposal containing sufficient sampling points to ensure the detection of any significant movement of or increase in contaminant concentration.

c. Groundwater monitoring. For groundwater pathways, samples must be taken at a minimum of once per year: (1) from a monitoring well at the maximum source concentration; (2) a transitional well meaning a well with detected levels of contamination closest to the leading edge of the groundwater plume as defined to the pathway-specific target level and between the source and the receptor; and (3) a guard well meaning a monitoring well between the source and the point of exposure with concentrations below the SSTL line. (NOTE: Monitoring under this provision may be used to satisfy exit monitoring if it otherwise meets the criteria in 135.12(6).)

d. Soil monitoring.

(1) For the soil vapor to enclosed space pathway potential receptors, soil gas samples must be taken at a minimum of once per year in the area(s) of expected maximum vapor concentrations where an institutional control is not in place.

(2) For the soil leaching to groundwater pathway potential receptors, annual groundwater monitoring is required for a minimum of three years as provided in *"c"* above. If groundwater concentrations are below the applicable SSTL line for all three years, no further action is required. If groundwater concentrations exceed the applicable SSTL line in any of the three years, corrective action is required to reduce soil concentrations to below the Tier 1 levels for soil leaching to groundwater. Therefore, annual monitoring of soil is not applicable.

(3) For the soil to water line pathway potential receptors, notification of the utility company is required. Notification will result in reclassification to no action required. Therefore, annual monitoring of soil is not applicable.

e. Receptors must be evaluated at least annually to ensure no actual or modeled data are above the site-specific target level line for any actual receptors. Potential receptor areas of concern must be evaluated at least annually and the presence of no actual receptors confirmed. If actual receptors are present or reasonably expected to be brought into existence, the owner or operator must report this fact to the department as soon as practicable. Annual monitoring which also meets the exit criteria under 135.12(6) may be used for that purpose.

f. The site or pathway must meet exit monitoring criteria to be reclassified as no action required as specified in 135.12(6)*"b."* If concentrations for actual receptors increase above the site-specific target

level line or potential receptor status changes to actual receptor status, the site must be reclassified as high risk and further corrective action required in accordance with 135.12(3).

135.12(6) *No action required classification.* A site shall be classified as no action required if all of the pathways are classified as no action required as provided below:

a. Soil pathways shall be classified as no action required if samples are less than the applicable target levels as defined for each pathway and confirmational sampling requirements have been met.

b. For initial classification, groundwater pathways shall be classified as no action required if the field data is below the site-specific target level line and all field data is at or less than the simulation line, and confirmation monitoring has been completed successfully. Confirmation sampling for groundwater is a second sample which confirms the no action required criteria.

c. For reclassification from high or low risk, a pathway shall be classified as no action required if all field data is below the site-specific target level line and if exit monitoring criteria have been met, except as provided in 135.12(6)*"g."* To satisfy exit monitoring criteria, the three most recent consecutive groundwater samples from all monitoring wells must show a steady or declining trend and the most recent samples must be below the site-specific target level line. Other criteria include the following: The first of the three samples for the source well and transition well must be more than detection limits; concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent of the previous sample; and samples must be separated by at least six months.

d. Confirmation sampling for soil gas and indoor vapor. For the enclosed space pathways, confirmation sampling is required to reasonably establish that the soil gas and indoor vapor samples represent the highest expected levels. A groundwater professional must obtain two samples taken at least two weeks apart. One of the samples must be taken during a seasonal period of lowest groundwater elevation and soil gas samples must be taken below the frost line.

e. Upon site classification as no action required, all groundwater monitoring wells must be properly plugged in accordance with 567—Chapters 39 and 49 unless the department requires selected wells to be maintained or written approval to maintain the well is obtained by the department.

f. Prior to acceptance of a request to classify the site as no action required, and in the event there is a question of validity of the data or sampling methods, laboratory analysis procedures, indication of plume movement, or the department obtains information about new conditions at the site, the department may conduct or require the owner to conduct confirmation sampling of the soil, groundwater, soil gas, or indoor vapor to confirm that the no action required criteria have been met.

g. The department may waive, at its discretion, the exit monitoring criteria based on a certified groundwater professional's written justification to support a no action required classification for the site based on a reasoned assessment of data, trends, receptor status, and corrective actions performed. One example is when steady and declining criteria have not been met due solely to variations among a laboratory's lowest achievable detection limits.

135.12(7) *Reclassification.* Any site or pathway which is classified as high risk may be reclassified to low risk if in the course of corrective action the criteria for low risk classification are established. Any site or pathway which is classified as low risk may be reclassified to high risk if in the course of monitoring the conditions for high risk classification are established. Sites subject to department-approved institutional or technological controls are classified as no action required if all other criteria for no action required classification are satisfied.

135.12(8) *Use of institutional and technological controls.*

a. Purpose. The purpose of an institutional control is to restrict access to or use of property such that an applicable receptor could not be exposed to chemicals of concern for as long as the target level is exceeded at applicable points of exposure and compliance. Institutional controls include:

1. A law of the United States or the state;
2. A regulation issued pursuant to federal or state laws;
3. An ordinance or regulation of a political subdivision in which real estate subject to the institutional control is located;

4. An environmental covenant as provided in 2005 Iowa Code Supplement section 455B.474(1)*"f"*(4)(f) and in accordance with the provisions of 2005 Iowa Code Supplement chapter 455I and 567—Chapter 14;

5. Any other institutional control the owner or operator can reasonably demonstrate to the department will reduce the risk from a release throughout the period necessary to ensure that no applicable target level is likely to be exceeded.

b. Modification or termination of institutional and technological controls. At a point when the department determines that an institutional or technological control has been removed or is no longer effective for the purpose intended, regardless of the issuance of a no further action certification or previous site classification, it may require owners and operators to undertake such reevaluation of the site conditions as necessary to determine an appropriate site classification and corrective action response. If the owner or operator is in control of the affected property, the department may require reimplementation of the institutional or technological control or may require a Tier 2 assessment of the affected pathway(s) be conducted to reevaluate the site conditions and determine alternative corrective action response. An owner or operator subject to an institutional or technological control may request modification or termination of the control by conducting a Tier 2 assessment of the affected pathway or conduct such other assessment as required by the department to establish that the control is no longer required given current site conditions.

c. If the owner or operator is not in control of the affected property or cannot obtain control and the party in control refuses to continue implementation of an institutional control, the department may require the owner or operator to take such legal action as available to enforce institution of the control or may require the owner or operator to undertake a Tier 2 assessment to determine site classification and an alternative corrective action response. If a person in control of the affected property appears to be contractually obligated to maintain an institutional or technological control, the department may, but is not required to, attempt enforcement of the contractual obligation as an alternative to requiring corrective action by the owner or operator.

d. If a site is classified no action required, subject to the existence of an institutional control or technological control, the holder of the fee interest in the real estate subject to the institutional control or technological control may request, at any time, that the department terminate the institutional control or technological control requirement. The department shall terminate the requirement for an institutional control if the holder demonstrates by completion of a Tier 2 assessment of the applicable pathway or other assessment as required by the department that the site conditions warranting the control no longer exist and that the site or pathway has met exit criteria for no action required classification under 135.12(6).

135.12(9) *Corrective action design report submission and review procedures.*

a. Owners and operators must submit a corrective action design report (CADR) within 60 days of the date the department approves or is deemed to approve a Tier 2 assessment report under 135.10(11) or a Tier 3 assessment is to be conducted. The department may establish an alternative schedule for submittal. As an alternative to submitting a CADR, owners or operators may participate in a corrective action meeting process to develop a corrective action plan which would be incorporated into a memorandum of agreement or other written agreement approved by the department. Owners or operators shall implement the terms of an approved CADR, memorandum of agreement or other corrective action plan agreement.

b. Corrective action design report completeness and accuracy. A CADR is considered to be complete if it contains all the information and data required by this rule and the department's guidance. The report is considered accurate if the information and data are reasonably reliable based first on the standards in these rules and department guidance, and second, on generally accepted industry standards.

c. The certified groundwater professional responsible for completion of the CADR must provide the following certification with the CADR:

I, _____, groundwater professional certification number _____, am familiar with all applicable requirements of Iowa Code section 455B.474 and all rules and procedures adopted thereunder including, but not limited to, the Department of Natural Resources' guidance and specifications for corrective action design reports. Based on my knowledge of those documents and the information I have prepared and reviewed regarding this site, UST registration number

_____, LUST No._____, I certify that this document is complete and accurate as provided in 135.12(9) and meets the applicable requirements of the corrective action design report, and that the recommended corrective action can reasonably be expected to meet its stated objectives.

Signature

Date

d. *Review.* Unless the report proposes to classify the site as no action required, the department must approve the report within 60 days for purposes of completeness or disapprove the report upon a finding of incompleteness, inaccuracy or noncompliance with these rules. If no decision is made within this 60-day period, the report is deemed to be approved for purposes of completeness. The department retains the authority to review the report at any time a no action required site classification is proposed. Owners or operators who fail to implement actions or meet the activity schedule in a memorandum of agreement resulting from a corrective action meeting or other written corrective action plan agreement or who fail to implement the actions or schedule outlined in an approved CADR are subject to legal action.

e. No action required site classification review. The department will review each CADR which proposes to classify a site as no action required to determine the data and information are complete and accurate, the data and information comply with department rules and guidance and the site classification proposal is reasonably supported by the data and information.

135.12(10) *Monitoring certificates and no further action certificates.*

a. Monitoring certificate. The department of natural resources will issue a monitoring certificate to the owner or operator of an underground storage tank from which a release has occurred, the current property owner, or other responsible party who has undertaken the corrective action warranting issuance of the certificate. Sites classified as low risk or sites classified as high risk/monitoring shall be eligible for a monitoring certificate. The monitoring certificate will be valid until the site is reclassified to a high risk requiring active remediation or no action required site. A site which has been issued a monitoring certificate shall not be eligible to receive a certificate evidencing completion of remediation until the site is reclassified as no action required. The monitoring certificate will be invalidated and the site reclassified to high risk if it is determined by the department that the owner of the site is not in compliance with the requirements specified in the monitoring certificate.

b. No further action certificate. The department will issue a no further action certificate to an owner or operator of an underground storage tank from which a release has occurred, the current property owner or other responsible party who has undertaken the corrective action warranting classification of the site as no action required. The person requesting the certificate shall provide the department with an accurate legal description of the property on which the underground storage tanks are or were formerly located. The following conditions apply:

(1) The site has been determined by a certified groundwater professional to not present an unreasonable risk to the public health and safety or the environment;

(2) A person issued the certificate or a subsequent purchaser of the site cannot be required to perform further corrective action solely because action standards are changed at a later date. Action standards refer to applicable site-specific standards under this rule;

(3) The certificate shall not prevent the department from ordering remediation of a new release or a release of a regulated substance from an unregulated tank;

(4) The certificate will not constitute a warranty of any kind to any person as to the condition, marketability or value of the described property;

(5) The certificate shall reflect any institutional control utilized to ensure compliance with any applicable Tier 2 level; and may include a notation that the classification is based on the fact that designated potential receptors are not in existence;

(6) The certificate shall be in a form which is recordable in accordance with Iowa Code section 558.1 et seq. and substantially in the form as provided in Appendix C.

c. The department shall modify any issued no further action certificates containing institutional controls once the owner, operator or their successor or assign has demonstrated that the institutional control is no longer necessary to meet the applicable Tier 2 level as provided in 135.12(10).

135.12(11) *Expedited corrective action.* An owner, operator or responsible party of a site at which a release of regulated substance is suspected to have occurred may carry out corrective actions at the site so long as the department receives notice of the expedited cleanup activities within 30 calendar days of their commencement; the owner, operator, or responsible party complies with the provisions of these rules; and the corrective action does not include active treatment of groundwater other than:

a. As previously approved by the department; or

b. Free product recovery pursuant to subrule 135.7(5).

c. Soil excavation. When undertaking excavation of contaminated soils, adequate field screening methods must be used to identify maximum concentrations during excavation. At a minimum one soil sample must be taken for field screening every 100 square feet of the base and each sidewall. Soil samples must be taken for laboratory analysis at least every 400 square feet of the base and each sidewall of the excavated area to confirm remaining concentrations are below Tier 1 levels. If the excavation is less than 400 square feet, a minimum of one sample must be analyzed for each sidewall and the base. The owner or operator must maintain adequate records of the excavation area to document compliance with this procedure unless submitted to the department and must provide it to the department upon request.

[**ARC 9011B**, IAB 8/25/10, effective 9/29/10]

567—135.13(455B) Public participation.

135.13(1) For each confirmed release that is classified as high or low risk, the department must provide notice to the public by means designated to reach those members of the public directly affected by the release and the recommended corrective action response. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by the staff.

135.13(2) The department must ensure site release information and decisions concerning the Tier 1 assessment report, Tier 2 and Tier 3 site cleanup reports are made available to the public for inspection upon request.

135.13(3) Before approving the Tier 2 or Tier 3 site cleanup report, the department may hold a public meeting to consider comments on the proposed corrective action response if there is sufficient public interest, or for any other reason.

135.13(4) The department must give a public notice that complies with subrule 135.13(1) above if the implementation of the approved Tier 2 or Tier 3 site cleanup report does not achieve the established cleanup levels in the report and the termination of that report is under consideration by the department.

567—135.14(455B) Action levels. The following corrective action levels apply to petroleum-regulated substances as regulated by this chapter. These action levels shall be used to determine if further corrective action under 567—135.6(455B) through 567—135.12(455B) or 567—135.15(455B) is required as the result of tank closure sampling under 135.15(3) or other analytical results submitted to the department. The contaminant concentrations must be determined by laboratory analysis as stated in 567—135.16(455B). Final cleanup determination is not limited to these contaminants. The contamination corrective action levels are:

	Soil (mg/kg)	**Groundwater (ug/L)**
Benzene	0.54	5
Toluene	3.2	1,000
Ethylbenzene	15	700
Xylenes	52	10,000
Total Extractable Hydrocarbons	3,800	1,200

[**ARC 9011B**, IAB 8/25/10, effective 9/29/10]

567—135.15(455B) Out-of-service UST systems and closure.

135.15(1) *Temporary closure.*

a. When a UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with 135.4(2), any release detection in accordance with rule 567—135.5(455B), and financial responsibility in accordance with 567—Chapter 136. Rules 567—135.6(455B) to 567—135.12(455B) must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

b. When a UST system is temporarily closed for three months or more, owners and operators must notify the department in writing of the temporary closure and comply with the following requirements:

(1) Leave vent lines open and functioning; and

(2) Cap and secure all other lines, pumps, accesses, and ancillary equipment.

c. When a UST system is temporarily closed for more than 12 months, owners and operators must return the tank tags and permanently close the UST system if it does not meet either the performance standards in 135.3(1) for new UST systems or the upgrading requirements in 135.3(2), except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with 135.15(2) to 135.15(5), unless the department provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with 135.15(3) before such an extension can be applied for.

135.15(2) *Permanent closure and changes-in-service.*

a. At least 30 days before beginning either permanent closure or a change-in-service under paragraphs *"b"* and *"c"* below, owners and operators must notify the department of their intent to permanently close or make the change-in-service. An owner or operator must seek prior approval to permanently close a tank in a time frame shorter than the 30-day notice. The required assessment of the excavation zone under 135.15(3) must be performed after notifying the department but before completion of the permanent closure or a change-in-service.

b. To permanently close a tank or piping, owners and operators must empty and clean them by removing all liquids and accumulated sludge. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material. Piping must either be removed from the ground or have the ends plugged with an inert solid material.

When permanently closing a tank by filling with inert solid material, the tank may not be filled until a closure report is approved by the department. The tank must be filled within 30 days after department approval. The owner and operator must notify the department within 15 days after filling the tank with inert solid material.

c. Continued use of a UST system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with 135.15(3).

d. Permanent closure procedures must be followed in the replacement of tanks or piping. Notification must be made using DNR Form 542-1308, "Notification of Tank Closure or Change-in-Service." The form must include the date scheduled for the closure. Oral confirmation of the closure date must be given to the DNR field office 24 hours prior to the actual closure. The required assessment of the excavation zone under 139.15(3) must be performed after notifying the department but before completion of the permanent closure or change-in-service.

NOTE: The following cleaning and closure procedures may be used to comply with subrule 135.15(2): American Petroleum Institute Recommended Practice 1604, "Removal and Disposal of Used Underground Petroleum Storage Tanks"; American Petroleum Institute Publication 2015, "Cleaning Petroleum Storage Tanks"; American Petroleum Institute Recommended Practice 1631, "Interior Lining of Underground Storage Tanks," may be used as guidance for compliance with this subrule; and the National Institute for Occupational Safety and Health "Criteria for a Recommended Standard . . .

Working in Confined Space" may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

135.15(3) *Assessing the site at closure or change-in-service.*

a. Before permanent closure or a change-in-service is completed, owners or operators must measure for the presence of a release where contamination is most likely to be present at the UST site. This soil and groundwater closure investigation must be conducted or supervised by a groundwater professional certified under 567—Chapter 134, Part A, unless the department in its discretion grants an exemption and provides direct supervision of the closure investigation. In selecting the sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release.

At UST sites with a history of petroleum storage, soil and groundwater samples shall in every case be analyzed for benzene, toluene, ethylbenzene, and xylenes (BTEX) with each compound reported separately in accordance with 567—135.16(455B). If there has been a history or suspected history of petroleum storage other than gasoline or gasoline blends (i.e., all grades of diesel fuels, fuel oil, kerosene, oil and mineral spirits), or such storage history is unknown or uncertain, soil and groundwater samples shall also be analyzed for total extractable hydrocarbons in accordance with 567—135.16(455B).

All such samples shall be collected separately and shipped to a laboratory certified under 567—Chapter 42, Part C, within 72 hours of collection. Samples shall be refrigerated and protected from freezing during shipment to the laboratory.

When a UST is removed from an area of confirmed contamination, the department may waive closure sampling if written documentation is submitted with the closure notification. Documentation should include laboratory analytical reports and a site map showing tank and piping locations along with contamination plume and sampling locations.

b. For all permanent tank and piping closures or changes-in-service, at least one water sample must be taken from the first saturated groundwater zone via a monitoring well or borehole except as provided in paragraph *"g."* The well or borehole must be located downgradient from and as close as possible to the excavation but no farther away than 20 feet.

If, however, the first saturated groundwater zone is not encountered within 10 feet below the lowest elevation of the tank excavation, the requirement for groundwater sampling shall not apply unless:

(1) Sands or highly permeable soils are encountered within 10 feet below the lowest level of the tank excavation which together with the underlying geology would, in the judgment of the department, pose the reasonable possibility that contamination may have reached groundwaters deeper than 10 feet below the lowest level of the tank excavation. The method of determining highly permeable soil is found in the departmental guidance documents entitled "Underground Storage Tank Closure Procedures for Tank and Piping Removal" and "Underground Storage Tank Closure for Filling in Place."

(2) Indications of potential groundwater contamination, including petroleum products in utility lines, petroleum products in private wells, petroleum product vapors in basements or other structures, occur in the area of the tank installation undergoing closure or change-in-service.

c. For permanent closure by tank removal, the departmental guidance document entitled "Underground Storage Tank Closure Procedures for Tank and Piping Removal" must be followed. The minimum number of soil samples that must be taken depends on the tank size and length of product piping. Samples must be taken at a depth of 1 to 2 feet beneath the tank fill area below the base of the tank along the tank's centerline. Soil samples must also be taken at least every 10 feet along the product piping at a depth of 1 to 2 feet beneath the piping fill area below the piping.

If sands or other highly permeable soils are encountered, alternative sampling methods may be required.

If contamination is suspected or found in any area within the excavation (i.e., sidewall or bottom), a soil sample must be taken at that location.

The numbers of samples required for tanks are as follows:

Nominal Tank Capacity (gallons)	Number of Samples	Location on Centerline
1,000 or less	1	center of tank
1,001 - 8,000	2	1/3 from ends
8,001 - 30,000	3	5 feet from ends and at center of tank
30,001 - 40,000	4	5 and 15 feet from ends
40,001 and more	5	5 and 15 feet from ends and at center of tank

d. For closing a tank in place by filling with an inert solid material or for a change-in-service, the departmental guidance document entitled "Underground Storage Tank Closure for Filling in Place" must be followed. The minimum number of soil borings required for sampling depends on the size of the tank and the length of the product piping. Soil samples must be taken within 5 feet of the sides and ends of the tank at a depth of 2 to 4 feet below the base of the tank, but outside the backfill material, at equal intervals around the tank. Soil samples must also be taken at least every 10 feet along the product piping at a depth of 1 to 2 feet beneath the piping fill area below the piping. If sands or other highly permeable soils are encountered, alternative sampling methods may be required.

The minimum numbers of soil borings and samples required are as follows:

Nominal Tank Capacity (gallons)	Number of Samples	Location of Samples
6,000 or less	4	1 each end and each side
6,001 - 12,000	6	1 each end and 2 each side
12,001 or more	8	1 each end and 3 each side

e. A closure report must be submitted to the department within 45 days of the tank removal or sampling for a closure in place. The report must include all laboratory analytical reports, soil boring and well or borehole construction details and stratigraphic logs, and a dimensional drawing showing location and depth of all tanks, piping, sampling, and wells or boreholes, and contaminated soil encountered. The tank tags must be returned with the closure report.

f. The requirements of this subrule are satisfied if one of the external release detection methods allowed in 135.5(4)*"e"* and *"f"* is operating in accordance with the requirements in 135.5(4) at the time of closure and indicates no release has occurred.

g. If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered during the site assessment or by any other manner, contact the department in accordance with 135.6(1). Normal closure procedures no longer apply. Owners and operators must begin corrective action in accordance with rules 567—135.7(455B) to 567—135.12(455B).

Identification of free product requires immediate response in accordance with 135.7(5). If contamination appears extensive or the groundwater is known to be contaminated, a full assessment of the contamination will be required. When a full assessment is required or anticipated, collection of the required closure samples is not required. If contamination appears limited to soils, overexcavation of the contaminated soils in accordance with 135.15(4) may be allowed at the time of closure.

135.15(4) *Overexcavation of contaminated soils at closure.*

a. If contaminated soils are discovered while assessing a site at closure in accordance with 135.15(3), owners and operators may overexcavate up to one foot of the contaminated soils surrounding the tank pit. The contamination and overexcavation must be reported to the department in accordance with the requirements of 135.6(4)*"a"* prior to backfilling the excavation. If excavation is limited to one foot of contaminated soils, a soil sample shall be taken and laboratory analyzed in accordance with 567—135.16(455B) from the area showing the greatest contamination. Any overexcavation of contaminated soils beyond one foot of contaminated soils is considered expedited corrective action and must be conducted by a certified groundwater professional in accordance with the procedures in 135.12(11).

b. Excavated contaminated soils must be properly disposed in accordance with 567—Chapters 100, 101, 102, 120, and 121, Iowa Administrative Code.

c. A report must be submitted to the department within 30 days of completion of the laboratory analysis. The report must include the requirements of 135.15(3)*"e"* and a dimensional drawing showing the depth and area of the excavation prior to and after overexcavation. The area of contamination must be shown.

135.15(5) *Applicability to previously closed UST systems.* When directed by the department, the owner and operator of a UST system permanently closed before October 24, 1988, must assess the excavation zone and close the UST system in accordance with this rule if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

135.15(6) *Closure records.* Owners and operators must maintain records in accordance with 135.4(5) that are capable of demonstrating compliance with closure requirements under this rule. The results of the excavation zone assessment required in 135.15(3) must be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

a. By the owners and operators who took the UST system out of service;

b. By the current owners and operators of the UST system site; or

c. By mailing these records to the department if they cannot be maintained at the closed facility.

135.15(7) *Applicability to pre-1974 USTs.* The closure provisions of rule 567—135.15(455B) are not applicable to USTs which have been out of operation as of January 1, 1974. For purposes of this subrule, out of operation means that no regulated substance has been deposited into or dispensed from the tanks and that the tanks do not currently contain an accumulation of regulated substances other than a de minimus amount as provided in 135.15(1)*"a."*

Owners and operators or other interested parties are not required to submit documentation that USTs meet the exemption conditions and may rely on this subrule as guidance. However, should a question arise as to whether USTs meet the exemption, or owners and operators or other interested parties request acknowledgment by the department that USTs are exempt, they must submit an affidavit on a form provided by the department. The affiant must certify that based on a reasonable investigation and to the best of the affiant's knowledge, the USTs were taken out of operation prior to January 1, 1974, the USTs have not contained a regulated substance since January 1, 1974, and the USTs do not currently contain an accumulation of regulated substances.

If the department has a reasonable basis to suspect a release has occurred, the release investigation and confirmation steps of subrule 135.8(1) and the corrective action requirements as provided in 567—135.7(455B) to 567—135.8(455B) shall apply.

[**ARC 8124B**, IAB 9/9/09, effective 10/14/09]

567—135.16(455B) Laboratory analytical methods for petroleum contamination of soil and water.

135.16(1) *General.* When having soil or water analyzed for petroleum or hazardous substances, owners and operators of UST systems must use a laboratory certified under 567—Chapter 83. In addition they must ensure that all soil and groundwater samples are properly preserved and shipped within 72 hours of collection to a laboratory certified under 567—Chapter 83, for UST petroleum analyses. This rule provides acceptable analytical procedures for petroleum substances and required information that must be provided in all laboratory reports.

135.16(2) *Laboratory report.* All laboratory reports must contain the following information:

a. Laboratory name, address, telephone number and Iowa laboratory certification number. If analytical work is subcontracted to another laboratory, the analytical report from the certified lab which analyzed the sample must be submitted and include the information required in this subrule.

b. Medium sampled (soil, water).

c. Client submitting sample (name, address, telephone number).

d. Sample collector (name, telephone number).

e. UST site address.

f. Clients sample location identifier.

g. Date sample was collected.

h. Date sample was received at laboratory.

i. Date sample was analyzed.

j. Results of analyses and units of measure.

k. Detection limits.

l. Methods used in sample analyses (preparation method, sample detection method, and quantitative method).

m. Laboratory sample number.

n. Analyst name.

o. Signature of analyst's supervisor.

p. Condition in which the sample was received at the laboratory and whether it was properly sealed and preserved.

q. Note that analytical results are questionable if a sample exceeded an established holding time or was improperly preserved. (The recommended holding time for properly cooled and sealed petroleum contaminated samples is 14 days, except for water samples containing volatile organic compounds which have a 7-day holding time unless acid-preserved.)

r. Laboratory reports required by this chapter for tank closure investigations under 567—135.15(455B) and site checks under 135.6(3) or Tier 1 or Tier 2 assessments under 567—135.9(455B) to 567—135.11(455B) must include a copy of the chromatograms and associated quantitation reports for the waste oil, diesel and gasoline standard used by the laboratory in analyzing submitted samples. The laboratory analytical report for each sample must state whether the sample tested matches the laboratory standard for waste oil, diesel or gasoline or that the sample cannot be reliably matched with any of these standards. A copy of the chromatograms and associated quantitation reports for only the soil and groundwater samples with the maximum concentrations of BTEX and TEH must be included.

135.16(3) *Analysis of soil and water for high volatile petroleum compounds (i.e., gasoline, benzene, ethylbenzene, toluene, xylene).* Sample preparation and analysis shall be by Method OA-1, "Method for Determination of Volatile Petroleum Hydrocarbons (gasoline)," revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa. This method is based on U.S. EPA methods 5030, 8000, and 8015, SW-846, "Test Methods for Evaluating Solid Waste," 3rd Edition. Copies of Method OA-1 are available from the department.

135.16(4) *Analysis of soil and water for low volatile petroleum hydrocarbon contamination (i.e., all grades of diesel fuel, fuel oil, kerosene, oil, and mineral spirits).* Sample preparation and analysis shall be by Method OA-2, "Determination of Extractable Petroleum Products (and Related Low Volatility Organic Compounds)," revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa. This method is based on U.S. EPA methods 3500, 3510, 3520, 3540, 3550, 8000, and 8100, SW-846, "Test Methods for Evaluating Solid Waste," 3rd Edition. Copies of Method OA-2 are available from the department.

135.16(5) *Analysis of soil gas for volatile petroleum hydrocarbons.* Analysis of soil gas for volatile petroleum hydrocarbons shall be conducted in accordance with the National Institute for Occupational Safety and Health (NIOSH) Method 1501, or a department-approved equivalent method.

567—135.17(455B) Evaluation of ability to pay.

135.17(1) General. The ability to pay guidance procedures referenced in this rule will be used by the department when an owner or operator of an underground storage tank (UST) claims to be financially unable to comply with corrective action requirements under 567—135.7(455B) to 567—135.12(455B) or closure investigation requirements under 567—135.15(455B). If an owner or operator of a regulated UST claims to be financially unable to meet these departmental requirements, that responsible party must provide documentation of the party's finances on forms provided by the department in order for the department to act on the claim of financial inability. The department may request additional financial documentation to verify or supplement reported information.

135.17(2) Individual claims. The financial ability of individual owners and operators of USTs, with or without an active business (including but not limited to sole proprietorships and general partnerships), shall be evaluated using the "Individual Ability to Pay Guidance" document dated June 19, 1992, and

generally accepted principles of financial analysis. This guidance is only one tool the department may use in evaluating claims of financial inability.

135.17(3) Corporate claims. The financial ability of corporate owners and operators of USTs shall be evaluated using the June 1992 version of "ABEL" developed by the U.S. Environmental Protection Agency and generally accepted principles of financial analysis. This guidance is only one tool the department may use in evaluating claims of financial inability.

135.17(4) Federal LUST Trust Fund. The financial ability of owners and operators of USTs shall be evaluated for the purpose of determining if the department is authorized to use Federal LUST Trust Fund moneys as provided in the current cooperative agreement with the U.S. Environmental Protection Agency, Region VII. A determination of financial inability does not create an entitlement or any expectation interest on behalf of an owner or operator that Federal LUST Trust Fund moneys will be used for corrective action at any individual site.

135.17(5) The evaluation of financial ability will also be used by the department in making other administrative planning decisions including but not limited to decisions as to whether to pursue and when to pursue administrative or judicial enforcement of regulatory and statutory duties and the assessment of penalties. A determination of financial inability does not create an entitlement or expectation interest that enforcement actions will be deferred or suspended. The evaluation of this factor is only one of many affecting the department's fully discretionary decisions regarding enforcement options and program planning.

135.17(6) An evaluation of financial inability as provided in this rule does not relieve any owner or operator of legal liability to comply with department rules or Iowa Code chapter 455B or provide a defense to any legal actions to establish liability or enforce compliance.

567—135.18(455B) Transitional rules.

135.18(1) *Transitional rules.* Guidance for implementing these transitional rules is contained in the department's guidance entitled "Transition Policy Statement" dated June 6, 1996.

135.18(2) *Site cleanup reports and corrective action design reports accepted before August 15, 1996.* Any owner or operator who had a site cleanup report or corrective action design report approved by the department before August 15, 1996, may elect to submit a Tier 1 Site Assessment or Tier 2 Site Cleanup Report to the department. If the owner, operator, or responsible party so elects, the site shall be assessed, classified, and, if necessary, remediated, in accordance with the rules of the department as of August 15, 1996. To the extent that data collected for the site cleanup report does not include all information necessary for the Tier 1 Site Assessment or Tier 2 Site Cleanup Report, the owner or operator shall utilize the default parameters set out in subrule 135.18(4) or provide site-specific parameters.

135.18(3) *Site cleanup reports in the process of preparation or review prior to August 15, 1996.* The department will complete a Tier 1 or a Tier 2 risk analysis for any site cleanup report received but not approved by the department by November 15, 1996. To the extent that data collected for the site cleanup report does not include all information necessary for the Tier 2 site cleanup report and the owner or operator elects to not complete a Tier 2 site cleanup report the department shall utilize the default parameters set out in subrule 135.18(4). If the owner or operator wishes that site-specific data, rather than any default parameter, be used, the owner or operator shall notify the department by October 15, 1996, or in accordance with a schedule specified by the department. Following notification, the owner or operator shall be responsible for preparation of the Tier 1 site assessment or Tier 2 site cleanup report.

135.18(4) *Default parameters for use in converting a site cleanup report to a Tier 2 site cleanup report.*

a. As to sites for which the owner or operator has collected and submitted only TPH ("total petroleum hydrocarbons") data regarding soil contamination, TPH levels shall be converted to a risk associated factor by using: (1) previously acquired data regarding benzene, toluene, ethyl benzene, and xylenes data for the samples; (2) newly collected benzene, toluene, ethylbenzene, and xylenes data for the site; or (3) the assumptions that 1 percent of the total petroleum hydrocarbon (TPH) is benzene, 7 percent of the TPH is toluene, 2 percent of the TPH is ethylbenzene, and 8 percent of the TPH is xylenes.

b. As to sites for which the owner or operator has, to date, submitted only TEH ("total extractable hydrocarbons") data regarding soil contamination, TEH levels should be converted to a risk-associated factor by using: (1) previously acquired benzene, toluene, ethylbenzene and xylenes data for the samples; (2) newly collected benzene, toluene, ethylbenzene and xylenes data for the site; or (3) the assumption that 0.004 percent of the TEH is benzene, 0.05 percent of the TEH is toluene, 0.03 percent of the TEH is ethylbenzene and 0.3 percent of the TEH is xylenes. In addition, TEH levels should be compared to the TEH default levels in the Tier 1 Table. If, as of August 15, 1996, only TEH data for soil is available, and it does not exceed Tier 1 levels, additional sampling for TEH in groundwater is not required. Otherwise, groundwater samples must be collected and analyzed for TEH in accordance with 135.8(3).

c. Data required for preparing a Tier 2 site cleanup report shall be taken from the site cleanup report. If the site cleanup report lacks any of the data, site-specific data subsequently obtained may be used. The following assumptions shall be used if no site cleanup report or site-specific data is provided:

(1) If the site cleanup report is unclear as to neighboring land use, assume the land residential land use;

(2) Use the larger resulting default if both TPH and TEH data are available.

(3) For sites with free product gasoline range constituents, the default values in groundwater are 17,500 ug/l for benzene, 3,040 ug/l for ethylbenzene, 37,450 ug/l for toluene and 15,840 ug/l for xylenes. For sites with free product consisting of diesel range constituents, the default values are 370 ug/l benzene, 640 ug/l toluene, 140 ug/l ethylbenzene, 580 ug/l xylenes, and 260 ug/l naphthalene or 130,000 ug/l TEH.

135.18(5) *Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports accepted before August 6, 2008.* Any owner or operator who had a Tier 2 site cleanup report, Tier 3 report, or corrective action design report approved by the department before August 6, 2008, may elect to submit a Tier 2 site cleanup report using the Appendix B revised model, department-developed software and rules in effect as of August 6, 2008. The owner or operator shall notify the department that the owner or operator wishes to evaluate the leaking underground storage tank site with the Appendix B revised model, software and rules. If the owner or operator so elects, the site shall be assessed, classified, and, if necessary, remediated, in accordance with the rules of the department as of August 6, 2008. If the leaking underground storage tank site is undergoing active remediation, the remediation system shall remain operating until the reevaluation is completed and accepted or as otherwise approved by the department. Once a site has been evaluated using the Appendix B revised model, software and rules in effect as of August 6, 2008, it can no longer be evaluated with the Appendix B-1 old model and software and rules in effect prior to August 6, 2008.

135.18(6) *Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports in the process of preparation with a submittal schedule established prior to August 6, 2008.* The owner or operator shall notify the department that the owner or operator wishes to use the Appendix B revised model and department software and rules in effect as of August 6, 2008, to evaluate the leaking underground storage tank site before submitting the next report, and prior to expiration of the previously established submittal schedule. Once a site has been evaluated using the Appendix B revised model, software and rules in effect as of August 6, 2008, it can no longer be evaluated with the Appendix B-1 old model, software and rules existing just prior to August 6, 2008.

135.18(7) *Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports received by the department but not yet reviewed.* The owner or operator will notify the department within 60 days of August 6, 2008, whether the owner or operator is electing to complete a risk-based corrective action assessment using Appendix B revised model, department software and rules effective as of August 6, 2008, or proceeding with the risk-based corrective action assessment using Appendix B-1 old model and department software and rules existing prior to August 6, 2008. Once a site has been evaluated using the Appendix B revised model, software and rules it can no longer be evaluated with the previous Appendix B-1 old model, software and rules.

567—135.19(455B) Analyzing for methyl tertiary-butyl ether (MTBE) in soil and groundwater samples.

135.19(1) *General.* The objective of analyzing for MTBE is to determine its presence in soil and water samples collected as part of investigation and remediation of contamination at underground storage tank facilities.

135.19(2) *Required MTBE testing.* Soil and water samples must be analyzed for MTBE when collected for risk-based corrective action as required in rules 567—135.8(455B) through 567—135.12(455B). These sampling requirements include but are not limited to:

a. Risk-based corrective action (RBCA) evaluations required for Tier 1, Tier 2, and Tier 3 assessments and corrective action design reports.

b. Site monitoring.

c. Site remediation monitoring.

135.19(3) *MTBE testing not required.* Soil and water samples for the following actions are not required to be analyzed for MTBE:

a. Closure sampling under rule 567—135.15(455B) unless Tier 1 or Tier 2 sampling is being performed.

b. Site checks under subrule 135.7(3) unless Tier 1 or Tier 2 sampling is being performed.

c. If prior analysis at a site under 135.19(2) has not shown MTBE present in soil or groundwater.

d. If the department determines MTBE analysis is no longer needed at a site.

135.19(4) *Reporting.* The analytical data must be submitted in a format prescribed by the department.

135.19(5) *Analytical methods for methyl tertiary-butyl ether (MTBE).* When having soil or water analyzed for MTBE from contamination caused by petroleum or hazardous substances, owners and operators of UST systems must use a laboratory certified under 567—Chapter 83 for petroleum analyses. In addition, the owners and operators must ensure all soil and water samples are properly preserved and shipped within 72 hours of collection to a laboratory certified under 567—Chapter 83 for petroleum analyses.

a. Sample preparation and analysis shall be by:

(1) GC/MS version of OA-1, "Method for Determination of Volatile Petroleum Hydrocarbons (gasoline)," revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa; or

(2) U.S. Environmental Protection Agency Method 8260B, SW-846, "Test Methods for Evaluating Solid Waste," Third Edition.

b. Laboratories performing the analyses must run standards for MTBE on a routine basis, and standards for other possible compounds like ethyl tertiary-butyl ether (ETBE), tertiary-amyl methyl ether (TAME), diisopropyl ether (DIPE), and tertiary-butyl alcohol (TBA) to be certain of their identification should they be detected.

c. Laboratories must run a method detection limit study and an initial demonstration of capability for MTBE. These records must be kept on file.

d. The minimum detection level for MTBE in soil is 15 ug/kg. The minimum detection level for MTBE in water is 15 ug/l.

567—135.20(455B) Compliance inspection of UST system.

135.20(1) The owner or operator must have the UST system inspected and an inspection report submitted to the department by a UST compliance inspector certified by the department under 567—Chapter 134. An initial compliance site inspection shall be conducted no later than December 31, 2007. All subsequent compliance site inspections conducted after the compliance site inspection for the 2008-2009 biennial period shall be conducted within 24 months of the prior compliance site inspection. Compliance site inspections must be separated by at least six months.

135.20(2) Compliance inspection requirements. The owner or operator is responsible to ensure the department receives ten days' prior notice by the compliance inspector of the date of a site inspection and the name of the inspector as provided in 567—134.14(455B). The owner and operator must comply with the following as part of the inspection process.

a. Review and respond to the inspection report provided by the certified compliance inspector and complete the corrective actions specified in the compliance inspection report within the specified time frames.

b. Provide all records and documentation required by the certified compliance inspector and this chapter.

c. Upon notification of a suspected release by the certified compliance inspector pursuant to 567—subrule 134.14(1), report the condition to the department and undertake steps to investigate and confirm the suspected release as provided in 567—135.6(455B).

d. Ensure that the compliance inspector completes and submits an electronic inspection form in accordance with 567—134.14(455B).

135.20(3) The owner and operator shall do the following upon receipt of a compliance inspection report as provided in 567—subrule 134.14(1) which finds violations of the department's rules:

a. Take all actions necessary to correct any compliance violations or deficiencies in accordance with this chapter. Corrective action must be taken within the time frame established by rule or, if no time frames are established by rule, within 60 days of receipt of the inspector's report or another reasonable time period approved by the department. The granting of time to remedy a violation does not preclude the department from exercising its discretion to assess penalties for the violation.

b. Within 60 days of receipt of the inspector's report, provide documentation to the compliance inspector that the violation or deficiencies have been corrected.

c. Conduct a follow-up inspection in instances where there are serious problems or a history of repeated violations when required by the department.

135.20(4) Conflict of interest. A compliance site inspection must be conducted by a certified compliance inspector who is not the owner or operator of the UST system being inspected, an employee of the owner or operator of the UST system being inspected, or a person having daily on-site responsibility for the operation and maintenance of the UST system.

[**ARC 8124B**, IAB 9/9/09, effective 10/14/09]

Appendix A - Tier 1 Table, Assumptions, Equations and Parameter Values

Iowa Tier 1 Look-Up Table

Media	Exposure Pathway	Receptor	Group 1				Group 2: TEH	
			Benzene	Toluene	Ethylbenzene	Xylenes	Diesel*	Waste Oil
Groundwater (µg/L)	Groundwater Ingestion	Actual	5	1,000	700	10,000	1,200	400
		Potential	290	7,300	3,700	73,000	75,000	40,000
	Groundwater Vapor to Enclosed Space	All	1,540	20,190	46,000	NA	2,200,000	NA
	Groundwater to Water Line	PVC or Gasketed Mains	7,500	6,250	40,000	48,000	75,000	40,000
		PVC or Gasketed Service Lines	3,750	3,120	20,000	24,000	75,000	40,000
		PE/PB/AC Mains or Service Lines	200	3,120	3,400	19,000	75,000	40,000
	Surface Water	All	290	1,000	3,700	73,000	75,000	40,000
Soil (mg/kg)	Soil Leaching to Groundwater	All	0.54	42	15	NA	3,800	NA
	Soil Vapor to Enclosed Space	All	1.16	48	79	NA	47,500	NA
	Soil to Water Line	All	2.0	3.2	45	52	10,500	NA

NA: Not applicable. There are no limits for the chemical for the pathway, because for groundwater pathways the concentration for the designated risk would be greater than the solubility of the pure chemical in water, and for soil pathways the concentration for the designated risk would be greater than the soil concentration if pure chemical were present in the soil.

TEH: Total Extractable Hydrocarbons. The TEH value is based on risks from naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. Refer to Appendix B for further details.

Diesel*: Standards in the Diesel column apply to all low volatile petroleum hydorcarbons except waste oil.

Assumptions Used for Iowa Tier 1 Look-Up Table Generation

1. Groundwater ingestion pathway. The maximum contaminant levels (MCLs) were used for Group 1 chemicals. The target risk for carcinogens for actual receptors is 10^{-6} and for potential receptors is 10^{-4}. A hazard quotient of one, and residential exposure and building parameters are assumed.

2. Groundwater vapor to enclosed space pathway. Residential exposure and residential building parameters are assumed; no inhalation reference dose is used for benzene; the capillary fringe is assumed to be the source of groundwater vapor; and the hazard quotient is 1 and target risk for carcinogens is $1x10^{-4}$.

3. Groundwater to water line. This pathway uses the same assumptions as the groundwater ingestion pathway for potential receptors, including a target risk for carcinogens of 10^{-4}.

4. Surface water. This pathway uses the same assumptions as the groundwater ingestion pathway for potential receptors, including a target risk for carcinogens of 10^{-4}, except for toluene which has a chronic level for aquatic life of 1,000 as in the definition for surface water criteria in 567—135.2(455B).

5. Soil leaching to groundwater. This pathway assumes the groundwater will be protected to the same levels as the groundwater ingestion pathway for potential receptors, using residential exposure and a target risk for carcinogens of 10^{-4}.

6. Soil vapor to enclosed space pathway. The target risk for carcinogens is $1x10^{-4}$; the hazard quotient is 1; no inhalation reference dose is used for benzene; residential exposure factors are assumed; and the average of the residential and nonresidential building parameters is assumed.

7. Soil to water line pathway. This pathway uses the soil leaching to groundwater model with nonresidential exposure and a target risk for carcinogens of 10^{-4}.

In addition to these assumptions, the equations and parameter values used to generate the Iowa Tier 1 Look-Up Table are described below.

Groundwater Ingestion Equations

Carcinogens:

$$RBSL_w \left[\frac{mg}{L - H_2O}\right] = \frac{TR \times BW \times AT_c \times \frac{365\ days}{year}}{SF_o \times IR_w \times EF \times ED}$$

Noncarcinogens:

$$RBSL_w \left[\frac{mg}{L - H_2O}\right] = \frac{THQ \times RfD_o \times BW \times AT_n \times \frac{365\ days}{year}}{IR_w \times EF \times ED}$$

Soil Leaching to Groundwater Equations

$$RBSL_{sl} \left[\frac{mg}{kg - soil}\right] = \frac{RBSL_w \left[\frac{mg}{L - H_2O}\right]}{LF}$$

$$LF \left[\frac{mg/L - H_2O}{mg/kg - soil}\right] = \frac{\rho_s}{(\theta_{ws} + k_s\rho_s + H\theta_{as})\left(1 + \frac{U\delta}{IW}\right)}$$

Soil Vapor to Enclosed Space Equations

$$RBSL_{sv}\left[\frac{mg}{kg-soil}\right] = \frac{RBSL_{air}\left[\frac{\mu g}{m^3-air}\right]}{VF_{sv}}\left(\frac{mg}{1000\ \mu g}\right)$$

$$VF_{sv}\left[\frac{(mg/m^3-air)}{(mg/kg-soil)}\right] = \frac{\frac{H\rho_s}{(\theta_{ws}+k_s\rho_s+H\theta_{as})}\left[\frac{D_s^{eff}/L_s}{ER\ L_B}\right]}{1+\left[\frac{D_s^{eff}/L_s}{ER\ L_B}\right]+\left[\frac{D_s^{eff}/L_s}{\left(D_{crack}^{eff}/L_{crack}\right)\eta}\right]}\left(10^3\ \frac{cm^3-kg}{m^3-g}\right)$$

$$D_{crack}^{eff}\left[\frac{cm^2}{s}\right] = D^{air}\ \frac{\theta_{acrack}^{3.33}}{\theta_T^2} + D^{wat}\frac{1}{H}\frac{\theta_{wcrack}^{3.33}}{\theta_T^2}$$

$$D_s^{eff}\left[\frac{cm^2}{s}\right] = D^{air}\ \frac{\theta_{as}^{3.33}}{\theta_T^2} + D^{wat}\frac{1}{H}\frac{\theta_{ws}^{3.33}}{\theta_T^2}$$

Indoor Air Inhalation Equations

Carcinogens:

$$RBSL_{air}\left[\frac{\mu g}{m^3\text{ - air}}\right] = \frac{TR \times BW \times AT_c \times \frac{365\text{ days}}{year} \times \frac{1000\ \mu g}{mg}}{SF_i \times IR_{air} \times EF \times ED}$$

Noncarcinogens:

$$RBSL_{air}\left[\frac{\mu g}{m^3\text{ - air}}\right] = \frac{THQ \times RfD_i \times BW \times AT_n \times \frac{\frac{365}{kdays}}{year} \times \frac{1000\ \mu g}{mg}}{IR_{air} \times EF \times ED}$$

Groundwater Vapor to Enclosed Space Equations

$$RBSL_{gw}\left[\frac{mg}{L - H_2O}\right] = \frac{RBSL_{air}\left[\frac{\mu g}{m^3 - air}\right]}{VF_{gw}}\left(\frac{mg}{1000\ \mu g}\right)$$

$$VF_{gw}\left[\frac{(mg/m^3 - air)}{(mg/L - H_2O)}\right] = \frac{H\left[\frac{D_s^{eff}/L_{gw}}{ER\ L_B}\right]}{1 + \left[\frac{D_s^{eff}/L_{gw}}{ER\ L_B}\right] + \left[\frac{D_s^{eff}/L_{gw}}{\left(D_{crack}^{eff}/L_{crack}\right)\eta}\right]}\left(\frac{10^3 L}{m^3}\right)$$

Variable Definitions

δ	groundwater mixing zone thickness (cm)
η	areal fraction of cracks in foundation/wall (cm^2-cracks/cm^2-area)
ρ_s	soil bulk density (g/cm^3)
θ_{acrack}	volumetric air content in foundation/wall cracks (cm^3-air/cm^3-soil)
θ_{as}	volumetric air content in vadose zone (cm^3-air/cm^3-soil)
θ_T	total soil porosity (cm^3-voids/cm^3-soil)
θ_{wcrack}	volumetric water content in foundation/wall cracks (cm^3-H_2O/cm^3-soil)
θ_{ws}	volumetric water content in vadose zone (cm^3-H_2O/cm^3-soil)
AT_c	averaging time for carcinogens (years)
AT_n	averaging time for noncarcinogens (years)
BW	body weight (kg)
D^{air}	chemical diffusion coefficient in air (cm^2/s)
D^{wat}	chemical diffusion coefficient in water (cm^2/s)
D^{eff}_{crack}	effective diffusion coefficient through foundation cracks (cm^2/s)
D^{eff}_{s}	effective diffusion coefficient in soil based on vapor-phase concentration (cm^2/s)
ED	exposure duration (years)
EF	exposure frequency (days/year)
ER	enclosed space air exchange rate (s^{-1})
f_{oc}	fraction organic carbon in the soil (kg-C/kg-soil)
H	henry's law constant (L-H_2O)/(L-air)
i	groundwater head gradient (cm/cm)
I	infiltration rate of water through soil (cm/year)
IR_{air}	daily indoor inhalation rate (m^3/day)
IR_w	daily water ingestion rate (L/day)
K	hydraulic conductivity (cm/year)
K_{oc}	carbon-water sorption coefficient (L-H_2O/kg-C)
k_s	soil-water sorption coefficient (L-H_2O/kg-soil), f_{oc} x K_{oc}
L_B	enclosed space volume/infiltration area ratio (cm)
L_{crack}	enclosed space foundation or wall thickness (cm)
LF	leaching factor from soil to groundwater ((mg/L-H_2O)/(mg/kg-soil))
L_{gw}	depth to groundwater from the enclosed space foundation (cm)
L_s	depth to subsurface soil sources from the enclosed space foundation (cm)
$RBSL_{air}$	Risk-Based Screening Level for indoor air ($\mu g/m^3$-air)
$RBSL_{gw}$	Risk-Based Screening Level for vapor from groundwater to enclosed space air inhalation (mg/L-H_2O)
$RBSL_{sl}$	Risk-Based Screening Level for soil leaching to groundwater (mg/kg-soil)
$RBSLs_v$	Risk-Based Screening Level for vapors from soil to enclosed space air inhalation (mg/kg-soil)
$RBSL_w$	Risk-Based Screening Level for groundwater ingestion (mg/L-H_2O)
RfD_i	inhalation chronic reference dose ((mg/(kg-day))
RfD_o	oral chronic reference dose ((mg/(kg-day))
SF_i	inhalation cancer slope factor ((kg-day)/mg)
SF_o	oral cancer slope factor ((kg-day)/mg)
THQ	target hazard quotient for individual constituents (unitless)
TR	target excess individual lifetime cancer risk (unitless)
U	groundwater Darcy velocity (cm/year), U=Ki
VF_{gw}	volatilization factor for vapors from groundwater to enclosed space ((mg/m^3-air)/(mg/L-H_2O))
VF_{sv}	volatilization factor for vapors from soil to enclosed space ((mg/m^3-air)/(mg/kg-soil))
W	width of soil source area parallel to groundwater flow direction (cm)

Soil and Groundwater Parameter Values Used for Iowa Tier 1 Table Generation

Parameter		Iowa Tier 1 Table Value
K	hydraulic conductivity	16060 cm/year
i	groundwater head gradient	0.01 cm/cm
W	width of soil source area parallel to groundwater flow direction	1500 cm
I	infiltration rate of water through soil	7 cm/year
δ	groundwater mixing zone thickness	200 cm
ρ_s	soil bulk density	1.86 g/cm^3
θ_{as}	volumetric air content in vadose zone	0.2 cm^3-air/cm^3-soil
θ_{ws}	volumetric water content in vadose zone	0.1 cm^3-H_2O/cm^3-soil
θ_{acrack}	volumetric air content in foundation/wall cracks	0.2 cm^3-air/cm^3-soil
θ_{wcrack}	volumetric water content in foundation/wall cracks	0.1 cm^3-H_2O/cm^3-soil
θ_T	total soil porosity	0.3 cm^3-voids/cm^3-soil
f_{oc}	fraction organic carbon in the soil	0.01 kg-C/kg-soil
L_s	depth to subsurface soil sources from the enclosed space foundation	1 cm
L_{gw}	depth to groundwater from the enclosed space foundation	1 cm

Exposure Factors Used in Iowa Tier 1 Table Generation

Parameter		Residential	Nonresidential
AT_c (years)	averaging time for carcinogens	70	70
AT_n (years)	averaging time for noncarcinogens	30	25
BW (kg)	body weight	70	70
ED (years)	exposure duration	30	25
EF (days/year)	exposure frequency	350	250
IR_{air} (m^3/day)	daily indoor inhalation rate	15	20
IR_w (L/day)	daily water ingestion rate	2	1
THQ (unitless)	target hazard quotient for individual constituents	1.0	1.0

Building Parameters Used in Iowa Tier 1 Table Generation

Parameter		Residential	Nonresidential
ER (s^{-1})	enclosed space air exchange rate	0.00014	0.00023
L_B (cm)	enclosed space volume/infiltration area ratio	200	300
L_{crack} (cm)	enclosed space foundation or wall thickness	15	15
η	areal fraction of cracks in foundation/wall	0.01	0.01

Chemical-Specific Parameter Values Used for Iowa Tier 1 Table Generation

Chemical	D^{air} (cm^2/s)	D^{wat} (cm^2/s)	H (L-air/L-water)	log(K_{oc}), L/kg
Benzene	0.093	1.1e-5	0.22	1.58
Toluene	0.085	9.4e-6	0.26	2.13
Ethylbenzene	0.076	8.5e-6	0.32	1.98
Xylenes	0.072	8.5e-6	0.29	2.38
Naphthalene	0.072	9.4e-6	0.049	3.11
Benzo(a)pyrene	0.050	5.8e-6	5.8e-8	5.59
Benz(a)anthracene	0.05	9.0e-6	5.74e-7	6.14
Chrysene	0.025	6.2e-6	4.9e-7	5.30

Saturation Values Used to Determine "NA" for the Iowa Tier 1 Table

Chemical	Solubility in Water (mg/L) S	Saturation in Soil (mg/kg) C_s^{sat}
Benzene	1,750	801
Toluene	535	765
Ethylbenzene	152	159
Xylenes	198	492
Naphthalene	31	401
Benzo(a)pyrene	0.0012	4.69
Benz(a)anthracene	0.014	193.3
Chrysene	0.0028	5.59

The maximum solubility of the pure chemical in water is listed in the table above. The equation below is used to calculate the soil concentration (C_s^{sat}) at which dissolved pore-water and vapor phases become saturated. Tier 1 default values are used in the equation. "NA" (for not applicable) is used in the Tier 1 table when the risk-based value exceeds maximum solubility for water (S) or maximum saturation for soil (C_s^{sat}).

$$C_s^{sat}(\text{mg/kg-soil}) = S/\rho_s \times (H\theta_{as} + \theta_{ws} + k_s \rho_s)$$

Slope Factors and Reference Doses Used for Iowa Tier 1 Table Generation

Chemical	SF_i ((kg-day)/mg)	SF_o ((kg-day)/mg)	RfD_i (mg/(kg-day))	RfD_o (mg/(kg-day))
Benzene	0.029	0.029	—	—
Toluene	—	—	0.114	0.2
Ethylbenzene	—	—	0.286	0.1
Xylenes	—	—	2.0	2.0
Naphthalene	—	—	0.004	0.004
Benzo(a)pyrene	6.1	7.3	—	—
Benz(a)anthracene	0.61	0.73	—	—
Chrysene	0.061	0.073	—	—

[**ARC 9011B**, IAB 8/25/10, effective 9/29/10]

Appendix B – Tier 2 Equations and Parameter Values (Revised Model)

All Tier 1 equations and parameters apply at Tier 2 except as specified below.

Equation for Tier 2 Groundwater Contaminant Transport Model

Equation (1)

$$C(x) = C_s \exp\left(\frac{x_m}{2\alpha_x}\left[1-\sqrt{1+\frac{4\lambda\alpha_x}{u}}\right]\right) erf\left(\frac{S_w}{4\sqrt{\alpha_y x_m}}\right) erf\left(\frac{S_d}{4\sqrt{\alpha_z x_m}}\right)$$

Equation (2)

Where $x_m = ax + bx^c$

The value of X_m is computed from Equation (2), where the values for a, b and c in Equation (2) are given in Table 1.

Table 1. Parameter Values for Equation (2)

Chemical	a	b	c
Benzene	1	0.000000227987	3.929438689
Toluene	1	0.000030701	3.133842393
Ethylbenzene	1	0.0001	2.8
Xylenes	1	0.0	0.0
TEH-Diesel	1	0.000000565	3.625804634
TEH-Waste Oil	1	0.000000565	3.625804634
Naphthalene	1	0	0

Variable definitions

x: distance in the x direction downgradient from the source
erf( ): the error function
C(x): chemical concentration in groundwater at x
C_s: Source concentration in groundwater (groundwater concentration at x=0)
S_w: width of the source (perpendicular to x)
S_d: vertical thickness of the source
u: groundwater velocity (pore water velocity); u=Ki/θe
K: hydraulic conductivity
i: groundwater head gradient
θe: effective porosity
λ: first order decay coefficient, chemical specific
αx, αy, αz: dispersivities in the x, y and z directions, respectively

For the following lists of parameters, one of three is required: site-specific measurements, defaults or the option of either (which means the default may be used or replaced with a site-specific measurement).

Soil parameters

Parameter		Default Value	Required
ρ_s	soil bulk density	1.86 g/cm^3	option
f_{oc}	fraction organic carbon in the soil	0.01 kg-C/kg-soil	option
θ_T	total soil porosity	0.3cm^3-voids/cm^3-soil	option
θ_{as}	volumetric air content in vadose zone	0.2cm^3-air/cm^3-soil	default
θ_{ws}	volumetric water content in vadose zone	0.1cm^3-H_2O/cm^3-soil	default
θ_{acrack}	volumetric air content in foundation/wall cracks	0.2cm^3-air/cm^3-soil	default

Parameter		Default Value	Required
θ_{wcrack}	volumetric water content in foundation/wall cracks	0.1cm^3-H_2O/cm^3-soil	default
I	infiltration rate of water through soil	7 cm/year	default

If the total porosity is measured, assume 1/3 is air filled and 2/3 is water filled for determining the water and air fraction in the vadose zone soil and floor cracks.

Groundwater Transport Modeling Parameters

Parameter		Default Value	Required
K	hydraulic conductivity	16060 cm/year	site-specific
i	groundwater head gradient	0.01 cm/cm	site-specific
S_w	width of the source	use procedure specified in 135.10(2)	site-specific
S_d	vertical thickness of the source	3 m	default
αx	dispersivity in the x direction	0.1x	default
αy	dispersivity in the y direction	$0.33\alpha x$	default
αz	dispersivity in the z direction	$0.05\alpha x$	default
θe	effective porosity	0.1	default

where $u=Ki/\theta e$

First-order Decay Coefficients

Chemical	Default Valueλ (d-1)	Required
Benzene	0.000127441	default
Toluene	0.0000208066	default
Ethylbenzene	0.0	default
Xylenes	0.0005	default
Naphthalene	0.00013	default
TEH-Diesel	0.0000554955	default
TEH-Waste Oil	0.0000554955	default

Other Parameters for Groundwater Vapor to Enclosed Space

Parameter		Default Value	Required
Lgw	depth to groundwater from the enclosed space foundation	1 cm	option
L_B	enclosed space volume/infiltration area ratio	200 cm	option
ER (s-1)	enclosed space air exchange rate	0.00014	default
Lcrack	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

Other Parameters for Soil Vapor to Enclosed Space

Parameter		Default Value	Required
L_s	depth to subsurface soil sources from the enclosed space foundation	1 cm	option
L_B	enclosed space volume/infiltration area ratio	250 cm *	option
ER (s-1)	enclosed space air exchange rate	0.000185 *	default
Lcrack	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

*These values are an average of residential and nonresidential factors.

Soil Leaching to Groundwater

Parameter		Default Value	Required
δ	groundwater mixing zone	2 m	default

Building Parameters for Iowa Tier 2

Parameter		Residential	Nonresidential
ER (s-1)	enclosed space air exchange rate	0.00014	0.00023
L_B	enclosed space volume/infiltration area ratio	200 cm	300 cm

Other Parameters

For Tier 2, the following are the same as Tier 1 values (refer to Appendix A): chemical-specific parameters, slope factors and reference doses, and exposure factors (except for those listed below).

Exposure Factors for Tier 2 Groundwater Vapor to Enclosed Space Modeling:

Potential Residential: use residential exposure and residential building parameters.

Potential Nonresidential: use nonresidential exposure and nonresidential building parameters.

Diesel and Waste Oil

Diesel and Waste Oil			Chemical-Specific Values for Tier 1			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	150	0.012	0.12	1.2
		potential	150	1.2	12.0	NA
	Groundwater Vapor to Enclosed Space	all	4,440	NA	NA	NA
	Groundwater to Water Line	all	150	1.2	12.0	NA
	Surface Water	all	150	1.2	12.0	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	7.6	NA	NA	NA
	Soil Vapor to Enclosed Space	all	95	NA	NA	NA
	Soil to Water Line	all	21	NA	NA	NA

Due to difficulties with analytical methods for the four individual chemicals listed in the above table, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that diesel contains 0.2% napthalene, 0.001% benzo(a)pyrene, 0.001% benz(a)anthracene, and 0.001% chrysene. Resulting TEH Default Values are shown in the following table.

Diesel			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	75,000	1,200	12,000	120,000
		potential	75,000	120,000	1,200,000	NA
	Groundwater Vapor to Enclosed Space	all	2,200,000	NA	NA	NA
	Groundwater to Water Line	all	75,000	120,000	1,200,000	NA
	Surface Water	all	75,000	120,000	1,200,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	3,800	NA	NA	NA
	Soil Vapor to Enclosed Space	all	47,500	NA	NA	NA
	Soil to Water Line	all	10,500	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.

Due to difficulties with analytical methods for the four individual chemicals, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that waste oil contains no naphthalene, 0.003% benzo(a)pyrene, 0.003% benz(a)anthracene, and 0.003% chrysene. Resulting TEH Default Values are shown in the following table.

Waste Oil			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	NA	400	4,000	40,000
		potential	NA	40,000	400,000	NA
Groundwater (ug/L)	Groundwater Vapor to Enclosed Space	all	NA	NA	NA	NA
	Groundwater to Water Line	all	NA	40,000	400,000	NA
	Surface Water	all	NA	40,000	400,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	NA	NA	NA	NA
	Soil Vapor to Enclosed Space	all	NA	NA	NA	NA
	Soil to Water Line	all	NA	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.

Water Line Calculations

Explanation of Target Levels for
Petroleum Fuel-Derived BTEX Compounds in Groundwater and Soil

GROUNDWATER

PVC or Gasketed Mains

Benzene: 7,500 µg/L
Gasoline-saturated groundwater was considered to be an extreme condition of environmental contamination, and it was considered unacceptable to leave water lines, regardless of material, in contact with this level of benzene contamination. While Ong et al. (2008) showed that gasoline-saturated groundwater would not pose a significant risk of permeation exceeding the 5 µg/L MCL for benzene of gasketed DI or PVC water mains, a safety factor of 1/8th was applied to the level of benzene in premium gasoline-saturated water determined by Ong et al. (2008). A 1/2 safety factor was compounded for each of four potential safety risks: material defects in the pipe (= 1/2), presence of service line taps (= 1/4), stagnation of water (= 1/6), and water line breaks (= 1/8). This was an average of 67.5 mg/L ± 4.9 mg/L for multiple preparations of gasoline-saturated water and was rounded to 60.0 mg/L to conservatively account for the statistical uncertainty. Hence,

$$\textit{Target Level} = \frac{1}{8} \times 60{,}000\ \mu g/L = 7{,}500\ \mu g/L\ \textit{benzene}$$

Toluene: 6,250 µg/L
The target level for toluene was determined similarly to that for benzene. The level of toluene in premium gasoline-saturated water was determined by Ong et al. (2008) to be 56.2 mg/L ± 4.9 mg/L and conservatively rounded to 50.0 mg/L. Hence,

$$\textit{Target Level} = \frac{1}{8} \times 50{,}000\ \mu g/L = 6{,}250\ \mu g/L\ \textit{toluene}$$

Ethylbenzene: 40,000 µg/L
The target level was set to be double that for PVC or Gasketed Service Lines (20,000 µg/L – see below).

Total Xylenes: 48,000 µg/L
The target level was set to be double that for PVC or Gasketed Service Lines (24,000 µg/L – see below).

PVC or Gasketed Service Lines

Benzene: 3,750 µg/L
The target level was set to be one-half of that for PVC or Gasketed Mains (7,500 µg/L as above) since service lines tend to be of higher risk than mains owing to their smaller diameter and greater potential for stagnation.

Toluene: 3,120 µg/L
Similar to benzene, the target level was set to be one-half of that for PVC or Gasketed Mains (6,250 µg/L as above) since service lines tend to be of higher risk than mains owing to their smaller diameter and greater potential for stagnation. Odd-even rounding to 3 significant figures was applied.

Ethylbenzene: 20,000 µg/L
The target level was based on two observations by Ong et al. (2008): (1) premium gasoline-saturated water has an average concentration of 3.4 mg/L ethylbenzene and (2) ethylene permeates high density polyethylene 46 times slower than does benzene (presumably, this is reasonably representative of other materials such as rubber gaskets). The 1/8 safety factor was also applied, as above. Odd-even rounding to 2 significant figures was applied. Hence:

$$\textit{Target Level} = 3{,}400\ \mu g/L \times 46x \times \frac{1}{8} = 19{,}550\ \mu g/L = 20{,}000\ \mu g/L$$

Total Xylenes: 24,000 µg/L
Similar to ethylbenzene, the target level was based on (1) premium gasoline-saturated water has an average concentration of 19 mg/L total xylenes and (2) total xylenes permeate high density polyethylene 10 times slower than does benzene. The 1/8 safety factor was also applied, as above. Odd-even rounding to 2 significant figures was applied. Hence:

$$\textit{Target Level} = 19{,}000\ \mu g/L \times 10x \times \frac{1}{8} = 23{,}750\ \mu g/L = 24{,}000\ \mu g/L$$

PE/PB/AC

Benzene: 200 µg/L
The target level was set at the concentration of benzene in groundwater surrounding a 1″ HDPE service line (SIDR 9 IPS) that would result in a concentration of 2 µg/L benzene in the service line after a 24 hr stagnation period. This level was chosen because 2 µg/L is generally the minimum reportable concentration of benzene in laboratory reports received by the department.

The permeation rate is a function of the concentration of benzene in the groundwater as described by Ong et al. (2008), equation 3.4a:

$$P_m = 0.0079 C_{bulk}^{1.1323}$$

where P_m is the benzene permeation rate in µg/cm^2/day through the pipe described above (cm^2 refers to the inner surface of the pipe) and C_{bulk} is the concentration of benzene in the groundwater (mg/L).

For any length of exposed 1″ SIDR 9 IPS pipe, l (cm), the concentration in the pipe after 24 hr stagnation, C_{24hr} (µg/L), can be computed from P_m and the ratio of the inner surface of the pipe to the internal volume:

$$C_{24hr} = P_m \times \left(\frac{2\pi r l}{\pi r^2 l/1000}\right) = 0.0079 C_{bulk}^{1.1323} \times \frac{2000}{r}$$

where r is the inside radius of the pipe (cm), l is the length of exposed pipe (cm), and dividing by 1000 converts from cm^3 to liters (and, therefore, 2000/r converts µg/cm^2/day to µg/L/day).

Solving for C_{bulk} (mg/L) with C_{24hr}= 2 µg/L and r = 1.28 cm (per manufacturer's specifications):

$$C_{bulk}^{1.1323} = \frac{2 \times 1.28}{0.0079 \times 2000}$$

and

$$C_{bulk} = \sqrt[1.1323]{0.162} = 0.200 mg/L = 200 \mu g/L$$

While the target level is expressed as 200 µg/L for clarity, the underlying data support only two significant figures. In a stricter treatment of the data, this would be expressed as 20×10^1 µg/L.

Toluene: 3,120 µg/L
The target level was set to be equal to that for PVC or Gasketed Service Lines. Calculations similar to those used above for benzene (Ong et al. (2008), equation 3.4b) indicate that 3,120 µg/L toluene in groundwater would result in 50 µg/L inside a 1" SIDR 9 IPS HDPE pipe after 24 hours of stagnation, which is 1/20th of the 1,000 µg/L MCL for toluene.

Ethylbenzene: 3,400 µg/L
The target level was set to be equal to the concentration of ethylbenzene in premium gasoline-saturated water (see discussion above for PVC or Gasketed Mains/Benzene). Unlike other target levels based on contaminant concentrations in gasoline-saturated water, the 1/8th safety factor was not applied because of the very low permeation rate of ethylbenzene through HDPE, the relatively low solubility of ethylbenzene in water, and the relatively high MCL (700 µg/L). Ong et al. (2008) found that permeation of HDPE by aqueous ethylbenzene was minimal and of no consequence for public health.

Total Xylenes: 19,000 µg/L
The target level was set to be equal to the concentration of ethylbenzene in premium gasoline-saturated water following the same reasoning for ethylbenzene (above). The permeation rate and water solubility are also very low, and the MCL is 10,000 µg/L. Ong et al. (2008) found that permeation of HDPE by aqueous xylenes was minimal and of no consequence for public health.

SOIL

Target levels for soil were set to be the same for mains and service lines of any material discussed above under "Groundwater." The underlying data support two significant figures for target levels in soil. Odd-even rounding was applied where appropriate.

Benzene: 2.0 mg/Kg
The target level was derived from the concentration of benzene (mg/Kg) that would result if soil that was 10% moisture and 1% organic matter was equilibrated with premium gasoline-saturated water (60 mg/L benzene – as per discussion of PVC or Gasketed Mains/Benzene above). The equilibrium concentration in soil was calculated using the approach of Chiou et al. (1983). The 1/8th safety factor discussed previously for groundwater was applied. Accordingly:

$$C_T = C_W K_d + C_W \theta$$

where C_T is the total concentration of benzene in soil (mg/Kg), θ is the fraction of moisture in the soil (Kg/Kg), and K_d is the partition coefficient from water to soil (L/Kg). Further:

$$K_d = K_{om} f_{om}$$

where K_{om} is the partition coefficient from water to organic matter in the soil, which is 16.8 L/Kg for benzene in soils with naturally occurring organic matter (Chiou et al. (1983)), and f_{om} is the fraction of organic matter in the dry soil (Kg/Kg).

For soil containing 1% naturally occurring organic matter and 10% moisture, the total concentration of benzene upon exposure to premium gasoline-saturated groundwater (60 mg/L benzene, as per above discussion of PVC or Gasketed Mains) would be:

$$C_T = \left(\frac{60\ mg}{L} \times \left(\frac{16.8\ L}{Kg} \times \frac{0.01\ Kg}{Kg}\right)\right) + \left(\frac{60\ mg}{L} \times \frac{0.1\ Kg}{Kg}\right) = \frac{16\ mg}{Kg}$$

Applying the 1/8th safety factor:

$$Target\ Level = \frac{1}{8} \times \frac{16\ mg}{Kg} = \frac{2.0\ mg}{Kg}$$

Toluene: 3.2 mg/Kg

The target level was derived in the same manner as for benzene except that the concentration of toluene in premium gasoline-saturated water is 50 mg/L and K_{om} is 42 L/Kg. Accordingly:

$$C_T = \left(\frac{50\ mg}{L} \times \left(\frac{42\ L}{Kg} \times \frac{0.01\ Kg}{Kg}\right)\right) + \left(\frac{50\ mg}{L} \times \frac{0.1\ Kg}{Kg}\right) = \frac{26\ mg}{Kg}$$

and

$$Target\ Level = \frac{1}{8} \times \frac{26\ mg}{Kg} = \frac{3.2\ mg}{Kg}$$

Ethylbenzene: 45 mg/Kg

The target level was based on the target level set for Groundwater/PVC or Gasketed Mains (40,000 µg/L, rounded from 39,100 µg/L, or 39.1 mg/L) and the principles of Chiou et al. (1983) discussed above. In a manner similar to that for benzene in soil, C_W was 3.4 mg/L, K_d was 0.106 L/Kg, and C_T was calculated to be 3.9 mg/Kg. The target level for soil that is equivalent to the target level set for groundwater was calculated as follows:

$$Target\ Level\ mg/Kg = 39.1\ mg/L \times \frac{3.9\ mg/Kg}{3.4\ mg/L} = 45\ mg/Kg$$

Total Xylenes: 52 mg/Kg

The target level was set in the same manner as for ethylbenzene (above), based on the groundwater target level of 48,000 µg/L (rounded from 47.5 mg/L). C_W was 19 mg/L, K_d was 1.001 L/Kg (assuming a mixture of m-, o-, and p-xylenes which is 60%, 20%, and 20%, respectively, which is typical of xylenes derived from petroleum), and C_T was calculated to be 21 mg/Kg. Hence:

$$Target\ Level\ mg/Kg = 47.5\ mg/L \times \frac{21\ mg/Kg}{19\ mg/L} = 52\ mg/Kg$$

NOTE: The 1/8th safety factor was applied above to the target levels for ethylbenzene and total xylenes for Groundwater, PVC or Gasketed Service Lines, thence the target levels for Groundwater, PVC or Gasketed Mains, were derived. Consequently, the 1/8th safety factor has also been applied to the target levels for both ethylbenzene and total xylenes in soil.

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Ong, S. K., J. A. Gaunt, F. Mao, C. L. Cheng, L. Esteve-Agelet, and C. R. Hurburgh. 2008. Impact of hydrocarbons on PE/PVC pipes and pipe gaskets, Publication 91204. Awwa Research Foundation (presently Water Research Foundation), Denver, CO.

Appendix B-1 – Tier 2 Equations and Parameter Values (Old Model)

All Tier 1 equations and parameters apply at Tier 2 except as specified below.

Equation for Tier 2 Groundwater Contaminant Transport Model

$$C(x) = C_s \exp\left(\frac{x}{2\alpha_x}\left[1-\sqrt{1+\frac{4\lambda\alpha_x}{u}}\right]\right) \operatorname{erf}\left(\frac{S_w}{4\sqrt{\alpha_y x}}\right) \operatorname{erf}\left(\frac{S_d}{4\sqrt{\alpha_z x}}\right)$$

Variable definitions

x: distance in the x direction downgradient from the source
erf( ): the error function
C(x): chemical concentration in groundwater at x
C_s: Source concentration in groundwater (groundwater concentration at x=0)
S_w: width of the source (perpendicular to x)
S_d: vertical thickness of the source
u: groundwater velocity (pore water velocity); u=Ki/θe
K: hydraulic conductivity
i: groundwater head gradient
θe: effective porosity
λ: first-order decay coefficient, chemical specific
αx, αy, αz: dispersivities in the x, y and z directions, respectively

For the following lists of parameters, one of three is required: site-specific measurements, defaults or the option of either (which means the default may be used or replaced with a site-specific measurement).

Soil parameters

Parameter		Default Value	Required
ρ_s	soil bulk density	1.86 g/cm^3	option
f_{oc}	fraction organic carbon in the soil	0.01 kg-C/kg-soil	option
θ_T	total soil porosity	0.3cm^3-voids/cm^3-soil	option
θ_{as}	volumetric air content in vadose zone	0.2cm^3-air/cm^3-soil	default
θ_{ws}	volumetric water content in vadose zone	0.1cm^3-H_2O/cm^3-soil	default
θ_{acrack}	volumetric air content in foundation/wall cracks	0.2cm^3-air/cm^3-soil	default
θ_{wcrack}	volumetric water content in foundation/wall cracks	0.1cm^3-H_2O/cm^3-soil	default
I	infiltration rate of water through soil	7 cm/year	default

If the total porosity is measured, assume 1/3 is air filled and 2/3 is water filled for determining the water and air fraction in the vadose zone soil and floor cracks.

Groundwater Transport Modeling Parameters

Parameter		Default Value	Required
K	hydraulic conductivity	16060 cm/year	site-specific
i	groundwater head gradient	0.01 cm/cm	site-specific
S_w	width of the source	use procedure specified in 135.10(2)	site-specific
S_d	vertical thickness of the source	3 m	default
αx	dispersivity in the x direction	0.1x	default
αy	dispersivity in the y direction	$0.33\alpha x$	default
αz	dispersivity in the z direction	$0.05\alpha x$	default
θe	effective porosity	0.1	default

where $u=Ki/\theta e$

First-order Decay Coefficients

Chemical	Default Valueλ (d-1)	Required
Benzene	0.0005	default
Toluene	0.0007	default
Ethylbenzene	0.00013	default
Xylenes	0.0005	default
Naphthalene	0.00013	default
Benzo(a)pyrene	0	default
Benz(a)anthracene	0	default
Chrysene	0	default

Other Parameters for Groundwater Vapor to Enclosed Space

Parameter		Default Value	Required
Lgw	depth to groundwater from the enclosed space foundation	1 cm	option
L_B	enclosed space volume/infiltration area ratio	200 cm	option
ER (s-1)	enclosed space air exchange rate	0.00014	default
Lcrack	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

Other Parameters for Soil Vapor to Enclosed Space

Parameter		Default Value	Required
L_s	depth to subsurface soil sources from the enclosed space foundation	1 cm	option
L_B	enclosed space volume/infiltration area ratio	250 cm *	option
ER (s-1)	enclosed space air exchange rate	0.000185 *	default
Lcrack	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

*These values are an average of residential and nonresidential factors.

Soil Leaching to Groundwater

Parameter		Default Value	Required
δ	groundwater mixing zone	2 m	default

Building Parameters for Iowa Tier 2

Parameter		Residential	Nonresidential
ER (s-1)	enclosed space air exchange rate	0.00014	0.00023
L_B	enclosed space volume/infiltration area ratio	200 cm	300 cm

Other Parameters

For Tier 2, the following are the same as Tier 1 values (refer to Appendix A): chemical-specific parameters, slope factors and reference doses, and exposure factors (except for those listed below).

Exposure Factors for Tier 2 Groundwater Vapor to Enclosed Space Modeling:
Potential Residential: use residential exposure and residential building parameters.
Potential Nonresidential: use nonresidential exposure and nonresidential building parameters.

Diesel and Waste Oil

Diesel and Waste Oil			Chemical-Specific Values for Tier 1			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	150	0.012	0.12	1.2
		potential	150	1.2	12.0	NA
	Groundwater Vapor to Enclosed Space	all	4,440	NA	NA	NA
	Groundwater to Plastic Water Line	all	150	1.2	12.0	NA
	Surface Water	all	150	1.2	12.0	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	7.6	NA	NA	NA
	Soil Vapor to Enclosed Space	all	95	NA	NA	NA
	Soil to Plastic Water Line	all	21	NA	NA	NA

Due to difficulties with analytical methods for the four individual chemicals listed in the above table, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that diesel contains 0.2% napthalene, 0.001% benzo(a)pyrene, 0.001% benz(a)anthracene, and 0.001% chrysene. Resulting TEH Default Values are shown in the following table.

Diesel			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	75,000	1,200	12,000	120,000
		potential	75,000	120,000	1,200,000	NA
	Groundwater Vapor to Enclosed Space	all	2,200,000	NA	NA	NA
	Groundwater to Plastic Water Line	all	75,000	120,000	1,200,000	NA
	Surface Water	all	75,000	120,000	1,200,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	3,800	NA	NA	NA
	Soil Vapor to Enclosed Space	all	47,500	NA	NA	NA
	Soil to Plastic Water Line	all	10,500	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.

Due to difficulties with analytical methods for the four individual chemicals, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that waste oil contains no naphthalene, 0.003% benzo(a)pyrene, 0.003% benz(a)anthracene, and 0.003% chrysene. Resulting TEH Default Values are shown in the following table.

Waste Oil			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	NA	400	4,000	40,000
		potential	NA	40,000	400,000	NA
Groundwater (ug/L)	Groundwater Vapor to Enclosed Space	all	NA	NA	NA	NA
	Groundwater to Plastic Water Line	all	NA	40,000	400,000	NA
	Surface Water	all	NA	40,000	400,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	NA	NA	NA	NA
	Soil Vapor to Enclosed Space	all	NA	NA	NA	NA
	Soil to Plastic Water Line	all	NA	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.
[**ARC 9011B**, IAB 8/25/10, effective 9/29/10]

APPENDIX C
DECLARATION OF RESTRICTIVE COVENANTS
Rescinded IAB 7/19/06, effective 8/23/06

APPENDIX D
IOWA DEPARTMENT OF NATURAL RESOURCES

NO FURTHER ACTION CERTIFICATE

This document certifies that the referenced underground storage tank site has been classified by the Iowa Department of Natural Resources (IDNR) as "no action required" as provided in the 1995 Iowa Code Supplement 455B.474(1)"h"(1). This certificate may be recorded as provided by law.

ISSUED TO: OWNERS/OPERATORS OF TANKS
DATE OF ISSUANCE:
IDNR FILE REFERENCES: LUST # REGISTRATION #
LEGAL DESCRIPTION OF UNDERGROUND STORAGE TANK SITE:

Issuance of this certificate does not preclude the IDNR from requiring further corrective action due to new releases and is based on the information available to date. The department is precluded from requiring additional corrective action solely because governmental action standards are changed. See 1995 Iowa Code Supplement 455B.474(1)"h"(1).

This certificate does not constitute a warranty or a representation of any kind to any person as to the environmental condition, marketability or value of the above referenced property other than that certification required by 1995 Iowa Code Supplement 455B.474(1)"h".

These rules are intended to implement Iowa Code sections 455B.304, 455B.424 and 455B.474.

[Filed emergency 9/20/85—published 10/9/85, effective 9/20/85]
[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]
[Filed emergency 12/29/86—published 1/14/87, effective 1/14/87]
[Filed 5/1/87, Notice 1/14/87—published 5/20/87, effective 7/15/87[1]]
[Filed emergency 9/22/87—published 10/21/87, effective 9/22/87]
[Filed 2/19/88, Notice 11/18/87—published 3/9/88, effective 4/13/88]
[Filed emergency 10/24/88—published 11/16/88, effective 10/24/88]
[Filed 7/21/89, Notice 2/22/89—published 8/9/89, effective 9/13/89]
[Filed emergency 8/25/89—published 9/20/89, effective 8/25/89]
[Filed 8/31/90, Notice 3/21/90—published 9/19/90, effective 10/24/90]
[Filed 2/1/91, Notice 11/14/90—published 2/20/91, effective 3/27/91]
[Filed emergency 3/29/91—published 4/17/91, effective 3/29/91]
[Filed emergency 8/28/91—published 9/18/91, effective 8/28/91]
[Filed emergency 2/21/92 after Notice 9/18/91—published 3/18/92, effective 2/21/92]
[Filed 9/24/93, Notice 3/17/93—published 10/13/93, effective 11/17/93]
[Filed 12/1/95, Notice 8/16/95—published 12/20/95, effective 1/24/96]
[Filed emergency 6/25/96—published 7/17/96, effective 8/15/96]
[Filed emergency 12/20/96 after Notice 7/17/96—published 1/15/97, effective 12/20/96]
[Filed emergency 6/25/99—published 7/14/99, effective 7/1/99]
[Filed 10/1/99, Notice 7/14/99—published 10/20/99, effective 11/24/99]

[Filed emergency 9/29/00—published 10/18/00, effective 9/29/00]
[Filed 1/19/01, Notice 10/18/00—published 2/7/01, effective 3/14/01]
[Filed 12/19/01, Notice 10/17/01—published 1/9/02, effective 2/13/02]
[Filed 3/23/06, Notice 11/9/05—published 4/12/06, effective 5/17/06]
[Filed 6/28/06, Notice 3/15/06—published 7/19/06, effective 8/23/06]
[Filed emergency 7/6/07—published 8/1/07, effective 7/6/07]
[Filed 10/4/07, Notice 8/1/07—published 10/24/07, effective 11/28/07]
[Filed 6/12/08, Notice 2/13/08—published 7/2/08, effective 8/6/08[2]]
[Editorial change: IAC Supplement 7/30/08]
[Editorial change: IAC Supplement 11/5/08]
[Filed ARC 7621B (Notice ARC 7400B, IAB 12/3/08), IAB 3/11/09, effective 4/15/09]
[Filed ARC 8124B (Notice ARC 7854B, IAB 6/17/09), IAB 9/9/09, effective 10/14/09]
[Filed ARC 8469B (Notice ARC 7854B, IAB 6/17/09), IAB 1/13/10, effective 2/17/10][3]
[Editorial change: IAC Supplement 2/24/10]
[Editorial change: IAC Supplement 5/5/10]
[Filed ARC 9011B (Notice ARC 8676B, IAB 4/7/10), IAB 8/25/10, effective 9/29/10]

[1] July 15, 1987, effective date of 135.9(4) delayed 70 days by Administrative Rules Review Committee at its June 1987 meeting.

[2] August 6, 2008, effective date of **ARC 6892B** delayed 70 days by Administrative Rules Review Committee at its July 2008 meeting. At its meeting held October 14, 2008, the Committee delayed until adjournment of the 2009 Session of the General Assembly the following provisions: **567—135.2(455B)**, definition of "Sensitive area"; **135.9(4)"f"**; **135.10(4)"a,"** last sentence: "A public water supply screening and risk assessment must be conducted in accordance with 135.10(4)"f" for this pathway" and **135.10(4)"b,"** last sentence of the first paragraph: "The certified groundwater professional or the department may request additional sampling of drinking water wells and non-drinking water wells as part of its evaluation"; **135.10(4)"f"**; **135.10(11)"h."**

[3] February 17, 2010, effective date of 135.5(1)"e" delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 2010. At its meeting held April 13, 2010, the Committee delayed the effective date of 135.5(1)"e" until adjournment of the 2011 Session of the General Assembly.

OBJECTION

At a special meeting held on Monday, February 8, 2010, the Administrative Rules Review Committee voted to object to the provisions of **ARC 8469B**, on the grounds these requirements are beyond the authority delegated to the agency. This filing appeared in the 1/13/2010 issue of the Iowa Administrative Bulletin.

This adopted filing establishes leak detection requirements for unstaffed fueling facilities. It requires in-line leak detection to shut off the pump and stop fuel flow to the dispenser. Discussion at the February 8, 2010, meeting raised several issues involving the number of facilities affected and the cost of the upgrades. The issue was also raised whether the rule exceeded the authority of the agency. Iowa Code §455B.474(10) states, in part, "The rules adopted by the commission under this section shall be consistent with and shall not exceed the requirements of federal regulations…." Since federal regulations do not have specific leak detection requirements for unstaffed fueling facilities, the Committee believes the plain language of §455B.474(10) precludes this rulemaking.

For this reason the Committee members felt the new detection requirements are beyond the authority delegated to the agency.

Objection filed February 12, 2010

PUBLIC SAFETY DEPARTMENT[661]

Rules transferred from agency number 680 to 661 to conform with the reorganization numbering scheme in general

CHAPTER 1
THE DEPARTMENT

1.1(17A)	Establishment of the department of public safety
1.2(17A)	Organization
1.3(17A)	Offices
1.4(17A)	Methods by which and location where the public may obtain information or make submissions or requests
1.5	Reserved
1.6(17A)	Legal advice
1.7(17A)	Surety companies
1.8(17A)	Construction of rules

CHAPTER 2
Reserved

CHAPTER 3
SHERIFF'S UNIFORMS

3.1(17A,331)	General provisions
3.2(17A,331)	Trousers
3.3(17A,331)	Shirts
3.4(17A,331)	Hats
3.5(17A,331)	Ties
3.6(17A,331)	Raingear
3.7(17A,331)	Shoes and boots
3.8(17A,331)	Gloves
3.9(17A,331)	Jackets
3.10(17A,331)	Accessories

CHAPTERS 4 and 5
Reserved

CHAPTER 6
VEHICLE IMPOUNDMENT

6.1(17A,321)	Vehicle impoundment
6.2(17A,321)	Vehicles which may be impounded immediately
6.3(17A,321)	Vehicles which need not be impounded immediately
6.4(17A,321)	Impoundment procedure
6.5(17A,321)	Abandoned vehicles
6.6(321)	Scope

CHAPTER 7
Reserved

CHAPTER 8
CRIMINAL JUSTICE INFORMATION

8.1 to 8.100	Reserved

DIVISION I
IOWA ON-LINE WARRANTS AND ARTICLES SYSTEM

8.101(80,692)	Iowa on-line warrants and articles (IOWA) criminal justice information system
8.102(80,692)	Information available through the IOWA system

8.103(80) Human immunodeficiency virus-related information
8.104(80,692) IOWA system security
8.105(80,692) Subpoenas and court orders

CHAPTER 9
Reserved

CHAPTER 10
PRACTICE AND PROCEDURE BEFORE THE DEPARTMENT OF PUBLIC SAFETY

10.1(17A) Definitions
10.2 to 10.100 Reserved

DECLARATORY ORDERS

10.101(17A) Petition for declaratory order
10.102(17A) Notice of petition
10.103(17A) Intervention
10.104(17A) Briefs
10.105(17A) Inquiries
10.106(17A) Service and filing of petitions and other papers
10.107(17A) Consideration
10.108(17A) Action on petition
10.109(17A) Refusal to issue order
10.110(17A) Contents of declaratory order—effective date
10.111(17A) Copies of orders
10.112(17A) Effect of a declaratory order
10.113 to 10.200 Reserved

AGENCY PROCEDURE FOR RULE MAKING

10.201(17A) Applicability
10.202(17A) Advice on possible rules before notice of proposed rule adoption
10.203(17A) Public rule-making docket
10.204(17A) Notice of proposed rule making
10.205(17A) Public participation
10.206(17A) Regulatory analysis
10.207(17A,25B) Fiscal impact statement
10.208(17A) Time and manner of rule adoption
10.209(17A) Variance between adopted rule and published notice of proposed rule adoption
10.210(17A) Exemptions from public rule-making procedures
10.211(17A) Concise statement of reasons
10.212(17A) Contents, style, and form of rule
10.213(17A) Agency rule-making record
10.214(17A) Filing of rules
10.215(17A) Effectiveness of rules prior to publication
10.216(17A) General statements of policy
10.217(17A) Review by department of rules
10.218(17A) Petition for rule making
10.219(17A) Briefs
10.220(17A) Inquiries
10.221(17A) Agency consideration
10.222(17A) Waivers of rules
10.223 to 10.300 Reserved

CONTESTED CASES

10.301(17A) Scope and applicability
10.302(17A) Definitions
10.303(17A) Time requirements
10.304(17A) Requests for contested case proceeding
10.305(17A) Notice of hearing
10.306(17A) Presiding officer
10.307(17A) Waiver of procedures
10.308(17A) Telephone proceedings
10.309(17A) Disqualification
10.310(17A) Consolidation—severance
10.311(17A) Pleadings
10.312(17A) Service and filing of pleadings and other papers
10.313(17A) Discovery
10.314(17A) Subpoenas
10.315(17A) Motions
10.316(17A) Prehearing conference
10.317(17A) Continuances
10.318(17A) Withdrawals
10.319(17A) Intervention
10.320(17A) Hearing procedures
10.321(17A) Evidence
10.322(17A) Default
10.323(17A) Ex parte communication
10.324(17A) Recording costs
10.325(17A) Interlocutory appeals
10.326(17A) Final decision
10.327(17A) Appeals and review
10.328(17A) Applications for rehearing
10.329(17A) Stays of agency actions
10.330(17A) No factual dispute contested cases
10.331(17A) Emergency adjudicative proceedings
10.332(17A) Burden of proof

CHAPTERS 11 and 12
Reserved

CHAPTER 13
SPECIAL RAILWAY AGENTS

13.1(17A,80) Appointment of railway special agents
13.2(17A,80) Standards
13.3(17A,80) Training requirements
13.4(17A,80) Letter of request
13.5(17A,80) Application form
13.6(17A,80) Photographs
13.7(17A,80) Vision classification
13.8(17A,80) Surety bond
13.9(17A,80) Background investigation
13.10(17A,80) Weapons permit
13.11(17A,80) Renewal of permit
13.12(17A,80) Weapons training
13.13(17A,80) Review of application

13.14(17A,80) Identification card
13.15(17A,80) Notification
13.16(17A,80) Notice of termination of employment

CHAPTER 14
Reserved

CHAPTER 15
LAW ENFORCEMENT ADMINISTRATOR'S TELECOMMUNICATIONS ADVISORY COMMITTEE (LEATAC)

15.1(693) Establishment of committee
15.2(693) Membership of committee
15.3(693) Terms of appointment
15.4(693) Officers
15.5(693) Bylaws
15.6(693) Duties

CHAPTER 16
STATE BUILDING CODE—FACTORY-BUILT STRUCTURES

16.1 to 16.609 Reserved

PART 1—MODULAR FACTORY-BUILT STRUCTURES

16.610(103A) "Modular factory-built structures"
16.611 to 16.619 Reserved

PART 2—MANUFACTURED HOUSING

16.620(103A) Manufactured home construction
16.621(103A) Installation of manufactured homes
16.622 Reserved
16.623(103A) Installation seal and certificate procedures for manufactured homes
16.624 to 16.626 Reserved
16.627(103A) Approval of existing manufactured home tie-down systems
16.628(103A) Procedure for governmental subdivisions for installation of factory-built structures
16.629(103A) Support and anchoring systems submission

CHAPTER 17
Reserved

CHAPTER 18
PARKING FOR PERSONS WITH DISABILITIES

18.1(321L) Scope
18.2(321L) Location
18.3(321L) Dimensions
18.4(321L) Access aisles and loading zones
18.5(321L) Designation
18.6(321L) Numbers of parking spaces for persons with disabilities required in off-street parking facilities
18.7(321L) Persons with disabilities parking at residential facilities
18.8(321L) On-street parking

CHAPTER 19
Reserved

CHAPTER 20
GOVERNOR'S TRAFFIC SAFETY BUREAU

20.1(23USC402,ExecOrd23) Authority
20.2(23USC402,ExecOrd23) Purpose
20.3(23USC402,ExecOrd23) Responsibilities
20.4(23USC402,ExecOrd23) Funding criteria
20.5(23USC402,ExecOrd23) Program requirements

CHAPTERS 21 to 27
Reserved

CHAPTER 28
MARIJUANA ERADICATION PROCEDURES

28.1(80) Reports of marijuana
28.2(80) Cultivated marijuana
28.3(80) Uncultivated marijuana
28.4(80) Scope and limitation

CHAPTERS 29 to 34
Reserved

CHAPTER 35
COMPLAINTS AGAINST EMPLOYEES

35.1(80) Definitions
35.2(80) Filing a complaint
35.3(80) Notification to complainant

CHAPTERS 36 to 40
Reserved

CHAPTER 41
PAYMENT OF SMALL CLAIMS TO EMPLOYEES

41.1(17A,80) Authorization to reimburse

CHAPTERS 42 to 50
Reserved

CHAPTER 51
FLAMMABLE AND COMBUSTIBLE LIQUIDS

51.1(101) Definitions
51.2 to 51.149 Reserved
51.150(101) Production, storage, and handling of liquefied natural gas

CHAPTER 52
Reserved

CHAPTER 53
FIRE SERVICE TRAINING BUREAU

53.1(78GA,HF2492) Fire service training bureau
53.2(78GA,HF2492) Programs, services, and fees

CHAPTERS 54 to 60
Reserved

CHAPTER 61
REDUCED IGNITION PROPENSITY CIGARETTES

61.1(101B)	Definitions
61.2(101B)	Restriction on sale of cigarettes
61.3(101B)	Test method, performance standard, test report
61.4(101B)	Alternate test method
61.5(101B)	Acceptance of alternate test method approved by another state
61.6(101B)	Retention of reports of testing
61.7(101B)	Testing performed or sponsored by the department
61.8 and 61.9	Reserved
61.10(101B)	Certification and fee
61.11(101B)	Changes to the manufacture of a certified reduced ignition propensity cigarette
61.12(101B)	Notification of certification
61.13(101B)	Marking reduced ignition propensity cigarette packaging
61.14 to 61.19	Reserved
61.20(101B)	Applicability—preemption
61.21(17A)	Violations and penalties

CHAPTERS 62 to 79
Reserved

CHAPTER 80
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

80.1(17A,22)	Definition
80.2(17A,22)	Statement of policy
80.3(17A,22)	Requests for access to records
80.4(17A,22)	Procedures for access to confidential records
80.5(17A,22)	Requests for treatment of a record as a confidential record
80.6(17A,22)	Procedure by which a subject may have additions, dissents, or objections entered into the record
80.7(17A,22)	Consent to disclosure by the subject of a confidential record
80.8	Reserved
80.9(17A,22)	Disclosures without the consent of the subject
80.10(17A,22)	Routine use
80.11(17A,22)	Records retention manual
80.12(17A,22)	Data processing system
80.13(22)	Confidential records
80.14(252J)	Release of confidential licensing information for child support recovery purposes
80.15(22,80F)	Release of official photographs of employees

CHAPTER 81
CRIMINAL INTELLIGENCE INFORMATION

81.1(692)	Definitions
81.2(692)	Iowa law enforcement intelligence network (LEIN) information system
81.3(692)	Criminal intelligence file security
81.4(692)	Review of criminal intelligence files—purging
81.5(692)	Subpoenas and court orders

CHAPTER 82
CRIMINAL HISTORY AND FINGERPRINT RECORDS

82.1(690,692)	Records and identification section
82.2(690,692)	Definitions
82.3(690,692)	Tracking criminal history data

82.4 to 82.100 Reserved

DIVISION I
CRIMINAL HISTORY DATA

82.101(690,692) Release of information
82.102(690,692) Right of review
82.103(690,692) Review of record
82.104(17A,690,692) Inaccuracies in criminal history record
82.105(17A,690,692) Arresting agency portion of final disposition form
82.106(690,692) Final disposition form
82.107(692) Release of information to the public
82.108(692) Scope of record checks for non-criminal justice agencies and individuals
82.109(692) Fees
82.110(17A,22,692) Requests for criminal history data
82.111(690) Administrative sanctions
82.112(692) Criminal history record checks for qualified entities or authorized agencies
82.113 to 82.200 Reserved

DIVISION II
FINGERPRINT RECORDS

82.201(17A,690,692) Fingerprint files and crime reports
82.202(690) Taking of fingerprints
82.203 to 82.300 Reserved

DIVISION III
JUVENILE RECORDS

82.301(232) Juvenile fingerprints and criminal histories

CHAPTER 83
IOWA SEX OFFENDER REGISTRY

83.1(692A) Sex offender registry established
83.2(692A) Definitions
83.3(692A) Forms and procedures
83.4(692A) Availability of records
83.5(692A) Expungement of records

CHAPTERS 84 to 87
Reserved

CHAPTER 88
NOTIFICATION OF LAW ENFORCEMENT AGENCY BY HOSPITAL PRIOR TO DISCHARGE OF A PERSON WITH SERIOUS MENTAL IMPAIRMENT

88.1(229) Notification request

CHAPTER 89
MISSING PERSONS

89.1 to 89.99 Reserved

DIVISION I
MISSING PERSON INFORMATION CLEARINGHOUSE

89.100(694) Missing person information clearinghouse
89.101(694) Administration of missing person information clearinghouse
89.102(694) Definitions
89.103(694) Program information
89.104(694) Prevention and education programs and materials
89.105(694) Release of information
89.106(694) Dissemination

89.107(694) Training
89.108 to 89.199 Reserved

DIVISION II
AMBER ALERT PROGRAM

89.200(694) AMBER alert program
89.201(694) Criteria
89.202(694) Activation procedures
89.203(694) Alternative alert if criteria are not satisfied

CHAPTER 90
Reserved

CHAPTER 91
WEAPONS PERMITS

91.1(724) Definitions
91.2(724) Forms
91.3(724) Training programs
91.4(724) Application procedures for a permit to carry a weapon
91.5(724) Firearm purchase or transfer—permit to acquire pistols or revolvers
91.6(724) Reports and remittance to the state
91.7(724) Offensive weapons as collector's items—method of classification

CHAPTERS 92 to 94
Reserved

CHAPTER 95
DISPOSITION OF SEIZED AND FORFEITED WEAPONS AND AMMUNITION

95.1(809,809A) Definitions
95.2(809,809A) Ammunition and firearms
95.3(809,809A) Firearms inventory
95.4(809,809A) Deposit of firearms in the firearms reference file
95.5(809,809A) Disposition of firearms (interstate)
95.6(809A) Transfer of rifles and shotguns to the department of natural resources
95.7(809,809A) Disposition of firearms (intrastate)
95.8(809,809A) Final disposition and destruction of firearms
95.9(809,809A) Claims
95.10(809,809A) Disposition of explosives
95.11(809,809A) Disposition of weapons other than firearms and explosives

CHAPTERS 96 to 120
Reserved

CHAPTER 121
BAIL ENFORCEMENT, PRIVATE INVESTIGATION, AND
PRIVATE SECURITY BUSINESSES

121.1(80A) Licensing
121.2(80A) Definitions
121.3(80A) Persons exempt
121.4(80A) Licenses
121.5(80A) License requirements
121.6(80A) Identification cards
121.7(80A) License and background investigation fees
121.8(80A) Display of license
121.9(80A) Duplicate license

121.10(80A) License renewal
121.11(80A) Employee identification cards
121.12(80A) Badges, uniforms, insignia, patches and hats
121.13(80A) Advertisement, cards, letterhead and the like
121.14(80A) Misleading statements
121.15(80A) Reports
121.16(80A) Denial, cancellation, suspension, or revocation of a license or identification card
121.17(80A) Licensee's duty regarding employees
121.18(80A) Campus weapon requirements
121.19(80A) Professional permit to carry weapons
121.20(80A) Appeals
121.21(252J) Child support collection procedures
121.22(80A) Continuing education requirements
121.23(80A) Reciprocity
121.24(80A) Replacement license

CHAPTERS 122 to 140
Reserved

CHAPTER 141
CLOSED CIRCUIT SURVEILLANCE SYSTEMS

141.1(99F) Definitions
141.2 and 141.3 Reserved
141.4(99F) Closed circuit surveillance system
141.5(99F) Required equipment
141.6(99F) Required surveillance
141.7(99F) Equipment in DCI offices
141.8(99F) Camera lenses
141.9(99F) Lighting
141.10(99F) Surveillance room
141.11(99F) Nongambling hours
141.12(99F) Waivers from requirements

CHAPTERS 142 to 149
Reserved

CHAPTER 150
DIVISION OF CRIMINAL INVESTIGATION CRIMINALISTICS LABORATORY

150.1(691) Criminalistics laboratory
150.2(691) Purpose and scope of work
150.3(691) Laboratory capabilities
150.4(691) Evidence submission to the laboratory
150.5(17A,691) Distribution of reports
150.6(17A,691) Disposition of evidence

CHAPTERS 151 to 155
Reserved

CHAPTER 156
DNA DATABASE

156.1(81GA,HF619) Establishment of DNA database
156.2(81GA,HF619) Definitions
156.3(81GA,HF619) Administration of DNA database
156.4(81GA,HF619) Collection of DNA samples

156.5(81GA,HF619) Submission of DNA samples
156.6(81GA,HF619) Analysis of DNA samples
156.7(81GA,HF619) Identification of DNA samples
156.8(81GA,HF619) Storage of DNA samples
156.9(81GA,HF619) Disposition of DNA samples
156.10(81GA,HF619) Expungement of DNA samples

CHAPTER 157
DEVICES AND METHODS TO TEST BODY FLUIDS FOR ALCOHOL OR DRUGS
157.1(321J) Approval of devices and methods to test for alcohol or drug concentration
157.2(321J) Evidentiary breath testing
157.3(321J) Urine collection
157.4(321J) Submission of samples for alcohol and drug testing to the criminalistics laboratory
157.5(321J) Preliminary breath screening test
157.6(123) Chemical test—alcohol concentration—public intoxication
157.7(321J) Detection of drugs other than alcohol

CHAPTER 158
IGNITION INTERLOCK DEVICES
158.1(321J) Scope and authority
158.2(321J) Definitions
158.3(321J) Approval
158.4(321J) Revocation of approval
158.5(321J) Modifications to an approved IID
158.6(321J) Mandatory operational features
158.7(321J) IID security
158.8(321J) IID maintenance and reports
158.9(321J) Other provisions

CHAPTERS 159 to 173
Reserved

CHAPTER 174
RETAIL SALES OF PSEUDOEPHEDRINE
174.1(81GA,SF169) Electronic logbooks
174.2(81GA,SF169) Reporting of civil penalties

CHAPTERS 175 to 199
Reserved

CHAPTER 200
FIRE MARSHAL ADMINISTRATION
200.1(100) Description
200.2(100) General administrative procedures
200.3(100) Building plan approval and plan review fees
200.4(100,101,101A) Inspections and inspection fees
200.5(100) Certificates for licensure
200.6(100) Fire investigations
200.7(100) Fire drills
200.8(100) Inspection based on complaint
200.9(100A) Sharing of insurance company information with the fire marshal
200.10(100A) Release of information to an insurance company
200.11(100A) Forms

CHAPTER 201
GENERAL FIRE SAFETY REQUIREMENTS

201.1(100)	Scope
201.2(100)	General provisions
201.3(100)	Electrical installations
201.4(100)	Existing buildings or structures
201.5(100)	Recognition of local fire ordinances and enforcement

CHAPTER 202
REQUIREMENTS FOR SPECIFIC OCCUPANCIES

202.1(100)	Scope
202.2(237)	Facilities in which foster care is provided by agencies to fewer than six children
202.3(137C)	Bed and breakfast inns
202.4	Reserved
202.5(100,135C)	General requirements for small group homes (specialized licensed facilities) licensed pursuant to Iowa Code section 135C.2

CHAPTERS 203 and 204
Reserved

CHAPTER 205
FIRE SAFETY REQUIREMENTS FOR HOSPITALS AND
HEALTH CARE FACILITIES

205.1(100)	Definitions
205.2 to 205.4	Reserved
205.5(100)	Hospitals
205.6 to 205.9	Reserved
205.10(100)	Nursing facilities and hospices
205.11 to 205.14	Reserved
205.15(100)	Intermediate care facilities for the mentally retarded and intermediate care facilities for persons with mental illness
205.16 to 205.19	Reserved
205.20(100)	Ambulatory health care facilities
205.21 to 205.24	Reserved
205.25(100)	Religious nonmedical health care institutions

CHAPTERS 206 to 209
Reserved

CHAPTER 210
SMOKE DETECTORS

210.1(100)	Definitions
210.2(100)	Scope
210.3(100)	General requirements
210.4(100)	Smoke detectors—notice and certification of installation
210.5(100)	Smoke detectors—new and existing construction

CHAPTERS 211 to 220
Reserved

CHAPTER 221
FLAMMABLE AND COMBUSTIBLE LIQUIDS

221.1(101)	Scope
221.2(101)	Definitions

221.3(101) Flammable and combustible liquids
221.4(101) Motor fuel dispensing facilities and repair garages
221.5(101) Aircraft fueling
221.6(101) Helicopter fueling
221.7(101) Fuel-fired appliances
221.8(101) Stationary combustion engines and gas turbines

CHAPTERS 222 and 223
Reserved

CHAPTER 224
ABOVEGROUND PETROLEUM STORAGE TANKS
224.1(101) Scope
224.2(101) Definition
224.3(101) Compliance
224.4(101) Registration of existing and new tanks—fees
224.5(101) Approval of plans
224.6(101) Inspections and orders
224.7(101) Leaks, spills, or damage
224.8(101) Civil penalty
224.9(17A,101) Appeals

CHAPTER 225
Reserved

CHAPTER 226
LIQUEFIED PETROLEUM GAS
226.1(101) General requirements
226.2(101) Transfer into container
226.3(101) Prohibition of certain refrigerants
226.4(101) Qualifications of personnel
226.5(101) Pressure testing
226.6(101) Damages—reporting

CHAPTERS 227 to 230
Reserved

CHAPTER 231
MANUFACTURING, STORAGE, HANDLING, AND
USE OF EXPLOSIVE MATERIALS
231.1(101A) Explosive materials

CHAPTERS 232 to 234
Reserved

CHAPTER 235
COMMERCIAL EXPLOSIVE LICENSING
235.1(101A) Licensing program established
235.2(101A) Licenses required
235.3(101A) License application process
235.4(101A) Issuance of commercial explosive business license
235.5(101A) Issuance of individual blaster license
235.6(101A) Inventory and records

235.7(101A,252J) Grounds for suspension, revocation, or denial of commercial explosive licenses; appeals
235.8(101A,252J) Child support collection procedures
235.9(101A,272D) Suspension or revocation for nonpayment of debts owed state or local government

CHAPTERS 236 to 250
Reserved

CHAPTER 251
FIRE FIGHTER TRAINING AND CERTIFICATION

251.1(100B) Definitions
251.2 to 251.100 Reserved

MINIMUM TRAINING STANDARDS

251.101(100B) Minimum training standard
251.102(100B) Other training
251.103(100B) Continuing training
251.104(100B) Record keeping
251.105 to 251.200 Reserved

FIRE FIGHTER CERTIFICATION

251.201(100B) Fire fighter certification program
251.202(100B) Certification standards
251.203(100B) Fees
251.204(100B) Certification, denial, and revocation of certification

CHAPTERS 252 to 258
Reserved

CHAPTER 259
FIRE FIGHTER TRAINING AND EQUIPMENT FUNDS

259.1 to 259.100 Reserved

DIVISION I
VOLUNTEER FIRE FIGHTER TRAINING AND EQUIPMENT FUND

259.101(17A,77GA,ch1222) Establishment of fund
259.102(17A,77GA,ch1222) Allocations
259.103(17A,77GA,ch1222) Awards to private providers of training
259.104(100B) Paul Ryan memorial fire fighter safety training fund
259.105(80GA,ch1175) Volunteer fire fighter preparedness fund
259.106 to 259.200 Reserved

DIVISION II
FIRE FIGHTING EQUIPMENT REVOLVING LOAN FUND

259.201(80GA,ch177) Fire fighting equipment revolving loan fund
259.202(80GA,ch177) Purpose and scope
259.203(80GA,ch177) Definitions
259.204(80GA,ch177) Application process
259.205(80GA,ch177) Allowable acquisitions
259.206(80GA,ch177) Eligibility requirements and restrictions
259.207(80GA,ch177) Loan origination fee and repayment schedule
259.208 to 259.300 Reserved

DIVISION III
REGIONAL TRAINING FACILITY FUNDS

259.301(100B) Regional training center program
259.302(100B) Definitions

259.303(100B) Availability of funds
259.304(100B) Application process
259.305(100B) Processing of submitted applications

CHAPTERS 260 to 274
Reserved

CHAPTER 275
CERTIFICATION OF AUTOMATIC FIRE EXTINGUISHING SYSTEM CONTRACTORS

275.1(100C) Establishment of program
275.2(100C) Definitions
275.3(100C) Responsible managing employee
275.4(100C) Certification requirements
275.5(100C) Application and fees
275.6(100C) Complaints
275.7(100C) Denial, suspension, or revocation of certification; civil penalties; and appeals

CHAPTER 276
LICENSING OF FIRE PROTECTION SYSTEM INSTALLERS AND MAINTENANCE WORKERS

276.1(100D) Establishment of program
276.2(100D) Definitions
276.3(100D) Licensing requirements
276.4(100D) Application and fees
276.5(100D) Complaints
276.6(100D) Denial, suspension, or revocation of licensure; civil penalties; appeals

CHAPTER 277
CERTIFICATION OF ALARM SYSTEM CONTRACTORS AND INSTALLERS

277.1(100C) Establishment of program
277.2(100C) Definitions
277.3(100C) Responsible managing employee
277.4(100C) Contractor certification requirements
277.5(100C) Contractor application and fees
277.6(100C) Installer certification requirements
277.7(100C) Installer application and fees
277.8(100C) Complaints
277.9(100C) Denial, suspension, or revocation of certification; civil penalties; and appeals

CHAPTERS 278 to 290
Reserved

CHAPTER 291
VOLUNTEER EMERGENCY SERVICES PROVIDER DEATH BENEFITS

291.1(100B) Volunteer emergency services provider death benefit program
291.2(100B) Eligibility
291.3(100B) Determination

CHAPTERS 292 to 299
Reserved

CHAPTER 300
STATE BUILDING CODE—ADMINISTRATION

300.1(103A) State building code promulgated
300.2(103A) Building code commissioner
300.3(103A) Building code advisory council
300.4(103A) Plan reviews
300.5(103A) Inspections
300.6(103A) Local code enforcement

CHAPTER 301
STATE BUILDING CODE—GENERAL PROVISIONS

301.1(103A) Scope and applicability
301.2(103A) Definitions
301.3(103A) General provisions
301.4(103A) Mechanical requirements
301.5(103A) Electrical requirements
301.6(103A) Plumbing requirements
301.7(103A) Existing buildings
301.8(103A) Residential construction requirements
301.9(103A) Fuel gas piping requirements
301.10(103A) Transition period

CHAPTER 302
STATE BUILDING CODE—ACCESSIBILITY OF BUILDINGS AND FACILITIES AVAILABLE TO THE PUBLIC

302.1(103A,104A) Purpose and scope
302.2(103A,104A) Definitions
302.3(103A,104A) Plan review procedures
302.4(103A,104A) Site development
302.5(103A,104A) Building elements and spaces accessible to the physically handicapped
302.6(103A,104A) Restaurants and cafeterias
302.7(103A,104A) Medical care facilities
302.8(103A,104A) Business and mercantile facilities
302.9(103A,104A) Libraries
302.10(103A,104A) Transient lodging facilities
302.11(103A,104A) Transportation facilities
302.12 to 302.19 Reserved
302.20(103A,104A) Making apartments accessible and functional for persons with disabilities

CHAPTER 303
STATE BUILDING CODE—REQUIREMENTS FOR ENERGY CONSERVATION IN CONSTRUCTION

303.1(103A) Scope and applicability of energy conservation requirements
303.2(103A) Residential energy code
303.3(103A) Adoption of nonresidential energy code
303.4(470) Life cycle cost analysis
303.5(103A) Energy review fee

CHAPTERS 304 to 309
Reserved

CHAPTER 310
SUSTAINABLE DESIGN STANDARDS

310.1(103A) Scope and purpose
310.2(103A) Definitions
310.3(103A) Submission of projects
310.4(103A) Sustainable design criteria for residential projects
310.5(103A) Sustainable design criteria for commercial projects
310.6(103A) Fees

CHAPTERS 311 to 314
Reserved

CHAPTER 315
WEATHER SAFE ROOMS

315.1(83GA,ch142) Scope
315.2(83GA,ch142) Definition
315.3(83GA,ch142) Requirements

CHAPTERS 316 to 321
Reserved

CHAPTER 322
STATE BUILDING CODE —
MANUFACTURED HOUSING SUPPORT AND ANCHORAGE SYSTEMS

322.1 Reserved
322.2(103A) Definitions
322.3 to 322.10 Reserved
322.11(103A) Support and anchorage of manufactured homes
322.12(103A) Suspension of installation requirements in proclaimed disaster emergencies
322.13 to 322.19 Reserved
322.20(103A) Fees

CHAPTER 323
TEMPORARY EMERGENCY USE OF FACTORY-BUILT STRUCTURES—COMMERCIAL USE

323.1(103A) Temporary factory-built structures for commercial use

CHAPTERS 324 to 349
Reserved

CHAPTER 350
STATE HISTORIC BUILDING CODE

350.1(103A) Scope and definition

CHAPTERS 351 to 371
Reserved

CHAPTER 372
MANUFACTURED OR MOBILE HOME RETAILERS,
MANUFACTURERS, AND DISTRIBUTORS

372.1(103A) Definitions
372.2(103A) Criteria for obtaining a manufactured or mobile home retailer's license
372.3(103A) Operation under distinct name
372.4(103A) Supplemental statements
372.5(103A) Denial, suspension, or revocation—civil penalties
372.6(103A,321) Sale or transfer of manufactured or mobile homes

372.7(103A) Right of inspection
372.8(103A) Criteria for obtaining a manufactured or mobile home manufacturer's or distributor's license
372.9(17A,103A) Waivers

CHAPTER 373
Reserved

CHAPTER 374
MANUFACTURED HOUSING INSTALLER CERTIFICATION

374.1(103A) Certification program
374.2(103A) Certified installer required
374.3(103A) Requirements for installer certification
374.4(103A) Certification fee
374.5(103A) Certification period
374.6(103A) Review of application for certification
374.7(103A) Certification renewal and continuing education
374.8(103A) Suspension or revocation of certification
374.9(103A) Civil penalties
374.10(103A) Inspections
374.11(103A) Temporary certification during proclaimed disaster emergencies

CHAPTERS 375 to 399
Reserved

CHAPTER 400
PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM—GOVERNANCE AND ADMINISTRATION

400.1(97A) Establishment of system
400.2(97A) Definitions
400.3(97A) Governance
400.4(97A) Meetings of board of trustees
400.5(97A) Administrative support
400.6(97A) Forms and information
400.7(97A) Annual statements
400.8(97A) Books of account
400.9(97A) Investments
400.10(97A) Medical board

CHAPTER 401
PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM—ADMINISTRATIVE PROCEDURES

401.1(97A) Applications
401.2(97A) Determination on initial review
401.3(97A) Applications for reimbursement for medical attention
401.4 to 401.100 Reserved

PROCEDURE FOR RULE MAKING

401.101(17A) Applicability
401.102(17A) Advice on possible rules before notice of proposed rule adoption
401.103(17A) Public rule-making docket
401.104(17A) Notice of proposed rule making
401.105(17A) Public participation
401.106(17A) Regulatory analysis

401.107(17A,25B) Fiscal impact statement
401.108(17A) Time and manner of rule adoption
401.109(17A) Variance between adopted rule and published notice of proposed rule adoption
401.110(17A) Concise statement of reasons
401.111(17A,97A) Agency rule-making record
401.112(17A,97A) Petitions for rule making
401.113(17A,97A) Waivers of rules
401.114 to 401.200 Reserved

DECLARATORY ORDERS

401.201(17A) Petition for declaratory order
401.202(17A) Notice of petition
401.203(17A) Intervention
401.204(17A) Briefs
401.205(17A) Inquiries
401.206(17A) Service and filing of petitions and other papers
401.207(17A) Consideration
401.208(17A) Action on petition
401.209(17A) Refusal to issue order
401.210(17A) Contents of declaratory order—effective date
401.211(17A) Copies of orders
401.212(17A) Effect of a declaratory order
401.213 to 401.300 Reserved

CONTESTED CASES

401.301(17A) Contested case proceeding
401.302(17A) Discovery
401.303(17A) Subpoenas in a contested case
401.304(17A) Motions
401.305(17A) Settlements
401.306(17A) Prehearing conference
401.307(17A) Continuances
401.308(17A) Withdrawals
401.309(17A) Hearing procedures
401.310(17A) Evidence
401.311(17A) Ex parte communication
401.312(17A) Decisions
401.313(17A) No factual dispute contested cases
401.314(17A) Applications for rehearing

CHAPTER 402
PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM—
ELIGIBILITY, BENEFITS, AND PAYMENTS

402.1 to 402.99 Reserved

DIVISION I
ELIGIBILITY

402.100(97A) Age of qualification
402.101(97A) Date of retirement
402.102(97A) Application of Iowa Code Supplement section 97A.6, subsection 12
402.103(97A) Date of death
402.104(97A) Age of spouse
402.105 to 402.199 Reserved

DIVISION II
BENEFITS AND PAYMENTS

402.200(97A) Computation of average final compensation
402.201(97A) Workers' compensation—effect on benefit payment
402.202(97A) Errors in payments
402.203(97A) Initial benefit for a child
402.204(97A) Computation for partial month
402.205(97A) One year of service
402.206(97A) Termination prior to retirement
402.207(97A) Optional retirement benefits
402.208(97A) Options not reversible once payments begin—exceptions
402.209(97A) Method of calculating annual adjustments when optional retirement benefits are selected
402.210(97A) Termination of benefits when optional retirement benefits are selected
402.211(97A) Impact of optional benefit selections on child benefits
402.212(97A) Method of calculating annual adjustment for members who retire on or after July 1, 2010
402.213(97A) Method of calculating annual adjustment for members who retired prior to July 1, 2010
402.214(97A) Determination of survivor's pension
402.215 to 402.299 Reserved

DIVISION III
SERVICE PURCHASES

402.300(97A) Purchase of eligible service credit
402.301(97A) Determination of eligible service
402.302(97A) Determination of cost to member
402.303(97A) Application process
402.304(97A) Service adjustment irrevocable
402.305(97A) Board review
402.306(97A) Other provisions
402.307(97A) Purchase of service credit for military service

CHAPTER 403
PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM—
LINE-OF-DUTY DEATH BENEFIT

403.1(97A) Member death benefit program
403.2(97A) Application
403.3(97A) Determination

CHAPTERS 404 to 499
Reserved

CHAPTER 500
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM—
ORGANIZATION AND ADMINISTRATION

500.1(103) Establishment of program
500.2(103) Definitions

CHAPTER 501
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM—ADMINISTRATIVE PROCEDURES

501.1(103) Board meetings and agenda
501.2 to 501.4 Reserved
501.5(17A) Waivers

CHAPTER 502
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM—LICENSING REQUIREMENTS, PROCEDURES, AND FEES

502.1(103) License categories and licenses required
502.2(103) License requirements
502.3(103) License terms and fees
502.4(103) Disqualifications for licensure
502.5(103) License application
502.6(103) Restriction of use of class B licenses by political subdivisions
502.7(103) Financial responsibility

CHAPTER 503
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM—COMPLAINTS AND DISCIPLINE

503.1(103) Complaints
503.2(103) Discipline
503.3(103) Action against an unlicensed person
503.4(103) Appeals
503.5(252J,103) Suspension or revocation for nonpayment of child support
503.6(103,272D) Suspension or revocation for nonpayment of debts owed state or local government

CHAPTER 504
STANDARDS FOR ELECTRICAL WORK

504.1(103) Installation requirements

CHAPTER 505
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM—CONTINUING EDUCATION

505.1(103) General requirements
505.2(103) Course approval

CHAPTERS 506 to 549
Reserved

CHAPTER 550
ELECTRICAL INSPECTION PROGRAM—ORGANIZATION AND ADMINISTRATION

550.1(103) Electrical inspection program
550.2(103) Communications
550.3(103) Organization
550.4(103) Qualifications of inspectors
550.5(103) Fees

CHAPTER 551
ELECTRICAL INSPECTION PROGRAM—DEFINITIONS

551.1(103) Applicability
551.2(103) Definitions

CHAPTER 552
ELECTRICAL INSPECTION PROGRAM—PERMITS AND INSPECTIONS

552.1(103) Required permits and inspections
552.2(103) Request for inspection
552.3(103) Scheduling of inspections
552.4(103) Report of inspection
552.5(103) Appeals

CHAPTER 553
CIVIL PENALTIES

553.1(103) Civil penalty—when applicable
553.2(103) Civil penalty—notice
553.3(103) Civil penalty—appeal

CHAPTERS 554 to 558
Reserved

CHAPTER 559
ELECTRICAL INSPECTION PROGRAM—UTILITY NOTIFICATIONS
AND RESPONSIBILITIES OF UTILITIES

559.1(103) Notification of utility

CHAPTER 276
LICENSING OF FIRE PROTECTION SYSTEM INSTALLERS AND MAINTENANCE WORKERS

661—276.1(100D) Establishment of program. There is established within the fire marshal division a fire protection system installer and maintenance worker licensing program. The program is established pursuant to 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355.

276.1(1) *Licensing required.* A person shall not act as a fire protection system installer and maintenance worker without being currently licensed as a fire protection system installer and maintenance worker by the fire marshal, except for the following as provided in 2009 Iowa Code Supplement section 100D.11 as amended by 2010 Iowa Acts, Senate File 2355:

a. A person licensed as a professional engineer pursuant to Iowa Code chapter 542B who is providing consultation or develops plans or other work concerning the installation or design of fire protection systems shall not be required to be licensed pursuant to this chapter.

b. A person whose work on fire protection systems is limited to routine maintenance shall not be required to be licensed pursuant to this chapter.

c. A person who is licensed as a plumber pursuant to Iowa Code chapter 105 and whose work is within the scope of that license shall not be required to be licensed pursuant to this chapter.

d. A person who is working as an apprentice fire protection system installer and maintenance worker under the direct supervision of a responsible managing employee or under the direct supervision of a licensed fire sprinkler installer and maintenance worker who is on site while the work is being performed shall not be required to be licensed pursuant to this chapter. For purposes of this rule, "direct supervision" means that the person supervising the person performing the work shall be on the job site while the work being supervised is performed.

e. A person who demolishes fire protection system components shall not be required to be licensed pursuant to this chapter when the work involves the demolition of a complete fire protection system or if the work results in a fire protection system's being placed out of service. If a fire protection system has been placed out of service, work required to place it into service must be performed by a person licensed to perform such work pursuant to this chapter. A person who demolishes a fire protection system or components thereof shall comply with any local ordinance, statute or administrative rule which requires notification to a local fire authority or the state fire marshal.

f. A person who is a responsible managing employee of a fire extinguishing system contractor certified pursuant to Iowa Code chapter 100C shall not be required to be licensed pursuant to this chapter, provided that the work performed which is subject to the provisions of this chapter is within the scope of the endorsement or endorsements of the certification of the certified contractor employing the responsible managing employee.

276.1(2) *Endorsement.* Any person acting as a fire protection system installer and maintenance worker shall do so only in relation to systems and work covered by the endorsements on the person's license. The license of each installer and maintenance worker shall carry an endorsement for one or more of the following:

a. Automatic sprinkler system installation and maintenance;

b. Special hazards fire suppression system installation and maintenance;

c. Installation of preengineered dry chemical or wet agent fire protection systems;

d. Maintenance of preengineered dry chemical or wet agent fire protection systems;

e. Installation of preengineered water-based fire protection systems in one- and two-family dwellings;

f. Maintenance of preengineered water-based fire protection systems in one- and two-family dwellings;

g. Any combination thereof.

276.1(3) *Length of licensure.* Licensure shall normally be for two years and shall expire on December 31 of the year following the issuance of the license. A license which is effective on a date other than January 1 shall be effective on the date on which the license is issued and shall expire on

December 31 of the year following the year in which the license is issued. The fee for licenses issued for less than a full two-year period shall be prorated on the basis of the number of quarters for which the license shall be in effect.

EXCEPTION: Any license issued before January 1, 2011, shall expire on December 31, 2012.

276.1(4) *Inquiries.* Inquiries regarding the fire protection system installer and maintenance worker licensing program may be addressed to:

Fire Protection System Installer and Maintenance Worker Licensing Program
Fire Marshal Division
Iowa Department of Public Safety
215 East 7th Street
Des Moines, Iowa 50319

Inquiries may be addressed by electronic mail to fesccp@dps.state.ia.us; by telephone to (515)725-6145; or by facsimile to (515)725-6172.

[**ARC 9032B**, IAB 8/25/10, effective 10/1/10]

661—276.2(100D) Definitions. The following definitions apply to rules 661—276.1(100D) through 661—276.6(100D):

"Apprentice fire protection system installer and maintenance worker" means a person, other than a trainee, who is registered in an apprenticeship program approved by the United States Department of Labor and who is engaged in learning the fire protection system industry trade under the direct supervision of a responsible managing employee of a certified fire extinguishing system contractor or licensed fire protection system installer and maintenance worker.

"Department" means the department of public safety.

"Fire extinguishing system contractor" means a person(s) engaging in or representing oneself to the public as engaging in the activity or business of layout, installation, repair, service, alteration, addition, testing, maintenance, or maintenance inspection of automatic fire extinguishing systems in this state, as defined in Iowa Code section 100C.1, and who is certified pursuant to Iowa Code chapter 100C.

"Fire protection system" means a sprinkler, standpipe, hose system, special hazard system, dry system, foam system, or any water-based fire protection system, whether engineered or preengineered and whether manually or automatically activated, used for fire protection purposes which may include an integrated system of underground and overhead piping and which may be connected to a water source.

"Fire protection system installation" means to set up or establish a fire protection system for use in an indicated space.

"Fire protection system installer and maintenance worker" means a person who, having the necessary qualifications, training, experience, and technical knowledge, conducts fire protection system installation and maintenance and who is licensed by the department to install or maintain the types of fire protection systems endorsed on the person's license.

"Fire protection system maintenance" means to provide repairs, including all inspections and tests, required to keep a fire protection system and its component parts in an operative condition at all times and the replacement of the system or its component parts when they become undependable or inoperable.

"Listed" means equipment, materials, or services included in a list published by a nationally recognized independent testing organization concerned with evaluation of products or services that maintains periodic inspection of the production of listed equipment or materials or periodic evaluation of services and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose.

"Preengineered fire protection system" means a fire protection system that has a predetermined flow rate, nozzle pressure, and quantity of extinguishing agent.

"Responsible managing employee" means a person who is an owner, partner, officer, or manager employed full-time by a fire extinguishing system contractor and who meets the requirements for a responsible managing employee established in Iowa Code chapter 100C and 661—Chapter 275.

"Routine maintenance" means the repair or replacement of existing fire protection system components of the same size and type, for which no changes in configuration are made. "Routine

maintenance" does not mean any new installation or any expansion or extension of any existing fire protection system, nor does it mean inspection and testing.

"Temporary license" means a license issued to a fire protection system installer and maintenance worker who is licensed or certified in another state and who will perform work in Iowa only within areas covered by a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.

"Trainee" means a person who is engaged in learning the fire protection system industry trade under the direct supervision of a responsible managing employee or a licensed fire protection system installer and maintenance worker who is not a trainee. "Trainee" does not mean a person who is an apprentice fire protection system installer and maintenance worker.

[**ARC 9032B**, IAB 8/25/10, effective 10/1/10]

661—276.3(100D) Licensing requirements. A fire protection system installer and maintenance worker shall meet all of the following requirements in order to receive a license from the fire marshal and shall continue to meet all requirements throughout the period of licensure. A licensee shall notify the fire marshal, in writing on a form designated by the fire marshal, within 30 calendar days if the licensee fails to meet any requirement for licensure.

276.3(1) *Liability insurance.* Each licensee, other than a trainee, shall maintain general and complete operations liability insurance covering any work that the licensee is authorized to perform pursuant to any endorsements on the license in the following amounts: $500,000 per person, $1,000,000 per occurrence, and $1,000,000 property damage.

a. The carrier of any insurance coverage maintained to meet this requirement shall notify the fire marshal 30 days prior to the effective date of cancellation or reduction of the coverage.

b. The licensee shall cease work immediately if the insurance coverage required by this subrule is no longer in force and other insurance coverage meeting the requirements of this subrule is not in force. A licensee shall not initiate any work which requires licensure pursuant to this chapter or to 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355, which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this subrule and of which the licensee has received notice, unless new insurance coverage meeting the requirements of this subrule has been obtained and will be in force upon cancellation of the prior coverage.

EXCEPTION: A licensee is not required to maintain insurance coverage provided that the licensee's employer maintains insurance coverage equivalent to the requirements of this subrule.

276.3(2) *Compliance.* Each licensee shall maintain compliance with all other applicable provisions of law related to operation in the state of Iowa and in any political subdivision in which the licensee is performing work.

276.3(3) *Training and experience requirements.* An applicant for a license shall meet the following training and experience requirements:

a. For endorsement for automatic sprinkler system installation and maintenance, the applicant shall show evidence of the following:

(1) Satisfactory completion of an apprenticeship program in fire sprinkler installation and maintenance approved by the United States Department of Labor, including four years of employment as an apprentice fire protection system installer and maintenance worker, and

(2) A passing score on either the United Association Star Fire Sprinkler Mastery Exam or on another examination administered by a nationally recognized third-party testing organization and approved as equivalent by the state fire marshal.

EXCEPTION: Prior to August 1, 2012, an applicant who was employed as a fire protection system installer as of July 1, 2008, may receive endorsement for automatic sprinkler system installation and maintenance upon submission of evidence of completion of 8500 hours of employment as a fire protection system installer and maintenance worker and any of the following:

1. Satisfactory completion of an apprenticeship program in fire sprinkler installation and maintenance of four or more years in duration, approved by the United States Department of Labor.

2. Passing the United Association Star Fire Sprinkler Mastery Exam or another examination administered by a nationally recognized third-party testing organization and approved as equivalent by the state fire marshal.

3. Certification by the National Institute for Certification in Engineering Technologies in Automatic Sprinkler System Layout at Level I, or another form of certification or testing administered by a nationally recognized organization and approved as equivalent by the state fire marshal. An applicant for licensure or the applicant's employer may request approval from the state fire marshal of a form of certification or testing as equivalent to that required by this paragraph by contacting the program as indicated in subrule 276.1(4) and following the instructions given to request such approval. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.

b. For endorsement for special hazards fire protection system installation and maintenance, the applicant shall show evidence of the following:

(1) Satisfactory completion of an apprenticeship program in installation and maintenance of special hazards fire protection systems approved by the United States Department of Labor, and

(2) Certification by the National Institute for Certification in Engineering Technologies in Special Hazards Protection Systems at Level I, or another form of certification or testing by a nationally recognized organization approved as equivalent by the state fire marshal. An applicant for licensure or the applicant's employer may request approval from the state fire marshal of a form of certification or testing as equivalent to that required by this subparagraph by contacting the program as indicated in subrule 276.1(4) and following the instructions given to request such approval. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.

EXCEPTION 1: If the state fire marshal determines that no appropriate apprenticeship program is readily available, the fire marshal may allow the substitution of documentation of 8500 hours or more of employment in installation and maintenance of special hazards systems in lieu of meeting the apprenticeship requirement. Credit for such work experience obtained on or after October 1, 2010, shall be awarded only for work performed as an apprentice fire protection system installer and maintenance worker or as a licensed fire protection system installer and maintenance worker trainee. An applicant for a license, a certified contractor, or another employer of an applicant for a license may request determination by the state fire marshal that no appropriate apprenticeship is readily available to the applicant. In order to make such a request, the person making the request shall contact the program as specified in subrule 276.1(4) for instructions regarding information to be submitted.

EXCEPTION 2: Prior to August 1, 2012, an applicant who was employed as a fire protection system installer as of July 1, 2008, may receive endorsement for special hazards fire protection system installation and maintenance upon submission of evidence of completion of 8500 hours of employment as a fire protection system installer and maintenance worker and either of the following:

1. Satisfactory completion of an apprenticeship program in installation and maintenance of special hazards fire protection systems of four or more years in duration, approved by the United States Department of Labor.

2. Certification by the National Institute for Certification in Engineering Technologies in Special Hazards Systems Installation and Maintenance at Level I, or another form of certification or testing administered by a nationally recognized organization and approved as equivalent by the state fire marshal. An applicant for licensure or the applicant's employer may request approval from the state fire marshal of a form of certification or testing as equivalent to that required by this paragraph by contacting the program as indicated in subrule 276.1(4) and following the instructions given to request such approval. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.

c. For endorsement for installation or maintenance of preengineered dry chemical or wet agent fire protection systems, the applicant shall show evidence of the following:

(1) To be endorsed as a preengineered kitchen fire extinguishing system installer, the applicant shall have successfully completed training and an examination verified by a preengineered system

manufacturer, an agent of a preengineered system manufacturer, or an organization that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph. An organization which wishes to be approved pursuant to this subparagraph shall contact the program as specified in subrule 276.1(4) and shall follow the instructions received from the program. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.

(2) To be endorsed as a preengineered kitchen fire extinguishing system maintenance worker, the applicant shall have successfully completed training by the applicant's employer or the system's manufacturer and passed a written or online examination for preengineered kitchen fire extinguishing system maintenance that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph. An organization which wishes to be approved pursuant to this subparagraph shall contact the program as specified in subrule 276.1(4) and shall follow the instructions received from the program. For any testing which occurs on or after January 1, 2011, such approval shall be obtained in advance.

(3) To be endorsed as a preengineered industrial fire extinguishing system installer, the applicant shall possess a training and examination certification from a preengineered system manufacturer, an agent of a preengineered system manufacturer, or an organization that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph. An organization which wishes to be approved pursuant to this subparagraph shall contact the program as specified in subrule 276.1(4) and shall follow the instructions received from the program. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.

(4) To be endorsed as a preengineered industrial fire extinguishing system maintenance worker, the applicant shall have been trained by the applicant's employer and shall have passed a written or online examination for preengineered industrial fire extinguishing system maintenance that is approved by the state fire marshal. Completion of training and examination which would qualify the applicant for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this subparagraph. An organization which wishes to be approved pursuant to this subparagraph shall contact the program as specified in subrule 276.1(4) and shall follow the instructions received from the program. For any training which commences on or after January 1, 2011, or testing which occurs on or after July 1, 2011, such approval shall be obtained in advance.

d. For endorsement for installation of preengineered water-based fire protection systems in one- and two-family dwellings, the applicant shall show evidence of satisfactory completion of any training required by the manufacturer for installation of any system that the applicant will install. Completion of training and examination which would qualify the person for equivalent endorsement as a responsible managing employee of a certified fire extinguishing system contractor shall be deemed to meet the requirement of this paragraph.

276.3(4) *Continuing education.* A license may be renewed only if the licensee has completed 16 or more hours of continuing education in subjects related to the license and its endorsements during the two years preceding the date on which the new license will become effective if it is issued. The continuing education must consist of courses approved by the fire marshal and must have been completed by the licensee during the two years prior to the effective date of the renewal. Any person or organization which wishes to obtain approval for continuing education courses to satisfy the provisions of this subrule shall contact the program as specified in subrule 276.1(4) and shall follow the instructions received from the program. After January 1, 2011, prior approval must be obtained before a licensee may take a course for which credit toward the requirements of this subrule will be sought.

276.3(5) *Temporary license requirements.* A person may be issued a temporary license upon submission of an application to the state fire marshal with proof of equivalent licensure or certification in another state, accompanied by the applicable fee. The state fire marshal may require the submission of any documentation of licensure or certification in another state that the state fire marshal deems necessary. A temporary license may be used only in an area which is or has been within the past 180 days subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6. A temporary license shall be in effect for 90 days from the date of issuance and may be renewed once for an additional 90 days.
[**ARC 9032B**, IAB 8/25/10, effective 10/1/10]

661—276.4(100D) Application and fees.

276.4(1) *Application.* Any person seeking licensure as a fire protection system installer and maintenance worker shall submit a completed application form to the fire marshal. The application shall be filed no later than 30 days prior to the date on which licensure is required or on which an existing license expires. An application form may be obtained from the fire marshal or from the Web site of the fire protection system installer and maintenance worker licensing program. The application form shall be submitted with all required attachments and the required license fee established in subrule 276.4(2). An application shall not be considered complete unless all required information is submitted, including required attachments and fees, and shall not be processed until it is complete.

NOTE: The Web site for the fire protection system installer and maintenance worker licensing program is http://www.dps.state.ia.us/fm/building/fesccp/index.shtml.

276.4(2) *License fee.*

a. The fee for a permanent or provisional license, except for a trainee license, shall be $200. If an application is denied, all except $25 of the fee may be refunded if the applicant applies to the fire marshal for a refund. No refund of the license fee shall be made if the license is revoked or if the denial of the license is based on the applicant's knowingly including false or misleading information on the application. If an application for a license provides for more than one endorsement as provided in subrule 276.1(2), there shall be an additional fee of $25 for each endorsement beyond the first.

b. The fee for a trainee license shall be $100.

c. The fee for a temporary license shall be $50. A temporary license may be renewed once; the renewal fee shall be $50.

276.4(3) *Payment.* The license fee shall be submitted by draft, check, or money order in the applicable amount payable to the Iowa Department of Public Safety. The memo portion of the check should have the following notation: "Fire Protection System Installer and Maintenance Worker Licensing Program."

276.4(4) *Amended license.*

a. The fee for issuance of an amended license is $25. The fee shall be submitted with a request for an amended license. A licensee shall request and the fire marshal shall issue an amended license for any of the following reasons:

(1) A change in employer;

(2) A change in insurance coverage; or

(3) A change in any other material information included in or with the initial or renewal application.

A change of address is a material change. However, if the request for an amended license is solely for a change of business address, the former address of the business is in an area subject to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6, and the relocation occurs as a result of flooding or storm damage or other conditions which form a basis for the issuance of the disaster emergency proclamation, the fee shall not apply, although an amended license shall be issued.

b. Other changes in the information required in the application form, including renewal of insurance coverage with a new expiration date, shall be reported to the fire marshal but shall not require issuance of an amended license or payment of the amended license fee.

276.4(5) *Attachments.* Required attachments to the application for a license include, but are not limited to, the following:

a. Documentation verifying that the applicant has in force the insurance coverage required by subrule 276.3(1). The documentation shall include an acknowledgment that the applicant's or employer's insurance coverage extends to any work performed by the licensee within the scope of licensure pursuant to this chapter. The documentation may consist of a letter from the insurance carrier, a copy of the insurance certificate with an endorsement showing the required information, or a signed statement from the applicant's employer attesting that the employer has insurance coverage in effect equivalent to the coverage required by subrule 276.3(1).

b. If the application requests licensure based on work experience, the applicant shall attach a notarized affidavit attesting that the applicant has the required experience.

NOTE: An applicant may contact the fire protection system installer and maintenance worker licensing program for assistance with the wording of the affidavit.

[**ARC 9032B**, IAB 8/25/10, effective 10/1/10]

661—276.5(100D) Complaints.

276.5(1) Complaints regarding the performance of any licensed fire protection system installer and maintenance worker; failure of a licensee to meet any of the requirements established in 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355, or this chapter or any other provision of law; or persons operating as fire protection system installers and maintenance workers without licensure may be filed with the fire marshal. Complaints should be addressed as follows:

Fire Protection System Installer and Maintenance Worker Licensing Program
Fire Marshal Division
Iowa Department of Public Safety
215 East 7th Street
Des Moines, Iowa 50319

276.5(2) Complaints may be submitted by electronic mail to fesccp@dps.state.ia.us or by facsimile to (515)725-6172.

276.5(3) Complaints should be as specific as possible and shall clearly identify the licensee or other person against whom the complaint is filed. Complaints shall be submitted in writing. A complaint may be submitted anonymously, but if the name and contact information of the complainant are provided, the complainant will be notified of the disposition of the complaint.

[**ARC 9032B**, IAB 8/25/10, effective 10/1/10]

661—276.6(100D) Denial, suspension, or revocation of licensure; civil penalties; appeals. If a licensee or person who performs work requiring a license violates any provision of these rules or any other provision of law related to work requiring licensure pursuant to this chapter, the fire marshal may deny, suspend or revoke a license or assess a civil penalty to a licensee or to a person who performs work requiring licensure pursuant to this chapter and who is not licensed.

276.6(1) *Denial.* The fire marshal may deny an application for licensure:

a. If the applicant makes a false statement on the application form or in any other submission of information required for licensure. "False statement" means providing false information or failing to include material information, such as a previous criminal conviction or action taken by another jurisdiction, when requested on the application form or otherwise in the application process.

b. If the applicant fails to meet all of the requirements for licensure established in this chapter.

c. If the applicant is currently barred for cause from licensure equivalent to that provided for in this chapter in another jurisdiction.

d. If an applicant has previously been barred for cause from operating in another jurisdiction as a fire protection system installer and maintenance worker and if the basis of that action reflects upon the integrity of the applicant in operating as a fire protection system installer and maintenance worker. If an applicant is found to have been previously barred for cause from operating as a fire protection system installer and maintenance worker in another jurisdiction and is no longer barred from doing so, the fire marshal shall evaluate the record of that action with regard to the likelihood that the applicant

would operate with integrity as a licensee. If an applicant is denied licensure under this paragraph, the applicant shall be notified of the specific reasons for the denial.

e. If the applicant has been convicted of a crime which reflects upon the integrity of the applicant in operating as a fire protection system installer and maintenance worker. If an applicant is found to have a criminal record, the fire marshal shall evaluate that record with regard to the likelihood that the applicant would operate with integrity as a licensee. If an applicant is denied licensure under this paragraph, the applicant shall be notified of the specific reasons for the denial.

276.6(2) *Suspension.* A suspension of a license may be imposed by the fire marshal for any violation of these rules or 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355, or for a failure to meet any legal requirement to operate as a fire protection system installer and maintenance worker in this state. Failure to provide any notice to the fire marshal as required by these rules shall be grounds for suspension. An order of suspension shall specify the length of the suspension and shall specify that correction of all conditions which were a basis for the suspension is a condition of reinstatement of the license even after the period of the suspension.

276.6(3) *Revocation.*

a. A revocation is a termination of a license. A license may be revoked by the fire marshal for repeated violations or for a violation which creates an imminent danger to the safety or health of individuals protected by a fire protection system incorrectly installed by a licensee or when information comes to the attention of the fire marshal which, if known to the fire marshal when the application was being considered, would have resulted in denial of the license.

b. A new application for a license from an applicant whose license has previously been revoked shall not be considered for a period of one year after the effective date of the revocation and, in any event, until every condition which was a basis for the revocation has been corrected. The fire marshal may specify in the revocation order a period longer than one year before a new application for a license may be considered. When a new application for a license from a person whose license was previously revoked is being considered, the applicant may be denied a license based upon the same information which was the basis for revocation even after any such period established by the fire marshal has expired.

276.6(4) *Civil penalties.* The fire marshal may impose a civil penalty of up to $500 per day during which a violation has occurred and for every day until the violation is corrected. A civil penalty may be imposed in lieu of or in addition to a suspension or may be imposed in addition to a revocation. A civil penalty shall not be imposed in lieu of a revocation.

276.6(5) *Suspension or revocation for nonpayment of child support.* The following procedures shall apply to actions taken by the fire marshal on a certificate of noncompliance received from the Iowa department of human services pursuant to Iowa Code chapter 252J:

a. The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

b. The effective date of revocation or suspension of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service upon the licensee.

c. Licensees shall keep the fire marshal informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the fire marshal with copies, within 7 days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

d. 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 fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 252J.

e. In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code sections 252J.8 and 252J.9, the fire marshal 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 fire marshal to proceed. For the purpose of determining the effective date

of revocation or suspension of the license, the fire marshal 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.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively to the fire marshal or within the department of public safety.

NOTE: The procedures established in subrule 276.6(5) implement the requirements of Iowa Code chapter 252J. The provisions of Iowa Code chapter 252J establish mandatory requirements for an agency which administers a licensing program, such as the one established in this chapter, 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.

276.6(6) *Suspension or revocation for nonpayment of debts owed state or local government.* The following procedures shall apply to actions taken by the fire marshal on a certificate of noncompliance received from the Iowa department of revenue pursuant to Iowa Code chapter 272D:

a. The notice required by Iowa Code section 272D.3 shall be served upon the licensee by regular mail.

b. 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.

c. Licensees shall keep the fire marshal informed of all court actions and centralized collection unit actions taken under or in connection with Iowa Code chapter 272D and shall provide the fire marshal with copies, within 7 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.

d. 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 fire marshal has denied the issuance or renewal of a license or has suspended or revoked a license pursuant to Iowa Code chapter 272D.

e. In the event the licensee files a timely district court action following service of a notice pursuant to Iowa Code section 272D.8, the fire marshal 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 fire marshal to proceed. For the purpose of determining the effective date of revocation or suspension of the license, the fire marshal 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.

f. Suspensions or revocations imposed pursuant to this subrule may not be appealed administratively to the fire marshal or within the department of public safety.

NOTE: The procedures established in subrule 276.6(6) 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 one established in this chapter, 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.

276.6(7) *Appeals.* Any denial, suspension, or revocation of a license, or any civil penalty imposed upon a licensee or other person under this rule, other than one imposed pursuant to subrule 276.6(5) or 276.6(6), may be appealed by the licensee or other person within 14 days of receipt of the notice. Appeals of actions taken by the fire marshal under this rule shall be to the commissioner of public safety and shall be treated as contested cases following the procedures established in rules 661—10.301(17A) through 661—10.332(17A).

[**ARC 9032B**, IAB 8/25/10, effective 10/1/10]

These rules are intended to implement 2009 Iowa Code Supplement chapter 100D as amended by 2010 Iowa Acts, Senate File 2355.

[Filed ARC 9032B (Notice ARC 8855B, IAB 6/16/10), IAB 8/25/10, effective 10/1/10]

CHAPTER 1
ADMISSION RULES COMMON TO THE THREE STATE UNIVERSITIES

[Prior to 4/20/88, Regents, Board of[720]]

Preamble: The state board of regents has adopted the following requirements governing admission of students to the three state universities.

Each university is expected to describe in its catalog the requirements and other information necessary to make the admission process operate within the framework of these requirements.

Amendments and changes in these requirements normally are proposed by the universities to the regent committee on educational relations which examines the proposals and makes specific recommendations through the interinstitutional committee on educational coordination to the state board of regents which is empowered by law to establish the admission requirements.

681—1.1(262) Admission of undergraduate students directly from high school. Students desiring admission to the University of Iowa, Iowa State University, or the University of Northern Iowa must meet the requirements in this rule and also any special requirements for the curriculum, school, or college of their choice.

1.1(1) Application. Applicants must submit a formal application for admission, together with the appropriate application fee as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18) and detailed in rule 681—1.7(262), and have their secondary school provide a transcript of their academic record, including credits and grades, rank in class, and certification of graduation. Applicants must also submit SAT Reasoning Test or ACT scores. Applicants whose primary language is not English must also meet the English language proficiency requirement specified by each university. Applicants may be required to submit additional information or data to support their applications.

1.1(2) Admission criteria.

a. Effective for students who seek admission prior to fall 2009. Graduates of approved Iowa high schools who have the subject matter background required by each university and who rank in the upper one-half of their graduating class will be admitted to any regent university. Applicants who are not in the upper one-half of their graduating class may, after an individual review of their academic and test records, and at the discretion of the admissions officers:

(1) Be admitted unconditionally,

(2) Be admitted conditionally,

(3) Be required to enroll for a tryout period during a preceding summer session, or

(4) Be denied admission.

b. Effective for students who seek admission in fall 2009 and thereafter.

(1) Decisions on admission to a regent university are based on the following four factors: performance on standardized tests (SAT Reasoning Test or ACT); high school grade point average (GPA); high school percentile rank in class; and number of high school courses completed in the core subject areas. These factors are used in the following equation to calculate a regent admission index (RAI):

RAI = (2 × ACT composite score) + (1 × high school rank expressed as a percentile) + (20 × high school grade point average) + (5 × number of high school courses completed in the core subject areas)

NOTE: For purposes of calculating the regent admission index, the ACT composite score has a top value of 36 (SAT scores will be converted to ACT composite equivalents); high school rank is expressed as a percentile with 99 percent as the top value; high school GPA is expressed in a four-point scale; and number of high school courses completed in the core subject areas is expressed in terms of years or fractions of years of study.

(2) Graduates of approved Iowa high schools who have the subject matter background required by each university and who meet the regent admission index of 245 required for automatic admission will be admitted to any regent university. Applicants who do not meet the regent admission index of 245 for automatic admission or for whom a regent admission index cannot be calculated may, after an individual review of their academic and test records, and at the discretion of the admissions officers:

1. Be admitted unconditionally,
2. Be admitted conditionally,
3. Be required to enroll for a tryout period during a preceding summer session, or
4. Be denied admission.

1.1(3) Graduates of approved high schools in other states may be held to higher academic standards, but must meet at least the same requirements as graduates of Iowa high schools. The options for conditional admission or summer tryout enrollment may not necessarily be offered to these students.

1.1(4) Applicants who are graduates of nonapproved high schools will be considered for admission in a manner similar to applicants from approved high schools, but additional emphasis will be given to scores obtained on standardized examinations.

1.1(5) Applicants who are not high school graduates, but whose classes have graduated, may be considered for admission. These applicants will be required to submit all academic data to the extent that it exists and achieve scores on standardized examinations which will demonstrate that they are adequately prepared for academic study.

1.1(6) Early admission.

a. Students with superior academic records may be admitted, on an individual basis, for part-time university study while enrolled in high school or during the summers prior to high school graduation.

b. In rare situations, exceptional students may be admitted as full-time students to a regent university before completing high school. Early admission to a regent university is provided to serve persons whose academic achievement and personal and intellectual maturity clearly suggest readiness for collegiate level study. Each university will specify requirements and conditions for early admission.

This rule is intended to implement Iowa Code section 262.9(3).

681—1.2(262) Admission of undergraduate students by transfer from other colleges. Students desiring admission to the University of Iowa, Iowa State University, or the University of Northern Iowa must meet the requirements in this rule and also any special requirements for the curriculum, school, or college of their choice.

Applicants must submit a formal application for admission, together with the appropriate application fee as approved by the state board of regents pursuant to Iowa Code subsection 262.9(18) and detailed in rule 681—1.7(262), and request that each college they have attended send an official transcript of record to the admissions office. High school academic records and standardized test results may also be required. The Test of English as a Foreign Language (TOEFL) is required of foreign students whose first language is not English.

1.2(1) Transfer applicants with a minimum of 24 semester hours of graded credit from regionally accredited colleges or universities, who have achieved for all college work previously attempted the grade point required by each university for specific programs, will be admitted. Higher academic standards may be required of students who are not residents of Iowa.

Applicants who have not maintained the grade point required by each university for specific programs or who are under academic suspension from the last college attended may, after a review of their academic and test records, and at the discretion of the admissions officers:

a. Be admitted unconditionally,

b. Be admitted conditionally,

c. Be required to enroll for a tryout period during a preceding summer session, or

d. Be denied admission.

1.2(2) Admission of students with fewer than 24 semester hours of college credit will be based on high school academic and standardized test records in addition to review of the college record.

1.2(3) Transfer applicants under disciplinary suspension will not be considered for admission until information concerning the reason for the suspension has been received from the college assigning the suspension. Applicants granted admission under these circumstances will be admitted on probation.

1.2(4) Transfer applicants from colleges and universities not regionally accredited will be considered for admission on an individual basis taking into account all available academic information.

This rule is intended to implement Iowa Code section 262.9(3).

681—1.3(262) Transfer credit practices. The regent universities endorse the Joint Statement on Transfer and Award of Academic Credit approved in 1978 by the American Council on Education (ACE), the American Association of Collegiate Registrars and Admissions Officers (AACRAO), and the Council on Postsecondary Accreditation (COPA). The current issue of Transfer Credit Practices of Selected Educational Institutions, published by the American Association of Collegiate Registrars and Admissions Officers (AACRAO), and publications of the Council on Postsecondary Accreditation (COPA) are examples of references used by the universities in determining transfer credit. The acceptance and use of transfer credit is subject to limitations in accordance with the educational policies operative at each university.

1.3(1) *Students from regionally accredited colleges and universities.* Credit earned at regionally accredited colleges and universities is acceptable for transfer except that credit in courses determined by the receiving university to be of a remedial, vocational, or technical nature, or credit in courses or programs in which the institution granting the credit is not directly involved, may not be accepted, or may be accepted to a limited extent.

Of the coursework earned at a two-year college, students may apply up to one-half but no more than 65 hours of the credits required for a bachelor's degree toward that degree at a regent university. This policy becomes effective September 29, 1993.

1.3(2) *Students from colleges and universities which have candidate status.* Credit earned at colleges and universities which have become candidates for accreditation by a regional association is acceptable for transfer in a manner similar to that from regionally accredited colleges and universities if the credit is applicable to the bachelor's degree at the receiving university.

Credit earned at the junior and senior classification from an accredited two-year college which has received approval by a regional accrediting association for change to a four-year college may be accepted by a regent university.

1.3(3) *Students from colleges and universities not regionally accredited.* When students are admitted from colleges and universities not regionally accredited, they may validate portions or all of their transfer credit by satisfactory academic study in residence, or by examination. Each university will specify the amount of the transfer credit and the terms of the validation process at the time of admission.

In determining the acceptability of transfer credit from private colleges in Iowa which do not have regional accreditation, the regent committee on educational relations, upon request from the institutions, evaluates the nature and standards of the academic program, faculty, student records, library, and laboratories.

In determining the acceptability of transfer credit from colleges in states other than Iowa which are not regionally accredited, acceptance practices indicated in the current issue of Transfer Credit Practices of Selected Educational Institutions will be used as a guide. For institutions not listed in the publication, guidance is requested from the designated reporting institution of the appropriate state.

1.3(4) *Students from foreign colleges and universities.* Transfer credit from foreign educational institutions may be granted after a determination of the type of institution involved and after an evaluation of the content, level, and comparability of the study to courses and programs at the receiving university. Credit may be granted in specific courses, but is frequently assigned to general areas of study. Extensive use is made of professional journals and references which describe the education systems and programs of individual countries.

This rule is intended to implement Iowa Code section 262.9(3).

681—1.4(262) Classification of residents and nonresidents for admission, tuition, and fee purposes.

1.4(1) *General.*

a. A person enrolling at one of the three state universities shall be classified as a resident or nonresident for admission, tuition, and fee purposes by the registrar or someone designated by the registrar. The decision shall be based upon information furnished by the student and other relevant information.

b. In determining resident or nonresident classification, the issue is essentially one of why the person is in the state of Iowa. If the person is in the state primarily for educational purposes, that person

will be considered a nonresident. For example, it may be possible that an individual could qualify as a resident of Iowa for such purposes as voting, or holding an Iowa driver's license, and not meet the residency requirements as established by the board of regents for admission, tuition, and fee purposes.

c. The registrar, or designated person, is authorized to require written documents, affidavits, verifications, or other evidence deemed necessary to determine why a student is in Iowa. The burden of establishing that a student is in Iowa for other than educational purposes is upon the student.

A student may be required to file any or all of the following:

(1) A statement from the student describing employment and expected sources of support;

(2) A statement from the student's employer;

(3) A statement from the student's parents verifying nonsupport and the fact that the student was not listed as a dependent on tax returns for the past year and will not be so listed in future years;

(4) A statement from the student's spouse related to sources of family support, length of residence in Iowa, and reasons for being in the state of Iowa;

(5) Supporting statements from persons who might be familiar with the family situation;

(6) Iowa state income tax return.

d. Applications for resident classification for a given semester or session are due no later than the fifteenth class day of that semester or session. Applications received after the fifteenth class day of that semester or session will be considered for the next semester or session. Appeals of any nonresident classification decision resulting from applications for resident classifications are due no later than midterm of that semester or session. Change of classification from nonresident to resident will not be made retroactive beyond the term in which application for resident classification is made.

e. A student who gives incorrect or misleading information to evade payment of nonresident fees shall be subject to serious disciplinary action and must also pay the nonresident fees for each term previously attended.

f. Review committee. These regulations shall be administered by the registrar or someone designated by the registrar. The decision of the registrar or designated person may be appealed to a university review committee. The decision of the review committee may be appealed to the state board of regents.

1.4(2) *Guidelines.*

a. The following general guidelines are used in determining the resident classification of a student for admission, tuition, and fee purposes:

(1) A financially dependent student whose parents move from Iowa after the student is enrolled remains a resident provided the student maintains continuous enrollment. A financially dependent student whose parents move from Iowa during the senior year of high school will be considered a resident provided the student has not established domicile in another state.

(2) In deciding why a person is in the state of Iowa, the person's domicile will be considered. A person who comes to Iowa from another state and enrolls in any institution of postsecondary education for a full program or substantially a full program shall be presumed to have come to Iowa primarily for educational reasons rather than to establish a domicile in Iowa.

(3) A student who was a former resident of Iowa may continue to be considered a resident provided absence from the state was for a period of less than 12 months and provided domicile is reestablished. If the absence from the state is for a period exceeding 12 months, a student may be considered a resident if evidence can be presented showing that the student has long-term ties to Iowa and reestablishes an Iowa domicile.

A person or the dependent of a person whose domicile is permanently established in Iowa, who has been classified as a resident for admission, tuition, and fee purposes, may continue to be classified as a resident so long as domicile is maintained, even though circumstances may require extended absence of the person from the state. It is required that a person who claims Iowa domicile while living in another state or country will provide proof of the continual Iowa domicile as evidence that the person:

1. Has not acquired a domicile in another state,
2. Has maintained a continuous voting record in Iowa, and
3. Has filed regular Iowa resident income tax returns during absence from the state.

(4) A student who moves to Iowa may be eligible for resident classification at the next registration following 12 consecutive months in the state provided the student is not enrolled as more than a half-time student (6 credits for an undergraduate or professional student, 5 credits for a graduate student) in any academic year term, is not enrolled for more than 4 credits in a summer term for any classification, and provides sufficient evidence of the establishment of an Iowa domicile.

(5) A student who has been a continuous student and whose parents move to Iowa may become a resident at the beginning of the next term provided the student is dependent upon the parents for a majority of financial assistance.

(6) A person who has been certified as a refugee or granted asylum by the appropriate agency of the United States who enrolls as a student at a university governed by the Iowa state board of regents may be accorded immediate resident status for admission, tuition, and fee purposes when the person:

1. Comes directly to the state of Iowa from a refugee facility or port of debarkation, or

2. Comes to the state of Iowa within a reasonable time and has not established domicile in another state.

Any refugee or individual granted asylum not meeting these standards will be presumed to be a nonresident for admission, tuition, and fee purposes and thus subject to the usual method of proof of establishment of Iowa residency.

(7) An alien who has immigrant status establishes Iowa residency in the same manner as a United States citizen.

(8) At the regent institutions, American Indians who have origins in any of the original people of North America and who maintain a cultural identification through tribal affiliation or community recognition with one or more of the tribes or nations connected historically with the present state of Iowa, including the Iowa, Kickapoo, Menominee, Miami, Missouri, Ojibwa (Chippewa), Omaha, Otoe, Ottawa (Odawa), Potawatomi, Sac and Fox (Sauk, Meskwaki), Sioux, and Winnebago (Ho Chunk), will be assessed Iowa resident tuition and fees.

b. Additional guidelines are used in determining the resident classification of a veteran, qualified military person, and dependent children and spouses of a veteran or qualified military person for purposes of admission and undergraduate tuition and mandatory fees:

(1) A person who is stationed on active duty at the Rock Island arsenal as a result of military orders, or the dependent child or spouse of such person, is entitled to resident status for purposes of undergraduate tuition and mandatory fees. However, if the arrival of the person under orders is subsequent to the beginning of the term in which the dependent child or spouse is first enrolled, nonresident fees will be charged in all cases for the dependent child or spouse until the beginning of the next term in which the dependent child or spouse is enrolled. If the qualified military person is transferred, deployed, or restationed while the person's spouse or dependent child is enrolled in an institution of higher education under the control of the board of regents, the spouse or dependent child shall continue to be classified as a resident under this subparagraph until the close of the fiscal year in which the spouse or dependent child is enrolled.

(2) A veteran who is domiciled or moves to the state of Iowa and who is eligible for benefits, or has exhausted benefits under the federal Post-9/11 Veterans Educational Assistance Act of 2008, is entitled to resident status for purposes of undergraduate tuition and mandatory fees. The dependent child or spouse of a veteran who meets these requirements is entitled to resident status for undergraduate tuition. However, if the arrival of the veteran in Iowa is subsequent to the beginning of the term in which the dependent child or spouse is first enrolled, nonresident fees will be charged in all cases for the dependent child or spouse until the beginning of the next term in which the dependent child or spouse is enrolled.

(3) A person who is moved into the state as the result of military or civil orders from the government for other than educational purposes, or the dependent child or spouse of such a person, is entitled to resident status. However, if the arrival of the person under orders is subsequent to the beginning of the term in which the dependent child or spouse is first enrolled, nonresident fees will be charged in all cases until the beginning of the next term in which the dependent child or spouse is enrolled. Legislation, effective July 1, 1977, requires that military personnel who claim residency in Iowa (home of record) will be required to file Iowa resident income tax returns.

1.4(3) *Facts.*

a. The following circumstances, although not necessarily conclusive, have probative value in support of a claim for resident classification:

(1) Reside in Iowa for 12 consecutive months, and be primarily engaged in activities other than those of a full-time student, immediately prior to the beginning of the term for which resident classification is sought.

(2) Reliance upon Iowa resources for financial support.

(3) Domicile in Iowa of persons legally responsible for the student.

(4) Former domicile in the state and maintenance of significant connections therein while absent.

(5) Acceptance of an offer of permanent employment in Iowa.

(6) Military orders, if for other than educational purposes.

(7) Other facts indicating the student's domicile will be considered by the universities in classifying the student.

b. The following circumstances, standing alone, do not constitute sufficient evidence of domicile to effect classification of a student as a resident under these regulations:

(1) Voting or registration for voting.

(2) Employment in any position normally filled by a student.

(3) The lease of living quarters.

(4) Admission to a licensed practicing profession in Iowa.

(5) Automobile registration.

(6) Public records, for example, birth and marriage records, Iowa driver's license.

(7) Continuous presence in Iowa during periods when not enrolled in school.

(8) Ownership of property in Iowa, or the payment of Iowa taxes.

This rule is intended to implement Iowa Code section 262.9(3).

[**ARC 7911B**, IAB 7/1/09, effective 7/1/09]

681—1.5(262) Registration and transcripts—general. A person may not be permitted to register for a course or courses at a state board of regents institution until any delinquent accounts owed by the person to an institution or any affiliated organization for which an institution acts as fiscal agent have been paid.

A state board of regents institution may withhold official transcripts of the academic record of a person until any delinquent accounts owed by the person to an institution or any affiliated organization for which an institution acts as fiscal agent have been paid.

This rule is intended to implement Iowa Code section 262.9.

681—1.6(262) College-bound program.

1.6(1) *Definitions.*

"Accredited private institution" means an institution of higher education as defined in Iowa Code section 261.9, subsection 5.

"Commission" means the college aid commission.

"Financial need" means the difference between the student's financial resources, including resources available from the student's parents and the student, as determined by a completed parents' financial statement and including any non-campus-administered federal or state grants and scholarships, and the student's estimated expenses while attending the institution. A student shall accept all available federal and state grants and scholarships before being considered eligible for grants under the Iowa minority academic grants for economic success program. Financial need shall be reconsidered on at least an annual basis.

"Full-time student" means an individual who is enrolled at an accredited private institution or board of regents university for at least 12 semester hours or the trimester or quarter equivalent.

"Minority person" means an individual who is black, Hispanic, Asian, or a Pacific Islander, American Indian, or an Alaskan Native American.

"Part-time student" means an individual who is enrolled at an accredited private institution or board of regents university in a course of study including at least three semester hours or the trimester or quarter equivalent of three semester hours.

"Program" means the Iowa minority academic grants for economic success program established in this division.

1.6(2) *Policy on college-bound program.*

a. The regent institutions will cooperate with other state and local agencies, including the department of education, the college aid commission, and educational institutions in implementing the college-bound program.

b. The universities will develop programs for elementary, middle and secondary school students and their families in the following areas:

(1) Encouragement to consider attending a postsecondary institution;

(2) Enrichment and academic preparation;

(3) Information about how to apply for admission.

c. College-bound program vouchers will be awarded to students on the basis of the participation of the student and the student's family in the college-bound program. One voucher will be awarded for participation in each college-bound program sponsored by a university.

(1) Each university will maintain records concerning those students who participate in the college-bound program, according to its established policies and procedures. The records will include information on those students who have received college-bound program vouchers which are described in Iowa Code section 262.92(2). The University of Iowa will maintain a central record on all students who have received college-bound program vouchers on behalf of all regent institutions and will make appropriate information available to the college aid commission.

(2) College-bound program vouchers may be used by students enrolled at a regent institution or at a private college or university in Iowa.

(3) A student holding vouchers and enrolling at a regent institution will receive priority in the award of funds under the Iowa minority academic grants for economic success (IMAGES) program. Awards under the IMAGES program are made on the basis of financial need. A student may be eligible for an additional award from the institution in which the student is enrolled.

(4) A student holding vouchers and enrolling at a private college or university in Iowa will receive priority in the award of funds under the Iowa minority academic grants for economic success program as provided by the rules of the college aid commission.

(5) The presidents, or their designees, will administer and coordinate the college-bound program at the universities. As part of the coordination, they will establish liaison with the appropriate state and local agencies, serve as the university contact and promote collaborative efforts among the regent universities and other appropriate agencies and institutions. Annual reports to the board of regents shall be prepared by each regent university. The reports shall contain relevant information as to the accomplishments of the program in the past year and a plan of action with goals and objectives for the forthcoming year. Reports shall be submitted to the board of regents on October 1 of each year.

This rule is intended to implement Iowa Code section 262.92.

681—1.7(262) Application fees. Application fees required for admission to the University of Iowa, Iowa State University and the University of Northern Iowa are as follows:

University of Iowa

Undergraduate domestic student	$40
Undergraduate international student	$85
Graduate/professional domestic student	$60
Graduate/professional international student	$100
PharmD student	$100
Re-entry fee	$20
Nondegree student	$40

Iowa State University

Undergraduate domestic student	$40
Undergraduate international student	$50
Graduate domestic student	$40
Graduate international student	$90
Veterinary Medicine	$75

University of Northern Iowa

Undergraduate domestic student	$40
Undergraduate international student	$50
Graduate domestic student	$50
Graduate international student	$70
Nondegree student	$40

This rule is intended to implement Iowa Code section 262.9(3).

[**ARC 9034B**, IAB 8/25/10, effective 9/29/10; **ARC 9033B**, IAB 8/25/10, effective 9/29/10]

[Filed 12/17/58; amended 1/28/59, 5/26/59, 9/15/59, 10/28/59, 9/30/60, 7/12/67, 6/14/72, 5/16/73, 1/16/75, 6/10/75]
[Filed emergency 3/19/76—published 4/5/76, effective 3/19/76]
[Filed 3/19/76, Notice 2/9/76—published 4/5/76, effective 5/10/76]
[Filed 12/18/80, Notices 10/15/80, 11/12/80—published 1/7/81, effective 2/11/81]
[Filed emergency 2/13/81—published 3/4/81, effective 2/13/81]
[Filed without Notice 8/21/85—published 9/11/85, effective 10/16/85]
[Filed 12/22/86, Notice 11/5/86—published 1/14/87, effective 2/18/87]
[Filed 1/22/88, Notice 11/18/87—published 2/10/88, effective 3/16/88]
[Filed 3/29/88, Notice 2/10/88—published 4/20/88, effective 5/25/88]
[Filed 3/28/90, Notice 11/1/89—published 4/18/90, effective 5/23/90]
[Filed 6/19/91, Notice 5/15/91—published 7/10/91, effective 8/14/91]
[Filed 7/23/93, Notice 6/9/93—published 8/18/93, effective 9/29/93]
[Filed 9/21/95, Notice 8/16/95—published 10/11/95, effective 11/15/95]
[Filed 12/23/97, Notice 11/5/97—published 1/14/98, effective 2/18/98]
[Filed 3/20/98, Notice 2/11/98—published 4/8/98, effective 6/1/98]
[Filed 6/2/04, Notice 3/31/04—published 6/23/04, effective 7/28/04]
[Filed emergency 9/24/04—published 10/13/04, effective 9/24/04]
[Filed 8/11/06, Notice 5/24/06—published 8/30/06, effective 10/4/06]

[Filed 5/3/07, Notice 2/28/07—published 5/23/07, effective 6/27/07]
[Filed 8/8/08, Notice 5/21/08—published 8/27/08, effective 10/1/08]
[Filed Emergency ARC 7911B, IAB 7/1/09, effective 7/1/09]
[Filed ARC 9034B (Notice ARC 8854B, IAB 6/16/10), IAB 8/25/10, effective 9/29/10]
[Filed ARC 9033B (Notice ARC 8807B, IAB 6/2/10), IAB 8/25/10, effective 9/29/10]

ARCHAEOLOGIST[685]

[Prior to 3/9/88, see Archaeologist[70], Transferred to Archaeologist[685] under the "umbrella" of Regents Board[681]]

CHAPTER 1
PURPOSE OF THE AGENCY

1.1(263B) Mission
1.2(263B) Divisions
1.3(263B) Further information

CHAPTER 2
PROCEDURES FOR PETITIONING FOR ADOPTION OF NEW RULES

2.1(17A) Procedures
2.2(17A) Waivers

CHAPTER 3
DECLARATORY RULINGS PROCEDURES

3.1(17A) Providing declaratory rulings

CHAPTER 4
CONTESTED CASES

4.1(17A) Informal settlements
4.2(17A) Contested cases
4.3(17A) Definitions
4.4(17A) Time requirements
4.5(17A) Requests for contested case proceeding
4.6(17A) Notice of hearing
4.7(17A) Presiding officer
4.8(17A) Waiver of procedures
4.9(17A) Telephone proceedings
4.10(17A) Disqualification
4.11(17A) Consolidation—severance
4.12(17A) Pleadings
4.13(17A) Service and filing of pleadings and other papers
4.14(17A) Discovery
4.15(17A) Subpoenas
4.16(17A) Motions
4.17(17A) Prehearing conference
4.18(17A) Continuances
4.19(17A) Withdrawals
4.20(17A) Intervention
4.21(17A) Hearing procedures
4.22(17A) Evidence
4.23(17A) Default
4.24(17A) Ex parte communication
4.25(17A) Recording costs
4.26(17A) Interlocutory appeals
4.27(17A) Final decision
4.28(17A) Appeals and review
4.29(17A) Applications for rehearing
4.30(17A) Stays of OSA actions
4.31(17A) No factual dispute contested cases

CHAPTER 5
PROCEDURES WITH OTHER STATE AND FEDERAL AGENCIES CONCERNING THE RECOVERY AND SALVAGE OF HISTORICAL OBJECTS
5.1(263B) Assumed responsibility

CHAPTER 6
PUBLICATIONS OF THE OFFICE OF STATE ARCHAEOLOGIST
6.1(263B) Publications
6.2(263B) Procedures

CHAPTER 7
STATE ARCHAEOLOGICAL REPOSITORY
7.1(263B) Definition

CHAPTER 8
ARCHAEOLOGICAL DOCUMENT COLLECTION
8.1(263B) Definition

CHAPTER 9
FIELD SERVICES
9.1(263B) Objective

CHAPTER 10
LIAISON WITH THE DEPARTMENT OF ANTHROPOLOGY
10.1(263B) Definition

CHAPTER 11
ANCIENT HUMAN SKELETAL REMAINS
11.1(263B) Procedures

CHAPTER 12
IOWA ARCHAEOLOGICAL SITE FILE
12.1(263B) Definition
12.2(263B) The Iowa Archaeological Site File
12.3(263B) Iowa site database

CHAPTER 13
Reserved

CHAPTER 14
CONFIDENTIALITY OF ARCHAEOLOGICAL SITE INFORMATION
14.1(263B) Objective
14.2(263B) Definition
14.3(263B) Iowa Archaeological Site File
14.4(263B) Policy on copying charges

CHAPTER 15
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
15.1(17A,22,263B) Definitions
15.2(17A,22,263B) Requests for access to records
15.3(17A,22,263B) Consent to disclosure by the subject of a confidential record
15.4(17A,22,263B) Disclosures without the consent of the subject
15.5(17A,22,263B) Routine use
15.6(17A,22,263B) Consensual disclosure of confidential records
15.7(17A,22,263B) Release to subject

15.8(17A,22,263B)	Availability of records
15.9(17A,22,263B)	Personally identifiable information
15.10(17A,22,263B)	Other groups of records

CHAPTER 1
PURPOSE OF THE AGENCY
[Prior to 3/9/88, Archaeologist[70] Ch 1]

685—1.1(263B) Mission. The office of state archaeologist, hereafter referred to as OSA, was organized in 1959 to provide for the location, recovery, restoration and preservation of archaeological materials for the state, and coordinate these activities with other state agencies. The OSA publishes both educational and scientific reports related to these duties and responsibilities.

1.1(1) In order to meet these statutory objectives under Iowa Code section 263B.2 and Acts of the Sixty-seventh General Assembly, Senate File 2200, sections 26 and 50, the OSA is defined as the primary state interagency service organization for archaeological survey, evaluation, and mitigation. In this capacity, the OSA is notified of projects that are funded or permitted by the state or that have the potential for adversely affecting archaeological sites.

1.1(2) In instances where an agency lacks an archaeological program, the OSA will contact appropriate institutions and professional archaeologists to determine their interest in participating in a state-funded project.

1.1(3) If an organization or individual other than the OSA agrees to conduct archaeological investigations, the OSA will establish a direct contact between the pertinent state agency and the institution or professional archaeologist. In such projects the OSA acts primarily to coordinate archaeological studies on state projects and ensures that such studies deemed necessary are completed.

1.1(4) The goal of utilizing the procedures in this rule, as they apply to the department of transportation and to any other state agency, is to ensure that neither the state nor any of its legal subdivisions is responsible for the needless destruction of historical objects. If such destruction occurs, or cannot be avoided, OSA will take proper reasonable action to obtain all possible information concerning such materials prior to destruction. However, OSA will not assume financial responsibility for intermediate- to large-scale actions involving the salvaging of archaeological information.

1.1(5) OSA performs other duties such as expansion and development of professional and public input into the operation of the office via communication with professional organizations, state and federal agencies and private societies.

1.1(6) OSA provides assistance to local and regional groups or individuals throughout the state in the areas of lectures, general assistance on public or private projects, curation of artifacts and offers programs of assistance to public schools.

1.1(7) OSA maintains an archaeological repository for the state and bears the related responsibility of development and maintenance of an archaeological documents collection related to material in the repository.

1.1(8) OSA may perform archaeological contract services for agencies utilizing federal, state, or private funding.

This rule is intended to implement Iowa Code sections 263B.2, 263B.6 and 263B.9.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—1.2(263B) Divisions. OSA is divided into five divisions: General services, research, contract services, field services and publication.

1.2(1) The state archaeologist carries the overall responsibility of OSA and for all activities developed from or associated with OSA. The state archaeologist shall be the director of the office.

1.2(2) The associate director is responsible for administration of the office and maintenance of the state repository and documents collection, has functional supervision over the staff, acts in the absence of the director, and contributes to production of scientific reports and articles pursuant to Iowa Code section 263B.2 in coordination with the specific requests of the director and submission of reports and articles to the director according to a specific annual timetable developed by the director.

1.2(3) The research archaeologist has the responsibility, in part, for producing scientific reports and articles pursuant to Iowa Code section 263B.2 in coordination with the specific requests of the director and submitting reports and articles to the director according to a specific annual timetable developed by the director.

1.2(4) Contract archaeologists working on OSA projects are considered to be members of the OSA staff. They have the responsibility for meeting the terms of contracts in which they are engaged. Reports prepared for each project undertaken are subject to professional guidelines, federal statutes and the director's approval.

1.2(5) Publication and field services are handled by the staff as assigned.

This rule is intended to implement Iowa Code sections 263B.2 and 263B.5.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—1.3(263B) Further information. The general public may obtain information concerning the function and operation of OSA either in writing or by telephone to Director, OSA, 700 S. Clinton Street Building, The University of Iowa, Iowa City, Iowa 52242; (319)384-0751.

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

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

[Filed 10/27/77, Notice 8/24/77—published 11/16/77, effective 12/21/77]
[Delayed 12/13/77—published 12/28/77; delay lifted 2/14/78—published 3/8/78]
[Filed 8/16/78, Notice 3/22/78—published 9/6/78, effective 10/11/78]
[Filed emergency 2/19/88—published 3/9/88, effective 2/19/88]
[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 2
PROCEDURES FOR PETITIONING FOR ADOPTION OF NEW RULES

685—2.1(17A) Procedures.

2.1(1) Petitions requesting the promulgation, amendment, waiver, or repeal of a rule shall be made to the director in writing and include the following information:

a. Name, address, and telephone number of petitioner.

b. The text of the rule as is and as proposed.

c. A concise statement of the reasons for the adoption, amendment, waiver, or repeal of the rule.

d. The statutes, rules, or orders applicable to the question presented in the petition.

2.1(2) If a waiver is sought pursuant to rule 685—2.2(17A), in addition to the information set forth in subrule 2.1(1), the petition shall also include the following details:

a. Precise scope and requested duration of the waiver;

b. The relevant facts that the petitioner believes will support the four criteria set forth in paragraphs 2.2(3)*"a"* to *"d"*;

c. The name, address, and telephone number of all persons who may have knowledge about the facts and circumstances giving rise to the request for waiver; and

d. The name, address, and telephone number of all persons whom the petitioner believes may be adversely impacted by OSA's granting of the waiver request.

2.1(3) OSA will notify the petitioner of the disposition of the petition within 60 days.

This rule is intended to implement Iowa Code section 17A.4.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—2.2(17A) Waivers.

2.2(1) For the purposes of this rule, the term "waiver" means action by the state archaeologist that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of the person.

2.2(2) The state archaeologist may grant a waiver from a rule only if OSA has jurisdiction over the rule and the requested waiver is consistent with applicable statutes and Constitutional provisions or other provisions of law. OSA may not waive requirements created or imposed by statute, by the state or federal Constitution, or by another provision of law.

2.2(3) In response to a petition completed pursuant to rule 685—2.1(17A), OSA may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if OSA, based on clear and convincing evidence, finds all of the following:

a. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;

b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and

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

2.2(4) OSA may require the petitioner to serve notice in a form prescribed by OSA on all persons to whom notice is required by any provision of law, as well as all persons who may be impacted by the grant or denial of the waiver sought. OSA may additionally require the petitioner to provide a written statement to OSA attesting that notice has been provided.

2.2(5) The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall not otherwise apply to agency proceedings for a waiver. At a hearing on a petition for a waiver, the petitioner may offer exhibits and provide witnesses or testimony. The hearing may be in person, telephonic, or in any other format chosen by OSA. The state archaeologist, or the designee of the state archaeologist, shall preside over the hearing.

2.2(6) An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued. OSA may place any condition on a waiver that OSA finds necessary and supportable by the law.

2.2(7) The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of OSA, upon consideration of all relevant factors. OSA shall evaluate each fact based on the unique, individual circumstances set out in the petition for waiver. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that OSA should exercise its discretion to grant a waiver from an OSA rule.

2.2(8) All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information that OSA is authorized or required to keep confidential. Accordingly, OSA may redact confidential information from petitions or orders prior to public inspection.

2.2(9) Semiannually, OSA shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying OSA's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

2.2(10) A waiver issued by OSA pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, OSA issues an order finding any of the following:

a. The person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or

b. The substantially equivalent means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or

c. The subject of the waiver order has failed to comply with all conditions contained in the order.

2.2(11) Judicial review of the OSA decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

This rule is intended to implement Iowa Code chapter 17A.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

[Filed 10/27/77, Notice 8/24/77—published 11/16/77, effective 12/21/77]
[Delayed 12/13/77—published 12/28/77; delay lifted 2/14/78—published 3/8/78]
[Filed 8/16/78, Notice 3/22/78—published 9/6/78, effective 10/11/78]
[Filed emergency 2/19/88—published 3/9/88, effective 2/19/88]
[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 4
CONTESTED CASES

685—4.1(17A) Informal settlements. Informal settlements of controversies over rules of OSA that may culminate in contested case proceedings, are encouraged.

4.1(1) All such informal settlements or waivers shall be made by the director when possible and by the parties contesting the rule in question.

4.1(2) Both parties to a contested case proceeding may, by written stipulation representing an informed mutual consent, waive any provision of Iowa Code chapter 17A relating to proceedings on contested cases when the following rules are followed:

a. All waivers for settling a controversy over a rule of OSA are made by and between the director and by a representative of the party contesting the rule.

b. All such waiver action can be initiated by either the director or by the representative of the party contesting the rule in question.

c. If the rule, order or regulation over which the controversy was raised, is amended, or repealed as mutually agreed upon by the director and a representative of the party contesting the rule, the procedures of rule adoption pursuant to Iowa Code section 17A.4 are followed.

This rule is intended to implement Iowa Code section 17A.10.

685—4.2(17A) Contested cases. Except when inconsistent with Iowa Code chapter 263B, this chapter applies to contested case proceedings conducted by OSA.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.3(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the state archaeologist, the designee of the state archaeologist or, under certain circumstances, the administrative law judge.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the state archaeologist did not preside.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.4(17A) Time requirements.

4.4(1) Time shall be computed as provided in Iowa Code section 4.1(34).

4.4(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.5(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the OSA action in question. The request for a contested case proceeding should state the name and address of the requester, identify the specific OSA action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.6(17A) Notice of hearing.

4.6(1) *Delivery.* Delivery of the notice of hearing by OSA constitutes the commencement of the contested case proceeding. Delivery may be executed by:

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.

4.6(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If OSA or another party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for OSA or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer; and

i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11, that the presiding officer be an administrative law judge.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.7(17A) Presiding officer.

4.7(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the state archaeologist or the designee of the state archaeologist.

4.7(2) The state archaeologist may deny the request only upon a finding that one or more of the following apply:

a. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

b. An administrative law judge is unavailable to hear the case within a reasonable time.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interdivision appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

4.7(3) The state archaeologist shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

4.7(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the state archaeologist. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.7(5) Unless otherwise provided by law, the state archaeologist, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.8(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, OSA in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.9(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.10(17A) Disqualification.

4.10(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.10(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other OSA functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code chapter 17A.

4.10(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.10(4) If a party asserts disqualification on any appropriate ground, the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding

officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and seek a stay pursuant to these rules.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.11(17A) Consolidation—severance.

4.11(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.11(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.12(17A) Pleadings.

4.12(1) *Petition.* A petition in a contested case proceeding shall state in separately numbered paragraphs the following:

a. The persons or entities on whose behalf the petition is filed;

b. The particular provisions of statutes and rules involved;

c. The relief demanded and the facts and law relied upon for such relief; and

d. The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

4.12(2) *Answer.* An answer shall be filed within 20 days of service of a petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate. An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. The answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim. An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any. Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

4.12(3) *Amendment.* Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or at the discretion of the presiding officer, who may impose terms or grant a continuance.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.13(17A) Service and filing of pleadings and other papers.

4.13(1) Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or OSA, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.13(2) Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.13(3) After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the State Archaeologist, 700 South Clinton Street Building, University of Iowa, Iowa City, Iowa 52242-1030. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with OSA.

4.13(4) Except where otherwise provided by law, a document is deemed filed at the time it is delivered to OSA, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.13(5) Proof of mailing includes either a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the Office of the State Archaeologist, 700 South Clinton Street Building, University of Iowa, Iowa City, Iowa 52242-1030, and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or university mail).
>
> (Date) (Signature)

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.14(17A) Discovery.

4.14(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.14(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in rule 685—4.4(17A).

4.14(3) The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

4.14(4) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.15(17A) Subpoenas.

4.15(1) *Issuance.*

a. An OSA subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.15(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.16(17A) Motions.

4.16(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.16(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of OSA or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.16(3) The presiding officer may schedule oral argument on any motion.

4.16(4) Motions pertaining to the hearing must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of OSA or an order of the presiding officer.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.17(17A) Prehearing conference.

4.17(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause, the presiding officer may permit variances from this rule.

4.17(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.17(3) In addition to the requirements of subrule 4.17(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

4.17(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.18(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.18(1) A written application for a continuance shall:

a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. OSA may waive notice of such requests for a particular case or an entire class of cases.

4.18(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.19(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with OSA rules. Unless otherwise provided, a withdrawal shall be with prejudice.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.20(17A) Intervention.

4.20(1) A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.20(2) Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.20(3) The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

4.20(4) If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.21(17A) Hearing procedures.

4.21(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.21(2) All objections shall be timely made and stated on the record.

4.21(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.21(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.21(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.21(6) Witnesses may be sequestered during the hearing.

4.21(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings.

b. The parties shall be given an opportunity to present opening statements.

c. Parties shall present their cases in the sequence determined by the presiding officer.

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law.

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.22(17A) Evidence.

4.22(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.22(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.22(3) Evidence in the proceeding shall be confined to the issues to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.22(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.22(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.22(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.23(17A) Default.

4.23(1) If a party fails to appear or participate in a contested case hearing after proper service of notice, the presiding officer may, if no continuance is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.23(2) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case hearing become final agency action unless, within 20 days after the mailing of the decision to the parties, a motion to vacate pursuant to subrule 4.23(3) is filed and served on all parties or, if the decision is a proposed decision within the meaning of Iowa Code section 17A.15(2), an appeal from the decision on the merits is filed within the time provided by rule 685—4.28(17A).

4.23(3) A motion to vacate may be filed only by a party who failed to appear for the hearing and against whom the decision was rendered. The motion must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to and filed and served with the motion.

4.23(4) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown, in accordance with Iowa Rule of Civil Procedure 1.977. The burden of proof as to the existence of good cause is on the moving party. Adverse parties may, within ten days of the service of the motion and supporting affidavit(s) upon them, file a response to the motion. Adverse parties shall be

allowed to conduct discovery as to the issue of the existence of good cause and to present evidence on the issue prior to a ruling on the motion, if a request to do so is included in that party's response.

4.23(5) The time for the filing of an intra-agency appeal from or petition for review of a decision for which a timely motion to vacate has been filed is stayed pending the issuance of the presiding officer's ruling on the motion to vacate.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.24(17A) Ex parte communication.

4.24(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, a presiding officer in a contested case or in proceedings on a petition for declaratory order in which there are two or more parties shall not communicate directly or indirectly with any party, representative of any party or any other person with a direct or indirect interest in such case, nor shall any such party, representative or person communicate directly or indirectly with the presiding officer concerning any issues of fact or law in that case, except upon notice and opportunity for all parties to participate. Nothing in this provision precludes the presiding officer, without such notice and opportunity for all parties to participate, from communicating with members of the agency or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish or modify the evidence in the record. The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another's investigative work product in the course of determining whether to initiate a proceeding or exposure to factual information while performing other agency functions, including fact-gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as a presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17.

4.24(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and with the filing of the petition in a declaratory order proceeding in which there are two or more parties and continue for as long as the case is pending.

4.24(3) Communications with a presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible and shall notify other parties prior to seeking to continue hearings or other deadlines.

4.24(4) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case or proceedings on a petition for declaratory order in which there are two or more parties shall disclose to all parties and place on the record of the pending matter all such written communications, all written responses to the communication, and a memorandum stating the substance of all such oral and other communications received, all responses made and the identity of each person from whom the presiding officer received a prohibited ex parte communication. The presiding officer shall notify all parties that these matters have been placed on the record. Any party desiring to rebut the prohibited communication will be allowed the opportunity to do so upon written request filed within ten days after the giving of notice that the matters have been placed on the record.

4.24(5) If the presiding officer determines that the effect of a prohibited ex parte communication is so prejudicial that it cannot be cured by the procedure specified in subrule 4.24(4), the presiding officer shall be disqualified and the portions of the record pertaining to the communication shall be sealed by protective order.

4.24(6) Promptly after being assigned to serve as presiding officer, a presiding officer shall disclose to all parties any material factual information received through ex parte communication prior to such assignment, unless the factual information has or soon will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery.

4.24(7) Sanctions for prohibited communications.

a. The agency and any party may report any violation of this rule to appropriate authorities for any disciplinary proceedings provided by law.

b. The presiding officer may render a proposed decision or, in the case of OSA, a final decision imposing appropriate sanctions for violations of this rule including a decision against the offending party, censure, suspension, or revocation of the privilege to practice before the agency.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.25(17A) Recording costs. Upon request, OSA shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party. Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.26(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the state archaeologist may review an interlocutory order of the presiding officer. In determining whether to do so, the state archaeologist shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by OSA at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order but no later than the time for compliance with the order or the date of hearing, whichever is first.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.27(17A) Final decision.

4.27(1) When the state archaeologist presides over the reception of evidence at the hearing, the decision is a final decision.

4.27(2) When the state archaeologist does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of OSA without further proceedings unless there is an appeal to, or review on motion of, the state archaeologist within the time provided in rule 685—4.28(17A).

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.28(17A) Appeals and review.

4.28(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the state archaeologist within 30 days after issuance of the proposed decision.

4.28(2) *Review.* The state archaeologist may initiate review of a proposed decision on the state archaeologist's own motion at any time within 30 days following the issuance of such a decision.

4.28(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with OSA. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

4.28(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to

present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal, or by a nonappealing party, within 14 days of service of the notice of appeal. The state archaeologist may remand a case to the presiding officer for further hearing or may personally preside at the taking of additional evidence.

4.28(5) *Scheduling.* OSA shall issue a schedule for consideration of the appeal.

4.28(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The state archaeologist may resolve the appeal on the briefs or provide an opportunity for oral argument. The state archaeologist may shorten or extend the briefing period as appropriate.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.29(17A) Applications for rehearing.

4.29(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.29(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.28(4), the applicant requests an opportunity to submit additional evidence.

4.29(3) *Time of filing.* The application shall be filed with OSA within 20 days after issuance of the final decision.

4.29(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, OSA shall serve copies on all parties.

4.29(5) *Disposition.* Any application for a rehearing shall be deemed denied unless OSA grants the application within 20 days after its filing.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.30(17A) Stays of OSA actions.

4.30(1) *When available.*

a. Any party to a contested case proceeding may petition OSA for a stay of an order issued in that proceeding or for other temporary remedies, pending review by OSA. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The state archaeologist may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition OSA for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

4.30(2) *When granted.* In determining whether to grant a stay, the presiding officer or state archaeologist shall consider the factors listed in Iowa Code section 17A.19(5)*"c."*

4.30(3) *Vacation.* A stay may be vacated by the issuing authority by application of any party to OSA or by OSA acting sua sponte.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—4.31(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the

parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the Iowa Rules of Civil Procedure and these administrative rules that govern such motions.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

These rules are intended to implement Iowa Code chapter 17A.

[Filed 10/27/77, Notice 8/24/77—published 11/16/77, effective 12/21/77]
[Delayed 12/13/77—published 12/28/77; delay lifted 2/14/78—published 3/8/78]
[Filed emergency 2/19/88—published 3/9/88, effective 2/19/88]
[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 6
PUBLICATIONS OF THE OFFICE OF STATE ARCHAEOLOGIST

685—6.1(263B) Publications.

6.1(1) OSA publishes the following publications on a regular basis: Research Papers, Reports and Contract Completion Reports. Educational Leaflets and OSA News are published periodically.

6.1(2) Reserved.

685—6.2(263B) Procedures. The following procedures and guidelines for submittal of manuscripts for each publication of OSA are defined below.

6.2(1) The following rules apply for submission and publication of manuscripts to the Reports series.

a. Any individual or organization may submit manuscripts for review. Sample agreement forms are available on request.

b. The editor is a staff member of OSA and is appointed by the director.

c. In addition, the director may appoint an editorial committee to review submitted manuscripts. Selections for the Reports series are made by the editor in concurrence with the director and the editorial committee.

d. OSA prints at least one number of the Reports series annually if appropriate manuscripts and funding are available.

6.2(2) OSA publishes, on an irregular basis, a Research Papers series, that contain scientific reports relating to Iowa Code sections 263B.7 and 263B.8 concerning salvage and reburial of human remains. Other scientific reports produced by OSA may be published in this series.

6.2(3) OSA assists other archaeologists with the preparation and revision of guidelines for contract completion reports. The guidelines are reviewed by the archaeological profession and are utilized as uniform standards in the state.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—6.3(263B) Rescinded by emergency rule filed 12/22/77 to become effective 3/1/78. Action taken to overcome Committee objection published in IAC Supplement 1/11/78.

These rules are intended to implement Iowa Code section 263B.2.

[Filed 10/27/77, Notice 8/24/77—published 11/16/77, effective 12/21/77]
[Filed emergency 12/22/77—published 1/11/78, effective 3/1/78]
[Delayed 12/13/77—published 12/28/77; delay lifted 2/14/78—published 3/8/78]
[Filed emergency 2/19/88—published 3/9/88, effective 2/19/88]
[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 7
STATE ARCHAEOLOGICAL REPOSITORY

685—7.1(263B) Definition. The state archaeological repository is a working collection of materials related to Iowa archaeology.

7.1(1) Qualified individuals (see definition at rule 685—14.2(263B)) shall have access to the collections upon request, providing that necessary staff is available. Users are requested to contact OSA in advance in order to facilitate scheduling.

7.1(2) Research involving the use of materials in the state archaeological repository by qualified individuals is encouraged by the OSA in recognition of the potential contribution of such scholarly activities.

7.1(3) The teaching collection is the artifact collection in the repository developed by OSA to be used for instructional or display purposes. These materials will be loaned upon written request to individuals or institutions. The requester should state in a letter the nature of the project and the time the materials will be needed. Loans do not exceed one calendar year, unless other arrangements are made. Any materials not returned or damaged will result in appropriate charges for replacement or repair.

7.1(4) OSA accepts donations of artifacts or artifact collections in accordance with the fee schedule published on the OSA Web site (also available in printed form by written request) provided that explanatory materials, such as site sheets, site records and all pertinent locational information, accompany collections. Donated specimens are required to be washed and reasonably identified. OSA will not determine the monetary value of artifacts.

7.1(5) OSA is the agent to decide which category donations fall into and which are accepted or rejected. OSA serves a similar function for any other state agency wishing to donate artifacts or information on sites. Donations will be accepted given the following categories listed in order of decreasing priority.

a. In-state new site.
b. In-state previously reported site, new collections.
c. Out of state-midwest or assemblages directly relevant to Iowa archaeology.
d. North America-general.
e. Mesoamerica-general.
f. South America-general.
g. Old World-general.

Where applicable, specimens must be accompanied by documentation of their legal acquisition and exportation from the state or county of origin.

This rule is intended to implement Iowa Code section 263B.2.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

[Filed 10/27/77, Notice 8/24/77—published 11/16/77, effective 12/21/77]
[Delayed 12/13/77—published 12/28/77; delay lifted 2/14/78—published 3/8/78]
[Filed 8/16/78, Notice 3/22/78—published 9/6/78, effective 10/11/78]
[Filed emergency 2/19/88—published 3/9/88, effective 2/19/88]
[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 8
ARCHAEOLOGICAL DOCUMENT COLLECTION

685—8.1(263B) Definition. The archaeological document collection is part of the repository. It contains records of this agency, supporting notes and written information pertaining to the artifact collections in the repository as well as research materials on Iowa prehistory which are utilized on a regular basis by members of the staff. The archaeological document collection is a working collection.

8.1(1) Qualified individuals (see definition at rule 685—14.2(263B)) shall have access to the collections upon request, providing that necessary staff is available. Users are requested to contact OSA in advance in order to facilitate scheduling.

8.1(2) Donations of materials are accepted in accordance with the fee schedule published on the OSA Web site (also available in printed form by written request) in the following priority:

a. Iowa archaeology.

b. Midwest archaeology.

c. North American archaeology.

d. Midwest and Plains ethnography.

e. North American ethnology.

This rule is intended to implement Iowa Code section 263B.2.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

[Filed 10/27/77, Notice 8/24/77—published 11/16/77, effective 12/21/77]
[Delayed 12/13/77—published 12/28/77; delay lifted 2/14/78—published 3/8/78]
[Filed 8/16/78, Notice 3/22/78—published 9/6/78, effective 10/11/78]
[Filed emergency 2/19/88—published 3/9/88, effective 2/19/88]
[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 10
LIAISON WITH THE DEPARTMENT OF ANTHROPOLOGY

685—10.1(263B) Definition. By statute the state board of regents shall appoint a state archaeologist, who shall be a member of the department of anthropology of the State University of Iowa. Midwestern archaeological programs of the department of anthropology and the OSA are coordinated through the cooperative efforts of the state archaeologist and the faculty of the department of anthropology. Such programs include, but are not limited to, field, laboratory, and research projects. As a faculty member, the state archaeologist is also involved in routine interaction with the anthropology faculty on departmental business.

10.1(1) In order to facilitate cooperative efforts with the department of anthropology, professors and students under their sponsorship will be granted as free, direct and complete access to the repository and documents collection as OSA staff time will permit. Research projects involving tests which will modify or physically damage specimens in the repository must be cleared with the director.

10.1(2) OSA staff will cooperate fully with researchers, aiding with the location of materials needed. Work areas will be provided for reasonable lengths of time. All publications or reports resulting in full or in part from the use of OSA collections and facilities shall include an appropriate acknowledgment. One print and one electronic copy of all such publications or reports shall be sent to OSA for inclusion in the documents collection.

This rule is intended to implement Iowa Code section 263B.1.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

[Filed 8/16/78, Notice 3/22/78—published 9/6/78, effective 10/11/78]
[Filed emergency 2/19/88—published 3/9/88, effective 2/19/88]
[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 11
ANCIENT HUMAN SKELETAL REMAINS

685—11.1(263B) Procedures. OSA is the appropriate agency to contact regarding the discovery of human physical remains or suspected human physical remains believed to be over 150 years in age. OSA should be notified of the location of areas believed to represent ancient burial grounds. The director has the authority to deny permission to disinter human physical remains from aboriginal ossuaries, grave sites, cemeteries or any other archaeological deposit determined to have state and national significance from the standpoint of history or science.

11.1(1) A site will be judged significant if it has been demonstrated by archaeological investigation, including but not limited to excavation and analysis appropriate to the context, that it possesses one or more of the qualities listed below:

a. Substantial information bearing on the biology of past populations.

b. Substantial information bearing on the technology, society or ideology of past populations.

c. Potential for public interpretation of past lifeways.

11.1(2) The basis for the determination of significance shall be specified in the written report filed with the public health department.

11.1(3) If a site is determined to be significant by these rules and is designated by the director to be preserved, any human physical remains recovered during testing may be reinterred at the original burial site rather than at one of the designated state cemeteries. Sites that are judged not to be significant will be salvaged by OSA or its designated representative to the degree permitted by available funding and staff. In such cases, materials recovered will be the subject of a written report and the human remains will be reburied in one of the designated state cemeteries.

11.1(4) The OSA shall maintain records of all known or suspected ancient burial sites in the state. The OSA has the authority to coordinate activities pertaining to ancient burial grounds in order to foster their protection and preservation.

11.1(5) The OSA will not assume financial responsibility for intermediate- to large-scale actions involving the removal of human physical remains from private lands. The OSA must participate, however, in the authorization and coordination of any such action on federal, state, county, municipal or private lands.

11.1(6) OSA will assist with the ongoing identification of ancient cemetery areas to the degree permitted by available funding and staff. OSA will coordinate such actions with appropriate federal, state, county, municipal or private concerns.

11.1(7) The director shall maintain an informal advisory committee composed of osteologists, anthropologists, state agency officials, the lay public, and a minimum of two Native Americans residing in Iowa to consult on matters dealing with ancient human skeletal remains. Individuals appointed will serve on a voluntary basis. Certain travel expenses, authorized by the director in advance, will be paid by the OSA.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

This rule is intended to implement Iowa Code sections 263B.7, 263B.8 and 263B.9.

[Filed 8/16/78, Notice 3/22/78—published 9/6/78, effective 10/11/78]

[Filed emergency 2/19/88—published 3/9/88, effective 2/19/88]

[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 12
IOWA ARCHAEOLOGICAL SITE FILE

685—12.1(263B) Definition. Pursuant to the statutory responsibilities of locating and recovering archaeological and paleontological remains, OSA maintains the Iowa Archaeological Site File in digital and paper formats. OSA is the appropriate agency for the public or other agencies to contact to report sites or to receive information concerning known sites in the inventory. OSA assigns all official site numbers following written guidelines which are available from OSA upon request.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—12.2(263B) The Iowa Archaeological Site File.

12.2(1) The official site numbers used in the Iowa Archaeological Site File conform to the Smithsonian trinomial system which incorporates state and county designations coded with sequentially numbered sites within each county.

12.2(2) Numbers are assigned on an individual basis as needed. Individuals, firms, and agencies that are assigned site numbers must submit site data for the assigned numbers within six months of the date assigned.

12.2(3) If an individual, firm, or agency fails to submit site data within the period allowed, the numbers may be renewed or revoked depending upon the circumstances. OSA may revoke site number assignment privileges to any individual, firm, or agency that consistently fails to submit data for its assigned site numbers.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—12.3(263B) Iowa site database. Specific locational and descriptive information on each reported site is recorded in the Iowa Archaeological Site File database in a data format developed by OSA. The electronically digitized, mapped location of each reported site is part of the Iowa Archaeological Site File database. Information explaining the process of reporting site information is available from OSA upon request.

12.3(1) OSA shall develop and maintain a system for Internet access to the Iowa Archaeological Site File database. Information about access to the system is available from OSA on request.

12.3(2) The Internet system is updated on a regular basis as new site information is added to the Iowa Archaeological Site File.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

These rules are intended to implement Iowa Code section 263B.2.

[Filed 8/16/78, Notice 3/22/78—published 9/6/78, effective 10/11/78]
[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 14
CONFIDENTIALITY OF ARCHAEOLOGICAL SITE INFORMATION

685—14.1(263B) Objective. Pursuant to Iowa Code section 263B.10, specific locational information on archaeological resources and sites is confidential unless approved for disclosure. This is intended to provide such resources and sites protection from unreasonable risk of damage or loss. The state archaeologist is the appropriate authority to approve disclosure of information on the location of archaeological resources and sites.

685—14.2(263B) Definition. "Qualified archaeologist" means an individual who has:

1. A graduate degree in archaeology, anthropology, or a closely related field of equivalent specialized training in archaeological research, administration, or management,
2. At least one year of full-time professional experience,
3. At least four months of supervised field and analytic experience in general North American archaeology, and
4. A demonstrated ability to carry research to completion.

685—14.3(263B) Iowa Archaeological Site File.

14.3(1) Upon request, OSA will make the Iowa Archaeological Site File including site location maps available to the following individuals for inspection and copying:

a. Members of the Association of Iowa Archaeologists;
b. Members of the Register of Professional Archaeologists;
c. Qualified archaeologists;
d. OSA staff;
e. Students or researchers under the supervision of a person meeting any of the above criteria;
f. Amateur archaeologists, at the discretion of the state archaeologist;
g. Other persons if OSA determines that disclosure will not result in unreasonable risk of damage to or loss of the resource or site.

14.3(2) OSA maintains a log of all non-OSA staff users of the Iowa Archaeological Site File and associated site location maps. The log includes the name and address of each user and the date of use.

14.3(3) One copy of any report or publication utilizing information obtained from the Iowa Archaeological Site File shall be sent to OSA for inclusion in the documents collection.

14.3(4) Notwithstanding any of the preceding provisions, the state archaeologist retains authority to deny access of any individual to the Iowa Archaeological Site File including site location maps, in accordance with Iowa Code section 22.7(20), if release of the information will result in unreasonable risk of damage to or loss of archaeological resources. An appeal committee consisting of three members of OSA advisory committee shall review contested cases and make recommendations to the university of Iowa vice president for research.

14.3(5) The state archaeologist may enter into cooperative agreements with the state historical society and other agencies in order to make available access to the Iowa Archaeological Site File for planning purposes.

14.3(6) Documents containing information on the specific location of any archaeological resource or site shall be considered an extension of the Iowa Archaeological Site File and shall be treated in similar fashion. Such documents include those archived at OSA or released by OSA to agencies or individuals.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—14.4(263B) Policy on copying charges. Anyone making a request for reproduction from the Iowa Archaeological Site File and OSA documents including electronic records will be charged for services.
[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

These rules are intended to implement Iowa Code section 263B.10.

[Filed 6/24/88, Notice 4/20/88—published 7/13/88, effective 8/17/88]
[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]

CHAPTER 15
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

685—15.1(17A,22,263B) Definitions. As used in this chapter:

"Agency" means the office of state archaeologist (OSA).

"Confidential record" means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public and records or information contained in records that are specified as confidential by Iowa Code section 22.7, Iowa Code section 263B.10, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record.

"Custodian" means the state archaeologist or a person lawfully delegated authority by the state archaeologist to act for the agency in implementing Iowa Code chapter 22.

"Open record" means a record other than a confidential record.

"Personally identifiable information" means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

"Record" means the whole or a part of a "public record" as defined in Iowa Code section 22.1.

"Record system" means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—15.2(17A,22,263B) Requests for access to records.

15.2(1) *Location of record.* A request for access to a record should be directed to the state archaeologist at OSA, 700 South Clinton Street Building, University of Iowa, Iowa City, Iowa 52242; or telephone (319)384-0751.

15.2(2) *Office hours.* Open records shall be made available during all customary office hours, which are 8 a.m. to 4:30 p.m., Monday through Friday, except legal or university holidays.

15.2(3) *Request for access.* Requests for access to open records may be made in writing or in person. The office may also accommodate telephone requests where appropriate. Requests shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

15.2(4) *Response to requests.* Access to an open record shall be provided promptly, unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.7 or 22.8. Upon request, the custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay. The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code section 22.7 or 22.8, or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 685—15.3(17A,22,263B) and other applicable provisions of law.

15.2(5) *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

15.2(6) *Copying.* A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

15.2(7) *Fees.*

a. OSA may charge the photocopy fee set forth in its "Fees for Services" document, which reflects the actual cost of such photocopies. The current "Fees for Services" document is available from OSA and posted on the OSA Web site.

b. In addition to photocopy charges, an hourly fee may be charged for actual OSA expenses in supervising the examination and copying of requested records. OSA shall prominently post in agency offices the hourly fees to be charged for supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly compensation of an agency clerical employee who ordinarily would be appropriate and suitable to perform this supervisory function.

c. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—15.3(17A,22,263B) Consent to disclosure by the subject of a confidential record. To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure must be in writing and must identify the particular record or records that may be disclosed and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—15.4(17A,22,263B) Disclosures without the consent of the subject.

15.4(1) Open records are routinely disclosed without the consent of the subject.

15.4(2) To the extent allowed by law, disclosure of confidential records or exempt records may occur without the consent of the subject. Without limiting the custodian's discretion to disclose records pursuant to Iowa Code section 22.7 and applicable law, the following are nonexhaustive examples of instances where disclosure, if lawful, can generally occur without notice to the subject:

a. For a routine use as defined in rule 685—15.5(17A,22,263B) or in any notice for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of the government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—15.5(17A,22,263B) Routine use.

15.5(1) *Definition.* "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

15.5(2) *Examples.* To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential or exempt records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the agency or officer which the office is advising or representing in the matter in question or to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—15.6(17A,22,263B) Consensual disclosure of confidential records.

15.6(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 685—15.3(17A,22,263B).

15.6(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may to the extent permitted by law be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—15.7(17A,22,263B) Release to subject.

15.7(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 685—15.3(17A,22,263B). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or records otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

d. As otherwise authorized by law.

15.7(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—15.8(17A,22,263B) Availability of records.

15.8(1) *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

15.8(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Records which are exempt from disclosure under Iowa Code section 22.7.

b. Records which constitute attorney work product or attorney-client communications or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10, and 622.11, Iowa R. Civ. P. 1.503(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the code of professional responsibility, and case law.

c. Records relating to the nature and location of archaeological resources or sites, which are exempt from disclosure pursuant to Iowa Code section 22.7(20) and Iowa Code section 263B.10.

d. Personal information in confidential personnel records pursuant to Iowa Code section 22.7(11).

e. Any other records made confidential by law.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—15.9(17A,22,263B) Personally identifiable information. This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 685—15.1(17A,22,263B). For each record system, this rule describes the legal authority for the collection of that information and the means of storage of that information and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by OSA are personnel and employment management information systems, the records for which are collected pursuant to the authority of Iowa Code chapter 263B. Storage is in paper form, though certain employment information may be incorporated into electronic records which could then be matched, collated, or compared.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

685—15.10(17A,22,263B) Other groups of records. This rule describes groups of records maintained by the agency other than record systems as defined in rule 685—15.1(17A,22,263B). These records are routinely available to the public. However, the agency's files of these records may contain confidential information. In addition, some records may contain information about individuals. All records are stored both on paper and in automated data processing systems unless otherwise noted.

15.10(1) *Rule making.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

15.10(2) *Publications.* News releases, annual reports, project reports, and agency newsletters are available through OSA's Web site or from the agency. Any news releases, annual or project reports, or newsletters may contain information about individuals, including agency staff members.

15.10(3) *Statistical reports.* Periodic reports for various OSA programs may be available from OSA.

15.10(4) *Grants/contracts.* OSA may have communications with prospective granting agencies or clients about grants or contracts.

[**ARC 9025B**, IAB 8/25/10, effective 9/29/10]

These rules are intended to implement Iowa Code chapter 22.

[Filed ARC 9025B (Notice ARC 8870B, IAB 6/30/10), IAB 8/25/10, effective 9/29/10]