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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 1

### **Insurance Division[191]**

Replace Analysis

Replace Chapter 3

Replace Chapter 5

Replace Chapter 34

Replace Reserved Chapter 99 with Chapter 99

Insert Reserved Chapters 107 to 109 and Chapter 110

### **Environmental Protection Commission[567]**

Replace Chapter 22

Replace Chapter 33

Replace Chapter 61

### **Professional Licensure Division[645]**

Replace Analysis

Replace Chapter 4

Replace Chapters 100 to 102

### **Public Safety Department[661]**

Replace Analysis

Replace Chapter 91

Replace Chapter 226

Replace Chapter 500

Replace Chapter 502

### **Labor Services Division[875]**

Replace Analysis

Replace Chapter 26

Replace Chapter 71

Replace Chapters 90 and 91



CHAPTER 1  
ADMINISTRATION

[Prior to 2/24/88, see Agriculture Department, 30—Chapter 1]

**21—1.1(159) Organization.**

**1.1(1)** “*Department*” means the department of agriculture and land stewardship.

**1.1(2)** “*Secretary*” means the secretary of agriculture who is the head of the department.

**1.1(3)** The deputy secretary of agriculture advises the secretary and has the statutory authority to perform any of the duties required or authorized of the secretary in the secretary’s absence or through explicit directions or tacit consent.

**1.1(4)** The department is organized into four branches known as the consumer protection and industry services division, the administration division, the soil conservation division, and the food safety and animal health division. The deputy secretary of agriculture heads the administration division, and division directors head the consumer protection and industry services division, the soil conservation division, and the food safety and animal health division. The directors assist the secretary in the implementation of the secretary’s policies within the various bureaus, laboratories, and units assigned to that division. The directors shall also assist the secretary in supervising the work of the various bureaus and units assigned to that division, provide the expertise of their division to other divisions where appropriate, and perform other duties as assigned by the secretary.

**1.1(5)** Rescinded IAB 2/25/09, effective 2/5/09.

**1.1(6)** The grain indemnity fund board is an autonomous agency of which the secretary is president. The board operates in conjunction with the grain warehouse bureau of the department, determining and providing for payment of claims which arise as a result of the failure of a grain dealer or warehouse operator and administering the Iowa grain depositors and sellers indemnity fund. The rules for the board’s organization and operations and its procedures for resolving claims appear in 21—Chapters 63 and 64, Iowa Administrative Code.

**1.1(7)** The Iowa board of veterinary medicine is an autonomous agency functioning within the department to provide for the licensing and disciplining of veterinarians and veterinary assistants. The powers of the Iowa board of veterinary medicine are vested in the board pursuant to Iowa Code chapter 169, and its rules appear at 811—Chapter 1, et seq., Iowa Administrative Code. The secretary appoints the state veterinarian who, pursuant to Iowa Code section 169.5, serves as secretary to the board.

[ARC 7587B, IAB 2/25/09, effective 2/5/09; ARC 8240B, IAB 10/21/09, effective 9/30/09]

**21—1.2(159) Consumer protection and industry services division.** In addition to the duties outlined in subrule 1.1(4), the director of the consumer protection and industry services division advises the secretary of activities and any impending or potential problems that have come to the attention of the division’s personnel. The bureaus and laboratories under the supervision of the consumer protection and industry services division are as follows:

**1.2(1)** *Grain warehouse bureau.* This bureau licenses, inspects and examines grain dealers and grain warehouse facilities and reviews financial statements of licensees to ensure compliance with requirements, including payment of fees into the grain indemnity fund. The bureau also reviews claims made against the fund and makes recommendations on those claims to the grain indemnity fund board, upon which the board takes action. This bureau includes the following unit:

*a. Audit.* This unit analyzes reports filed by feed and fertilizer companies for fees paid into the general fund of the state. The unit also makes audits to check for compliance with check-off law for the commodity promotion boards.

*b. Reserved.*

**1.2(2)** *Weights and measures bureau.* This bureau inspects and licenses for commercial use all weights and measures or weighing and measuring devices; conducts petroleum products sampling and testing, tests and certifies antifreeze, and conducts random package and labeling inspections of products offered for sale; registers and licenses all service agencies and persons who service or repair commercial weighing and measuring devices; approves or rejects all blueprints on new scale installations; and approves or rejects bonds for scale installation. The bureau maintains the state metrology laboratory

and, following the rules and regulations of the National Institute of Standards and Technology and using the weights and measures standards that are traceable to the National Institute of Standards and Technology, adjusts, certifies, and seals weights and measures used by state inspectors, commercial repairers and private industry. The bureau deals with renewable fuels and coproducts by facilitating increased production and consumption of products made from Iowa's agricultural commodities and by encouraging production and use of renewable fuels and coproducts.

**1.2(3) *Entomology and seed laboratory.*** This laboratory licenses establishments selling or distributing seeds that are sold for agricultural purposes; controls the movement of serious insect pests and plant diseases, including those under federal quarantine; and inspects nursery stock growers and dealers.

**1.2(4) *Agricultural diversification and market development bureau.*** This bureau processes applications for organic certification and works closely with the Iowa organic advisory council to ensure approval of those applications that meet state and federal regulations. This bureau provides marketing opportunities for diversified agricultural products throughout the state. This bureau includes the following units:

*a. Agricultural marketing.* This unit works with the various boards of Iowa agricultural organizations to assist and support their respective marketing efforts. The unit also seeks new opportunities to assist Iowa's private firms to find markets for their products. Additionally, the unit provides Iowa livestock and grain producers with essential market information on a timely basis through the market news reporting service, a joint effort with the United States Department of Agriculture.

*b. Horticulture.* This unit lends direction, continuity, leadership, and administrative services and guidance to the Iowa horticulture industry. The unit identifies and helps determine the market potential for horticultural crops such as ornamental plants, fruits and vegetables, Christmas trees, herbs, mushrooms, grapes, nuts, and turf products. The horticulture unit monitors the conditions of the industry and identifies, collects, and distributes pertinent information concerning horticulture and related interests. The unit acts as a resource for horticultural producers and provides referrals for assistance in marketing, production, financial aid, disaster programs, and regulatory issues. The horticulture unit acts as a liaison between industry organizations, other state and federal agencies, universities, noncommercial horticultural groups, and the agricultural community.

*c. Farmers' markets.* This unit assists in the organization and improvement of farmers' markets throughout the state. The unit collects and distributes information pertinent to the markets and provides market managers assistance in vendor recruitment, market promotion, and regulatory issues.

*d. Farmers' market nutrition programs.* This unit administers programs designed to provide a supplemental source of fresh, locally grown fruits and vegetables for women, infants, and children, seniors, and other clients and to increase the production, distribution, and consumption of locally grown fruits and vegetables.

**1.2(5) *Horse and dog bureau.*** This bureau promotes the Iowa horse and dog breeding industry by registering qualified Iowa-foaled horses and Iowa-whelped dogs and working in cooperation with the racing industry. The bureau administers the payment of breeder awards to the breeders of qualified winning horses and dogs.

[ARC 7587B, IAB 2/25/09, effective 2/5/09; ARC 8240B, IAB 10/21/09, effective 9/30/09; ARC 9220B, IAB 11/17/10, effective 10/20/10]

**21—1.3(159) Administration division.** In addition to the duties outlined in subrule 1.1(4), the director of the administration division, who is the deputy secretary of agriculture, assists the secretary in the preparation and presentation of the department's budget to the governor and the general assembly. The division provides personnel services and works with the secretary and other divisions in the selection, hiring, and most phases of employment record keeping and processing relative to pay, benefits, and employee status changes in relation to the department. The director shall serve as a liaison between the department and the department of management, the department of administrative services, and the state auditor. The bureaus and units under the supervision of the division are as follows:

**1.3(1) Accounting bureau.** The accounting bureau handles all accounting functions for the department, manages grants, formulates budget recommendations, performs various other business functions including the paying of bills and vouchers, and maintains adequate inventory of laboratory supplies.

**1.3(2) Agricultural diversification and market development bureau.** Rescinded IAB 2/25/09, effective 2/5/09.

**1.3(3) Agricultural marketing bureau.** Rescinded IAB 2/25/09, effective 2/5/09.

**1.3(4) Agricultural statistics bureau.** This bureau collects, prepares and publishes annual state farm census and other periodic research data, such as production figures, utilization of feed grains, grain stocks on hand, price variance, and marketing data on crops and livestock.

**1.3(5) Audit bureau.** Rescinded IAB 2/25/09, effective 2/5/09.

**1.3(6) Climatology bureau.** This bureau collects data and keeps records on rainfall, snowfall, snowmelt, frost and sun days, and prepares various reports including publishing maps showing data by region.

**1.3(7) Horse and dog bureau.** Rescinded IAB 2/25/09, effective 2/5/09.

**1.3(8) Horticulture and farmers market bureau.** Rescinded IAB 2/25/09, effective 2/5/09.

**1.3(9) Information.** This unit is staffed by information specialists who prepare informational material for the public benefit under the direction of the secretary. The information specialists prepare information for use through the media including newspapers, radio, television, and magazines. Information specialists are also responsible for drafting brochures and cooperating with other state agencies in disseminating agricultural information and education.

**1.3(10) Renewable fuels and coproducts.** Rescinded IAB 2/25/09, effective 2/5/09.  
[ARC 7587B, IAB 2/25/09, effective 2/5/09]

**21—1.4(159) Soil conservation division.** In addition to the duties outlined in subrule 1.1(4), the director of the soil conservation division advises the secretary on soil and water conservation matters and works with the state soil conservation committee in the adoption of rules relating to soil conservation, water resources, and mining. The division performs duties as designated in the Code of Iowa. The bureaus of the soil conservation division are as follows:

**1.4(1) Field services bureau.** This bureau works with elected soil and water conservation district commissioners and division of soil conservation personnel assigned to soil and water conservation districts. The bureau also coordinates water quality and watershed protection projects awarded to soil and water conservation districts.

**1.4(2) Financial incentives bureau.** This bureau works to control erosion on all agricultural land and administers incentive programs for the establishment of land treatment measures. The bureau also provides assistance and guidance to soil and water conservation districts.

**1.4(3) Mining bureau.** This bureau provides for the reclamation and conservation of land affected by surface mining. The bureau carries out coal regulatory and abandoned mine land programs and also regulates limestone and gypsum quarries, sand and gravel pits, and other mineral extraction operations.

**1.4(4) Water resources bureau.** This bureau coordinates water resources programs, including agricultural drainage well closures, watershed project development, and the conservation reserve enhancement program. The bureau also provides technical support on wetland issues, nutrient management, and other division programs.

**21—1.5(159) Food safety and animal health.** In addition to the duties outlined in subrule 1.1(4), the director of the food safety and animal health division advises the secretary of activities and any impending or potential problems that have come to the attention of the division's personnel. The bureaus and laboratories under the supervision of the food safety and animal health division are as follows:

**1.5(1) Animal industry bureau.** This bureau is under the direction of the state veterinarian and consists of the following units:

*a. Animal health.* This unit conducts brucellosis, pseudorabies, and tuberculosis control and eradication programs; issues quarantines and approves premises for receiving animals of unknown

health status for feeding or isolation while under quarantine; monitors and investigates reports of foreign animal diseases; inspects and licenses cattle dealers, pig dealers, auction markets, hatcheries, and rendering plants; registers cattle brands; provides administrative support, supplies and facilities for the board of veterinary medicine; maintains the capability to react to emergency situations; and maintains liaisons with livestock producer groups.

*b. Animal welfare.* This unit licenses and regulates facilities that engage in commercial activities relating to animals in the pet industry including, but not limited to, pet stores, dog and cat breeders and dealers, animal shelters and pounds, and kennels.

**1.5(2) Commercial feed and fertilizer bureau.** This bureau licenses feed mills and commercial feed manufacturing facilities; registers feed and stock tonic products; collects commercial feed tonnage fees; inspects medicated feed in accordance with Food and Drug Administration (FDA) rules and regulations; licenses and registers fertilizer plants and products; collects, compiles, and distributes data on plant food consumption; collects commercial fertilizer tonnage fees and groundwater protection fees; approves, inspects and regulates all anhydrous ammonia installations; and licenses, samples, evaluates and certifies all limestone quarries.

**1.5(3) Dairy products control bureau.** This bureau conducts a statewide program of dairy products control and regulates all phases of production, processing, and manufacturing of Grade A and Grade B dairy foods (manufacturing milk), dairy food, milk and dairy products, and other by-products. The dairy program is a part of a national regulatory scheme which provides for the interstate shipment of raw milk, pasteurized milk, and dairy products.

**1.5(4) Meat and poultry inspection bureau.** This bureau enforces and administers Iowa Code chapter 189A, the meat and poultry inspection Act. It is a cooperative program with the United States Department of Agriculture. The program must maintain an “equal to” status with the federal Wholesome Meat and Poultry Products Inspection Acts. This bureau conducts inspections of facilities, animals, products, and labeling and exercises processing controls and reinspection of meat and poultry products for intrastate commerce.

**1.5(5) Pesticide bureau.** This bureau registers pesticide products, licenses and certifies pesticide applicators, establishes programs for best management practices of agricultural chemicals, monitors consumer products for pesticide residues, implements pesticide enforcement and certification programs of the Environmental Protection Agency, and cooperates with the department of natural resources and other agencies.

**1.5(6) Feed, fertilizer, vitamin and drug laboratory.** This laboratory analyzes feed and fertilizer samples to ensure that they comply with the guaranteed analysis. The laboratory analyzes medicated feed samples to ensure that they are manufactured and used in accordance with Food and Drug Administration (FDA) regulations. The laboratory also analyzes milk products for added vitamins A and D<sub>3</sub>.

**1.5(7) Food, meat, poultry and dairy laboratory.** This laboratory analyzes samples to detect bacterial contamination and determine the composition of the product and substances added to determine wholesomeness and safety; certifies private dairy laboratories in the state; and tests public and private water supplies for bacteria and nitrate content.

**1.5(8) Pesticide residue and formulation laboratory.** This laboratory analyzes samples collected from pesticide retail establishments, from pesticide manufacturers to determine if pesticides have been used and produced properly, and during use/misuse investigations.

[ARC 8240B, IAB 10/21/09, effective 9/30/09]

These rules are intended to implement Iowa Code sections 17A.3 and 17A.4 and Iowa Code chapter 159.

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[Filed Emergency ARC 9220B, IAB 11/17/10, effective 10/20/10]



**INSURANCE DIVISION[191]**

[Prior to 10/22/86, see Insurance Department[510], renamed Insurance Division[191] under the “umbrella” of Department of Commerce by the 1986 Iowa Acts, Senate File 2175]

*ORGANIZATION AND PROCEDURES*

## CHAPTER 1

## ORGANIZATION OF DIVISION

- 1.1(502,505) Organization
- 1.2(502,505) Location and contact information
- 1.3(22,502,505) Public information and inspection of records
- 1.4(505) Service of process

## CHAPTER 2

## DECLARATORY ORDERS

- 2.1(17A) Petition for declaratory order
- 2.2(17A) Notice of petition
- 2.3(17A) Intervention
- 2.4(17A) Briefs
- 2.5(17A) Inquiries
- 2.6(17A) Service and filing of petitions and other papers
- 2.7(17A) Consideration
- 2.8(17A) Action on petition
- 2.9(17A) Refusal to issue order
- 2.10(17A) Contents of declaratory order—effective date
- 2.11(17A) Copies of orders
- 2.12(17A) Effect of a declaratory order

## CHAPTER 3

## CONTESTED CASES

- 3.1(17A) Scope and applicability
- 3.2(17A) Definitions
- 3.3(17A) Time requirements
- 3.4(17A) Requests for contested case proceeding
- 3.5(17A) Commencement of hearing; notice
- 3.6(17A) Presiding officer
- 3.7(17A) Waiver of procedures
- 3.8(17A) Telephone proceedings
- 3.9(17A) Disqualification
- 3.10(17A) Consolidation—severance
- 3.11(17A) Pleadings
- 3.12(17A) Service and filing of pleadings and other papers
- 3.13(17A) Discovery
- 3.14(17A) Subpoenas
- 3.15(17A) Motions
- 3.16(17A) Prehearing conference
- 3.17(17A) Continuances
- 3.18(17A) Withdrawals
- 3.19(17A) Intervention
- 3.20(17A) Hearing procedures
- 3.21(17A) Evidence
- 3.22(17A) Default
- 3.23(17A) Ex parte communication
- 3.24(17A) Recording costs

3.25(17A)	Interlocutory appeals
3.26(17A)	Final decision
3.27(17A)	Appeals and review
3.28(17A)	Applications for rehearing
3.29(17A)	Stay of agency action
3.30(17A)	No factual dispute contested cases
3.31(17A)	Emergency adjudicative proceedings
3.32(502,505,507B)	Summary cease and desist orders
3.33(17A,502,505)	Informal settlement
3.34(17A,502,505)	Witness fees

## CHAPTER 4

## AGENCY PROCEDURE FOR RULE MAKING AND WAIVER OF RULES

## DIVISION I

## AGENCY PROCEDURE FOR RULE MAKING

4.1(17A)	Applicability
4.2(17A)	Advice on possible rules before notice of proposed rule adoption
4.3(17A)	Public rule-making docket
4.4(17A)	Notice of proposed rule making
4.5(17A)	Public participation
4.6(17A)	Regulatory analysis
4.7(17A,25B)	Fiscal impact statement
4.8(17A)	Time and manner of rule adoption
4.9(17A)	Variance between adopted rule and rule proposed in Notice of Intended Action
4.10(17A)	Exemptions from public rule-making procedures
4.11(17A)	Concise statement of reasons
4.12(17A)	Contents, style, and form of rule
4.13(17A)	Agency rule-making record
4.14(17A)	Filing of rules
4.15(17A)	Effectiveness of rules prior to publication
4.16(17A)	General statements of policy
4.17(17A)	Review of rules by division
4.18(17A)	Petition for rule making
4.19 and 4.20	Reserved

## DIVISION II

## WAIVER AND VARIANCE RULES

4.21(17A)	Definition
4.22(17A)	Scope
4.23(17A)	Applicability of Division II of Chapter 4
4.24(17A)	Criteria for waiver or variance
4.25(17A)	Filing of petition
4.26(17A)	Content of petition
4.27(17A)	Additional information
4.28(17A)	Notice
4.29(17A)	Hearing procedures
4.30(17A)	Ruling
4.31(17A)	Public availability
4.32(17A)	Summary reports
4.33(17A)	Cancellation of a waiver
4.34(17A)	Violations
4.35(17A)	Defense
4.36(17A)	Judicial review

*REGULATION OF INSURERS*

## CHAPTER 5

## REGULATION OF INSURERS—GENERAL PROVISIONS

- 5.1(507) Examination reports
- 5.2(505,507) Examination for admission
- 5.3(507,508,515) Submission of quarterly financial information
- 5.4(505,508,515,520) Surplus notes
- 5.5(505,515,520) Maximum allowable premium volume
- 5.6(505,515,520) Treatment of various items on the financial statement
- 5.7(505) Ordering withdrawal of domestic insurers from states
- 5.8(505) Monitoring
- 5.9(505) Rate and form filings
- 5.10(511) Life companies—permissible investments
- 5.11(511) Investment of funds
- 5.12(515) Collateral loans
- 5.13(508,515) Loans to officers, directors, employees, etc.
- 5.14 Reserved
- 5.15(508,512B,514,514B,515,520) Accounting practices and procedures manual and annual statement instructions
- 5.16 to 5.19 Reserved
- 5.20(508) Computation of reserves

## UNEARNED PREMIUM RESERVES ON MORTGAGE GUARANTY INSURANCE POLICIES

- 5.21(515C) Unearned premium reserve factors
- 5.22(515C) Contingency reserve
- 5.23(507C) Standards
- 5.24(507C) Commissioner's authority
- 5.25 Reserved
- 5.26(508,515) Participation in the NAIC Insurance Regulatory Information System
- 5.27(508,515,520) Asset valuation
- 5.28(508,515,520) Risk-based capital and surplus
- 5.29(508,515) Actuarial certification of reserves
- 5.30(515) Single maximum risk—fidelity and surety risks
- 5.31(515) Reinsurance contracts
- 5.32(511,515) Investments in medium grade and lower grade obligations
- 5.33(510) Credit for reinsurance
- 5.34(508) Actuarial opinion and memorandum
- 5.35 to 5.39 Reserved
- 5.40(515) Premium tax
- 5.41(508) Tax on gross premiums—life companies
- 5.42(432) Cash refund of premium tax
- 5.43(510) Managing general agents

## DISCLOSURE OF MORTGAGE LOAN APPLICATIONS

- 5.44 to 5.49 Reserved
- 5.50(535A) Purpose
- 5.51(535A) Definitions
- 5.52(535A) Filing of reports
- 5.53(535A) Form and content of reports
- 5.54(535A) Additional information required
- 5.55(535A) Written complaints

## CHAPTER 6

## ORGANIZATION OF DOMESTIC INSURANCE COMPANIES

6.1(506)	Definitions
6.2(506)	Promoters contributions
6.3(506)	Escrow
6.4(506)	Alienation
6.5(506)	Sales to promoters
6.6(506)	Options
6.7(506)	Qualifications of management
6.8(506)	Chief executive
6.9(506)	Directors

## CHAPTER 7

## DOMESTIC STOCK INSURERS PROXIES

## PROXY REGULATIONS

7.1(523)	Application of regulation
7.2(523)	Proxies, consents and authorizations
7.3(523)	Disclosure of equivalent information
7.4(523)	Definitions
7.5(523)	Information to be furnished to stockholders
7.6(523)	Requirements as to proxy
7.7(523)	Material required to be filed
7.8(523)	False or misleading statements
7.9(523)	Prohibition of certain solicitations
7.10(523)	Special provisions applicable to election contests

## SCHEDULE A

## INFORMATION REQUIRED IN PROXY STATEMENT

## SCHEDULE B

INFORMATION TO BE INCLUDED IN STATEMENTS FILED BY OR ON BEHALF  
OF A PARTICIPANT (OTHER THAN THE INSURER) IN A PROXY SOLICITATION  
IN AN ELECTION CONTEST  
POLICYHOLDER PROXY SOLICITATION

7.11(523)	Application
7.12(523)	Conditions—revocation
7.13(523)	Filing proxy
7.14(523)	Solicitation by agents—use of funds
7.15 to 7.19	Reserved

## STOCK TRANSACTION REPORTING

7.20(523)	Statement of changes of beneficial ownership of securities
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## CHAPTER 8

## BENEVOLENT ASSOCIATIONS

8.1 and 8.2	Reserved
8.3(512A)	Organization
8.4(512A)	Membership
8.5(512A)	Fees, dues and assessments
8.6(512A)	Reserve fund
8.7(512A)	Certificates
8.8(512A)	Beneficiaries
8.9(512A)	Mergers
8.10(512A)	Directors and officers
8.11(512A)	Stockholders
8.12(512A)	Bookkeeping and accounts

## CHAPTER 9

## Reserved

*INSURANCE PRODUCERS*

## CHAPTER 10

## LICENSING OF INSURANCE PRODUCERS

## DIVISION I

## LICENSING OF INSURANCE PRODUCERS

10.1(522B)	Purpose and authority
10.2(522B)	Definitions
10.3(522B)	Requirement to hold a license
10.4(522B)	Licensing of resident producers
10.5(522B)	Licensing of nonresident producers
10.6(522B)	Issuance of license
10.7(522B)	License lines of authority
10.8(522B)	License renewal
10.9(522B)	License reinstatement
10.10(522B)	Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance
10.11(522B)	Temporary licenses
10.12(522B)	Change in name, address or state of residence
10.13(522B)	Reporting of actions
10.14(522B)	Commissions and referral fees
10.15(522B)	Appointments
10.16(522B)	Appointment renewal
10.17(522B)	Appointment terminations
10.18(522B)	Licensing of a business entity
10.19(522B)	Use of senior-specific certifications and professional designations in the sale of life insurance and annuities
10.20(522B)	Violations and penalties
10.21(252J)	Suspension for failure to pay child support
10.22(261)	Suspension for failure to pay student loan
10.23(82GA,SF2428)	Suspension for failure to pay state debt
10.24(522B)	Administration of examinations
10.25(522B)	Forms
10.26(522B)	Fees
10.27 to 10.50	Reserved

## DIVISION II

## LICENSING OF CAR RENTAL COMPANIES AND EMPLOYEES

10.51(522A)	Purpose
10.52(522A)	Definitions
10.53(522A)	Requirement to hold a license
10.54(522A)	Limited licensee application process
10.55(522A)	Counter employee licenses
10.56(522A)	Duties of limited licensees
10.57(522A)	License renewal
10.58(522A)	Limitation on fees
10.59(522A)	Change in name or address
10.60(522A)	Violations and penalties

CHAPTER 11  
CONTINUING EDUCATION FOR  
INSURANCE PRODUCERS

11.1(505,522B)	Statutory authority—purpose—applicability
11.2(505,522B)	Definitions
11.3(505,522B)	Continuing education requirements for producers
11.4(505,522B)	Proof of completion of continuing education requirements
11.5(505,522B)	Course approval
11.6(505,522B)	Topic guidelines
11.7(505,522B)	CE course renewal
11.8(505,522B)	Appeals
11.9(505,522B)	CE provider approval
11.10(505,522B)	CE provider's responsibilities
11.11(505,522B)	Prohibited conduct—CE providers
11.12(505,522B)	Outside vendor
11.13(505,522B)	CE course audits
11.14(505,522B)	Fees and costs

CHAPTER 12  
PORT OF ENTRY REQUIREMENTS

12.1(508,515)	Purpose
12.2(508,515)	Trust and other admission requirements
12.3(508,515)	Examination and preferred supervision
12.4(508,515)	Surplus required
12.5(508,515)	Investments

CHAPTER 13  
CONSENT FOR PROHIBITED PERSONS  
TO ENGAGE IN THE BUSINESS OF INSURANCE

13.1(505,522B)	Purpose and authority
13.2(505,522B)	Definitions
13.3(505,522B)	Requirement for prohibited persons to obtain consent
13.4(505,522B)	Applications for consent
13.5(505,522B)	Consideration of applications for consent
13.6(505,522B)	Review of application by the division
13.7(505,522B)	Consent effective for specified positions and responsibilities only
13.8(505,522B)	Change in circumstances
13.9(505,522B)	Burden of proof
13.10(505,522B)	Violations and penalties

*UNFAIR TRADE PRACTICES*

CHAPTER 14  
LIFE INSURANCE ILLUSTRATIONS MODEL REGULATION

14.1(507B)	Purpose
14.2(507B)	Authority
14.3(507B)	Applicability and scope
14.4(507B)	Definitions
14.5(507B)	Policies to be illustrated
14.6(507B)	General rules and prohibitions
14.7(507B)	Standards for basic illustrations
14.8(507B)	Standards for supplemental illustrations
14.9(507B)	Delivery of illustration and record retention

14.10(507B)	Annual report; notice to policyowners
14.11(507B)	Annual certifications
14.12(507B)	Penalties
14.13(507B)	Separability
14.14(507B)	Effective date

## CHAPTER 15 UNFAIR TRADE PRACTICES

### DIVISION I SALES PRACTICES

15.1(507B)	Purpose
15.2(507B)	Definitions
15.3(507B)	Advertising
15.4(507B)	Life insurance cost and benefit disclosure requirements
15.5(507B)	Health insurance sales to individuals 65 years of age or older
15.6(507B)	Preneed funeral contracts or prearrangements
15.7(507B)	Twisting prohibited
15.8(507B)	Producer responsibilities
15.9(507B)	Right to return a life insurance policy or annuity (free look)
15.10(507B)	Uninsured/underinsured automobile coverage—notice required
15.11(507B)	Unfair discrimination
15.12(507B)	Testing restrictions of insurance applications for the human immunodeficiency virus
15.13(507B)	Records maintenance
15.14(505,507B)	Enforcement section—cease and desist and penalty orders
15.15 to 15.30	Reserved

### DIVISION II CLAIMS

15.31(507B)	General claims settlement guidelines
15.32(507B)	Prompt payment of certain health claims
15.33(507B)	Audit procedures for medical claims
15.34 to 15.40	Reserved
15.41(507B)	Claims settlement guidelines for property and casualty insurance
15.42(507B)	Acknowledgment of communications by property and casualty insurers
15.43(507B)	Standards for settlement of automobile insurance claims
15.44(507B)	Standards for determining replacement cost and actual cost values
15.45(507B)	Guidelines for use of aftermarket crash parts in motor vehicles
15.46 to 15.50	Reserved

### DIVISION III DISCLOSURE FOR SMALL FACE AMOUNT LIFE INSURANCE POLICIES

15.51(507B)	Purpose
15.52(507B)	Definition
15.53(507B)	Exemptions
15.54(507B)	Disclosure requirements
15.55(507B)	Insurer duties
15.56 to 15.60	Reserved

### DIVISION IV ANNUITY DISCLOSURE REQUIREMENTS

15.61(507B)	Purpose
15.62(507B)	Applicability and scope
15.63(507B)	Definitions
15.64(507B)	Standards for delivery of disclosure document and Buyer's Guide

- 15.65(507B) Content of disclosure documents
- 15.66(507B) Report to contract owners
- 15.67(507B) Severability

DIVISION V  
SUITABILITY IN ANNUITY TRANSACTIONS

- 15.68(507B) Purpose
- 15.69(507B) Applicability and scope
- 15.70(507B) Definitions
- 15.71(507B) Duties of insurers and of insurance producers
- 15.72(507B) Insurance producer training
- 15.73(507B) Compliance; mitigation; penalties
- 15.74(507B) Record keeping
- 15.75 to 15.79 Reserved

DIVISION VI  
INDEXED PRODUCTS TRAINING REQUIREMENT

- 15.80(507B,522B) Purpose
- 15.81(507B,522B) Definitions
- 15.82(507B,522B) Special training required
- 15.83(507B,522B) Conduct of training course
- 15.84(507B,522B) Insurer duties
- 15.85(507B,522B) Verification of training
- 15.86(507B,522B) Penalties
- 15.87(507B,522B) Compliance date

CHAPTER 16  
REPLACEMENT OF LIFE INSURANCE AND ANNUITIES

DIVISION I

- 16.1 to 16.20 Reserved

DIVISION II

- 16.21(507B) Purpose
- 16.22(507B) Definitions
- 16.23(507B) Exemptions
- 16.24(507B) Duties of producers
- 16.25(507B) Duties of all insurers that use producers on or after January 1, 2001
- 16.26(507B) Duties of replacing insurers that use producers
- 16.27(507B) Duties of the existing insurer
- 16.28(507B) Duties of insurers with respect to direct-response solicitations
- 16.29(507B) Violations and penalties
- 16.30(507B) Severability

CHAPTER 17  
LIFE AND HEALTH REINSURANCE AGREEMENTS

- 17.1(508) Authority and purpose
- 17.2(508) Scope
- 17.3(508) Accounting requirements
- 17.4(508) Written agreements
- 17.5(508) Existing agreements

CHAPTER 18  
CEMETERIES

- 18.1(523I,566A) Perpetual care cemeteries
- 18.2(523I,566A) Administration

- 18.3(523I,566A) Public access to hearings
- 18.4 Reserved
- 18.5(523I,566A) Forms—content
- 18.6(523I,566A) Annual report by perpetual care cemeteries
- 18.7(523I,566A) Annual reports and perpetual care cemetery permits

## CHAPTER 19

Reserved

*PROPERTY AND CASUALTY INSURANCE*

## CHAPTER 20

## PROPERTY AND CASUALTY INSURANCE RATE AND FORM FILING PROCEDURES

## DIVISION I

## FORM AND RATE REQUIREMENTS

- 20.1(505,509,514A,515,515A,515F) General filing requirements
- 20.2(505) Objection to filing
- 20.3 Reserved
- 20.4(505,509,514A,515,515A,515F) Policy form filing
- 20.5(515A) Rate or manual rule filing
- 20.6(515A) Exemption from filing requirement
- 20.7 Reserved
- 20.8(515A) Rate filings for crop-hail insurance
- 20.9 and 20.10 Reserved
- 20.11(515) Exemption from form and rate filing requirements
- 20.12 to 20.40 Reserved

## DIVISION II

## IOWA FAIR PLAN ACT

- 20.41(515,515F) Purpose
- 20.42(515,515F) Scope
- 20.43(515,515F) Definitions
- 20.44(515,515F) Eligible risks
- 20.45(515,515F) Membership
- 20.46(515,515F) Administration
- 20.47(515,515F) Duties of the governing committee
- 20.48(515,515F) Annual and special meetings
- 20.49(515,515F) Application for insurance
- 20.50(515,515F) Inspection procedure
- 20.51(515,515F) Procedure after inspection and receipt of application
- 20.52(515,515F) Reasonable underwriting standards for property coverage
- 20.53(515,515F) Reasonable underwriting standards for liability coverage
- 20.54(515,515F) Cancellation; nonrenewal and limitations; review of eligibility
- 20.55(515,515F) Assessments
- 20.56(515,515F) Commission
- 20.57(515,515F) Public education
- 20.58(515,515F) Cooperation and authority of producers
- 20.59(515,515F) Review by commissioner
- 20.60(515,515F) Indemnification

## CHAPTER 21

REQUIREMENTS FOR EXCESS AND SURPLUS LINES,  
RISK RETENTION GROUPS AND PURCHASING GROUPS

- 21.1(515) Definitions
- 21.2(515) Qualified surplus lines carriers' duties
- 21.3(515) Producers' duties
- 21.4(515) Producers' duty to insured; evidence of coverage
- 21.5(515) Procedures for qualification and renewal of a nonadmitted insurer as a qualified surplus lines carrier
- 21.6(515E) Risk retention groups
- 21.7(515E) Procedures for qualification as a risk retention group
- 21.8(515E) Procedures for qualification as a purchasing group
- 21.9(515,515E) Failure to comply; penalties

## CHAPTER 22

## FINANCIAL GUARANTY INSURANCE

- 22.1(515C) Definitions
- 22.2(515) Financial requirements and reserves

## CHAPTER 23

## MOTOR VEHICLE SERVICE CONTRACTS

- 23.1(516E) Purpose
- 23.2(516E) Applicability and scope
- 23.3(516E) Application of insurance laws
- 23.4(516E) Administration
- 23.5(516E) Public access to hearings
- 23.6(516E) Public access to records
- 23.7(516E) Filing procedures
- 23.8(516E) Fees
- 23.9(516E) Forms
- 23.10(516E) Prohibited acts—unfair discrimination or trade practices
- 23.11(516E) Prohibited acts—unfair or deceptive trade practices involving used or rebuilt parts
- 23.12(516E) Violations
- 23.13(516E) Procedures for public complaints

## CHAPTER 24

## IOWA RETIREMENT FACILITIES

- 24.1(523D) Purpose
- 24.2(523D) Title
- 24.3(523D) Definitions
- 24.4(523D) Administration
- 24.5(523D) Misrepresentations
- 24.6(523D) Complaints
- 24.7(523D) Address for filings
- 24.8(523D) Fees
- 24.9(523D) Forms
- 24.10(523D) Financial statements, studies, and forecasts
- 24.11(523D) Amendments to the disclosure statement
- 24.12(523D) Standards for the disclosure statement

CHAPTER 25  
MILITARY SALES PRACTICES

25.1(505)	Purpose and authority
25.2(505)	Scope
25.3(505)	Exemptions
25.4(505)	Definitions
25.5(505)	Practices declared false, misleading, deceptive or unfair on a military installation
25.6(505)	Practices declared false, misleading, deceptive or unfair regardless of location
25.7(505)	Reporting requirements
25.8(505)	Violation and penalties
25.9(505)	Severability

CHAPTER 26  
Reserved

CHAPTER 27  
PREFERRED PROVIDER ARRANGEMENTS

27.1(514F)	Purpose
27.2(514F)	Definitions
27.3(514F)	Preferred provider arrangements
27.4(514F)	Health benefit plans
27.5(514F)	Preferred provider participation requirements
27.6(514F)	General requirements
27.7(514F)	Civil penalties
27.8(514F)	Health care insurer requirements

CHAPTER 28  
CREDIT LIFE AND CREDIT  
ACCIDENT AND HEALTH INSURANCE

28.1(509)	Purpose
28.2(509)	Definitions
28.3(509)	Rights and treatment of debtors
28.4(509)	Policy forms and related material
28.5(509)	Determination of reasonableness of benefits in relation to premium charge
28.6	Reserved
28.7(509)	Credit life insurance rates
28.8(509)	Credit accident and health insurance
28.9(509)	Refund formulas
28.10(509)	Experience reports and adjustment of prima facie rates
28.11(509)	Use of rates—direct business only
28.12(509)	Supervision of credit insurance operations
28.13(509)	Prohibited transactions
28.14(509)	Disclosure and readability
28.15(509)	Severability
28.16(509)	Effective date
28.17(509)	Fifteen-day free examination

CHAPTER 29  
CONTINUATION RIGHTS UNDER GROUP ACCIDENT  
AND HEALTH INSURANCE POLICIES

29.1(509B)	Definitions
29.2(509B)	Notice regarding continuation rights
29.3(509B)	Qualifying events for continuation rights

- 29.4(509B) Interplay between chapter 509B and COBRA  
 29.5(509B) Effective date for compliance

*LIFE AND HEALTH INSURANCE*

CHAPTER 30  
 LIFE INSURANCE POLICIES

- 30.1(508) Purpose  
 30.2(508) Scope  
 30.3(508) Definitions  
 30.4(508) Prohibitions, regulations and disclosure requirements  
 30.5(508) General filing requirements  
 30.6(508) Back dating of life policies  
 30.7(508,515) Expiration date of policy vs. charter expiration date  
 30.8(509) Electronic delivery of group life insurance certificates

CHAPTER 31  
 LIFE INSURANCE COMPANIES—VARIABLE ANNUITIES CONTRACTS

- 31.1(508) Definitions  
 31.2(508) Insurance company qualifications  
 31.3(508) Filing, policy forms and provision  
 31.4(508) Separate account or accounts and investments  
 31.5(508) Required reports  
 31.6(508) Producers  
 31.7(508) Foreign companies

CHAPTER 32  
 DEPOSITS BY A DOMESTIC LIFE COMPANY IN A  
 CUSTODIAN BANK OR CLEARING CORPORATION

- 32.1(508) Purpose  
 32.2(508) Definitions  
 32.3(508) Requirements upon custodial account and custodial agreement  
 32.4(508) Requirements upon custodians  
 32.5(508,511) Deposit of securities

CHAPTER 33  
 VARIABLE LIFE INSURANCE MODEL REGULATION

- 33.1(508A) Authority  
 33.2(508A) Definitions  
 33.3(508A) Qualification of insurer to issue variable life insurance  
 33.4(508A) Insurance policy requirements  
 33.5(508A) Reserve liabilities for variable life insurance  
 33.6(508A) Separate accounts  
 33.7(508A) Information furnished to applicants  
 33.8(508A) Applications  
 33.9(508A) Reports to policyholders  
 33.10(508A) Foreign companies  
 33.11 Reserved  
 33.12(508A) Separability article

CHAPTER 34  
 NONPROFIT HEALTH SERVICE CORPORATIONS

- 34.1(514) Purpose  
 34.2(514) Definitions

- 34.3(514) Annual report requirements
- 34.4(514) Arbitration
- 34.5(514) Filing requirements
- 34.6(514) Participating hospital contracts
- 34.7(514) Composition, nomination, and election of board of directors

## CHAPTER 35

### ACCIDENT AND HEALTH INSURANCE

#### BLANKET ACCIDENT AND SICKNESS INSURANCE

- 35.1(509) Purpose
- 35.2(509) Scope
- 35.3(509) Definitions
- 35.4(509) Required provisions
- 35.5(509) Application and certificates not required
- 35.6(509) Facility of payment
- 35.7(509) General filing requirements
- 35.8(509) Electronic delivery of accident and health group insurance certificates
- 35.9 to 35.19 Reserved
- 35.20(509A) Life and health self-funded plans
- 35.21(509) Review of certificates issued under group policies

#### LARGE GROUP HEALTH INSURANCE COVERAGE

- 35.22(509) Purpose
- 35.23(509) Definitions
- 35.24(509) Eligibility to enroll
- 35.25(509) Special enrollments
- 35.26(509) Group health insurance coverage policy requirements
- 35.27(509) Methods of counting creditable coverage
- 35.28(509) Certificates of creditable coverage
- 35.29(509) Notification requirements
- 35.30 Reserved
- 35.31(509) Disclosure requirements
- 35.32(514C) Treatment options
- 35.33(514C) Emergency services
- 35.34(514C) Provider access
- 35.35(509) Reconstructive surgery

#### CONSUMER GUIDE

- 35.36(514K) Purpose
- 35.37(514K) Information filing requirements
- 35.38(514K) Limitation of information published
- 35.39(514C) Contraceptive coverage

## CHAPTER 36

### INDIVIDUAL ACCIDENT AND HEALTH—MINIMUM STANDARDS AND RATE HEARINGS

#### DIVISION I MINIMUM STANDARDS

- 36.1(514D) Purpose
- 36.2(514D) Applicability and scope
- 36.3(514D) Effective date
- 36.4(514D) Policy definitions
- 36.5(514D) Prohibited policy provisions

36.6(514D)	Accident and sickness minimum standards for benefits
36.7(514D)	Required disclosure provisions
36.8(507B)	Requirements for replacement
36.9(514D)	Filing requirements
36.10(514D)	Loss ratios
36.11(514D)	Certification
36.12(514D)	Severability
36.13 to 36.19	Reserved

DIVISION II  
RATE HEARINGS

36.20(514D,83GA,SF2201) Rate hearings

CHAPTER 37  
MEDICARE SUPPLEMENT INSURANCE

DIVISION I  
MEDICARE SUPPLEMENT INSURANCE MINIMUM STANDARDS

37.1(514D)	Purpose
37.2(514D)	Applicability and scope
37.3(514D)	Definitions
37.4(514D)	Policy definitions and terms
37.5(514D)	Policy provisions
37.6(514D)	Minimum benefit standards for prestandardized Medicare supplement benefit plan policies or certificates issued for delivery prior to January 1, 1992
37.7(514D)	Benefit standards for 1990 standardized Medicare supplement benefit plan policies or certificates issued for delivery on or after January 1, 1992, and with an effective date for coverage prior to June 1, 2010
37.8(514D)	Benefit standards for 2010 standardized Medicare supplement benefit plan policies or certificates issued for delivery with an effective date for coverage on or after June 1, 2010
37.9(514D)	Standard Medicare supplement benefit plans for 1990 standardized Medicare supplement benefit plan policies or certificates with an effective date for coverage prior to June 1, 2010
37.10(514D)	Standard Medicare supplement benefit plans for 2010 standardized Medicare supplement benefit plan policies or certificates with an effective date for coverage on or after June 1, 2010
37.11(514D)	Medicare Select policies and certificates
37.12(514D)	Open enrollment
37.13(514D)	Standards for claims payment
37.14(514D)	Loss ratio standards and refund or credit of premium
37.15(514D)	Filing and approval of policies and certificates and premium rates
37.16(514D)	Permitted compensation arrangements
37.17(514D)	Required disclosure provisions
37.18(514D)	Requirements for application forms and replacement coverage
37.19(514D)	Standards for marketing
37.20(514D)	Appropriateness of recommended purchase and excessive insurance
37.21(514D)	Reporting of multiple policies
37.22(514D)	Prohibition against preexisting conditions, waiting periods, elimination periods and probationary periods in replacement policies or certificates
37.23(514D)	Prohibition against use of genetic information and requests for genetic testing
37.24(514D)	Prohibition against using SHIP prepared materials
37.25(514D)	Guaranteed issue for eligible persons
37.26(514D)	Severability

37.27 to 37.49 Reserved

DIVISION II  
MEDICARE SUPPLEMENT ADVERTISING

37.50(507B,514D) Purpose  
 37.51(507B,514D) Applicability  
 37.52(507B,514D) Definitions  
 37.53(507B,514D) Form and content of advertisements  
 37.54(507B,514D) Testimonials or endorsements by third parties  
 37.55(507B,514D) Use of statistics; jurisdictional licensing; status of insurer  
 37.56(507B,514D) Identity of insurer  
 37.57(507B,514D) Introductory, initial or special offers  
 37.58(507B,514D) Enforcement procedures—certificate of compliance  
 37.59(507B,514D) Filing for prior review

CHAPTER 38  
COORDINATION OF BENEFITS

DIVISION I

38.1 to 38.11 Reserved

DIVISION II

38.12(509,514) Purpose and applicability  
 38.13(509,514) Definitions  
 38.14(509,514) Use of model COB contract provision  
 38.15(509,514) Rules for coordination of benefits  
 38.16(509,514) Procedure to be followed by secondary plan to calculate benefits and pay a claim  
 38.17(509,514) Notice to covered persons  
 38.18(509,514) Miscellaneous provisions

CHAPTER 39  
LONG-TERM CARE INSURANCE

DIVISION I

39.1(514G) Purpose  
 39.2(514G) Authority  
 39.3(514G) Applicability and scope  
 39.4(514G) Definitions  
 39.5(514G) Policy definitions  
 39.6(514G) Policy practices and provisions  
 39.7(514G) Required disclosure provisions  
 39.8(514G) Prohibition against postclaims underwriting  
 39.9(514D,514G) Minimum standards for home health care benefits in long-term care insurance policies  
 39.10(514D,514G) Requirement to offer inflation protection  
 39.11(514D,514G) Requirements for application forms and replacement coverage  
 39.12(514G) Reserve standards  
 39.13(514D) Loss ratio  
 39.14(514G) Filing requirement  
 39.15(514D,514G) Standards for marketing  
 39.16(514D,514G) Suitability  
 39.17(514G) Prohibition against preexisting conditions and probationary periods in replacement policies or certificates  
 39.18(514G) Standard format outline of coverage  
 39.19(514G) Requirement to deliver shopper's guide

39.20(514G)	Policy summary and delivery of life insurance policies with long-term care riders
39.21(514G)	Reporting requirement for long-term care benefits funded through life insurance by acceleration of the death benefit
39.22(514G)	Unintentional lapse
39.23(514G)	Denial of claims
39.24(514G)	Incontestability period
39.25(514G)	Required disclosure of rating practices to consumers
39.26(514G)	Initial filing requirements
39.27(514G)	Reporting requirements
39.28(514G)	Premium rate schedule increases
39.29(514G)	Nonforfeiture
39.30(514G)	Standards for benefit triggers
39.31(514G)	Additional standards for benefit triggers for qualified long-term care insurance contracts
39.32(514G)	Penalties
39.33 to 39.40	Reserved

## DIVISION II

## INDEPENDENT REVIEW OF BENEFIT TRIGGER DETERMINATIONS

39.41(514G)	Purpose
39.42(514G)	Effective date
39.43(514G)	Definitions
39.44(514G)	Notice of benefit trigger determination and content
39.45(514G)	Notice of internal appeal decision and right to independent review
39.46(514G)	Independent review request
39.47(514G)	Certification process
39.48(514G)	Selection of independent review entity
39.49(514G)	Independent review process
39.50(514G)	Decision notification
39.51(514G)	Insurer information
39.52(514G)	Certification of independent review entity
39.53(514G)	Additional requirements
39.54(514G)	Toll-free telephone number
39.55(514G)	Insurance division application and reports
39.56 to 39.74	Reserved

## DIVISION III

## LONG-TERM CARE PARTNERSHIP PROGRAM

39.75(514H,83GA,HF723)	Purpose
39.76(514H,83GA,HF723)	Effective date
39.77(514H,83GA,HF723)	Definitions
39.78(514H,83GA,HF723)	Eligibility
39.79(514H,83GA,HF723)	Discontinuance of partnership program
39.80(514H,83GA,HF723)	Required disclosures
39.81(514H,83GA,HF723)	Form filings
39.82(514H,83GA,HF723)	Exchanges
39.83(514H,83GA,HF723)	Required policy terms and disclosures
39.84(514H,83GA,HF723)	Standards for marketing and suitability
39.85(514H,83GA,HF723)	Required reports

CHAPTER 40  
HEALTH MAINTENANCE ORGANIZATIONS

(Health and Insurance—Joint Rules)

40.1(514B)	Definitions
40.2(514B)	Application
40.3(514B)	Inspection of evidence of coverage
40.4(514B)	Governing body and enrollee representation
40.5(514B)	Quality of care
40.6(514B)	Change of name
40.7(514B)	Change of ownership
40.8(514B)	Termination of services
40.9(514B)	Complaints
40.10(514B)	Cancellation of enrollees
40.11(514B)	Application for certificate of authority
40.12(514B)	Net worth
40.13(514B)	Fidelity bond
40.14(514B)	Annual report
40.15(514B)	Cash or asset management agreements
40.16	Reserved
40.17(514B)	Reinsurance
40.18(514B)	Provider contracts
40.19(514B)	Producers' duties
40.20(514B)	Emergency services
40.21(514B)	Reimbursement
40.22(514B)	Health maintenance organization requirements
40.23(514B)	Disclosure requirements
40.24(514B)	Provider access
40.25(514B)	Electronic delivery of accident and health group insurance certificates

CHAPTER 41  
LIMITED SERVICE ORGANIZATIONS

41.1(514B)	Definitions
41.2(514B)	Application
41.3(514B)	Inspection of evidence of coverage
41.4(514B)	Governing body and enrollee representation
41.5(514B)	Quality of care
41.6(514B)	Change of name
41.7(514B)	Change of ownership
41.8(514B)	Complaints
41.9(514B)	Cancellation of enrollees
41.10(514B)	Application for certificate of authority
41.11(514B)	Net equity and deposit requirements
41.12(514B)	Fidelity bond
41.13(514B)	Annual report
41.14(514B)	Cash or asset management agreements
41.15(514B)	Reinsurance
41.16(514B)	Provider contracts
41.17(514B)	Producers' duties
41.18(514B)	Emergency services
41.19(514B)	Reimbursement
41.20(514B)	Limited service organization requirements
41.21(514B)	Disclosure requirements

CHAPTER 42  
GENDER-BLENDED MINIMUM NONFORFEITURE  
STANDARDS FOR LIFE INSURANCE

42.1(508)	Purpose
42.2(508)	Definitions
42.3(508)	Use of gender-blended mortality tables
42.4(508)	Unfair discrimination
42.5(508)	Separability
42.6(508)	2001 CSO Mortality Table

CHAPTER 43  
ANNUITY MORTALITY TABLES FOR USE IN  
DETERMINING RESERVE LIABILITIES FOR ANNUITIES

43.1(508)	Purpose
43.2(508)	Definitions
43.3(508)	Individual annuity or pure endowment contracts
43.4(508)	Group annuity or pure endowment contracts
43.5(508)	Application of the 1994 GAR Table
43.6(508)	Separability

CHAPTER 44  
SMOKER/NONSMOKER MORTALITY TABLES  
FOR USE IN DETERMINING MINIMUM RESERVE LIABILITIES  
AND NONFORFEITURE BENEFITS

44.1(508)	Purpose
44.2(508)	Definitions
44.3(508)	Alternate tables
44.4(508)	Conditions
44.5(508)	Separability
44.6(508)	2001 CSO Mortality Table

*INSURANCE HOLDING COMPANY SYSTEMS*

CHAPTER 45  
INSURANCE HOLDING COMPANY SYSTEMS

45.1(521A)	Purpose
45.2(521A)	Definitions
45.3(521A)	Subsidiaries of domestic insurers
45.4(521A)	Control acquisition of domestic insurer
45.5(521A)	Registration of insurers
45.6(521A)	Alternative and consolidated registrations
45.7(521A)	Exemptions
45.8(521A)	Disclaimers and termination of registration
45.9(521A)	Transactions subject to prior notice—notice filing
45.10(521A)	Extraordinary dividends and other distributions

CHAPTER 46  
MUTUAL HOLDING COMPANIES

46.1(521A)	Purpose
46.2(521A)	Definitions
46.3(521A)	Application—contents—process
46.4(521A)	Plan of reorganization
46.5(521A)	Duties of the commissioner
46.6(521A)	Regulation—compliance

- 46.7(521A) Reorganization of domestic mutual insurer with mutual insurance holding company
- 46.8(521A) Reorganization of foreign mutual insurer with mutual insurance holding company
- 46.9(521A) Mergers of mutual insurance holding companies
- 46.10(521A) Stock offerings
- 46.11(521A) Regulation of holding company system
- 46.12(521A) Reporting of stock ownership and transactions

#### CHAPTER 47

### VALUATION OF LIFE INSURANCE POLICIES

(Including New Select Mortality Factors)

- 47.1(508) Purpose
- 47.2(508) Application
- 47.3(508) Definitions
- 47.4(508) General calculation requirements for basic reserves and premium deficiency reserves
- 47.5(508) Calculation of minimum valuation standard for policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits (other than universal life policies)
- 47.6(508) Calculation of minimum valuation standard for flexible premium and fixed premium universal life insurance policies that contain provisions resulting in the ability of a policyowner to keep a policy in force over a secondary guarantee period
- 47.7(508) 2001 CSO Mortality Table

#### *VIATICAL AND LIFE SETTLEMENTS*

#### CHAPTER 48

### VIATICAL AND LIFE SETTLEMENTS

- 48.1(508E) Purpose and authority
- 48.2(508E) Definitions
- 48.3(508E) License requirements
- 48.4(508E) Disclosure statements
- 48.5(508E) Contract requirements
- 48.6(508E) Filing of forms
- 48.7(508E) Reporting requirements
- 48.8(508E) Examination or investigations
- 48.9(508E) Requirements and prohibitions
- 48.10(508E) Penalties; injunctions; civil remedies; cease and desist
- 48.11(252J) Suspension for failure to pay child support
- 48.12(261) Suspension for failure to pay student loan
- 48.13(272D) Suspension for failure to pay state debt
- 48.14(508E) Severability

#### CHAPTER 49

### FINANCIAL INSTRUMENTS USED IN HEDGING TRANSACTIONS

- 49.1(511) Purpose
- 49.2(511) Definitions
- 49.3(511) Guidelines and internal control procedures
- 49.4(511) Documentation requirements
- 49.5(511) Trading requirements

*SECURITIES*

CHAPTER 50  
REGULATION OF SECURITIES OFFERINGS AND THOSE WHO ENGAGE  
IN THE SECURITIES BUSINESS

DIVISION I  
DEFINITIONS AND ADMINISTRATION

50.1(502)	Definitions
50.2(502)	Cost of audit or inspection
50.3(502)	Interpretative opinions or no-action letters
50.4 to 50.9	Reserved

DIVISION II  
REGISTRATION OF BROKER-DEALERS AND AGENTS

50.10(502)	Broker-dealer registrations, renewals, amendments, succession, and withdrawals
50.11(502)	Principals
50.12(502)	Agent and issuer registrations, renewals and amendments
50.13(502)	Agent continuing education requirements
50.14(502)	Broker-dealer record-keeping requirements
50.15(502)	Broker-dealer minimum financial requirements and financial reporting requirements
50.16(502)	Dishonest or unethical practices in the securities business
50.17(502)	Rules of conduct
50.18(502)	Limited registration of Canadian broker-dealers and agents
50.19(502)	Brokerage services by national and state banks
50.20(502)	Broker-dealers having contracts with national and state banks
50.21(502)	Brokerage services by credit unions, savings banks, and savings and loan institutions
50.22(502)	Broker-dealers having contracts with credit unions, savings banks, and savings and loan institutions
50.23 to 50.29	Reserved

DIVISION III  
REGISTRATION OF INVESTMENT ADVISERS,  
INVESTMENT ADVISER REPRESENTATIVES,  
AND FEDERAL COVERED INVESTMENT ADVISERS

50.30(502)	Electronic filing with designated entity
50.31(502)	Investment adviser applications and renewals
50.32(502)	Application for investment adviser representative registration
50.33(502)	Examination requirements
50.34(502)	Notice filing requirements for federal covered investment advisers
50.35(502)	Withdrawal of investment adviser registration
50.36(502)	Investment adviser disclosure statement
50.37(502)	Cash solicitation
50.38(502)	Dishonest or unethical business practices of investment advisers and investment adviser representatives, or fraudulent or deceptive conduct by federal covered investment advisers
50.39(502)	Custody of client funds or securities by investment advisers
50.40(502)	Minimum financial requirements for investment advisers
50.41(502)	Bonding requirements for investment advisers
50.42(502)	Record-keeping requirements for investment advisers
50.43(502)	Financial reporting requirements for investment advisers
50.44(502)	Solely incidental services by certain professionals
50.45 to 50.49	Reserved

DIVISION IV  
RULES COVERING ALL REGISTERED PERSONS

- 50.50(502) Internet advertising by broker-dealers, investment advisers, broker-dealer agents, investment adviser representatives, and federal covered investment advisers
- 50.51(502) Consent to service
- 50.52(252J) Denial, suspension or revocation of agent or investment adviser representative registration for failure to pay child support
- 50.53(261) Denial, suspension or revocation of agent or investment adviser representative registration for failure to pay debts owed to or collected by the college student aid commission
- 50.54(502) Use of senior-specific certifications and professional designations
- 50.55 to 50.59 Reserved

DIVISION V  
REGISTRATION OF SECURITIES

- 50.60(502) Notice filings for investment company securities offerings
- 50.61(502) Registration of small corporate offerings
- 50.62(502) Streamlined registration for certain equity securities
- 50.63(502) Registration of multijurisdictional offerings
- 50.64(502) Form of financial statements
- 50.65(502) Reports contingent to registration by qualification
- 50.66(502) NASAA guidelines and statements of policy
- 50.67(502) Amendments to registration by qualification
- 50.68(502) Delivery of prospectus
- 50.69(502) Advertisements
- 50.70 to 50.79 Reserved

DIVISION VI  
EXEMPTIONS

- 50.80(502) Uniform limited offering exemption
- 50.81(502) Notice filings for Rule 506 offerings
- 50.82(502) Notice filings for agricultural cooperative associations
- 50.83(502) Unsolicited order exemption
- 50.84(502) Solicitation of interest exemption
- 50.85(502) Internet offers exemption
- 50.86(502) Denial, suspension, revocation, condition, or limitation of limited offering transaction exemption
- 50.87(502) Nonprofit securities exemption
- 50.88(502) Transactions with specified investors
- 50.89 to 50.99 Reserved

DIVISION VII  
FRAUD AND OTHER PROHIBITED CONDUCT

- 50.100(502) Fraudulent practices
- 50.101(502) Rescission offers
- 50.102(502) Fraudulent, deceptive or manipulative act, practice, or course of business in providing investment advice
- 50.103(502) Investment advisory contracts
- 50.104 to 50.109 Reserved

DIVISION VIII  
VIATICAL SETTLEMENT INVESTMENT CONTRACTS

- 50.110(502) Application by viatical settlement investment contract issuers and registration of agents to sell viatical settlement investment contracts
- 50.111(502) Risk disclosure

- 50.112(502) Advertising of viatical settlement investment contracts  
 50.113(502) Duty to disclose

## CHAPTERS 51 to 53

Reserved

## CHAPTER 54

## RESIDENTIAL SERVICE CONTRACTS

- 54.1(523C) Purpose  
 54.2(523C) Definitions  
 54.3(523C) Title  
 54.4(523C) Scope  
 54.5(523C) Application of insurance laws  
 54.6(523C) Exemptions  
 54.7 to 54.9 Reserved  
 54.10(523C) Administration  
 54.11(523C) Misrepresentations of government approval  
 54.12(523C) Public access to hearings  
 54.13(523C) Public access to records  
 54.14(523C) Procedure for public complaints  
 54.15(523C) Fees  
 54.16(523C) Forms  
 54.17 to 54.19 Reserved  
 54.20(523C) Service company licenses  
 54.21(523C) Suspension or revocation of license  
 54.22(523C) Licenses not transferable  
 54.23 to 54.29 Reserved  
 54.30(523C) Forms of contracts  
 54.31 to 54.39 Reserved  
 54.40(523C) Cessation of business—records  
 54.41(523C) Records  
 54.42(523C) Annual reports  
 54.43 to 54.49 Reserved  
 54.50(523C) Prohibited acts or practices  
 54.51(523C) Orders  
 54.52(523C) Investigations and subpoenas  
 54.53(523C) Audits

## CHAPTER 55

## LICENSING OF PUBLIC ADJUSTERS

- 55.1(82GA, HF499) Purpose  
 55.2(82GA, HF499) Definitions  
 55.3(82GA, HF499) License required to operate as public adjuster  
 55.4(82GA, HF499) Application for license  
 55.5(82GA, HF499) Issuance of resident license  
 55.6(82GA, HF499) Public adjuster examination  
 55.7(82GA, HF499) Exemptions from examination  
 55.8(82GA, HF499) Nonresident license reciprocity  
 55.9(82GA, HF499) Terms of licensure  
 55.10(82GA, HF499) Evidence of financial responsibility  
 55.11(82GA, HF499) Continuing education  
 55.12(82GA, HF499) License denial, nonrenewal or revocation

55.13(82GA,HF499)	Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance
55.14(82GA,HF499)	Contract between public adjuster and insured
55.15(82GA,HF499)	Escrow accounts
55.16(82GA,HF499)	Record retention
55.17(82GA,HF499)	Standards of conduct of public adjuster
55.18(82GA,HF499)	Public adjuster fees
55.19(82GA,HF499)	Penalties
55.20(82GA,HF499)	Fees
55.21(82GA,HF499)	Severability

## CHAPTER 56

## WORKERS' COMPENSATION GROUP SELF-INSURANCE

56.1(87,505)	General provisions
56.2(87,505)	Definitions
56.3(87,505)	Requirements for self-insurance
56.4	Reserved
56.5(87,505)	Excess insurance
56.6(87,505)	Rates and reporting of rates
56.7(87,505)	Special provisions
56.8(87,505)	Certificate of approval; termination
56.9(87,505)	Examinations
56.10(87,505)	Board of trustees—membership, powers, duties, and prohibitions
56.11(87,505)	Association membership; termination; liability
56.12(87,505)	Requirements of sales agents
56.13(87,505)	Requirements for continued approval
56.14(87,505)	Misrepresentation prohibited
56.15(87,505)	Investments
56.16(87,505)	Refunds
56.17(87,505)	Premium payment; reserves
56.18(87,505)	Deficits and insolvencies
56.19(87,505)	Grounds for nonrenewal or revocation of a certificate of relief from insurance
56.20(87,505)	Hearing and appeal
56.21(87,505)	Existing approved self-insurers
56.22(87,505)	Severability clause

## CHAPTER 57

## WORKERS' COMPENSATION SELF-INSURANCE FOR INDIVIDUAL EMPLOYERS

57.1(87,505)	General provisions
57.2(87,505)	Definitions
57.3(87,505)	Requirements for self-insurance
57.4(87,505)	Additional security requirements
57.5(87,505)	Application for an individual self-insurer
57.6	Reserved
57.7(87,505)	Excess insurance
57.8(87,505)	Insolvency
57.9(87,505)	Renewals
57.10(87,505)	Periodic examination
57.11(87,505)	Grounds for nonrenewal or revocation of a certificate of relief from insurance
57.12(87,505)	Hearing and appeal

- 57.13(87,505) Existing approved self-insurers  
 57.14(87,505) Severability clause

CHAPTER 58  
 THIRD-PARTY ADMINISTRATORS

- 58.1(510) Purpose  
 58.2(510) Definitions  
 58.3(505,510) Registration required  
 58.4(510) Third-party administrator duties  
 58.5(510) Renewal procedure  
 58.6(505,510) Responsibilities of the insurer  
 58.7(505,510) Written agreement  
 58.8(510) Compensation to the third-party administrator  
 58.9(510) Disclosure of charges and fees  
 58.10(510) Delivery of materials to covered individuals  
 58.11(510) Annual report and fee  
 58.12(510) Change of information  
 58.13(510) Inquiry by commissioner  
 58.14(510) Complaints  
 58.15(510) Periodic examination  
 58.16(510) Grounds for denial, nonrenewal, suspension or revocation of certificate of registration  
 58.17(510) Confidential information  
 58.18(510) Fees  
 58.19(510) Severability clause  
 58.20(510) Compliance date

CHAPTER 59  
 PHARMACY BENEFITS MANAGERS

- 59.1(510B) Purpose  
 59.2(510B) Definitions  
 59.3(510B) Timely payment of pharmacy claims  
 59.4(510B) Study  
 59.5(510B) Complaints  
 59.6(510B) Auditing practices  
 59.7(510B) Termination of pharmacy contracts

CHAPTER 60  
 WORKERS' COMPENSATION INSURANCE RATE FILING PROCEDURES

- 60.1(515A) Purpose  
 60.2(515A) Definitions, scope, authority  
 60.3(515A) General filing requirements  
 60.4(515A) Rate or manual rule filing  
 60.5(515A) Violation and penalties  
 60.6(515A) Severability  
 60.7(515A) Effective date

CHAPTERS 61 to 69  
 Reserved

*MANAGED HEALTH CARE*CHAPTER 70  
UTILIZATION REVIEW

70.1(505,514F)	Purpose
70.2(505,514F)	Definitions
70.3(505,514F)	Application
70.4(505,514F)	Standards
70.5(505,514F)	Retroactive application
70.6(505,514F)	Variances allowed
70.7(505,514F)	Confidentiality
70.8(76GA,ch1202)	Utilization review of postdelivery benefits and care
70.9(505,507B,514F)	Enforcement
70.10(514F)	Credentialing—retrospective payment

*HEALTH BENEFIT PLANS*CHAPTER 71  
SMALL GROUP HEALTH BENEFIT PLANS

71.1(513B)	Purpose
71.2(513B)	Definitions
71.3(513B)	Applicability and scope
71.4(513B)	Establishment of classes of business
71.5(513B)	Transition for assumptions of business from another carrier
71.6(513B)	Restrictions relating to premium rates
71.7(513B)	Requirement to insure entire groups
71.8(513B)	Case characteristics
71.9(513B)	Application to reenter state
71.10(513B)	Creditable coverage
71.11(513B)	Rules related to fair marketing
71.12(513B)	Status of carriers as small employer carriers
71.13(513B)	Restoration of coverage
71.14(513B)	Basic health benefit plan and standard health plan policy forms
71.15(513B)	Methods of counting creditable coverage
71.16(513B)	Certificates of creditable coverage
71.17(513B)	Notification requirements
71.18(513B)	Special enrollments
71.19(513B)	Disclosure requirements
71.20(514C)	Treatment options
71.21(514C)	Emergency services
71.22(514C)	Provider access
71.23(513B)	Reconstructive surgery
71.24(514C)	Contraceptive coverage
71.25(513B)	Suspension of the small employer health reinsurance program
71.26(513B)	Uniform health insurance application form

## CHAPTER 72

## LONG-TERM CARE ASSET PRESERVATION PROGRAM

72.1(249G)	Purpose
72.2(249G)	Applicability and scope
72.3(249G)	Definitions
72.4(249G)	Qualification of long-term care insurance policies and certificates
72.5(249G)	Standards for marketing

72.6(249G)	Minimum benefit standards for qualifying policies and certificates
72.7(249G)	Required policy and certificate provisions
72.8(249G)	Prohibited provisions in certified policies or certificates
72.9(249G)	Reporting requirements
72.10(249G)	Maintaining auditing information
72.11(249G)	Reporting on asset protection
72.12(249G)	Preparing a service summary
72.13(249G)	Plan of action
72.14(249G)	Auditing and correcting deficiencies in issuer record keeping
72.15(249G)	Separability

#### CHAPTER 73

##### HEALTH INSURANCE PURCHASING COOPERATIVES

73.1(75GA,ch158)	Purpose
73.2(75GA,ch158)	Applicability and scope
73.3(75GA,ch158)	Definitions
73.4(75GA,ch158)	Division duties—application—filing requirements—license—audits and examinations
73.5(75GA,ch158)	Fidelity bond—letter of credit
73.6(75GA,ch158)	Annual report
73.7(75GA,ch158)	Business plan
73.8(75GA,ch158)	Participants
73.9(75GA,ch158)	Health insurance purchasing cooperative—product offerings—exemptions
73.10(75GA,ch158)	Insurance risk
73.11(75GA,ch158)	Rates
73.12(75GA,ch158)	Election—disclosure and confidentiality
73.13(75GA,ch158)	Structure—merger and consolidation
73.14(75GA,ch158)	Conflict of interest
73.15(75GA,ch158)	Nondiscrimination and retaliatory protections
73.16(75GA,ch158)	Annual health insurance or health care benefits plan selection
73.17(75GA,ch158)	License subject to conditions—waivers
73.18(75GA,ch158)	Procedures
73.19(75GA,ch158)	Data collection—quality evaluation
73.20(75GA,ch158)	Examination—costs
73.21(75GA,ch158)	Trade practices
73.22(75GA,ch158)	Grounds for denial, nonrenewal, suspension or revocation of certificate
73.23(75GA,ch158)	Hearing and appeal
73.24(75GA,ch158)	Solvency

#### CHAPTER 74

##### HEALTH CARE ACCESS

74.1(505)	Purpose
74.2(505)	Applicability and scope
74.3(505)	Definitions
74.4(505)	Access to health care or health insurance for an employee
74.5(505)	Employer participation
74.6(505)	Violation of chapter

#### CHAPTER 75

##### IOWA INDIVIDUAL HEALTH BENEFIT PLANS

75.1(513C)	Purpose
75.2(513C)	Definitions
75.3(513C)	Applicability and scope

75.4(513C)	Establishment of blocks of business
75.5(513C)	Transition for assumptions of business from another carrier or ODS
75.6(513C)	Restrictions relating to premium rates
75.7(513C)	Availability of coverage
75.8(513C)	Disclosure of information
75.9(513C)	Standards to ensure fair marketing
75.10(513C)	Basic health benefit plan and standard health benefit plan policy forms
75.11(513C)	Maternity benefit rider
75.12(513C)	Disclosure requirements
75.13(514C)	Treatment options
75.14(514C)	Emergency services
75.15(514C)	Provider access
75.16(514C)	Diabetic coverage
75.17(513C)	Reconstructive surgery
75.18(514C)	Contraceptive coverage

#### CHAPTER 76 EXTERNAL REVIEW

76.1(514J)	Purpose
76.2(514J)	Applicable law
76.3(514J)	Notice of coverage decision and content
76.4(514J)	External review request
76.5(514J)	Certification process
76.6(514J)	Expedited review
76.7(514J)	Decision notification
76.8(514J)	Carrier information
76.9(514J)	Certification of independent review entity

#### CHAPTER 77 MULTIPLE EMPLOYER WELFARE ARRANGEMENTS

77.1(507A)	Certificate of registration
77.2(507A)	Application for certificate of registration
77.3(507A)	Financial requirements
77.4(507A)	Policy or contract
77.5(507A)	Disclosure
77.6(507A)	Filing fee
77.7(507A)	Agreements and management contracts
77.8(507A)	Examination
77.9(507A)	Trade practices
77.10(507A)	Insolvency
77.11(507A)	Suspension or revocation of certificate

#### CHAPTER 78 UNIFORM PRESCRIPTION DRUG INFORMATION CARD

78.1(514L)	Purpose
78.2(514L)	Definitions
78.3(514L)	Implementation

#### CHAPTER 79 Reserved

*INSURANCE COVERAGE FOR  
PEDIATRIC PREVENTIVE SERVICES*

CHAPTER 80  
WELL-CHILD CARE

80.1(505,514H)	Purpose
80.2(505,514H)	Applicability and scope
80.3(505,514H)	Effective date
80.4(505,514H)	Policy definitions
80.5(505,514H)	Benefit plan

CHAPTER 81  
POSTDELIVERY BENEFITS AND CARE

81.1(514C)	Purpose
81.2(514C)	Applicability and scope
81.3(514C)	Postdelivery benefits

CHAPTERS 82 to 89  
Reserved

CHAPTER 90  
FINANCIAL AND HEALTH INFORMATION REGULATION

90.1(505)	Purpose and scope
90.2(505)	Definitions

DIVISION I  
RULES FOR FINANCIAL INFORMATION

90.3(505)	Initial privacy notice to consumers required
90.4(505)	Annual privacy notice to customers required
90.5(505)	Information to be included in privacy notices
90.6(505)	Form of opt-out notice to consumers and opt-out methods
90.7(505)	Revised privacy notices
90.8(505)	Delivery of notice
90.9(505)	Limits on disclosure of nonpublic personal financial information to nonaffiliated third parties
90.10(505)	Limits on redisclosure and reuse of nonpublic personal financial information
90.11(505)	Limits on sharing account number information for marketing purposes
90.12(505)	Exception to opt-out requirements for disclosure of nonpublic personal financial information for service providers and joint marketing
90.13(505)	Exceptions to notice and opt-out requirements for disclosure of nonpublic personal financial information for processing and servicing transactions
90.14(505)	Other exceptions to notice and opt-out requirements for disclosure of nonpublic personal financial information
90.15(505)	Notice through a Web site
90.16(505)	Licensee exception to notice requirement

DIVISION II  
RULES FOR HEALTH INFORMATION

90.17(505)	Disclosure of nonpublic personal health information
90.18(505)	Authorizations
90.19(505)	Delivery of authorization request
90.20(505)	Relationship to federal rules
90.21(505)	Relationship to state laws
90.22(505)	Protection of Fair Credit Reporting Act
90.23(505)	Nondiscrimination

90.24(505)	Severability
90.25(505)	Penalties
90.26(505)	Effective dates
90.27 to 90.36	Reserved

DIVISION III  
SAFEGUARDING CUSTOMER INFORMATION

90.37(505)	Information security program
90.38(505)	Examples of methods of development and implementation
90.39(505)	Penalties
90.40(505)	Effective date

CHAPTER 91  
2001 CSO MORTALITY TABLE

91.1(508)	Purpose
91.2(508)	Definitions
91.3(508)	2001 CSO Mortality Table
91.4(508)	Conditions
91.5(508)	Applicability of the 2001 CSO Mortality Table to 191—Chapter 47, Valuation of Life Insurance Policies
91.6(508)	Gender-blended table
91.7(508)	Separability

CHAPTER 92  
UNIVERSAL LIFE INSURANCE

92.1(508)	Purpose and authority
92.2(508)	Definitions
92.3(508)	Scope
92.4(508)	Valuation
92.5(508)	Nonforfeiture
92.6(508)	Mandatory policy provisions
92.7(508)	Disclosure requirements
92.8(508)	Periodic disclosure to policyowner
92.9(508)	Interest-indexed universal life insurance policies
92.10(508)	Applicability

CHAPTER 93  
CONDUIT DERIVATIVE TRANSACTIONS

93.1(511,521A)	Purposes
93.2(511,521A)	Definitions
93.3(511,521A)	Provisions not applicable
93.4(511,521A)	Standards for conduit derivative transactions
93.5(511,521A)	Internal controls
93.6(511,521A)	Reporting requirements for conduit derivative transactions
93.7(511,521A)	Conduit ownership
93.8(511,521A)	Exemption from applicability

CHAPTER 94  
PREFERRED MORTALITY TABLES FOR USE  
IN DETERMINING MINIMUM RESERVE LIABILITIES

94.1(508)	Purpose
94.2(508)	Definitions
94.3(508)	2001 CSO Preferred Class Structure Mortality Table

- 94.4(508) Conditions
- 94.5(508) Separability

## CHAPTER 95

## DETERMINING RESERVE LIABILITIES FOR PRENEED LIFE INSURANCE

- 95.1(508) Authority
- 95.2(508) Scope
- 95.3(508) Purpose
- 95.4(508) Definitions
- 95.5(508) Minimum valuation mortality standards
- 95.6(508) Minimum valuation interest rate standards
- 95.7(508) Minimum valuation method standards
- 95.8(508) Transition rules
- 95.9(508) Effective date

## CHAPTER 96

Reserved

## CHAPTER 97

ACCOUNTING FOR CERTAIN DERIVATIVE INSTRUMENTS USED TO HEDGE  
THE GROWTH IN INTEREST CREDITED FOR INDEXED INSURANCE PRODUCTS  
AND ACCOUNTING FOR THE INDEXED INSURANCE PRODUCTS RESERVE

- 97.1(508) Authority
- 97.2(508) Purpose
- 97.3(508) Definitions
- 97.4(508) Asset accounting
- 97.5(508) Indexed annuity product reserve calculation methodology
- 97.6(508) Indexed life product reserve calculation methodology
- 97.7(508) Other requirements

## CHAPTER 98

## ANNUAL FINANCIAL REPORTING REQUIREMENTS

- 98.1(505) Authority
- 98.2(505) Purpose
- 98.3(505) Definitions
- 98.4(505) General requirements related to filing and extensions for filing of annual audited financial reports and audit committee appointment
- 98.5(505) Contents of annual audited financial report
- 98.6(505) Designation of independent certified public accountant
- 98.7(505) Qualifications of independent certified public accountant
- 98.8(505) Consolidated or combined audits
- 98.9(505) Scope of audit and report of independent certified public accountant
- 98.10(505) Notification of adverse financial condition
- 98.11(505) Communication of Internal Control Related Matters Noted in an Audit
- 98.12(505) Definition, availability and maintenance of independent certified public accountants' work papers
- 98.13(505) Requirements for audit committees
- 98.14(505) Conduct of insurer in connection with the preparation of required reports and documents
- 98.15(505) Management's Report of Internal Control Over Financial Reporting
- 98.16(505) Exemptions
- 98.17(505) Letter to insurer with accountant's qualifications
- 98.18(505) Canadian and British companies

- 98.19(505) Severability provision  
 98.20(505) Effective date

## CHAPTER 99

## LIMITED PURPOSE SUBSIDIARY LIFE INSURANCE COMPANIES

- 99.1(505,508) Authority  
 99.2(505,508) Purpose  
 99.3(505,508) Definitions  
 99.4(505,508) Formation of LPS  
 99.5(505,508) Certificate of authority  
 99.6(505,508) Capital and surplus  
 99.7(505,508) Plan of operation  
 99.8(505,508) Dividends and distributions  
 99.9(505,508) Reports and notifications  
 99.10(505,508) Material transactions  
 99.11(505,508) Investments  
 99.12(508) Securities  
 99.13(505,508) Permitted reinsurance  
 99.14(505,508) Certification of actuarial officer  
 99.15(505,508) Effective date

*REGULATED INDUSTRIES*

## SALES OF CEMETERY MERCHANDISE, FUNERAL MERCHANDISE AND FUNERAL SERVICES

## CHAPTER 100

## GENERAL PROVISIONS

- 100.1(523A) Purpose  
 100.2(523A) Definitions  
 100.3(523A) Contact and correspondence  
 100.4(523A) Fees

## CHAPTER 101

## TRUST DEPOSITS AND TRUST FUNDS

- 101.1(523A) Trust income withdrawals  
 101.2(523A) Amount of trust income withdrawn  
 101.3(523A) Allocation of trust income to purchasers' accounts  
 101.4(523A) Credit for trust income withdrawn  
 101.5(523A) Time period during which trust income may be withdrawn  
 101.6(523A) Application of contract law  
 101.7(523A) Consumer price index adjustment  
 101.8(523A) Cancellation refunds

## CHAPTER 102

## WAREHOUSED MERCHANDISE

- 102.1(523A) Funeral and cemetery merchandise delivered to the purchaser or warehoused  
 102.2(523A) Storage facilities

## CHAPTER 103

## LICENSING OF PRENEED SELLERS AND SALES AGENTS

- 103.1(523A) Requirement for a preneed seller license or a sales agent license  
 103.2(523A) Application and licensing of preneed seller or sales agent  
 103.3(523A) Change of ownership or sale of business of preneed seller  
 103.4(523A) License renewal  
 103.5(523A) Denial of license applications or of applications for renewal

- 103.6(523A) Reinstatement or reissuance of a license after suspension, revocation or forfeiture in connection with disciplinary matters; and forfeiture in lieu of compliance
- 103.7(252J) Suspension for failure to pay child support
- 103.8(261) Suspension for failure to pay student loan

#### CHAPTER 104

##### CONTINUING EDUCATION FOR SALES AGENTS

- 104.1(523A) Continuing education requirements
- 104.2(523A) Acceptable areas of continuing education
- 104.3(523A) Academic coursework
- 104.4(523A) Effective date
- 104.5(523A) Compliance period
- 104.6(523A) Denial of sales agent license renewal application
- 104.7(523A) Disqualification and replacement of credits
- 104.8(523A) Current mailing address
- 104.9(523A) Proof of completion of continuing education requirements
- 104.10(523A) Standards for continuing education activities
- 104.11(523A) Qualifications of presenters and proof of attendance
- 104.12(523A) Reviews
- 104.13(523A) Exemption

#### CHAPTER 105

##### STANDARDS OF CONDUCT AND PROHIBITED PRACTICES

- 105.1(523A) Purpose
- 105.2(523A) Numbering purchase agreements
- 105.3(523A) Records maintenance
- 105.4(523A) Annual reports
- 105.5(523A) Fidelity bond or insurance
- 105.6(523A) Grounds for discipline
- 105.7(523A) Prohibition on sales activities and practices without a license or without an appointment

#### CHAPTER 106

##### DISCIPLINARY PROCEDURES

- 106.1(523A) Investigations
- 106.2(17A,523A) Penalties
- 106.3(17A,523A) Administrative procedures

#### CHAPTERS 107 to 109

Reserved

#### CHAPTER 110

##### STANDARDS AND COMMISSIONER'S AUTHORITY FOR COMPANIES DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

- 110.1(505) Authority
- 110.2(505) Purpose
- 110.3(505) Definition
- 110.4(505) Standards
- 110.5(505) Commissioner's authority
- 110.6(505) Judicial review
- 110.7(505) Separability
- 110.8(505) Effective date

CHAPTER 3  
CONTESTED CASES

[Prior to 10/22/86, Insurance Department[510]]

**191—3.1(17A) Scope and applicability.** This chapter applies to contested case proceedings conducted by the insurance division.

**191—3.2(17A) Definitions.** Except where otherwise specifically defined by law or the context otherwise requires:

“*Commissioner*” means the commissioner of insurance or the commissioner’s designee.

“*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 1998 Iowa Acts, chapter 1202, section 14.

“*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.

“*License*” means the whole or a part of any permit, certificate, approval, registration, charter or similar form of permission required by statute.

“*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 commissioner, the commissioner’s designee or an administrative law judge from the department of inspections and appeals.

“*Proposed decision*” means the administrative law judge’s recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commissioner did not preside.

**191—3.3(17A) Time requirements.**

**3.3(1)** Time shall be computed as provided in Iowa Code section 4.1(34).

**3.3(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 may afford all parties an opportunity to be heard or to file written arguments.

**191—3.4(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 agency action in question. The request shall be filed with the insurance division, at the address disclosed in rule 191—1.2(502,505).

The request for a contested case proceeding shall state the name and address of the requester, identify the specific agency action which is disputed and, where the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing a contested case proceeding in the particular circumstances involved, and shall include a short and plain statement of the issues of material fact in dispute.

**191—3.5(17A) Commencement of hearing; notice.**

**3.5(1)** Delivery of the notice of hearing constitutes commencement of the contested case proceeding. Delivery shall be accomplished in the manner described below, at least 15 days before the hearing date unless the parties agree to a shorter time period, or unless otherwise provided by statute.

*a.* For nonlicensed persons, delivery may be accomplished by:

- (1) Personal service as provided in the Iowa Rules of Civil Procedure; or
- (2) Certified mail, return receipt requested; or
- (3) First-class mail; or
- (4) Publication, as provided in the Iowa Rules of Civil Procedure.

*b.* For licensees, delivery shall be executed by:

- (1) Personal service as provided in the Iowa Rules of Civil Procedure; or
- (2) Restricted certified mail.

**3.5(2)** The notice of hearing shall be prepared in the form of an order and 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 the insurance division or other 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 written 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 the division 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 and address, if known. If not known, a description of who generally will serve as presiding officer; and
- i.* Notification of the time period in which a party may request, under 1998 Iowa Acts, chapter 1202, section 15(1), and rule 3.6(17A), that the presiding officer be an administrative law judge.
- j.* Notification that failure to file an answer within 20 days of service may result in default.

**3.5(3)** An answer shall be filed within 20 days of service of the notice of hearing unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

- a.* An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the notice of hearing. The answer shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.
- b.* 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.
- c.* Any allegation in the notice of hearing 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.

**3.5(4)** Any notice of hearing or other charging document may be amended before a responsive pleading has been filed. Amendments to a notice of hearing or charging document after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

**3.5(5)** The hearing in a contested case proceeding shall be held within 90 days after the date of the notice of hearing, subject to the provisions of rule 3.17(17A).

#### **191—3.6(17A) Presiding officer.**

**3.6(1)** If the presiding officer is not an administrative law judge, any party wishing 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 with the insurance division within 20 days after service of a notice of hearing identifying or describing the presiding officer as the commissioner or members of the commissioner's staff.

**3.6(2)** The commissioner may deny the request only upon a finding that one or more of the following apply:

- a.* Neither the commissioner nor any designee under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c.* An administrative law judge with the qualifications identified in subrule 3.6(4) is unavailable to hear the case within a reasonable time.
- d.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

- e.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- f.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- g.* The request was not timely filed.
- h.* The request is not consistent with a specified statute.
- i.* A statute requires the commissioner or designee to serve as presiding officer.
- j.* The contested case arises from matters asserted pursuant to Iowa Code chapters 507A, 507B, 508B, 515G and 521A.

**3.6(3)** The commissioner or designee shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge with the qualifications identified in subrule 3.6(4), the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

**3.6(4)** An administrative law judge assigned to act as presiding officer in insurance and securities matters shall be admitted to practice law before the courts of the state of Iowa.

**3.6(5)** 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 commissioner. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

**191—3.7(17A) Waiver of procedures.** Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the insurance division may exercise discretion to refuse to give effect to such a waiver when the waiver is to be inconsistent with the public interest.

**191—3.8(17A) Telephone proceedings.**

**3.8(1)** The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have been afforded notice and an opportunity to participate.

**3.8(2)** The presiding officer may, on the officer's own motion or as requested by a party, order hearings or argument to be held by telephone conference or other electronic means in which all parties have an opportunity to participate. Any party may call witnesses by telephone, with 14 days' advance notice to all parties and the presiding officer. Failure of a party to make timely disclosure may result in the disallowance of testimony by telephone.

**191—3.9(17A) Disqualification.**

**3.9(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 factually related contested case with common disputed facts, or a pending controversy with common disputed facts 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 factually related contested case with common disputed facts 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 is (1) a party to the case, or an officer, director or trustee of a party; (2) a lawyer in the case; (3) known to have an interest that could be substantially affected by the outcome of the case; or (4) 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 the case.

**3.9(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 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 presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 as amended by 1998 Iowa Acts, chapter 1202, section 19, and subrules 3.9(3) and 3.23(9).

**3.9(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.

**3.9(4)** To request disqualification of a presiding officer, a party shall file a motion supported by an affidavit pursuant to 1998 Iowa Acts, chapter 1202, section 19(7). The motion shall be filed as soon as practical 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 shall establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party requesting disqualification may seek an interlocutory appeal under rule 3.25(17A) and seek a stay under rule 3.29(17A).

#### **191—3.10(17A) Consolidation—severance.**

**3.10(1)** The presiding officer may consolidate 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.

**3.10(2)** The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

#### **191—3.11(17A) Pleadings.**

**3.11(1)** Petition for intervention requirements:

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of petitioner and petitioner’s attorney, if any.

**3.11(2)** An answer to a petition for intervention shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

a. 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. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

b. 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.

c. 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.

**3.11(3)** Any petition for intervention 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 in the discretion of the presiding officer who may impose terms or grant a continuance.

**191—3.12(17A) Service and filing of pleadings and other papers.**

**3.12(1)** 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 insurance division, at the time of filing. Except for 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.

**3.12(2)** Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivering or mailing a copy to the attorney at the attorney's last-known address. Service upon an unrepresented party shall be made by delivering or mailing a copy to the party's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**3.12(3)** After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the presiding officer.

**3.12(4)** Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the presiding officer, 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.

**3.12(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 Insurance Division at the address disclosed in 191—1.2(502,505) 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 state interoffice mail).

(Date)

(Signature)

**3.12(6)** The presiding officer, by order, may permit service or filing of particular documents by facsimile or electronic mail or similar electronic means unless such service or filing is precluded by a provision of law. When permitted, service by facsimile, electronic mail or similar electronic means is complete upon transmission. In the absence of such an order, facsimile or electronic transmission does not satisfy service or filing requirements, but may be used to supplement service or filing when rapid notice is needed.

**191—3.13(17A) Discovery.**

**3.13(1)** Where statutory time limitations permit, discovery may be conducted as permitted by the Iowa Rules of Civil Procedure. 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.

**3.13(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 subrule

3.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

**191—3.14(17A) Subpoenas.**

**3.14(1)** A subpoena shall be issued by the presiding officer at a party's 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 ten days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

**3.14(2)** 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.

**3.14(3)** The presiding officer may quash or modify a subpoena upon motion as provided in the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be promptly set for hearing.

**191—3.15(17A) Motions.**

**3.15(1)** No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief and relief sought.

**3.15(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 the presiding officer. In ruling on a motion, the presiding officer may consider the motion unresisted, if no response is timely filed.

**3.15(3)** The presiding officer may schedule oral argument on any motion.

**3.15(4)** Motions pertaining to the hearing, except motions for summary judgment, 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 an order of the presiding officer.

**3.15(5)** Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment may be filed and served within a reasonable time prior to the hearing, as determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 3.28(17A) and appeal pursuant to rule 3.27(17A).

[Editorial change: IAC Supplement 11/17/10]

**191—3.16(17A) Prehearing conference.**

**3.16(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 14 days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

The presiding officer shall give written notice of the prehearing conference to all parties.

**3.16(2)** Prehearing conferences shall be conducted by telephone unless otherwise ordered.

**3.16(3)** Each party shall exchange and receive prior 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 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 failure to include them.

**3.16(4)** Witness or exhibit lists may be amended subsequent to the prehearing conference within time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

**3.16(5)** In addition to the requirements of subrule 3.16(3), 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.

**191—3.17(17A) Continuances.** Unless otherwise provided, applications for continuances shall be made to the presiding officer.

**3.17(1)** An application for a continuance shall:

- a. Be made at the earliest possible time and no less than 14 days before the hearing except in case of unanticipated emergencies or consent of all parties, and
- b. State the specific reasons for the request.

**3.17(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;
- i. Failure to timely provide discovery responses; and
- j. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

**191—3.18(17A) Withdrawals.** A party requesting a contested case proceeding may withdraw that request prior to the hearing.

**191—3.19(17A) Intervention.**

**3.19(1)** A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, including any statutory grounds, and the position and interest of the proposed intervenor. 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.

**3.19(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 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.

**3.19(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; or (d) there exists a statutory right to intervene.

**3.19(4)** If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned 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.

**191—3.20(17A) Hearing procedures.**

**3.20(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 orderly conduct of the proceedings.

**3.20(2)** 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.* 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; and

*e.* When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

**3.20(3)** The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel a person whose conduct is disorderly.

**3.20(4)** 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, subject to Iowa Court Rule 113.

**3.20(5)** 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.

**3.20(6)** All objections shall be timely made and stated on the record.

**3.20(7)** Witnesses may be sequestered during the hearing. This rule does not authorize exclusion of (1) a party who is a natural person, or (2) an officer or employee of a party which is not a natural person designated as its representative by its attorney, or (3) a person whose presence is shown by a party to be essential to presentation of the cause.

**191—3.21(17A) Evidence.**

**3.21(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with applicable requirements of law.

**3.21(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**3.21(3)** Evidence in the proceeding shall be confined to the issues as 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, may receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

**3.21(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 be provided to opposing parties no later than the time they are proffered to the presiding officer. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**3.21(5)** A party may object to specific evidence. A party may request limits on the scope of any examination or cross-examination. Objections shall be accompanied by a brief statement of the grounds upon which the objections are based. The objection and the ruling on the objection 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, if appropriate.

**3.21(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.

**191—3.22(17A) Default.**

**3.22(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**3.22(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and failed to file a required pleading or has failed to appear after proper service.

**3.22(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 3.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. 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 the motion.

**3.22(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**3.22(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**3.22(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

**3.22(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 3.25(17A).

**3.22(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall schedule another hearing on the merits and the contested case shall proceed accordingly.

**3.22(9)** A default decision may award any relief consistent with the request for relief made in the petition, notice of hearing, or charging document and embraced in its issues.

**3.22(10)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 3.29(17A).

[Editorial change: IAC Supplement 11/17/10]

**191—3.23(17A) Ex parte communication.**

**3.23(1)** Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the division or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 3.9(2), prosecuting, or advocating in, 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.

**3.23(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

**3.23(3)** Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

**3.23(4)** To avoid prohibited ex parte communications notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 3.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification.

**3.23(5)** Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

**3.23(6)** Communications with the 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 when seeking to continue hearings or other deadlines pursuant to rule 3.16(17A).

**3.23(7)** A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record, either under seal by protective order or in the public file, at the discretion of the presiding officer. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**3.23(8)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**3.23(9)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, suspension or revocation of the privilege to practice before the agency. Violation of ex parte communication prohibitions by agency personnel shall be reported to the first deputy commissioner or designee for possible sanctions including censure, suspension, dismissal or other disciplinary action.

**191—3.24(17A) Recording costs.** Upon request, the presiding officer with notice to all parties shall provide a copy of the whole or any portion of the record at a reasonable 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.

**191—3.25(17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the commissioner or designee may review an interlocutory order of the presiding officer. In determining whether to do so, the commissioner or designee shall weigh the extent to which granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order at the time the proposed decision of the presiding officer is reviewed 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.

**191—3.26(17A) Final decision.**

**3.26(1)** When the commissioner presides over the reception of evidence at the hearing, the commissioner's decision is a final decision.

**3.26(2)** When the commissioner does not preside over the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the commissioner within the time provided in rule 3.27(17A).

**3.26(3)** The presiding officer's decision shall specify in bold print either that the decision is final or that the decision shall become final without further proceedings unless there is an appeal to, or review on motion of, the commissioner within the time provided in rule 3.27(17A).

**3.26(4)** Any administrative law judge serving as a presiding officer in a contested case shall report to the commissioner on a monthly basis all matters taken under advisement for longer than 60 days, together with an explanation of the reasons for the delay and an expected date of a proposed decision. A matter shall be reported when all hearings have been completed and the matter awaits decision without further appearance of the parties or their attorneys, even though briefs or transcripts have been ordered but have not yet been filed. The report shall be due on the tenth day of each calendar month for the period ending with the last day of the preceding calendar month. The report shall be signed by the administrative law judge. All reports received will be filed with the Iowa insurance division as records available for public inspection.

**191—3.27(17A) Appeals and review.**

**3.27(1)** Any adversely affected party may appeal a proposed decision to the commissioner within 30 days after issuance of the proposed decision.

**3.27(2)** The insurance division may initiate review of a proposed decision on its own motion at any time within 30 days following issuance of such a decision.

**3.27(3)** An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commissioner. 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 proposed decision or order appealed from;
- b. The parties initiating the appeal;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The grounds for relief; and
- e. The relief sought.

**3.27(4)** On appeal from a proposed decision of a presiding officer, the issues shall be limited to those raised before the presiding officer. No new issues will be considered for the first time on appeal.

**3.27(5)** On appeal, a party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for 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 ten days of service of the notice of appeal. The commissioner may remand a case to the presiding officer for further hearing or the commissioner may preside at the taking of additional evidence.

**3.27(6)** The commissioner shall issue a schedule for consideration of the appeal.

**3.27(7)** 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. Any written requests to present oral argument shall be filed with the briefs. The commissioner may resolve the appeal on the briefs or provide an opportunity for oral argument. The commissioner may shorten or extend the briefing period as appropriate.

**191—3.28(17A) Applications for rehearing.**

**3.28(1)** Any party to a contested case proceeding may file an application for rehearing from a final order.

**3.28(2)** 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 agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 3.27(5), the applicant requests an opportunity to submit additional evidence.

**3.28(3)** The application shall be filed with the commissioner within 20 days after issuance of the final decision.

**3.28(4)** 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, the division shall serve copies on all parties.

**3.28(5)** Any application for a rehearing shall be deemed denied unless the commissioner grants the application within 20 days after its filing.

**191—3.29(17A) Stay of agency action.**

**3.29(1)** Petition requirements for stay of agency action:

*a.* Any party to a contested case proceeding may petition the commissioner for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the agency. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The commissioner may rule on the stay or authorize the presiding officer to do so.

*b.* Any party to a contested case proceeding may petition the commissioner for a stay or other temporary remedy pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

**3.29(2)** In determining whether to grant a stay, the presiding officer or commissioner shall consider the factors listed in 1998 Iowa Acts, chapter 1202, section 23(5c).

**3.29(3)** A stay may be vacated by the issuing authority upon application of the commissioner or any other party.

**191—3.30(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 is practicable.

**191—3.31(17A) Emergency adjudicative proceedings.**

**3.31(1)** To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the insurance division may issue a written order in compliance with 1998 Iowa Acts, chapter 1202, section 21, to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the division by emergency adjudicative order. Before issuing an emergency adjudicative order the division shall consider factors including, but not limited to, the following:

*a.* Whether there has been a sufficient factual investigation to ensure that the division is proceeding on the basis of reliable information;

*b.* Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

*c.* Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

*d.* Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare;

*e.* Whether the specific action contemplated by the insurance division is necessary to avoid the immediate danger; and

*f.* Whether the proposed emergency adjudicative order is sufficiently limited in scope and narrowly tailored to protect the public health, safety or welfare.

**3.31(2)** An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the insurance division's decision to take immediate action.

*a.* The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) For nonlicensed persons, delivery may be executed by:

1. Personal service as provided in the Iowa Rules of Civil Procedure; or

2. Certified mail, return receipt requested; or

3. First-class mail; or

4. Publication, as provided in the Iowa Rules of Civil Procedure; or

5. Facsimile or other electronic transmission. Facsimile or other electronic transmission may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by facsimile and has provided a fax number for that purpose.

(2) For licensees, delivery shall be executed by:

1. Personal service as provided in the Iowa Rules of Civil Procedure; or

2. Restricted certified mail.

*b.* If practical, the insurance division shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

**3.31(3)** Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the insurance division shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

**3.31(4)** After issuance of an emergency adjudicative order, the insurance division shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

**3.31(5)** A written emergency adjudicative order shall include notification of the date on which insurance division proceedings are scheduled for completion. After an emergency adjudicative order is issued, continuance of further division proceedings to a later date will be granted only in compelling circumstances, and upon written application.

**3.31(6)** This rule does not preclude issuance of summary cease and desist orders as authorized by Iowa Code sections 502.604, 502A.12, 523A.17, 523B.8(1), 523D.13, and 523E.17; chapters 505, 507B, 507C, 508, and 515; and rule 191—3.32(502,505).

**191—3.32(502,505,507B) Summary cease and desist orders.** When a statute authorizes action to be taken without a prior hearing, the commissioner's order shall be sent to the last-known address of the party by certified mail, return receipt requested, unless the party is a licensee, in which case the order shall be sent by restricted certified mail. The order shall include a brief statement of findings of fact, conclusions of law and policy reasons for the decision; direct the person or insurer to cease and desist from engaging in the act or practice or to take other affirmative action as is necessary, in the judgment of the commissioner, to comply with the statute; and state that the party will be afforded a contested case proceeding and a hearing if a request is filed with the commissioner at least 30 days from the date that the order is issued, unless a different time is specified by statute. The commissioner shall issue a notice of hearing no later than 30 days from the date of receipt of a timely request for a contested case proceeding and hearing. If a statute requires a hearing to be held following issuance of a summary order, the date and time of that hearing shall be set forth in the order. Summary orders shall remain effective during the pendency of proceedings.

**191—3.33(17A,502,505) Informal settlement.**

**3.33(1)** A party to a controversy that may culminate in contested case proceedings may attempt informal settlement of the controversy by complying with the procedures set forth in this subrule. No party to a controversy shall be required to settle the controversy by submitting to informal settlement procedures.

*a.* Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

*b.* When signed by the parties to a controversy, a proposed settlement shall represent final disposition of the matter in place of contested case proceedings.

*c.* Where there are more than two parties to a controversy involving the insurance division, a separate settlement between one party and the division is permissible.

*d.* A proposed settlement which is not accepted or signed by the parties shall not be admitted as evidence in the record of a contested case proceeding.

**3.33(2)** A party to a contested case proceeding may attempt informal settlement by complying with the procedures set forth in this subrule. No party shall be required to settle the contested case proceeding by submitting to informal settlement procedures.

*a.* Parties desiring informal settlement shall set forth in writing the various points of a proposed settlement, which may include a stipulated statement of facts.

*b.* When signed by the parties to the contested case proceeding and the presiding officer, a proposed settlement shall represent final disposition of the proceeding.

*c.* Where there are more than two parties to a contested case proceeding involving the insurance division, a separate settlement between one party and the division is permissible.

*d.* A proposed settlement which is not accepted or signed by the parties and the presiding officer shall not be admitted as evidence in the record of a contested case proceeding. Evidence of conduct or statements made in settlement negotiations likewise are not admissible. This rule does not require exclusion when the evidence is offered for another purpose, such as proving bias or prejudice of a witness, negating a contention of undue delay, or proving an effort to obstruct a criminal investigation or prosecution.

**191—3.34(17A,502,505) Witness fees.**

**3.34(1)** Subpoenaed witnesses shall be entitled to receive fees authorized by Iowa Code section 622.69.

**3.34(2)** Witnesses called to testify only to an opinion founded on special study or experience in any branch of science, or to make scientific or professional examinations and state the result thereof, may receive additional compensation, to be fixed by the presiding officer, with reference to the value of the time employed and the degree of learning or skill required; but such additional compensation shall not exceed the sum set forth in Iowa Code section 622.72.

These rules are intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202.

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## REGULATION OF INSURERS

## CHAPTER 5

## REGULATION OF INSURERS—GENERAL PROVISIONS

[Prior to 10/22/86, Insurance Department [510]]

**191—5.1(507) Examination reports.** Upon the completion of an examination a copy of the report will be furnished the company, association or society examined, whereupon the company, association or society will have 20 days in which to determine whether or not it will demand a hearing before the commissioner of insurance. If a hearing is desired, then and in that event the company, association or society shall, within said 20 days, file with the commissioner of insurance a written application, attaching thereto the specific grounds upon which a hearing is desired. Within a reasonable time after the receipt of said application, the commissioner will fix a date for the hearing and notify the company, association or society thereof. Upon the completion of the hearing, or as soon as convenient thereafter, the commissioner shall render the commissioner's decision, either orally or in writing at the commissioner's discretion and file said report as part of the records in the division.

This rule is intended to implement Iowa Code sections 505.8 and 507.2.

**191—5.2(505,507) Examination for admission.** Any foreign or alien insurance company seeking to be admitted to do business in the state of Iowa shall, at the discretion of the division of insurance, be subject to either or both of the following:

1. An on-site examination by the division;
2. A desk examination, if the applicant provides a financial examination report prepared by the insurance regulatory body of the applicant's state or country of domicile. The examination report must be certified by the issuing regulatory body and must have an effective date of not more than two years prior to the date of application for admission.

This rule is intended to implement Iowa Code section 507.2.

**191—5.3(507,508,515) Submission of quarterly financial information.** All insurers, corporations, associations, and other entities required to submit annual financial statements to the commissioner shall also submit a short form quarterly financial statement within 45 days of the close of each calendar quarter on a form as specified by the commissioner. Upon request of the commissioner an exhibit showing a count of policies in force by line of business as of the close of the quarter shall be submitted with the quarterly report. The quarterly financial statements shall also be filed with the National Association of Insurance Commissioners.

This rule is intended to implement Iowa Code section 507.2 and Iowa Code chapters 508 and 515.

**191—5.4(505,508,515,520) Surplus notes.** Surplus notes are recognized by the commissioner for both stock and mutual insurers. All payments of principal and interest on these notes require the prior approval of the commissioner.

**191—5.5(505,515,520) Maximum allowable premium volume.** A domestic property/casualty insurer shall not cause the ratio of its net written premiums to its surplus as regards policyholders to exceed three to one without the approval of the commissioner of insurance.

**191—5.6(505,515,520) Treatment of various items on the financial statement.** An admitted insurer shall at all times show the value of the following items on its financial statements in the following manner unless a different treatment is authorized by the state where the insurer is domiciled:

**5.6(1) Real estate.** At amortized cost.

**5.6(2) Stocks.** At market value as determined by the Securities Valuation Office of the National Association of Insurance Commissioners.

**5.6(3) Bonds.** At amortized cost, unless directed otherwise by the commissioner of insurance.

**5.6(4) Artwork.** Nonadmitted.

**5.6(5) *Other assets not listed.*** As treated by the applicable accounting practices and procedures manual of the National Association of Insurance Commissioners.

**5.6(6) *Liabilities.*** Liabilities, including active life reserves, unearned premium reserves, and liabilities for claims and losses unpaid and for incurred but not reported claims. As determined by the applicable accounting practices and procedures manual of the National Association of Insurance Commissioners.

These rules are intended to implement Iowa Code sections 505.8, 515.20, 515.49, 515.63, and 520.21.

**191—5.7(505) Ordering withdrawal of domestic insurers from states.** Upon a finding, after notice and opportunity for hearing, of substantial likelihood of future financial impairment of a domestic insurer due to persistent operating losses in any line of business in any state where the insurer does business, the commissioner may order a domestic insurer to withdraw and cease doing business in that line of business in that state or in the alternative, order the insurer to withdraw and cease doing business in all lines, pending further order. For the purposes of this rule, impaired or threatened financial solvency is deemed to exist where an insurer experiences a reduction of 5 percent or greater in surplus in any 12-month period from all cases, including the regulatory environment in a state.

**191—5.8(505) Monitoring.** Upon request of the commissioner, a domestic insurer shall provide all relevant information as to its business in any state identified by the commissioner and found by the commissioner to have a consistently oppressive and confiscatory regulatory environment: The commissioner's request shall identify the state and shall include a basis for the commissioner's findings that the state has a consistently oppressive and confiscatory regulatory environment.

**191—5.9(505) Rate and form filings.** Insurers doing business in Iowa shall file rates and forms in accordance with applicable law and with 191—Chapters 20, 30, 31, 34, 35, 36, 37, and 39, as applicable.

**191—5.10(511) Life companies—permissible investments.**

**5.10(1)** The phrase “preferred dividend requirements as of the date of acquisition” in Iowa Code section 511.8(6) is construed to include the dividend requirements of a new issue. Consequently, a new preferred issue will qualify if the net earnings of the corporation for each of the five preceding years have been not less than one and one-half times the sum of the annual fixed charges, contingent interest and the annual preferred dividend requirements including the new issue.

**5.10(2)** The phrase “the obligations are adequately secured and have investment qualities and characteristics wherein the speculative elements are not predominant” in Iowa Code section 511.8(5) means “investment grade” as defined in 191—subrule 22.1(4). As a result, except as permitted by the commissioner in exceptional circumstances, corporate obligations must be “investment grade” in order to meet legal reserve requirements unless the other requirements of Iowa Code section 511.8(5) “a” regarding the financial condition of the issuer of the obligation are met. The legal reserve investment limitations of Iowa Code section 511.8 regarding less than investment grade obligations, but not the deposit requirements of that section, are applicable to foreign insurers.

This rule is intended to implement Iowa Code section 511.8(5).

**191—5.11(511) Investment of funds.**

*Ruling No. R21. By Division.*

The Forty-first General Assembly of Iowa amended [508 & 511](511.8) of the Code of 1924, relating to the investment of funds by life insurance companies organized in this state, by adding to paragraph one of said section the following:

“Or federal farm loan bonds issued under the Act of Congress, approved July 17, 1916.”

Doubt has arisen in the minds of company officials as to whether or not the amendment in question authorizes life insurance companies organized in Iowa to invest their funds in bonds issued by joint stock land banks.

In a written opinion of the attorney general of Iowa, bearing date May 25, 1925, it is held that, inasmuch as joint stock land banks were created under the Act of Congress approved July 17, 1916, bonds issued by such banks are included in the amendment aforesaid.

Therefore, it is the ruling of this division that such bonds are a legal investment for life insurance companies organized in this state. However, said amendment is not effective until July 4, 1925, and until said date no such investments should be made.

**191—5.12(515) Collateral loans.** The collateral pledged to secure a loan must qualify as a legal investment for insurance companies before the loan it secures may so qualify [section 515.35(7)]. The statute provides that a company may not invest in excess of 30 percent of its capital and funds in stocks and not more than 10 percent of its capital and surplus in the stock or bonds, or both, of any one corporation.

Normally, a loan is little better than the collateral securing it. Therefore, in order to conform to the intent and purpose of the legislature it would appear that the same limitations should likewise be applied to the stock securing a collateral loan. The statute also provides that the value of the collateral must exceed the amount of the loan by 10 percent.

**191—5.13(508,515) Loans to officers, directors, employees, etc.** No insurance company or association of any kind, domiciled in the state of Iowa, shall loan any portion of its funds to an officer, director, stockholder, employee or any relative or immediate member of the family of an officer or director.

The provisions of Iowa Code sections 508.8 and 511.12 shall likewise be applicable to fire and casualty companies.

**191—5.14(515) Salvage as an asset.** Rescinded IAB 11/25/92, effective 11/6/92.

**191—5.15(508,512B,514,514B,515,520) Accounting practices and procedures manual and annual statement instructions.**

**5.15(1) Purpose.** The purpose of this rule is to adopt the National Association of Insurance Commissioners' accounting practices and procedures manual which has been revised to provide a comprehensive guide to statutory accounting principles, commonly referred to as the "codification project." Additionally, the rule adopts by reference the annual statement instructions promulgated by the National Association of Insurance Commissioners.

**5.15(2) Financial statements.** Effective January 1, 2001, all information reflected in the financial statements of insurance companies authorized to do business in Iowa shall conform with the accounting practices and procedures manual of the National Association of Insurance Commissioners.

All annual financial statements filed with the commissioner shall conform to the annual statement instructions and manuals promulgated by the National Association of Insurance Commissioners.

This rule is intended to implement Iowa Code sections 508.11(43), 512B.24, 514.9, 514B.12, 515.63 and 520.10.

**191—5.16 to 5.19** Reserved.

**191—5.20(508) Computation of reserves.** Iowa life insurance companies may report the nonadmitted excess item to this division on the basis of the true reserve instead of the mean reserve as has been the practice in the past. Under the true reserve system there will be no excess excepting in the case of indebtedness in excess of policy liabilities. The true reserve system eliminates all excess on account of due and deferred premiums, but there may be an excess equal to or in excess of the loading depending upon what premium the note represents, and how long it has been running when a premium note is taken for the gross premiums or when there is an overloan.

This concession is made to Iowa companies with the conviction that it removes many of the defects and disadvantages of the present practice of requiring the excess of the mean reserve.

As a corollary to the proposed system of determining this excess item, the business of the company must be reported upon a strictly paid for basis.

This division will not require that policies be lapsed if premium is not paid within a limited time after the due date, but no credit for an uncollected premium may be taken if more than 60 days past due, unless a premium note of the proper form has been taken therefor.

UNEARNED PREMIUM RESERVES ON MORTGAGE GUARANTY INSURANCE POLICIES

**191—5.21(515C) Unearned premium reserve factors.** In the case of premiums paid in advance on ten-year policies, mortgage guaranty insurers shall apply the following annual factors or comparable monthly factors in determining the unearned premium reserve:

Years policy is in force	Unearned premium factor	Years policy is in force	Unearned premium factor
1	81.8	6	18.2
2	65.5	7	10.9
3	50.9	8	5.5
4	38.2	9	1.8
5	27.3	10	-0-

**191—5.22(515C) Contingency reserve.** From the premium remaining after applying the appropriate factor from the table in 5.21(515C) above, there shall be maintained a contingency reserve as prescribed in Iowa Code section 515C.4.

These rules are intended to implement Iowa Code sections 515C.3 and 515C.4.

**191—5.23(507C) Standards.** The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in this state might be deemed to be hazardous to the policyholders, creditors or the general public. The commissioner may consider:

**5.23(1)** Adverse findings reported in financial condition and market conduct examination reports.

**5.23(2)** The National Association of Insurance Commissioners Insurance Regulatory Information System and its related reports.

**5.23(3)** The ratios of commission expense, general insurance expense, policy benefits and reserve increases to annual premium and net investment income which could lead to an impairment of capital and surplus.

**5.23(4)** The insurer's asset portfolio when viewed in light of current economic conditions is not of sufficient value, liquidity, or diversity to ensure the company's ability to meet its outstanding obligations as they mature.

**5.23(5)** The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the company's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.

**5.23(6)** The insurer's operating loss in the last 12-month period or any shorter period of time including, but not limited to: net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders reduces such insurer's remaining surplus as regards policyholders below the minimum required.

**5.23(7)** Whether any affiliate, subsidiary or reinsurer of the insurer is insolvent as defined in Iowa Code section 507C.2(11), is threatened with insolvency, or is delinquent in payment of its monetary or other obligation.

**5.23(8)** Contingent liabilities, pledges or guarantees which either individually or collectively involve a total amount which, in the opinion of the commissioner, may affect the solvency of the insurer.

**5.23(9)** Whether any "controlling person" of an insurer is delinquent in the transmitting to, or payment of, net premiums to such insurer.

**5.23(10)** The age and collectibility of receivables.

**5.23(11)** Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of such insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position.

**5.23(12)** Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false and misleading information concerning an inquiry.

**5.23(13)** Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer.

**5.23(14)** Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.

**5.23(15)** Whether the company has experienced or will experience in the foreseeable future cash flow or liquidity problems.

**5.23(16)** Rescinded IAB 7/10/91, effective 6/21/91.

This rule is intended to implement Iowa Code sections 507C.9, 507C.12 and 507C.17.

#### **191—5.24(507C) Commissioner's authority.**

**5.24(1)** For the purposes of making a determination of an insurer's financial condition under this rule, the commissioner may:

- a.* Disregard any credit or amount receivable resulting from transactions with a reinsurer which is insolvent, impaired or otherwise subject to a delinquency proceeding;
- b.* Make appropriate adjustments to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates;
- c.* Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account or the financial condition of the debtor; or
- d.* Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guarantee not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

**5.24(2)** If the commissioner determines that the continued operation of the insurer licensed to transact business in this state may be hazardous to the policyholders or the general public, then the commissioner may issue an order requiring the insurer to:

- a.* Reduce the total amount of present and potential liability for policy benefits by reinsurance;
- b.* Reduce, suspend or limit the volume of business being accepted or renewed;
- c.* Reduce general insurance and commission expenses by specified methods;
- d.* Increase the insurer's capital and surplus;
- e.* Suspend or limit the declaration and payment of dividend by an insurer to its stockholders or to its policyholders;
- f.* File reports in a form acceptable to the commissioner concerning the market value of an insurer's assets;
- g.* Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;
- h.* Document the adequacy of premium rates in relation to the risks insured;
- i.* File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or on such format as promulgated by the commissioner.

**5.24(3)** Any insurer subject to an order under subrule 5.24(2) may request, pursuant to rule 191—3.4(17A), review of that order. Any ensuing hearing shall not be open to the public, unless the insurer requests otherwise.

This rule is intended to implement Iowa Code sections 507C.9, 507C.12 and 507C.17.

#### **191—5.25(505) Annual audited financial reports.** Rescinded IAB 11/17/10, effective 12/22/10.

**191—5.26(508,515) Participation in the NAIC Insurance Regulatory Information System.**

**5.26(1)** This rule applies to all domestic, foreign and alien insurers who are authorized to transact business in this state.

**5.26(2)** Each domestic, foreign and alien insurer, except entities organized under Iowa Code chapters 512A, 512B, 514, 514B, 518 and 518A and those which write only in this state, who is authorized to transact insurance in this state shall annually on or before March 1 of each year, file with the National Association of Insurance Commissioners (NAIC) a copy of its annual statement convention blank, along with such additional filings as prescribed by the insurance commissioner for the preceding year. The information filed with the NAIC shall be in the same format and scope as that required by the commissioner and shall include the signed jurat page and the actuarial certification. Any amendments and addendums to the annual statement filing subsequently filed with the commissioner shall also be filed with the NAIC.

Foreign insurers that are domiciled in a state which has a law substantially similar to the requirement in the previous sentence shall be deemed in compliance with this rule.

**5.26(3)** Members of the NAIC, their duly authorized committees, subcommittees, and task forces, their delegates, NAIC employees, and all others charged with the responsibility of collecting, reviewing, analyzing and disseminating the information developed from the filing of the annual statement convention blanks shall be deemed to be acting on behalf of the commissioner by virtue of their collection, review, and analysis or dissemination of the data and information collected from the filings required under this rule.

**5.26(4)** All financial analysis ratios and examination synopses concerning insurance companies that are submitted to the insurance division by the NAIC Insurance Regulatory Information System are confidential as provided in subrule 191—1.3(11), paragraph “c.”

**5.26(5)** The commissioner may suspend, revoke or refuse to renew the certificate of authority of any insurer failing to file its annual statement when due or within any extension of time which the commissioner, for good cause, may have granted.

**5.26(6)** Electronic filing. The annual financial statement filings required of domestic insurers pursuant to Iowa Code sections 508.11 and 515.63 and the quarterly statement filings required pursuant to rule 191—5.3(507,508,515) must be filed electronically with the National Association of Insurance Commissioners. Electronic filing shall include filing via the Internet or by diskette. The electronic filing must be prepared in accordance with the NAIC Directive to Companies, Coding Conventions, Field Names and Definitions, Data Elements, and Reporting Requirements for Annual/Quarterly Statement Submission on Diskettes. Electronic filings are in addition to and due at the time of the filing of the annual/quarterly financial statement blank with the National Association of Insurance Commissioners. Diskette filings do not need to be filed with the insurance division unless the insurer is directed by the insurance commissioner to submit the filing(s) on diskette. This diskette filing requirement does not apply to entities organized pursuant to Iowa Code chapters 512A, 512B, 514, 514B, 518, and 518A.

This rule is intended to implement Iowa Code sections 508.11 and 515.63.

**191—5.27(508,515,520) Asset valuation.**

**5.27(1)** All bonds or other evidences of debt having a fixed term and rate of interest held by an insurer may, if amply secured and not in default as to principal or interest, be valued as follows:

- a. If purchased at par, at the par value.
- b. If purchased above or below par, on the basis of the purchase price adjusted so as to bring the value to par at maturity and so as to yield in the meantime the effective rate of interest at which the purchase was made or, in lieu of such method, according to such accepted method of valuation as is approved by the division.
- c. Purchase price shall in no case be taken at a higher figure than the actual market value at the time of purchase, plus actual brokerage, transfer, postage or express charges paid in the acquisition of such securities.

**5.27(2)** The division shall have full discretion in determining the method of calculating values according to the procedures set forth in this rule, but no such method or valuation shall be inconsistent

with any applicable valuation or method used by insurers in general, or any method formulated or approved by the National Association of Insurance Commissioners or its successor organization.

**5.27(3)** Securities, other than those referred to in subrule 5.27(1), held by an insurer shall be valued, in the discretion of the division, at their market value, or at their appraised value, or at prices determined by it as representing their fair market value.

**5.27(4)** Preferred or guaranteed stocks or shares while paying full dividends may be carried at a fixed value in lieu of market value, at the discretion of the division and in accordance with such method of valuation as it may approve.

**5.27(5)** Stock of a subsidiary corporation of an insurer shall not be valued at an amount in excess of the net value of the subsidiary as based upon only those assets of the subsidiary which would be eligible under Iowa Code section 521A.2 had investment of the funds of the insurer been made directly.

**5.27(6)** No valuations under this rule shall be inconsistent with any applicable valuation or method formulated or approved by the National Association of Insurance Commissioners.

**191—5.28(508,515,520) Risk-based capital and surplus.** Capital and surplus requirements in Iowa Code chapters 508, 518 and 520 are minimums. The commissioner retains the discretion to require greater amounts than set forth in those chapters when the risk-based circumstances of a particular insurer, including the type, nature and volume of business being written, require it.

**191—5.29(508,515) Actuarial certification of reserves.** An opinion on life and health policy and claim reserves and property and casualty loss and loss adjustment expense reserves by a qualified actuary is required in the annual statement blank for all domestic insurers under the terms and conditions contained in the annual statement instructions handbook of the National Association of Insurance Commissioners. All other provisions of the handbook shall be applicable to annual and quarterly financial statements filed with the division.

These rules are intended to implement Iowa Code sections 508.5, 508.9, 508.10, 508.11, 515.8, 515.10, 515.12 and 515.63.

**191—5.30(515) Single maximum risk—fidelity and surety risks.** No insurance company is permitted under the limitations of Iowa Code section 515.49 to expose itself to any risk on a fidelity or surety bond in excess of 10 percent of its surplus to policyholders, unless such excess shall be reinsured in accordance with the provisions of the statute.

**191—5.31(515) Reinsurance contracts.** No credit will be given the ceding insurer for reinsurance made, ceded, or renewed unless the reinsurance agreements (treaty, facultative or otherwise) substantially provide, or are amended by a supplemental contract to read in substance as follows:

In consideration of the continuing benefits to accrue hereunder to the assuming insurer, the assuming insurer hereby agrees that, as to all reinsurance made, ceded, or renewed the reinsurance shall be payable by the assuming insurer on the basis of the liability of the ceding insurer under the contract or contracts reinsured without diminution because of the insolvency of the ceding insurer.

**191—5.32(511,515) Investments in medium grade and lower grade obligations.**

**5.32(1) Reason for promulgation.** The insurance division is concerned that changes in economic conditions and other market variables could adversely affect domestic insurers having a high concentration of these investments. Accordingly, the division has concluded that a limitation on the percentage of total admitted assets that a domestic insurer may prudently invest in such obligations is reasonable, necessary and required in order to carry out the division's responsibilities under relevant statutory law.

The division understands that medium grade and lower grade obligations can have a place in a well diversified portfolio. However, it is also understood that the special risks associated with these investments require a high degree of management even when they are held within an aggregate limit. While this rule will leave all domestic insurers with authority to invest a substantial portion of their assets

in medium grade and lower grade obligations, the prudent management of the attendant risk will remain an essential element of such investing.

**5.32(2) Purposes.** The purposes of this rule are:

*a.* To protect the interests of the insurance-buying public by establishing limitations on the concentration of medium grade and lower grade obligations in which a domestic insurer can invest;

*b.* To regulate the acts and practices of domestic insurers with respect to the concentration of investments in medium grade and lower grade obligations. An insurer's obligations of these classifications shall not exceed the greater of those allowed in subrule 5.10(2) or Iowa Code section 515.35(4) "e," whichever is applicable, or this rule.

**5.32(3) Definitions.** As used in this rule:

"*Admitted assets*" means the amount thereof as of the last day of the most recently concluded annual statement year, computed in accordance with rule 191—5.6(505,515,520).

"*Aggregate amount*" of medium grade and lower grade obligations means the aggregate statutory statement value thereof.

"*Institution*" means a corporation, a joint-stock company, an association, a trust, a business partnership, a business joint venture or similar entity.

"*Lower grade obligations*" means obligations which are rated four, five or six by the Securities Valuation Office of the National Association of Insurance Commissioners.

"*Medium grade obligations*" means obligations which are rated three by the Securities Valuation Office of the National Association of Insurance Commissioners.

**5.32(4) Provisions.**

*a.* No domestic insurer shall acquire, directly or indirectly, any medium grade or lower grade obligation of any institution if, after giving effect to any such acquisition, the aggregate amount of all medium grade and lower grade obligations then held by the domestic insurer would exceed 20 percent of its admitted assets provided that:

(1) No more than 10 percent of its admitted assets consists of obligations rated four, five or six by the Securities Valuation Office;

(2) No more than 3 percent of its admitted assets consists of obligations rated five or six by the Securities Valuation Office;

(3) No more than 1 percent of its admitted assets consists of obligations rated six by the Securities Valuation Office. Attaining or exceeding the limit of any one category shall not preclude an insurer from acquiring obligations in other categories subject to the specific and multicategory limits.

*b.* No domestic insurer may invest more than an aggregate of 1 percent of its admitted assets in medium grade obligations issued, guaranteed or insured by any one institution, nor may it invest more than one-half of 1 percent of its admitted assets in lower grade obligations issued, guaranteed or insured by any one institution. In no event, however, may a domestic insurer invest more than 1 percent of its admitted assets in any medium or lower grade obligations issued, guaranteed or insured by any one institution.

*c.* Nothing contained in this rule shall prohibit a domestic insurer from acquiring any obligations which it has committed to acquire if the insurer would have been permitted to acquire that obligation pursuant to this rule on the date on which such insurer committed to purchase that obligation.

*d.* Notwithstanding the foregoing, a domestic insurer may acquire an obligation of an institution in which the insurer already has one or more obligations if the obligation is acquired in order to protect an investment previously made in the obligations of the institution, provided that all such acquired obligations shall not exceed one-half of 1 percent of the insurer's admitted assets.

*e.* Nothing contained in this rule shall prohibit a domestic insurer from acquiring an obligation as a result of a restructuring of a medium or lower grade obligation already held.

*f.* Nothing contained in this rule shall require a domestic insurer to sell or otherwise dispose of any obligation legally acquired prior to January 29, 1991.

*g.* The board of directors of any domestic insurance company which acquires or invests, directly or indirectly, more than 2 percent of its admitted assets in medium grade and lower grade obligations of any institution shall adopt a written plan for the making of such investments. The plan, in addition

to guidelines with respect to the quality of the issues invested in, shall contain diversification standards including, but not limited to, standards for issuer, industry, duration, liquidity and geographic location.

This rule is intended to implement Iowa Code sections 511.8 and 515.35.

**191—5.33(510) Credit for reinsurance.**

**5.33(1) Purpose.** The purpose of this rule is to set forth the procedural requirements which the insurance commissioner deems necessary to carry out the provisions of Iowa Code sections 521B.1 to 521B.5. The actions and information required by this rule are hereby declared to be necessary and appropriate to the public interest and for the protection of the ceding insurers in this state.

**5.33(2) Applicability.** This rule shall have no applicability to reinsurance ceded and assumed pursuant to a pooling arrangement among insurers in the same holding company system.

**5.33(3) Reinsurer licensed in this state.** The commissioner shall allow credit for reinsurance ceded by a domestic insurer to assuming insurers which were licensed in this state as of the date of the ceding insurer's statutory financial statement.

**5.33(4) Accredited reinsurers.**

*a.* The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which is accredited as a reinsurer in this state as of the date of the ceding insurer's statutory financial statement. An accredited reinsurer is one which:

(1) Files a properly executed Form AR-1<sup>1</sup> as evidence of its submission to this state's jurisdiction and to this state's authority to examine its books and records;

(2) Files with the commissioner a certified copy of a letter or a certificate of authority or of compliance as evidence that it is licensed to transact insurance or reinsurance in at least one state, or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed to transact insurance or reinsurance in at least one state;

(3) Files annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile or, in the case of an alien assuming insurer, with the state through which it is entered and in which it is licensed to transact insurance or reinsurance, and a copy of its most recent audited financial statement;

(4) Maintains a surplus as regards policyholders in an amount not less than \$20 million and whose accreditation has not been denied by the commissioner within 90 days of its submission or, in the case of companies with a surplus as regards policyholders of less than \$20 million, whose accreditation has been approved by the commissioner.

*b.* If the commissioner determines that the assuming insurer has failed to meet or maintain any of these qualifications, the commissioner may upon written notice and hearing revoke the accreditation. No credit shall be allowed a domestic ceding insurer with respect to reinsurance ceded after January 1, 1990, if the assuming insurer's accreditation has been denied or revoked by the commissioner after notice and hearing.

**5.33(5) Reinsurer domiciled and licensed in another state.**

*a.* The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which as of the date of the ceding insurer's statutory financial statement:

(1) Is domiciled and licensed in (or, in the case of a United States branch of an alien assuming insurer, is entered through and licensed in) a state which employs standards regarding credit for reinsurance substantially similar to those applicable in this state;

(2) Maintains a surplus as regards policyholders in an amount not less than \$20 million;

(3) Files a properly executed Form AR-1<sup>1</sup> with the commissioner as evidence of its submission to this state's authority to examine its books and records.

*b.* The provisions of this subrule relating to surplus as regards policyholders shall not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system. As used herein, "substantially similar standards" means credit for reinsurance standards which the commissioner determines equal or exceed the standards of this state.

**5.33(6) *Reinsurers maintaining trust funds.***

*a.* The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer which, as of the date of the ceding insurer's statutory financial statement, maintains a trust fund in an amount prescribed below in a qualified United States financial institution, as determined by the commissioner, for the payment of the valid claims of its United States policyholders and ceding insurers, their assigns and successors in interests. The assuming insurer shall report annually to the commissioner substantially the same information as that required to be reported on the NAIC annual statement form by licensed insurers, to enable the commissioner to determine the sufficiency of the trust fund.

*b.* The following requirements apply to the following categories of assuming insurer:

(1) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to business written in the United States and, in addition, a trustee surplus of not less than \$20 million.

(2) The trust fund for a group of individual unincorporated underwriters shall consist of funds in trust in an amount not less than the group's aggregate liabilities attributable to business written in the United States and, in addition, the group shall maintain a trustee surplus of which \$100 million shall be held jointly for the benefit of the United States ceding insurers of any member of the group. The group shall make available to the commissioner annual certifications by the group's domiciliary regulator and its independent public accountants of the solvency of each underwriter member of the group.

(3) The trust fund for a group of incorporated insurers under common administration, whose members possess aggregate policyholder surplus of \$10 billion (calculated and reported in substantially the same manner as prescribed by the annual statement instructions and Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners) and which has continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation, shall consist of funds in trust in an amount not less than the assuming insurers' liabilities attributable to business ceded by United States ceding insurers to any members of the group pursuant to reinsurance contracts issued in the name of such group and, in addition, the group shall maintain a joint trustee surplus of which \$100 million shall be held jointly for the benefit of United States ceding insurers of any member of the group. The group shall file a properly executed Form AR-1 as evidence of the submission to this state's authority to examine the books and records of any of its members and shall certify that any member examined will bear the expense of any such examination. The group shall make available to the commissioner annual certifications by the members' domiciliary regulators and their independent public accountants of the solvency of each member of the group.

*c.* The trust shall be established in a form approved by the commissioner. The trust instrument shall provide that:

(1) Contested claims shall be valid and enforceable out of funds in trust to the extent remaining unsatisfied 30 days after entry of the final order of any court of competent jurisdiction in the United States.

(2) Legal title to the assets of the trust shall be vested in the trustee for the benefit of the grantor's United States policyholders and ceding insurers, their assigns and successors in trust.

(3) The trust shall be subject to examination as determined by the commissioner.

(4) The trust shall remain in effect for as long as the assuming insurer, or any member or former member of a group of insurers, shall have outstanding obligations under reinsurance agreements subject to the trust.

(5) No later than February 28 of each year the trustees of the trust shall report to the commissioner in writing setting forth the balance in the trust and listing the trust's investments at the preceding year end, and shall certify the date of termination of the trust, if so planned, or certify that the trust shall not expire prior to the next following December 31.

(6) No amendment to the trust shall be effective unless reviewed and approved in advance by the commissioner.

**5.33(7) *Credit for reinsurance required by law.*** The commissioner shall allow credit for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of this state, but only

with respect to the insurance of risks located in jurisdictions where such reinsurance is required by the applicable law or regulation of that jurisdiction. As used in this subrule, “jurisdiction” means any state, district or territory of the United States and any lawful national government.

**5.33(8)** *Reduction from liability for reinsurance ceded to an unauthorized assuming insurer.* The commissioner shall allow a reduction from liability for reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of this state in an amount not exceeding the liabilities carried by the ceding insurer. Such reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the exclusive benefit of the ceding insurer, under a reinsurance contract with such assuming insurer as security for the payment of obligations thereunder. Such security must be held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer or, in the case of a trust, held in a qualified United States financial institution. This security may be in the form of any of the following:

*a.* Cash.

*b.* Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners and qualifying as admitted assets.

*c.* Clean, irrevocable, unconditional and “evergreen” letters of credit issued or confirmed by a qualified United States institution, as determined by the commissioner, effective no later than December 31 of the year for which filing is being made, and in the possession of the ceding company on or before the filing date of its annual statement. Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution’s subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification or amendment, whichever first occurs.

*d.* Any other form of security acceptable to the commissioner. An admitted asset or a reduction from liability for reinsurance ceded to an unauthorized assuming insurer shall be allowed only when the requirements of this rule are met, as determined by the commissioner.

**5.33(9)** *Trust agreements qualified under subrule 5.33(8).*

*a. Definitions.* As used in this rule:

“*Beneficiary*” means the entity for whose sole benefit the trust has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

“*Grantor*” means the entity that has established a trust for the sole benefit of the beneficiary. When established in conjunction with a reinsurance agreement, the grantor is the unlicensed, unaccredited assuming insurer.

“*Obligations*” means:

1. Reinsured losses and allocated loss expenses paid by the ceding company, but not recovered from the assuming insurer;
2. Reserves for reinsured losses reported and outstanding;
3. Reserves for reinsured losses incurred but not reported;
4. Reserves for allocated reinsured loss expenses and unearned premiums.

“*Qualified United States financial institution*” means an institution meeting the requirements of rule 191—32.4(508), except as permitted otherwise by the commissioner.

*b. Required conditions:*

(1) The trust agreement shall be entered into between the beneficiary, the grantor and a trustee which shall be a qualified United States financial institution as determined by the commissioner.

(2) The trust agreement shall create a trust account into which assets shall be deposited.

(3) All assets in the trust account shall be held by the trustee at the trustee’s office in the United States, except that a bank may apply for the commissioner’s permission to use a foreign branch office of such bank as trustee for trust agreements established pursuant to this subrule. If the commissioner approves the use of such foreign branch office as trustee, then its use must be approved by the beneficiary in writing and the trust agreement must provide that the written notice described in subparagraph

5.33(9) "b"(4) must also be presentable, as a matter of legal right, at the trustee's principal office in the United States.

(4) The trust agreement shall provide that:

1. The beneficiary shall have the right to withdraw assets from the trust account at any time, without notice to the grantor, subject only to written notice from the beneficiary to the trustee;
2. No other statement or document is required to be presented in order to withdraw assets, except that the beneficiary may be required to acknowledge receipt of withdrawn assets;
3. It is not subject to any conditions or qualifications outside of the trust agreement;
4. It shall not contain references to any other agreements or documents except as provided for under subparagraph 5.33(9) "b"(11).

(5) The trust agreement shall be established for the sole benefit of the beneficiary.

(6) The trust agreement shall require the trustee to:

1. Receive assets and hold all assets in a safe place;
2. Determine that all assets are in such form that the beneficiary, or the trustee upon direction by the beneficiary, may whenever necessary negotiate any such assets, without consent or signature from the grantor or any other person or entity;
3. Furnish to the grantor and the beneficiary a statement of all assets in the trust account upon its inception and at intervals no less frequent than the end of each calendar quarter;
4. Notify the grantor and the beneficiary, within ten days, of any deposits to or withdrawals from the trust account;
5. Upon written demand of the beneficiary, immediately take any and all steps necessary to transfer absolutely and unequivocally all right, title and interest in the assets held in the trust account to the beneficiary and deliver physical custody of the assets to the beneficiary;
6. Allow no substitutions or withdrawals of assets from the trust account, except on written instructions from the beneficiary, except that the trustee may, without the consent of but with notice to the beneficiary, upon call or maturity of any trust asset, withdraw such asset upon condition that the proceeds are paid into the trust account.

(7) The trust agreement shall provide that at least 30 days, but not more than 45 days, prior to termination of the trust account, written notification of termination shall be delivered by the trustee to the beneficiary.

(8) The trust agreement shall be made subject to and governed by the laws of the state in which the trust is established.

(9) The trust agreement shall prohibit invasion of the trust corpus for the purpose of paying compensation to, or reimbursing the expenses of, the trustee.

(10) The trust agreement shall provide that the trustee shall be liable for its own negligence, willful misconduct or lack of good faith.

(11) Notwithstanding other provisions of this rule, when a trust agreement is established in conjunction with a reinsurance agreement covering risks other than life, annuities and accident and health, where it is customary practice to provide a trust agreement for a specific purpose, such a trust agreement may, notwithstanding any other conditions in this rule, provide that the ceding insurer shall undertake to use and apply amounts drawn upon the trust account, without diminution because of the insolvency of the ceding insurer or the assuming insurer, for the following purposes:

1. To pay or reimburse the ceding insurer for the assuming insurer's share under the specific reinsurance agreement regarding any losses and allocated loss expenses paid by the ceding insurer, but not recovered from the assuming insurer, or for unearned premiums due to the ceding insurer if not otherwise paid by the assuming insurer;
2. To make payment to the assuming insurer of any amounts held in the trust account that exceed 102 percent of the actual amount required to fund the assuming insurer's obligations under the specific reinsurance agreement;
3. Where the ceding insurer has received notification of termination of the trust account and where the assuming insurer's entire obligations under the specific reinsurance agreement remain unliquidated and undischarged ten days prior to the termination date, to withdraw amounts equal to the obligations and

deposit those amounts in a separate account, in the name of the ceding insurer, in any qualified United States financial institution apart from its general assets, in trust for such uses and purposes specified in subparagraph 5.33(9)“d”(1) as may remain executory after such withdrawal and for any period after the termination date.

(12) The reinsurance agreement entered into in conjunction with the trust agreement may, but need not, contain the provisions required by subparagraph 5.33(9)“d”(1) so long as these required conditions are included in the trust agreement.

*c. Permitted conditions.*

(1) The trust agreement may provide that the trustee may resign upon delivery of a written notice of resignation, effective not less than 90 days after receipt by the beneficiary and grantor of the notice, and that the trustee may be removed by the grantor by delivery to the trustee and the beneficiary of a written notice of removal, effective not less than 90 days after receipt by the trustee and the beneficiary of the notice, provided that no such resignation or removal shall be effective until a successor trustee has been duly appointed and approved by the beneficiary and the grantor and all assets in the trust have been duly transferred to the new trustee.

(2) The grantor may have the full and unqualified right to vote any shares of stock in the trust account and to receive from time to time payments of any dividends or interest upon any shares of stock or obligations included in the trust account. Any such interest or dividends shall be either forwarded promptly upon receipt to the grantor or deposited in a separate account established in the grantor’s name.

(3) The trustee may be given authority to invest, and accept substitutions of, any funds in the account, provided that no investment or substitution shall be made without prior approval of the beneficiary, unless the trust agreement specifies categories of investments acceptable to the beneficiary and authorizes the trustee to invest funds and to accept substitutions which the trustee determines are at least equal in market value to the assets withdrawn and that are consistent with the restrictions in 5.33(9)“d”(1)“2.”

(4) The trust agreement may provide that the beneficiary may at any time designate a party to which all or part of the trust assets are to be transferred. Such transfer may be conditioned upon the trustee receiving, prior to or simultaneously, other specified assets.

(5) The trust agreement may provide that, upon termination of the trust account, all assets not previously withdrawn by the beneficiary shall, with written approval by the beneficiary, be delivered over to the grantor.

*d. Additional conditions applicable to reinsurance agreements.*

(1) A reinsurance agreement, which is entered into in conjunction with a trust agreement and the establishment of a trust account, may contain provisions that:

1. Require the assuming insurer to enter into a trust agreement and to establish a trust account for the benefit of the ceding insurer, and specifying what the agreement is to cover;

2. Stipulate that assets deposited in the trust account shall be valued according to their current fair market value and shall consist only of cash (United States legal tender), certificates of deposit (issued by a United States bank and payable in United States legal tender), and investments of the types permitted by the laws of this state for domestic insurers, or any combination of the above provided that such investments are issued by an institution that is not the parent, subsidiary or affiliate of either the grantor or the beneficiary. The reinsurance agreement may further specify the types of investments to be deposited. Where a trust agreement is entered into in conjunction with a reinsurance agreement covering risks other than life, annuities, and accident and health, then the trust agreement may contain the provisions required by this paragraph in lieu of including such provisions in the reinsurance agreement;

3. Require the assuming insurer, prior to depositing assets with the trustee, to execute assignments or endorsements in blank, or to transfer legal title to the trustee of all shares, obligations, or any assets requiring assignments, in order that the ceding insurer, or the trustee upon the direction of the ceding insurer, may whenever necessary negotiate these assets without consent or signature from the assuming insurer or any other entity;

4. Require that all settlements of account between the ceding insurer and the assuming insurer be made in cash or its equivalent;

5. Stipulate that the assuming insurer and the ceding insurer agree that the assets in the trust account, established pursuant to the provisions of the reinsurance agreement, may be withdrawn by the ceding insurer at any time, notwithstanding any other provisions in the reinsurance agreement, and shall be utilized and applied by the ceding insurer or its successors in interest by operation of law, including without limitation any liquidator, rehabilitator, receiver or conservator of such company, without diminution because of insolvency on the part of the ceding insurer or the assuming insurer, only for the following purposes:

- To reimburse the ceding insurer for the assuming insurer's share of premiums returned to the owners of policies reinsured under the reinsurance agreement because of cancellations of such policies;
- To reimburse the ceding insurer for the assuming insurer's share of surrenders and benefits or losses paid by the ceding insurer pursuant to the provisions of the policies reinsured under the reinsurance agreement;
- To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer liabilities for policies ceded under the agreement. The account shall include, but not be limited to, amounts for policy reserves, claims and losses incurred (including losses incurred but not reported), loss adjustment expenses and unearned premium reserves;
- To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

(2) The reinsurance agreement may also contain provisions that:

1. Give the assuming insurer the right to seek approval from the ceding insurer to withdraw from the trust account all or any part of the trust assets and transfer those assets to the assuming insurer, provided:

- The assuming insurer shall, at the time of withdrawal, replace the withdrawn assets with other qualified assets having a market value equal to the market value of the assets withdrawn so as to maintain at all times the deposit in the required amount, or
- After withdrawal and transfer, the market value of the trust account is not less than 102 percent of the required amount.

The ceding insurer shall not unreasonably or arbitrarily withhold its approval.

2. Provide for:

- The return of any amount withdrawn in excess of the actual amounts required to comply with 5.33(9) "d"(1)"5," first three unnumbered paragraphs, or in the case of 5.33(9) "d"(1)"5," last unnumbered paragraph, any amounts that are subsequently determined not to be due; and

- Interest payments, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to 5.33(9) "d"(1)"5," third unnumbered paragraph.

3. Permit the award by any arbitration panel or court of competent jurisdiction of:

- Interest at a rate different from that provided in 5.33(9) "d"(2)"2";
- Court of arbitration costs;
- Attorney's fees;
- Any other reasonable expenses.

(3) Financial reporting. A trust agreement may be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this division in compliance with the provision of this rule when established on or before the date of filing of the financial statement of the ceding insurer. Further, the reduction for the existence of an acceptable trust account may be up to the current fair market value of acceptable assets available to be withdrawn from the trust account at that time, but such reduction shall be no greater than the specific obligations under the reinsurance agreement that the trust account was established to secure.

(4) Existing agreements. Any trust agreement or underlying reinsurance agreement in existence prior to January 1, 1992, will continue to be acceptable until January 1, 1993, at which time the agreements will have to be in full compliance with this rule for the trust agreement to be acceptable.

(5) The failure of any trust agreement to specifically identify the beneficiary as defined in subparagraph 5.33(9) "a"(1) shall not be construed to affect any actions or rights which the commissioner may take or possess pursuant to the provisions of the laws of this state.

**5.33(10)** *Letters of credit qualified under subrule 5.33(8).*

*a.* The letter of credit must be clean, irrevocable and unconditional and issued or confirmed by a qualified United States financial institution. The letter of credit shall contain an issue date and date of expiration and shall stipulate that the beneficiary need only draw a sight draft under the letter of credit and present it to obtain funds and that no other document need be presented. The letter of credit shall also indicate that it is not subject to any condition or qualifications outside of the letter of credit. In addition, the letter of credit itself shall not contain reference to any other agreements, documents or entities, except as provided in subparagraph 5.33(10)“i”(1). As used in this paragraph, “beneficiary” means the domestic insurer for whose benefit the letter of credit has been established and any successor of the beneficiary by operation of law. If a court of law appoints a successor in interest to the named beneficiary, then the named beneficiary includes and is limited to the court-appointed domiciliary receiver (including conservator, rehabilitator or liquidator).

*b.* The heading of the letter of credit may include a boxed section which contains the name of the applicant and other appropriate notations to provide a reference for the letter of credit. The boxed section shall be clearly marked to indicate that such information is for internal identification purposes only.

*c.* The letter of credit shall contain a statement to the effect that the obligation of the qualified United States financial institution under the letter of credit is in no way contingent upon reimbursement with respect thereto.

*d.* The term of the letter of credit shall be for at least one year and shall contain an “evergreen clause” which prevents the expiration of the letter of credit without due notice from the issuer. The “evergreen clause” shall provide for a period of no less than 30 days’ notice prior to expiry date or nonrenewal.

*e.* The letter of credit shall state whether it is subject to and governed by the laws of this state or the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), and all drafts drawn thereunder shall be presentable at an office in the United States of a qualified United States financial institution.

*f.* If the letter of credit is made subject to the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce (Publication 400), then the letter of credit shall specifically address and make provision for an extension of time to draw against the letter of credit in the event that one or more of the occurrences specified in Article 19 of Publication 400 occur.

*g.* The letter of credit shall be issued or confirmed by a qualified United States financial institution authorized pursuant to the organic laws of its chartering jurisdiction to issue letters of credit.

*h.* If the letter of credit is not issued by a qualified United States financial institution authorized to issue letters of credit, the following additional requirements shall be met:

(1) The issuing United States financial institution shall formally designate a qualified United States financial institution as its agent for the receipt and payment of the drafts;

(2) The “evergreen clause” shall provide for 30 days’ notice prior to expiry date for nonrenewal.

*i.* Reinsurance agreement provisions.

(1) The reinsurance agreement in conjunction with which the letter of credit is obtained may contain provisions which:

1. Require the assuming insurer to provide letters of credit to the ceding insurer and specify what they are to cover;

2. Stipulate that the assuming insurer and ceding insurer agree that the letter of credit provided by the assuming insurer pursuant to the provisions of the reinsurance agreement may be drawn upon at any time, notwithstanding any other provisions in the agreement, and shall be utilized by the ceding insurer or its successors in interest only for one or more of the following reasons:

- To reimburse the ceding insurer for the assuming insurer’s share of premiums returned to the owners of policies reinsured under the reinsurance agreement on account of cancellations of such policies;

- To reimburse the ceding insurer for the assuming insurer’s share of surrenders and benefits or losses paid by the ceding insurer under the terms and provisions of the policies reinsured under the reinsurance agreement;

- To fund an account with the ceding insurer in an amount at least equal to the deduction, for reinsurance ceded, from the ceding insurer's liabilities for policies ceded under the agreement (such amount shall include, but not be limited to, amounts for policy reserves, claims and losses incurred and unearned premium reserves);

- To pay any other amounts the ceding insurer claims are due under the reinsurance agreement.

3. All of the provisions required by paragraph 5.33(10) "i" should be applied without diminution because of insolvency on the part of the ceding insurer or assuming insurer.

(2) Nothing contained in this paragraph shall preclude the ceding insurer and assuming insurer from providing for:

1. An interest payment, at a rate not in excess of the prime rate of interest, on the amounts held pursuant to 5.33(10) "i"(1)"2," third unnumbered paragraph.

2. The return of any amounts drawn down on the letters of credit in excess of the actual amounts required for the above or, in the event 5.33(10) "i"(1)"3," fourth unnumbered paragraph, is applicable, any amounts that are subsequently determined not to be due.

(3) When a letter of credit is obtained in conjunction with a reinsurance agreement covering risks other than life, annuities and health, where it is customary practice to provide a letter of credit for a specific purpose, then the reinsurance agreement may, in lieu of 5.33(10) "i"(1)"2," require that the parties enter into a "Trust Agreement" which may be incorporated into the reinsurance agreement or be a separate document.

*j.* A letter of credit may not be used to reduce any liability for reinsurance ceded to an unauthorized assuming insurer in financial statements required to be filed with this division unless an acceptable letter of credit with the filing ceding insurer as beneficiary has been issued on or before the date of filing of the financial statement. Further, the reduction for the letter of credit may be up to the amount available under the letter of credit but no greater than the specific obligation under the reinsurance agreement which the letter of credit was intended to secure.

**5.33(11) Other security.** A ceding insurer may take credit for unencumbered funds withheld by the ceding insurer in the United States subject to withdrawal solely by the ceding insurer and under its exclusive control.

**5.33(12) Reinsurance contract.** Credit will not be granted to a ceding insurer for reinsurance effected with assuming insurers meeting the requirements of subrules 5.33(4), 5.33(5), 5.33(6), 5.33(7), or 5.33(9) after the adoption of this rule unless the reinsurance agreement:

*a.* Includes a proper insolvency clause pursuant to Iowa Code section 507C.32; and

*b.* Includes a provision whereby the assuming insurer, if an unauthorized assuming insurer, has submitted to the jurisdiction of an alternative dispute resolution panel or court of competent jurisdiction within the United States, has agreed to comply with all requirements necessary to give such court or panel jurisdiction, has designated an agent upon whom service of process may be effected, and has agreed to abide by the final decision of such court or panel.

**5.33(13) Contracts affected.** All new and renewal reinsurance transactions entered into after January 1, 1992, shall conform to the requirements of this rule if credit is to be given to the ceding insurer for such reinsurance.

This rule is intended to implement Iowa Code chapter 521B.

<sup>1</sup> Available from Insurance Division

### **191—5.34(508) Actuarial opinion and memorandum.**

**5.34(1) Purpose and effective date.** The purpose of this rule is to prescribe:

*a.* Requirements for statements of actuarial opinion that are to be submitted in accordance with Iowa Code section 508.36 and for memoranda in support thereof;

*b.* Rules applicable to the appointment of an appointed actuary; and

*c.* Guidance as to the meaning of "adequacy of reserves."

**5.34(2) Authority.** This rule is issued pursuant to the authority vested in the commissioner of insurance under Iowa Code section 508.36. This rule will take effect for annual statements for the year 2004.

**5.34(3) Scope.** This rule shall apply to all life insurance companies and fraternal benefit societies doing business in this state and to all life insurance companies and fraternal benefit societies which are authorized to reinsure life insurance, annuities or accident and health insurance business in this state.

This rule shall be applied in a manner that allows the appointed actuary to utilize the actuary's professional judgment in performing the asset analysis and developing the actuarial opinion and supporting memoranda, consistent with relevant actuarial standards of practice. However, the commissioner shall have the authority to specify specific methods of actuarial analysis and actuarial assumptions when, in the commissioner's judgment, these specifications are necessary for an acceptable opinion to be rendered relative to the adequacy of reserves and related items.

This rule shall be applicable to all annual statements filed with the office of the commissioner after January 1, 2004. A statement of opinion on the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with subrule 5.34(6), and a memorandum in support thereof in accordance with subrule 5.34(7), shall be required each year.

**5.34(4) Definitions.** As used in this rule:

*"Actuarial opinion"* means the opinion of an appointed actuary regarding the adequacy of the reserves and related actuarial items based on an asset adequacy analysis in accordance with subrule 5.34(6) and with applicable actuarial standards.

*"Actuarial Standards Board"* means the board established by the American Academy of Actuaries to develop and promulgate standards of actuarial practice.

*"Annual statement"* means that statement required by Iowa Code section 508.11 to be filed annually by the company with the office of the commissioner.

*"Appointed actuary"* means any individual who is appointed or retained in accordance with the requirements set forth in 5.34(5) "c" to provide the actuarial opinion and supporting memorandum as required by Iowa Code section 508.36.

*"Asset adequacy analysis"* means an analysis that meets the standards and other requirements referred to in 5.34(5) "d."

*"Commissioner"* means the insurance commissioner of this state.

*"Company"* means a life insurance company, fraternal benefit society or reinsurer subject to the provisions of this rule.

*"Qualified actuary"* means any individual who meets the requirements set forth in 5.34(5) "b."

**5.34(5) General requirements.**

*a. Submission of statement of actuarial opinion.*

(1) There is to be included on or attached to page 1 of the annual statement for each year beginning with the statement filed as of December 31, 2004, the statement of an appointed actuary, entitled "Statement of Actuarial Opinion," setting forth an opinion relating to reserves and related actuarial items held in support of policies and contracts, in accordance with 5.34(6).

(2) Upon written request by the company, the commissioner may grant an extension of the date for submission of the statement of actuarial opinion.

*b. Qualified actuary.* A "qualified actuary" is an individual who:

(1) Is a member in good standing of the American Academy of Actuaries;

(2) Is qualified to sign statements of actuarial opinion for life and health insurance company annual statements in accordance with the American Academy of Actuaries qualification standards for actuaries signing such statements;

(3) Is familiar with the valuation requirements applicable to life and health insurance companies;

(4) Has not been found by the commissioner (or if so found has subsequently been reinstated as a qualified actuary), following appropriate notice and hearing, to have:

1. Violated any provision of, or any obligation imposed by, the insurance code or other law in the course of dealing as a qualified actuary;

2. Been found guilty of fraudulent or dishonest practices;

3. Demonstrated incompetency, lack of cooperation, untrustworthiness to act as a qualified actuary;

4. Submitted to the commissioner during the past five years, pursuant to this rule, an actuarial opinion or memorandum that the commissioner rejected because it did not meet the provisions of this rule including standards set by the Actuarial Standards Board; or

5. Resigned or been removed as an actuary within the past five years as a result of acts or omissions indicated in any adverse report on examination or as a result of failure to adhere to generally acceptable actuarial standards; and

(5) Has not failed to notify the commissioner of any action taken by any commissioner of any other state similar to that under 5.34(5)“b”(4).

*c. Appointed actuary.* An “appointed actuary” is a qualified actuary who is appointed or retained to prepare the statement of actuarial opinion required by this rule, either directly by or by the authority of the board of directors through an executive officer of the company other than the qualified actuary. The company shall give the commissioner timely written notice of the name, title (and, in the case of a consulting actuary, the name of the firm) and manner of appointment or retention of each person appointed or retained by the company as an appointed actuary and shall state in the notice that the person meets the requirements set forth in 5.34(5)“b.” Once notice is furnished, no further notice is required with respect to this person, provided that the company shall give the commissioner timely written notice in the event the actuary ceases to be appointed or retained as an appointed actuary or to meet the requirements set forth in 5.34(5)“b.” If any person appointed or retained as an appointed actuary replaces a previously appointed actuary, the notice shall so state and give the reasons for replacement.

*d. Standards for asset adequacy analysis.* The asset adequacy analysis required by this rule shall:

(1) Conform to the standards of practice as promulgated from time to time by the Actuarial Standards Board and any additional standards under this rule, which standards are to form the basis of the statement of actuarial opinion in accordance with 5.34(6);

(2) Be based on methods of analysis as are deemed appropriate for such purposes by the Actuarial Standards Board.

*e. Liabilities to be covered.*

(1) Under the authority of Iowa Code section 508.36, the statement of actuarial opinion shall apply to all in-force business on the statement date, whether directly issued or assumed, regardless of when or where issued, e.g., reserves of Exhibits 8, 9, and 10, and claim liabilities in Exhibit 11, part 1, and equivalent items in the separate account statement or statements.

(2) If the appointed actuary determines as the result of asset adequacy analysis that a reserve should be held in addition to the aggregate reserve held by the company and calculated in accordance with methods set forth in Iowa Code section 508.36, the company shall establish the additional reserve.

(3) Additional reserves established under 5.34(5)“e”(2) and deemed not necessary in subsequent years may be released. Any amounts released shall be disclosed in the actuarial opinion for the applicable year. The release of such reserves would not be deemed an adoption of a lower standard of valuation.

**5.34(6) Statement of actuarial opinion based on an asset adequacy analysis.**

*a. General description.* The statement of actuarial opinion submitted in accordance with this subrule shall consist of:

(1) A paragraph identifying the appointed actuary and the actuary’s qualifications (see 5.34(6)“b”(1));

(2) A scope paragraph identifying the subjects on which an opinion is to be expressed and describing the scope of the appointed actuary’s work, including a tabulation delineating the reserves and related actuarial items that have been analyzed for asset adequacy and the method of analysis (see 5.34(6)“b”(2)), and identifying the reserves and related actuarial items covered by the opinion that have not been so analyzed;

(3) A reliance paragraph describing those areas, if any, where the appointed actuary has deferred to other experts in developing data, procedures or assumptions (e.g., anticipated cash flows from currently owned assets, including variation in cash flows according to economic scenarios (see 5.34(6)“b”(3))), supported by a statement of each such expert in the form prescribed by 5.34(6)“e”; and

(4) An opinion paragraph expressing the appointed actuary’s opinion with respect to the adequacy of the supporting assets to mature the liabilities (see 5.34(6) “b”(6)).

(5) One or more additional paragraphs will be needed in individual company cases as follows:

1. If the appointed actuary considers it necessary to state a qualification of opinion;
2. If the appointed actuary must disclose an inconsistency in the method of analysis or basis of asset allocation used at the prior opinion date with that used for this opinion;
3. If the appointed actuary must disclose whether additional reserves of the prior opinion date are released as of this opinion date, and the extent of the release;
4. If the appointed actuary chooses to add a paragraph briefly describing the assumptions that form the basis for the actuarial opinion.

*b. Recommended language.* The following paragraphs shall be included in the statement of actuarial opinion in accordance with this subrule. Language is that which in typical circumstances should be included in a statement of actuarial opinion. The language may be modified as needed to meet the circumstances of a particular case, but the appointed actuary should use language that clearly expresses the actuary’s professional judgment. However, in any event, the opinion shall retain all pertinent aspects of the language provided in this subrule.

(1) The opening paragraph should generally indicate the appointed actuary’s relationship to the company and qualifications to sign the opinion. For a company actuary, the opening paragraph of the actuarial opinion should include a statement such as:

“I, [name], am [title] of [insurance company name] and a member of the American Academy of Actuaries. I was appointed by, or by the authority of, the board of directors of said insurer to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.”

For a consulting actuary, the opening paragraph should include a statement such as:

“I, [name], a member of the American Academy of Actuaries, am associated with the firm of [name of consulting firm]. I have been appointed by, or by the authority of, the board of directors of [name of company] to render this opinion as stated in the letter to the commissioner dated [insert date]. I meet the Academy qualification standards for rendering the opinion and am familiar with the valuation requirements applicable to life and health insurance companies.”

(2) The scope paragraph should include a statement such as:

“I have examined the actuarial assumptions and actuarial methods used in determining reserves and related actuarial items listed below, as shown in the annual statement of the company, as prepared for filing with state regulatory officials, as of December 31, 20 \_\_\_\_\_. Tabulated below are those reserves and related actuarial items which have been subjected to asset adequacy analysis.”

Asset Adequacy Tested Amounts – Reserves and Liabilities					
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b) (3)	Other Amount (4)	Total Amount (1)+(2)+(3) (4)
Exhibit 5					
A Life Insurance					
B Annuities					
C Supplementary Contracts Involving Life Contingencies					
D Accidental Death Benefit					
E Disability—Active					
F Disability—Disabled					
G Miscellaneous					
Total (Exhibit 5 Item 1, Page 3)					

Asset Adequacy Tested Amounts – Reserves and Liabilities					
Statement Item	Formula Reserves (1)	Additional Actuarial Reserves (a) (2)	Analysis Method (b) (3)	Other Amount (4)	Total Amount (1)+(2)+(3) (4)
Exhibit 6					
A Active Life Reserve					
B Claim Reserve					
Total (Exhibit 6 Item 2, Page 3)					
Exhibit 7					
Premiums and Other Deposit Funds (Column 5, Line 14)					
Guaranteed Interest Contracts (Column 2, Line 14)					
Other (Column 6, Line 14)					
Supplemental Contracts and Annuities (Column 3, Line 14)					
Dividend Accumulations or Refunds (Column 4, Line 14)					
Total Exhibit 7 (Column 1, Line 14)					
Exhibit 8, Part 1					
1 Life (Page 3, Line 4.1)					
2 Health (Page 3, Line 4.2)					
Total Exhibit 8, Part 1					
Separate Accounts (Page 3 of the Annual Statement of the Separate Accounts, Lines 1, 2, 3.1, 3.2, 3.3)					
TOTAL RESERVES					
IMR (General Account, Page ____ Line ____)					
(Separate Accounts, Page ____ Line ____)					
AVR (Page ____ Line ____)		(c)			
Net Deferred and Uncollected Premium					

Notes:

- (a) The additional actuarial reserves are the reserves established under subparagraph (2) of 5.34(5) “e.”
- (b) The appointed actuary should indicate the method of analysis, determined in accordance with the standards for asset adequacy analysis referred to in paragraph 5.34(5) “d,” by means of symbols that should be defined in footnotes to the table.
- (c) Allocated amount of asset valuation reserve (AVR).

(3) If the appointed actuary has relied on other experts to develop certain portions of the analysis, the reliance paragraph should include a statement such as:

“I have relied on [name], [title] for [e.g., ‘anticipated cash flows from currently owned assets, including variations in cash flows according to economic scenarios’ or ‘certain critical aspects of the analysis performed in conjunction with forming my opinion’], as certified in the attached statement. I have reviewed the information relied upon for reasonableness.”

Such a statement of reliance on other experts should be accompanied by a statement by each of such experts in the form prescribed by 5.34(6) “e.”

(4) If the appointed actuary has examined the underlying asset and liability records, the reliance paragraph should include a statement such as:

“My examination included such review of the actuarial assumptions and actuarial methods and of the underlying basic asset and liability records and such tests of the actuarial calculations as I considered necessary. I also reconciled the underlying basic asset and liability records to [exhibits and schedules listed as applicable] of the company’s current annual statement.”

(5) If the appointed actuary has not examined the underlying records, but has relied upon data (e.g., listings and summaries of policies in force or asset records) prepared by the company, the reliance paragraph should include a statement such as:

“In forming my opinion on [specify types of reserves], I relied upon data prepared by [name and title of company officer certifying in-force records or other data] as certified in the attached statements. I evaluated that data for reasonableness and consistency. I also reconciled that data to [exhibits and schedules to be listed as applicable] of the company’s current annual statement. In other respects, my examination included review of the actuarial assumptions and actuarial methods used and tests of the calculations I considered necessary.”

The section shall be accompanied by a statement by each person relied upon in the form prescribed by 5.34(6)“e.”

(6) The opinion paragraph shall include a statement such as:

“In my opinion the reserves and related actuarial values concerning the statement items identified above:

“1. Are computed in accordance with presently accepted actuarial standards consistently applied and are fairly stated, in accordance with sound actuarial principles;

“2. Are based on actuarial assumptions that produce reserves at least as great as those called for in any contract provision as to reserve basis and method, and are in accordance with all other contract provisions;

“3. Meet the requirements of the insurance law and rules of the state of [state of domicile]; and are at least as great as the minimum aggregate amounts required by the state in which this statement is filed;

“4. Are computed on the basis of assumptions consistent with those used in computing the corresponding items in the annual statement of the preceding year-end (with any exceptions noted below); and

“5. Include provision for all actuarial reserves and related statement items which ought to be established.

“The reserves and related items, when considered in light of the assets held by the company with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts, make adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the company. (At the discretion of the commissioner, this language may be omitted for an opinion filed on behalf of a company doing business only in this state and in no other state.)

“The actuarial methods, considerations and analyses used in forming my opinion conform to the appropriate Standards of Practice as promulgated by the Actuarial Standards Board, which standards form the basis of this statement of opinion.

“The following material change(s) which occurred between the date of the statement for which this opinion is applicable and the date of this opinion should be considered in reviewing this opinion: (Describe the change or changes.)

“The impact of unanticipated events subsequent to the date of this opinion is beyond the scope of this opinion. The analysis of asset adequacy portion of this opinion should be viewed recognizing that the company’s future experience may not follow all the assumptions used in the analysis.

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Signature of Appointed Actuary

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Address of Appointed Actuary

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Telephone Number of Appointed Actuary

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Date”

*c. Assumptions for new issues.* The adoption for new issues or new claims or other new liabilities of an actuarial assumption that differs from a corresponding assumption used for prior new issues or new claims or other new liabilities is not a change in actuarial assumptions within the meaning of this subrule.

*d. Adverse opinion.* If the appointed actuary is unable to form an opinion, then the actuary shall refuse to issue a statement of actuarial opinion. If the appointed actuary’s opinion is adverse or qualified, then the actuary shall issue an adverse or qualified actuarial opinion explicitly stating the reason(s) for the opinion. This statement should follow the scope paragraph and precede the opinion paragraph.

*e. Reliance on information furnished by other persons.* If the appointed actuary relies on the certification of others on matters concerning the accuracy or completeness of any data underlying the actuarial opinion, or the appropriateness of any other information used by the appointed actuary in forming the actuarial opinion, the actuarial opinion should so indicate the persons upon whom the actuary is relying and a precise identification of the items subject to reliance. In addition, the persons on whom the appointed actuary relies shall provide a certification that precisely identifies the items on which the person is providing information and a statement as to the accuracy, completeness or reasonableness, as applicable, of the items. This certification shall include the signature, title, company, address and telephone number of the person rendering the certification, as well as the date on which it is signed.

*f. Alternate option.*

(1) Iowa Code section 508.36 gives the commissioner broad authority to accept the valuation of a foreign insurer when that valuation meets the requirements applicable to a company domiciled in this state in the aggregate. As an alternative to the requirements of subparagraph 5.34(6)“b”(6), item “3,” the commissioner may make one or more of the following additional approaches available to the opining actuary:

1. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and the formal written standards and conditions of this state for filing an opinion based on the law of the state of domicile.” If the commissioner chooses to allow this alternative, a formal written list of standards and conditions shall be made available. If a company chooses to use this alternative, the standards and conditions in effect on July 1 of a calendar year shall apply to statements for that calendar year, and they shall remain in effect until they are revised or revoked. If no list is available, this alternative is not available.

2. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have verified that the company’s request to file an opinion based on the law of the state of domicile has been approved and that any conditions required by the commissioner for approval of that request have been met.” If the commissioner chooses to allow this alternative, a formal written statement of such allowance shall be issued no later than March 31 of the year it is first effective. The statement shall remain valid until rescinded or modified by the commissioner. A rescission or modification of the statement shall be issued no later than March 31 of the year it is first effective. After that statement is issued, if a company chooses to use this alternative, the company shall file a request to do so, along with justification for its use, no later than April 30 of the year the opinion is to be filed. The request shall be deemed approved on October 1 of that year if the commissioner has not denied the request by that date.

3. A statement that the reserves “meet the requirements of the insurance laws and regulations of the State of [state of domicile] and I have submitted the required comparison as specified by this state.”

- If the commissioner chooses to allow this alternative, a formal written list of products (to be added to the table in 5.34(6)“f”(1)“3,” second bulleted paragraph) for which the required comparison shall be provided will be published. If a company chooses to use this alternative, the list in effect on July

1 of a calendar year shall apply to statements for that calendar year, and it shall remain in effect until it is revised or revoked. If no list is available, this alternative is not available.

- If a company desires to use this alternative, the appointed actuary shall provide a comparison of the gross nationwide reserves held to the gross nationwide reserves that would be held under National Association of Insurance Commissioners codification standards adopted in rule 191—5.15(508,512B,514,514B,515,520). Gross nationwide reserves are the total reserves calculated for the total company in-force business directly sold and assumed, indifferent to the state in which the risk resides, without reduction for reinsurance ceded. The information provided shall include at least the following:

(1) Product Type	(2) Death Benefit or Account Value	(3) Reserves Held	(4) Codification Reserves	(5) Codification Standard

- The information listed shall include all products identified by either the state of filing or any other states subscribing to this alternative.

- If there is no codification standard for the type of product or risk in force or if the codification standard does not directly address the type of product or risk in force, the appointed actuary shall provide detailed disclosure of the specific method and assumptions used in determining the reserves held.

- The comparison provided by the company is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

(2) Notwithstanding 5.34(6)“f”(1), the commissioner may reject an opinion based on the laws and regulations of the state of domicile and require an opinion based on the laws of this state. If a company is unable to provide the opinion within 60 days of the request or such other period of time determined by the commissioner after consultation with the company, the commissioner may contract an independent actuary at the company’s expense to prepare and file an opinion.

**5.34(7) Description of actuarial memorandum including an asset adequacy analysis and regulatory asset adequacy issues summary.**

*a. General.*

(1) In accordance with Iowa Code section 508.36, the appointed actuary shall prepare a memorandum to the company describing the analysis done in support of the opinion regarding the reserves. The memorandum shall be made available for examination by the commissioner upon request but shall be returned to the company after such examination and shall not be considered a record of the insurance division or subject to automatic filing with the commissioner.

(2) In preparing the memorandum, the appointed actuary may rely on, and include as a part of the actuary’s own memorandum, memoranda, prepared and signed by other actuaries who are qualified within the meaning of 5.34(5)“b” with respect to the areas covered in such memoranda, and so state in their memoranda.

(3) If the commissioner requests a memorandum and no such memorandum exists or if the commissioner finds that the analysis described in the memorandum fails to meet the standards of the Actuarial Standards Board or the standards and requirements of this rule, the commissioner may designate a qualified actuary to review the opinion and prepare such supporting memorandum as is required for review. The reasonable and necessary expense of the independent review shall be paid by the company but shall be directed and controlled by the commissioner.

(4) The reviewing actuary shall have the same status as an examiner for purposes of obtaining data from the company, and the work papers and documentation of the reviewing actuary shall be retained by the commissioner; provided, however, that any information provided by the company to the reviewing actuary and included in the work papers shall be considered as material provided by the company to the commissioner and shall be kept confidential to the same extent as is prescribed by law with respect to other material provided by the company to the commissioner pursuant to the statute governing this rule.

The reviewing actuary shall not be an employee or a consulting firm involved with the preparation of any prior memorandum or opinion for the insurer pursuant to this rule for the current year or the preceding three years.

(5) In accordance with Iowa Code section 508.36, the appointed actuary shall prepare a regulatory asset adequacy issues summary, the contents of which are specified in 5.34(7)“c.” Companies submitting the regulatory asset adequacy issues summary shall submit the summary no later than March 15 of the year following the year for which a statement of actuarial opinion based on asset adequacy is required. Iowa foreign companies are not required to submit the regulatory asset adequacy issues summary annually; however, the summary shall be made available for examination by the commissioner upon request. The regulatory asset adequacy issues summary is to be kept confidential to the same extent and under the same conditions as the actuarial memorandum.

*b. Details of the memorandum section documenting asset adequacy analysis (5.34(6)).* When an actuarial opinion under 5.34(6) is provided, the memorandum shall demonstrate that the analysis has been done in accordance with the standards for asset adequacy referred to in 5.34(5)“d” and any additional standards under this rule. It shall specify:

- (1) For reserves:
  1. Product descriptions including market description, underwriting and other aspects of a risk profile and the specific risks the appointed actuary deems significant;
  2. Source of liability in force;
  3. Reserve method and basis;
  4. Investment reserves;
  5. Reinsurance arrangements;
  6. Identification of any explicit or implied guarantees made by the general account in support of benefits provided through a separate account or under a separate account policy or contract and the methods used by the appointed actuary to provide for the guarantees in the asset adequacy analysis;
  7. Documentation of assumptions to test reserves for the following:
    - Lapse rates (both base and excess);
    - Interest crediting rate strategy;
    - Mortality;
    - Policyholder dividend strategy;
    - Competitor or market interest rate;
    - Annuitization rates;
    - Commissions and expenses; and
    - Morbidity.

The documentation of the assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

- (2) For assets:
  1. Portfolio descriptions, including a risk profile disclosing the quality, distribution and types of assets;
  2. Investment and disinvestment assumptions;
  3. Source of asset data;
  4. Asset valuation bases; and
  5. Documentation of assumptions made for:
    - Default costs;
    - Bond call function;
    - Mortgage prepayment function;
    - Determining market value for assets sold due to disinvestment strategy; and
    - Determining yield on assets acquired through the investment strategy.

The documentation of assumptions shall be such that an actuary reviewing the actuarial memorandum could form a conclusion as to the reasonableness of the assumptions.

- (3) For the analysis basis:
  1. Methodology;

2. Rationale for inclusion or exclusion of different blocks of business and how pertinent risks were analyzed;

3. Rationale for degree of rigor in analyzing different blocks of business (include in the rationale the level of “materiality” that was used in determining how vigorously to analyze different blocks of business);

4. Criteria for determining asset adequacy (include in the criteria the precise basis for determining if assets are adequate to cover reserves under “moderately adverse conditions” or other conditions as specified in relevant actuarial standards of practice); and

5. Whether the impact of federal income taxes was considered and the method of treating reinsurance in the asset adequacy analysis.

(4) Summary of material changes in methods, procedures, or assumptions from prior year’s asset adequacy analysis.

(5) Conclusion(s).

*c. Details of the regulatory asset adequacy issues summary.*

(1) The regulatory asset adequacy issues summary shall include:

1. Descriptions of the scenarios tested (including whether those scenarios are stochastic or deterministic) and the sensitivity testing done relative to those scenarios. If negative ending surplus results under certain tests in the aggregate, the actuary should describe those tests and the amount of additional reserves as of the valuation date which, if held, would eliminate the negative aggregate surplus values. Ending surplus values shall be determined by either extending the projection period until the in-force and associated assets and liabilities at the end of the projection period are immaterial or by adjusting the surplus amount at the end of the projection period by an amount that appropriately estimates the value that can reasonably be expected to arise from the assets and liabilities remaining in force;

2. The extent to which the appointed actuary uses assumptions in the asset adequacy analysis that are materially different from the assumptions used in the previous asset adequacy analysis;

3. The amount of reserves and the identity of the product lines that had been subjected to asset adequacy analysis in the prior opinion but were not subject to analysis for the current opinion;

4. Comments on any interim results that may be of significant concern to the appointed actuary, for example, the impact of the insufficiency of assets to support the payment of benefits and expenses and the establishment of statutory reserves during one or more interim periods;

5. The methods used by the actuary to recognize the impact of reinsurance on the company cash flows, including both assets and liabilities, under each of the scenarios tested; and

6. Whether the actuary has been satisfied that all options, whether explicit or embedded, in any asset or liability (including but not limited to those affecting cash flows embedded in fixed income securities) and equitylike features in any investments have been appropriately considered in the asset adequacy analysis.

(2) The regulatory asset adequacy issues summary shall contain the name of the company for which the regulatory asset adequacy issues summary is being supplied and shall be signed and dated by the appointed actuary rendering the actuarial opinion.

*d. Conformity to standards of practice.* The memorandum shall include the following statement: “Actuarial methods, considerations and analyses used in the preparation of this memorandum conform to the appropriate standards of practice as promulgated by the Actuarial Standards Board, which standards form the basis for this memorandum.”

*e. Use of assets supporting the interest maintenance reserve and the asset valuation reserve.* An appropriate allocation of assets in the amount of the interest maintenance reserve (IMR), whether positive or negative, shall be used in any asset adequacy analysis. Analysis of risks regarding asset default may include an appropriate allocation of assets supporting the asset valuation reserve (AVR); these AVR assets may not be applied for any other risks with respect to reserve adequacy. Analysis of these and other risks may include assets supporting other mandatory or voluntary reserves available to the extent not used for risk analysis and reserve support.

The amount of assets used for the AVR shall be disclosed in the Table of Reserves and Liabilities of the opinion and in the memorandum. The method used for selecting particular assets or allocated portions of assets must be disclosed in the memorandum.

*f. Documentation.* The appointed actuary shall retain on file, for at least seven years, sufficient documentation so that it will be possible to determine the procedures followed, the analyses performed, the bases for assumptions and the results obtained.

This rule is intended to implement Iowa Code section 508.36.  
[ARC 9184B, IAB 11/3/10, effective 12/8/10]

**191—5.35 to 5.39** Reserved.

**191—5.40(515) Premium tax.** The fact that the companies choose to call a stipulated amount a “policy fee” and do not include it under the term of “premium” would not have the effect of exempting this income from taxation. It is most assuredly a part of the premium or income received from policyholders for business done in Iowa and thus subject to taxation.

**191—5.41(508) Tax on gross premiums—life companies.** In determining the gross amount of premiums to be taxed hereunder, there shall be excluded:

1. All premiums returned to policyholders or annuitants during the preceding calendar year, except cash surrender values.
2. All dividends that, during said year, have been paid in cash or applied in reduction of premiums or left to accumulate to the credit of policyholders or annuitants.

**191—5.42(432) Cash refund of premium tax.** A cash refund of premium tax may be made to an insurance company that has paid a premium tax payment or prepayment and demonstrates an inability to recoup the funds paid via a credit, provided that the insurance division determines that a refund is appropriate. A claim for refund is a formal request made by the insurance company or its successor in interest to the insurance division for repayment of premium tax prepayments that were paid with the insurance company’s previously filed tax return. The claim for refund shall not be filed with a premium tax prepayment, annual tax payment, or with other documents or forms submitted to the division.

**5.42(1) Eligibility criteria.** Upon the written application of an insurance company or its successor in interest, the insurance division shall authorize the department of revenue to make a cash refund to an insurer if:

- a.* The insurance company is subject to an order of liquidation or equivalent order issued by a court of competent jurisdiction; or
- b.* The insurance company has not written any business in the state of Iowa for five years; or
- c.* The insurance company’s certificate of authority is voluntarily or involuntarily surrendered or terminated; upon application for a refund, the company shall be prohibited from applying for readmission in Iowa for at least five years; and
- d.* The insurance company has no insurer within its holding company which could utilize the credit.

**5.42(2) Application procedure.** An insurance company may file a claim for a cash refund with the insurance division by stating in detail the reasons and facts and including supporting documents with the claim for a cash refund. These documents shall include but not be limited to:

- a.* A written request applying for a cash refund and identifying the address where the cash refund should be mailed;
- b.* A copy of the tax return from which the premium tax credit originated;
- c.* A copy of the liquidation order or other documentation demonstrating that the insurance company’s certificate of authority has been surrendered and that the company is prohibited from applying for admission in Iowa for at least five years; and
- d.* A certification from the chief executive officer stating that the company has no plans for writing business in the state of Iowa and agrees to notify the insurance division before writing any business in this state if the claim for refund is made pursuant to 5.42(1) “*b.*”

**5.42(3) Appeals.** If the claim for refund is denied and the applicant wishes to appeal the denial, the insurance division will consider an appeal to be timely if filed not later than 30 days following the date of denial.

**5.42(4) Statute of limitations.** Upon meeting the eligibility criteria outlined in 5.42(1), an insurance company has up to five years to file an application for a refund. A refund will not be authorized if an application is not made within this time frame.

This rule is intended to implement Iowa Code section 432.1(6).

**191—5.43(510) Managing general agents.**

**5.43(1)** The requirement that a domestic insurer submit its contracts with managing general agents for approval of the commissioner of insurance set forth in Iowa Code section 510.2 remains in effect after July 1, 1991.

**5.43(2)** A managing general agent shall at all times maintain a surety bond in the amount of \$50,000 issued by an insurer licensed to transact business in this state for the benefit of each domestic insurer with which the managing general agent has contracted.

**5.43(3)** A managing general agent shall maintain an errors and omissions policy in the face amount of \$250,000.

**5.43(4)** A third-party administrator subject to Iowa Code chapter 510 shall not be deemed to be a managing general agent.

**5.43(5)** The amount of claims in excess of which a person is authorized to adjust or pay for purposes of the definition of “managing general agent” in Iowa Code section 510.2A(4) “a”(3) “a” is \$15,000 per claim.

DISCLOSURE OF MORTGAGE LOAN APPLICATIONS

**191—5.44 to 5.49** Reserved.

**191—5.50(535A) Purpose.** These rules are adopted for the purpose of enforcing Iowa Code sections 535A.2 and 535A.4.

**191—5.51(535A) Definitions.**

**5.51(1)** “*Reporting financial institution*” means a person which holds a certificate of authority to act as an insurer pursuant to any provision of Title XX, Iowa Code, if the person:

- a. At the beginning of a reporting period possessed assets in excess of \$10 million; and
- b. During a reporting period received applications for mortgage loans on residential property situated in any Iowa city with a population in excess of 50,000, as determined in the most recent census, or in any standard metropolitan statistical area.

**5.51(2)** “*Application*” means an oral or written request for an extension of credit that is made in accordance with procedures established by a financial institution for the type of credit requested.

**5.51(3)** “*Reporting period*” means the calendar year beginning January 1, 1979, and each calendar year thereafter.

**5.51(4)** “*Mortgage loan*” means a mortgage loan as defined in Iowa Code section 535A.1, which is secured by a primary or secondary lien against residential property located in this state.

**5.51(5)** “*Residential property*” means real property used or to be used for residential purposes, including single family homes, dwellings for from two to four families and individual units of condominiums and townhouses.

**5.51(6)** “*Residential mortgage loan*” means a mortgage loan other than a construction loan, a home improvement loan or a rehabilitation loan.

**5.51(7)** “*Construction loan*” means a loan for a maximum of two years for the purpose of construction.

**5.51(8)** “*Interest rate*” means the rate stated on the indenture.

**5.51(9)** “*Standard metropolitan statistical area*” means an area located wholly or partly in the state of Iowa which is designated a standard metropolitan statistical area by the United States Department of Commerce.

**191—5.52(535A) Filing of reports.**

**5.52(1)** Every reporting financial institution shall file the reports required by rule 191—5.53(535A) with the director of the Iowa housing finance authority, Des Moines, Iowa 50319, and with the commissioner of insurance, Des Moines, Iowa 50319, on or before January 15, 1980, and each year thereafter by January 15, and shall maintain a copy of each report at the office where its principal financial records are maintained for a period of five years after it is filed.

**5.52(2)** Reporting financial institutions shall file a report which complies with the Federal Home Mortgage Act of 1975, 12 U.S.C. 2801 to 2809, and regulations promulgated under that Act. Reporting financial institutions shall also report additional information required by rule 191—5.54(535A).

**191—5.53(535A) Form and content of reports.**

**5.53(1)** Reports required by rule 191—5.53(535A) shall be filed on Disclosure Form A<sup>1</sup> or a form similar thereto.

**5.53(2)** Financial institutions may submit computer printouts in lieu of the specimen form if the computer printouts contain the same information in the same sequence as on the specimen form.

**5.53(3)** Every report filed shall disclose the following information:

- a. Name and address of the reporting financial institution.
- b. Name, address and telephone number of the officer designated by the reporting financial institution to file the report.
- c. Reporting period.
- d. The principal amount of a loan shall be disclosed with respect to construction loan applications, home improvement loan applications, total mortgage loan applications, and residential mortgage loan applications, and the requested amount shall be disclosed with respect to construction loan applications not approved, home improvement loan applications not approved, total mortgage loan applications not approved and residential mortgage loan applications not approved. The principal and requested amount disclosures required above shall be reported separately for each census tract or zip code area.

**5.53(4)** Each report shall also indicate the number of persons requesting to examine the disclosure report for the previous reporting period.

<sup>1</sup> Form omitted under Iowa Code section 17A.6(3). They are available upon request from the agency.

**191—5.54(535A) Additional information required.**

**5.54(1)** Reporting financial institutions shall file with the commissioner of insurance on or before March 15 of each year Disclosure Form B or a form similar thereto the following additional information with respect to loans for the purchase of residential property made during the preceding year:

a. The number of loans approved at each of the following percentages of the appraised value of the property used as security for the loan:

- (1) Less than 60 percent
- (2) 60 percent to 69 percent
- (3) 70 percent to 79 percent
- (4) 80 percent to 89 percent
- (5) 90 percent or more

b. The number of loans approved for each of the following amortization periods:

- (1) Less than 10 years
- (2) 10 to 14 years
- (3) 15 to 19 years
- (4) 20 to 24 years
- (5) 25 to 29 years

(6) 30 or more

c. The number of loans made at each interest rate charged.

**5.54(2)** Reporting financial institutions are not required to file the additional information required by subrule 5.54(1) for any loan guaranteed in whole or part under any program of the United States or any of its agencies or instrumentalities, if:

a. The reporting financial institution made a written loan commitment for the loan at the maximum rate of interest permitted under the program at the time of the commitment, and

b. The amortization period for a loan is the maximum period permitted under the program or a shorter period established in response to a request initiated solely by the borrower, and

c. The loan is made at the maximum percentage of appraised value of the property permitted under the program or for the total amount which the borrower desired to borrow, and

d. The reporting financial institution files with the commissioner of insurance on or before March 15 of each year its verified statement, signed by an officer of the reporting financial institution, that it has made loans under such a program and that it has filed the report required by rule 5.54(2) for each such loan not exempted by this rule.

**191—5.55(535A) Written complaints.** Any person who has reason to believe that a financial institution has failed to comply with the provisions of Iowa Code chapter 535A or these rules may file a written complaint with the insurance division, Des Moines, Iowa 50319, or bring an action in the district court in accordance with Iowa Code chapter 535A.

These rules are intended to implement Iowa Code sections 535A.2 and 535A.4.

**191—5.56 to 5.89** Reserved.

**191—5.90(145) Implementation of health data commission directives.** Rescinded IAB 11/15/00, effective 12/20/00.

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◊ Two or more ARCs

CHAPTER 34  
NONPROFIT HEALTH SERVICE CORPORATIONS  
[Prior to 10/22/86, Insurance Department[510]]

**191—34.1(514) Purpose.** The purpose of this chapter is to specify those requirements imposed upon health service corporations under Iowa Code chapter 514 and delineate standards for the commissioner's implementation of these requirements.

**191—34.2(514) Definitions.** For purposes of this chapter, the following definitions shall apply:

*"Commissioner"* means the commissioner of insurance for the state of Iowa.

*"Competitor"* means a corporation, business entity, or person engaged in the business of contracting to provide health care services to others, pay indemnity for health care services provided to others, or provide administrative services relevant thereto in the state of Iowa.

*"Division"* means the insurance division of Iowa.

*"Employee"* is as defined by Iowa Code section 85.61.

*"Health care services"* means services included in the furnishing to any individual of medical or dental care, or hospitalization, or incident to the furnishing of such care or hospitalization, as well as the furnishing to any person of all other services for the purposes of preventing, alleviating, curing or healing human illness, injury, or physical disability.

*"Immediate family member"* means an individual within the first degree of consanguinity or affinity who resides in the same household. With respect to determining the immediate family or spouse of a provider, only those providers licensed and practicing in Iowa on a regular basis shall be considered.

*"Material financial interest"* means a vested interest of at least 10 percent of the fair market value of the property or an interest from which at least 10 percent of individual's gross income is derived.

*"Provider"* means any physician, hospital, or person as defined in Iowa Code chapter 4 which is licensed or otherwise authorized in the state of Iowa to furnish health care services.

*"Related industry"* means a commercial enterprise whose goods or services are by design or function primarily for use in the health care services industry. Related industry does not include commercial enterprises whose goods and services are generic to business in general, such as, but not limited to, utilities, food, cleaning, financial, or legal services.

*"Subscriber"* means an individual who enters into a contract for hospital services, medical or surgical services, dental services, pharmaceutical services, or optometric services with a corporation subject to Iowa Code chapter 514. With respect to contracts providing benefits to more than one individual, subscriber shall include each individual entitled to receive benefits who has reached the legal age of majority. Subscriber also includes all individuals entitled to receive services or payment for services from a corporation subject to Iowa Code chapter 514 pursuant to the terms of a contract or certificate issued by the corporation to an employer or group. Subscriber also includes any individual eligible for medical assistance or additional medical assistance as defined by Iowa Code chapter 249A and with respect to whom the department of human services has entered into a contract with the corporation subject to Iowa Code chapter 514.

*"Subscriber director"* means a subscriber who is a member of the board of directors of a corporation subject to Iowa Code chapter 514 and who is not a provider, the spouse or an immediate family member of a provider. Subscriber director includes only those individuals nominated pursuant to subrule 34.7(2). Subscriber director does not include any individual who has a material financial interest or fiduciary interest in the delivery of health care services or a related industry, an employee of an institution which provides health care services, or the spouse or an immediate family member of such an individual. A subscriber director of a hospital or medical service corporation shall be a subscriber of the services of that corporation. Proof of compliance with the requirements of this paragraph shall be by affidavit.

**191—34.3(514) Annual report requirements.** Each corporation subject to Iowa Code chapter 514 shall file an annual statement on the National Association of Insurance Commissioner's annual statement blank.

This rule is intended to implement Iowa Code section 514.9.

**191—34.4(514) Arbitration.** Parties defined in Iowa Code section 514.13 may submit covered disputes to the commissioner. The following procedures shall be followed when covered disputes are submitted to the commissioner.

**34.4(1)** The party seeking arbitration shall file a petition for arbitration requesting arbitration by the commissioner and setting forth the facts which are the basis for the dispute, together with a statement of the factual or legal issue(s), and the party's position on the issue(s), and serve a copy of the petition by certified mail upon the other party(ies) to the dispute. Proof of service shall be promptly filed with the commissioner.

**34.4(2)** The other party(ies) shall file within 20 days an answer to the petition for arbitration, admitting or denying the facts alleged in the petition and indicating whether there is agreement with the statement of the issue(s) in the petition and setting forth the other party's position on the issue(s). All papers other than the petition shall be served in accordance with Iowa Rule of Civil Procedure 1.415 with proof of service to be made in conformance therewith.

**34.4(3)** The commissioner shall conduct a prehearing conference in accordance with rule 191—3.5(17A,502,505) at which the commissioner may set a schedule for the submission of briefs by the parties, and, if necessary, shall provide for the holding of an evidentiary hearing. The parties are encouraged to stipulate to the facts and agree as to the legal issue(s).

**34.4(4)** The commissioner may submit the dispute to a person selected by the commissioner, who may or may not be employed by the division, who shall make proposed findings and recommendations to the commissioner for a decision by the commissioner.

[Editorial change: IAC Supplement 11/17/10]

**191—34.5(514) Filing requirements.** All matters subject to the division's approval under Iowa Code chapter 514 shall be submitted pursuant to rule 191—20.1(505,509,514A,515,515A,515F) prior to the intended effective date.

**191—34.6(514) Participating hospital contracts.**

**34.6(1)** The following standards shall be applied to all participating hospital contracts subject to approval under Iowa Code section 514.8 and shall be relied upon by the commissioner in deciding whether approval is granted:

- a. Contracts shall be fair to the subscribers of the hospital service corporation.
- b. Contracts shall be fair to the hospital service corporation.
- c. Contracts shall be fair, reasonable, and in the public interest.
- d. The subscribers' rights to service under participating hospital contracts shall be adequately specified and protected.
- e. The contract shall not be unfairly discriminatory with respect to the provision of services to subscribers.
- f. Contracts shall not be detrimental to the financial condition of the hospital service corporation.
- g. The payment of consideration required of the hospital service corporation by the provisions of the contract shall not be excessive, inadequate or unfair.

**34.6(2)** The prototype contract used by hospital service corporations with participating hospitals for hospital service shall be subject to the prior approval of the division. The individual contracts between hospital service corporations and individual participating hospitals are not subject to prior approval, so long as they substantially conform to the prototype contract approved by the commissioner. An informational filing shall be required upon execution of an individual hospital contract. An individual hospital contract shall be deemed to be in substantial conformity with the prototype contract if it is not disapproved within 30 days of filing.

**34.6(3)** In order to ensure fair and equitable charges to and premiums paid by subscribers of hospital service corporations, any method for paying hospitals which is contained in contracts between hospital service corporations and participating hospitals shall contain the following:

- a. Incentives for high productivity and disincentives that encourage efficiency in hospital operation and effectiveness in use;
  - b. Provisions for economic trends;
  - c. Adjustments for variations in capacity among large hospitals and small hospitals;
  - d. Control mechanisms on unnecessary utilization and inappropriate setting for care;
  - e. Payment levels to hospitals which are equitable and meet reasonable financial requirements;
  - f. An internal appeal mechanism for disputes relating to budget review.
- This rule is intended to implement Iowa Code chapter 514.

**191—34.7(514) Composition, nomination, and election of board of directors.**

**34.7(1)** *Composition of board of directors.* The composition of the board of directors of each corporation subject to Iowa Code chapter 514 shall be as follows:

- a. On and after August 1, 1984, a majority of the members of the board of directors of each corporation subject to Iowa Code chapter 514 shall be subscriber directors.
- b. On and after August 1, 1985, at least two-thirds of the members of the board of directors of each corporation subject to Iowa Code chapter 514 shall be subscriber directors.

**34.7(2)** *Nomination of subscriber directors.*

a. Until the board composition requirements of subrule 34.7(1), paragraph “b,” are met, a ballot containing nominees for subscriber director positions shall be prepared by an independent subscriber nominating committee pursuant to subrule 34.7(3). Nominations for subscriber director positions may also be made by petition signed by at least 50 subscribers. The independent subscriber nominating committee shall consider the petitions to determine which persons, if any, nominated by those petitions shall be placed on the ballot.

b. Once the board composition requirements of subrule 34.7(1), paragraph “b,” are met, a ballot containing nominees for subscriber director position shall be prepared by the subscriber directors under procedures established by the board of directors. These procedures shall also permit nomination by a petition of at least 50 subscribers. The board shall determine which persons, if any, nominated by these petitions shall be placed on the ballot.

**34.7(3)** *Independent subscriber nominating committee.*

a. *Generally.* An independent subscriber nominating committee shall be appointed for each corporation subject to Iowa Code chapter 514. Each independent subscriber nominating committee shall consist of at least five to seven members. Commonality of membership among the independent subscriber nominating committees shall be permissible. The independent subscriber nominating committee for each corporation shall, as a whole, be broadly representative of the subscribers of the corporation. The independent subscriber nominating committee for each corporation shall serve only until the composition of the board of directors for the corporation meets the requirements of subrule 34.7(1), paragraph “b.”

b. *Standards for independent subscriber nominating committee membership.* Each individual appointed to the independent subscriber nominating committee shall meet the following criteria:

(1) Each member of an independent subscriber nominating committee shall be a subscriber of a corporation subject to Iowa Code chapter 514. Each member of the independent subscriber nominating committee of a hospital or medical service corporation shall be a subscriber of the services of that corporation.

(2) No member of an independent subscriber nominating committee shall be a member of the board of directors of a corporation subject to Iowa Code chapter 514.

(3) No member, their spouse or an immediate family member, of an independent subscriber nominating committee shall have a material financial interest in, be a fiduciary to, or be an employee of a competitor. Proof of compliance with this requirement shall be by affidavit.

(4) Each member of an independent subscriber nominating committee shall have reasonable knowledge of the operation of and issues facing the corporation for which the independent subscriber nominating committee has been appointed.

*c. Appointment.* The commissioner shall appoint each committee from names suggested by individual subscribers, group subscribers, labor organizations, the Health Policy Corporation of Iowa, each corporation subject to Iowa Code chapter 514, and other interested persons. Interested persons shall submit the names of potential independent subscriber nominating committee members to the commissioner within 30 days of the effective date of these rules. The committee appointments will be within 7 days thereafter.

*d. Work of the independent subscriber nominating committee.* The independent subscriber nominating committee shall develop a ballot containing nominees for subscriber director positions to be filled. At least two and not more than three individuals shall be nominated for each subscriber director position to be filled.

The independent subscriber nominating committee shall also consider each individual currently serving as a subscriber representative on the board of directors of a corporation operating pursuant to Iowa Code chapter 514, and each individual nominated by subscriber petitions, for inclusion on the ballot containing nominees for subscriber directors. The independent subscriber nominating committee shall select nominees that represent a broad spectrum of subscriber interests including an appropriate balance of demographic and geographic characteristics for the corporation's service area.

*e. Criteria for nominees.* The independent subscriber nominating committee shall utilize the following criteria in developing nominations for subscriber directors:

(1) Each nominee shall be a subscriber of a corporation subject to Iowa Code chapter 514. Each nominee to the board of directors of a hospital or medical service corporation shall be a subscriber of the services of that corporation. The corporation shall verify a potential nominee's subscriber status upon inquiry by an independent subscriber nominating committee.

(2) A nominee, their spouse or an immediate family member, shall not have a material financial interest in, be a fiduciary to, or be an employee of a competitor or provider. Proof of compliance with this requirement shall be by affidavit.

(3) Each nominee shall have reasonable knowledge of the operation of and issues facing the corporation to whose board the nominee has been nominated.

**34.7(4) Election of subscriber directors.** Each subscriber director shall be elected from the subscriber nominees placed on a ballot prepared as provided by these rules. The ballot shall alphabetically list the subscriber nominees and indicate that each member shall vote only for the same number of candidates as there are positions to be filled. Election shall be by the corporate membership. Nominees receiving the most votes shall be considered elected to the positions.

The ballot for electing subscriber directors may also contain nominees to be elected to provider director positions.

**34.7(5) Nomination of provider directors.**

*a.* Until the board composition requirements of subrule 34.7(1), paragraph "b," are met, nominations for provider director positions may be made by petition signed by at least 50 providers. The independent subscriber nominating committee shall consider the petitions to determine which persons, if any, nominated by those petitions shall be placed on the ballot.

*b.* Once the board composition requirements of subrule 34.7(1), paragraph "b," are met, the board of directors shall establish procedures to permit nomination of provider directors by petition of at least 50 participating providers. The board of directors shall consider the petitions to determine which persons, if any, nominated by those petitions shall be placed on the ballot.

*c.* This subrule shall not be construed to preclude nominations for provider director positions by any alternate means provided by the corporation's articles or bylaws.

**34.7(6) Construction.** The articles or bylaws of a corporation operating pursuant to Iowa Code chapter 514 shall continue in existence to the extent that they do not conflict with this rule.

This rule is intended to implement Iowa Code section 514.4.

[Filed 5/6/83, Notice 3/30/83—published 5/25/83, effective 6/29/83]

[Filed emergency after Notice 6/24/83, Notice 5/11/83—published 7/20/83, effective 6/24/83]

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[Editorially transferred from [510] to [191], IAC Supp. 10/22/86; see IAB 7/30/86]

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[Editorial change: IAC Supplement 11/17/10]



CHAPTER 99  
LIMITED PURPOSE SUBSIDIARY LIFE INSURANCE COMPANIES

**191—99.1(505,508) Authority.** This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code section 505.8 and 2010 Iowa Acts, Senate File 2201, section 9.  
[ARC 9229B, IAB 11/17/10, effective 12/22/10]

**191—99.2(505,508) Purpose.** The purpose of this chapter is to authorize the establishment of domestic limited purpose subsidiary life insurance companies that are wholly owned by domestic insurers authorized to transact the business of insurance pursuant to Iowa Code chapter 508 and that may issue securities and otherwise access financial markets and alternative sources of capital through securitizations and other transactions.  
[ARC 9229B, IAB 11/17/10, effective 12/22/10]

**191—99.3(505,508) Definitions.** For purposes of this chapter, the following definitions shall apply:

“*Affiliated companies*” means domestic life insurance companies that are directly or indirectly wholly owned subsidiaries of the same parent.

“*Ceding insurer*” means a domestic life insurance company that is an affiliated company of an LPS and that cedes risk to the LPS pursuant to a reinsurance contract.

“*Commissioner*” means the Iowa insurance commissioner.

“*Guaranty of a parent*” means an agreement to pay specified obligations of the LPS by a parent of the LPS approved by the commissioner that is not a ceding insurer and the guarantor has sufficient equity, less the equity of all ceding insurers that are subsidiaries of the guarantor, to satisfy the agreement during the life of the guaranty.

“*Insurance securitization*” or “*securitization*” means a transaction or a group of related transactions, which may include capital market offerings, that are effected through related risk transfer instruments and facilitating administrative agreements where all or part of the result of such transactions is used to fund the LPS’s obligations under a reinsurance contract with a ceding insurer and by which proceeds are:

1. Obtained by an LPS, directly or indirectly, through the issuance of securities by the LPS or any other person; or
2. Provided through one or more letters of credit or other assets for the benefit of the LPS, which the commissioner authorizes the LPS to treat as admitted assets for purposes of the LPS’s annual statement; where all or any part of such proceeds, letters of credit, or assets, as applicable, is used to fund the LPS’s obligations under a reinsurance contract with a ceding insurer. The terms “insurance securitization” and “securitization” do not include the issuance of a letter of credit for the benefit of the commissioner to satisfy all or part of the LPS’s capital and surplus requirements under this chapter.

“*Insurer*,” for purposes of this chapter, means a domestic life insurance company organized under Iowa Code chapter 508.

“*Letters of credit*” means clean, unconditional, irrevocable letters of credit issued or confirmed by a qualified United States financial institution as defined in Iowa Code section 521B.4, subsection 2.

“*LPS*” means a limited purpose subsidiary life insurance company organized pursuant to 2010 Iowa Acts, Senate File 2201, section 9, that is wholly owned by the organizing life insurance company and that is issued a certificate of authority by the commissioner pursuant to this chapter.

“*LPS security*” means:

1. A security issued by an LPS; or
2. A security issued by a third party, the proceeds of which are obtained directly or indirectly by an LPS.

“*Management*” means the board of directors, managing board, or other individual or individuals vested with overall responsibility for the management of the affairs of the LPS, including but not limited to officers or other agents elected or appointed to act on behalf of the LPS.

“*Material*” means a transaction or series of transactions involving amounts equal to or exceeding 3 percent of the LPS’s admitted assets less any letters of credit and intangible assets included as an admitted asset of the LPS.

“*Organizational document*” means an LPS’s articles of incorporation and bylaws.

“*Organizing life insurance company*” means the domestic life insurance company that organizes the LPS pursuant to 2010 Iowa Acts, Senate File 2201, section 9.

“*Parent*” means a person as defined in Iowa Code section 521A.1 that directly or indirectly through one or more intermediaries wholly owns an LPS.

“*Reinsurance contract*” means a contract between an LPS and a ceding insurer pursuant to which the LPS agrees to provide reinsurance to the ceding insurer for risks.

“*Risk*” means risks associated with life insurance policies and contracts written by the ceding insurer or assumed by the ceding insurer from an affiliated company which were written by the affiliated company and for which the ceding insurer holds direct statutory reserves for those policies and contracts required by Iowa Code section 508.36.

“*Risk-based capital instructions*” means the instructions included in the risk-based capital report as adopted by the National Association of Insurance Commissioners, as such risk-based capital instructions may be amended by the National Association of Insurance Commissioners from time to time in accordance with the procedures adopted by the National Association of Insurance Commissioners.

“*Security*” means the same as defined in Iowa Code section 502.102 and shall also include any form of debt obligation, surplus note, derivative, or other financial instrument that the commissioner designates as a “security” for purposes of this chapter.

“*Subsidiary*” means the same as defined in Iowa Code section 521A.1(9).

“*Surplus note*” means an unsecured subordinated debt obligation possessing characteristics consistent with paragraph 3 of the National Association of Insurance Commissioners (NAIC) Statement of Statutory Accounting Principles No. 41, as amended from time to time and as modified or supplemented by rule or order of the commissioner.

[ARC 9229B, IAB 11/17/10, effective 12/22/10]

#### **191—99.4(505,508) Formation of LPS.**

**99.4(1)** An LPS’s organizational documents shall limit the LPS’s authority to transact the business of reinsurance to reinsure only the risks of a ceding insurer and shall state that the LPS shall not otherwise engage in the business of insurance.

**99.4(2)** An LPS’s organizational documents shall provide that the LPS shall always be wholly owned by the organizing life insurance company and that the LPS’s stock shall be issued only to the organizing life insurance company.

[ARC 9229B, IAB 11/17/10, effective 12/22/10]

#### **191—99.5(505,508) Certificate of authority.**

**99.5(1)** *Certificate of authority required.* No LPS shall do any reinsurance business in this state unless it obtains from the commissioner a certificate of authority pursuant to this rule.

**99.5(2)** *Application for certificate of authority.* Before receiving a certificate of authority, an LPS shall do all of the following:

*a.* File with the commissioner a copy of its plan of operation.  
*b.* File with the commissioner an affidavit of its president, a vice president, the treasurer, or the chief financial officer that includes all of the following statements, to the best of such person’s knowledge and belief, after reasonable inquiry:

(1) The proposed organization and operation of the LPS comply with all applicable provisions of this chapter.

(2) The LPS’s investment policy reflects and takes into account the liquidity of assets and the reasonable preservation, administration, and management of such assets with respect to the risks associated with the reinsurance contract.

(3) Any reinsurance contract and any arrangement for securing the LPS’s obligations under such reinsurance contract, including but not limited to any agreements or other documentation to implement such arrangement, comply with the provisions of this chapter.

*c.* File with the commissioner an opinion of legal counsel, in a form acceptable to the commissioner, that the offer and sale of any LPS securities comply with all applicable registration

requirements or applicable exemptions from or exceptions to such requirements of the federal securities laws and that the offer and sale of securities by the LPS itself comply with all registration requirements or applicable exemptions from or exceptions to such requirements of the securities laws of this state. Such opinions shall not be required as part of the application if the LPS includes a specific statement in its plan of operation that such opinions will be provided to the commissioner in advance of the offer or sale of any LPS securities.

*d.* File with the commissioner an opinion of a qualified independent actuary acceptable to the commissioner that the methodology and assumptions to set and discount reserves make good and sufficient provision for the risk assumed by the LPS, including significant stress tests on key assumptions.

*e.* Pay to the commissioner the reasonable expenses and costs incurred by the commissioner incident to examining the LPS's application pursuant to Iowa Code chapter 507.

*f.* Submit any other statements or documents required by the commissioner to evaluate the LPS's application for a certificate of authority.

**99.5(3) *Material change in application.*** In the event of any material change in any item required in subrule 99.5(2), the LPS shall notify the commissioner at least 30 days prior to the change and submit to the commissioner for approval any revised documents, opinions, or certifications.

**99.5(4) *Grant of certificate of authority.***

*a.* The commissioner may grant a certificate of authority to an LPS, which shall be valid through the next June 1 following the date of initial issuance and which may be renewed annually thereafter, authorizing the LPS to transact reinsurance business as an LPS in this state upon a finding that:

- (1) The proposed plan of operation provides for a viable operation;
- (2) The terms of any reinsurance contract and related transactions comply with this chapter and all applicable insurance laws and regulations; and
- (3) The proposed plan of operation is not hazardous to any ceding insurer.

*b.* In conjunction with the issuance of a certificate of authority to an LPS, the commissioner may issue an order that includes any provisions, terms, and conditions regarding the organization, licensing, and operation of the LPS that the commissioner deems appropriate and that are not inconsistent with the provisions of this chapter.

**99.5(5) *Scope of certificate of authority.*** An LPS issued a certificate of authority may reinsure only the risks of a ceding insurer. An LPS shall not otherwise engage in the business of insurance. An LPS may purchase reinsurance to cede the risks assumed under a reinsurance contract, subject to the prior approval of the commissioner.

[ARC 9229B, IAB 11/17/10, effective 12/22/10]

#### **191—99.6(505,508) Capital and surplus.**

**99.6(1)** An LPS shall not be issued a certificate of authority unless it possesses and thereafter maintains unimpaired paid-in capital and surplus of not less than \$2.5 million.

**99.6(2)** The commissioner may prescribe additional tangible capital and surplus based upon the type, volume, and nature of reinsurance business transacted.

**99.6(3)** Minimum capital and surplus required by subrule 99.6(1) shall be in the form of cash or other securities that are investment grade at the time of acquisition and acceptable to the commissioner.

[ARC 9229B, IAB 11/17/10, effective 12/22/10]

#### **191—99.7(505,508) Plan of operation.**

**99.7(1)** An LPS shall have a plan of operation approved by its board of directors. The plan of operation shall include all of the following:

- a.* A complete description of all reinsurance transactions, reinsurance security arrangements, securitizations, and any other material transactions or arrangements.
- b.* The source and form of the LPS's capital and surplus.
- c.* The investment policy of the LPS.

d. Pro forma balance sheets and income statements illustrating one or more adverse case scenarios, as determined under criteria required by the commissioner, for the performance of the LPS under all reinsurance contracts.

e. Risk-based capital requirements, which, at a minimum, shall require the LPS to maintain risk-based capital equal to the product of two and one-half and the number determined under the life risk-based capital formula in accordance with the risk-based capital instructions.

f. Notice and reporting of material transactions.

g. Policies for payments of dividends and other distributions to the organizing life insurance company.

h. Copies of all contracts between the LPS and affiliated companies.

**99.7(2)** Any change in the LPS's plan of operation shall require prior approval of the commissioner.  
[ARC 9229B, IAB 11/17/10, effective 12/22/10]

**191—99.8(505,508) Dividends and distributions.** An LPS may pay dividends and distributions that do not decrease the capital of the LPS below the minimum capital and surplus amount designated by the commissioner pursuant to rule 191—99.6(505,508), provided, however, that no dividend or distribution may be declared or paid by an LPS if such dividend or distribution would jeopardize the ability of the LPS to fulfill the LPS's obligations. The LPS shall give the commissioner 30 days' prior notice of any dividend or distribution. The notice shall include the amount of the dividend or distribution and a certification signed by an officer of the LPS stating that the dividend or distribution would not jeopardize the ability of the LPS to fulfill the LPS's obligations.

[ARC 9229B, IAB 11/17/10, effective 12/22/10]

**191—99.9(505,508) Reports and notifications.**

**99.9(1) Notice of securitizations.** An LPS shall provide the commissioner with a copy of a complete set of executed documentation of an insurance securitization no later than 45 days after the closing on the transactions for such securitization.

**99.9(2) Notice of material change to financial condition.** In the event of any material change in the financial condition or management of an LPS, the LPS shall notify the commissioner in writing within two business days of any such change.

**99.9(3) Reports on reserves.** An LPS shall file annually with the commissioner an actuarial opinion, in compliance with 191—5.34(508), on reserves for all risks assumed by the LPS pursuant to its reinsurance contracts provided by an internal actuary and may discount its reserves in accordance with that actuarial opinion, subject to approval by the commissioner. An LPS shall file biennially an opinion of a qualified independent actuary acceptable to the commissioner concerning the methods and assumptions used to set reserves.

**99.9(4) Risk-based capital reports.** An LPS shall file annually with the commissioner a report of the LPS's risk-based capital level as of the end of the calendar year immediately preceding containing the information required by the risk-based capital instructions.

**99.9(5) Foreclosure on collateral.** An LPS shall notify the commissioner immediately of any action by a ceding insurer or any other person to foreclose on or otherwise take possession of collateral provided by the LPS to secure any obligation of the LPS.

**99.9(6) Filing reports with the National Association of Insurance Commissioners.** Notwithstanding 191—5.3(507,508,515), 191—5.26(508,515), or any other rule, an LPS shall not be required to file any report, notice, or other document with the National Association of Insurance Commissioners unless required by the commissioner.

[ARC 9229B, IAB 11/17/10, effective 12/22/10]

**191—99.10(505,508) Material transactions.**

**99.10(1) Notice of material transactions.** An LPS shall not take any of the following actions unless the LPS provides the commissioner at least 30 days' prior written notice and the commissioner expressly approves the action:

a. The dissolution of the LPS.

- b. Any sale, exchange, lease, mortgage, assignment, pledge or other transfer or granting of a security interest in over 30 percent of the assets of the LPS.
- c. Any incurrence of material indebtedness by the LPS.
- d. Any making of a material loan or other material extension of credit by the LPS.
- e. Any material payment out of capital and surplus other than dividends or distributions paid in accordance with rule 191—99.8(505,508).
- f. Any merger or consolidation to which the LPS is a constituent party.
- g. Any transfer to or redomestication in any jurisdiction by the LPS.
- h. The termination of all or any part of an LPS's business.

This subrule shall not apply when an LPS takes any action described in paragraph “b” or “e” in accordance with the LPS's plan of operation.

**99.10(2) *Prior approval of certain payments.*** An LPS shall submit for prior approval of the commissioner periodic written requests for authorization to make payments of interest on and repayments of principal of surplus notes and other debt obligations issued by the LPS, provided that the commissioner shall not approve such payment if the commissioner determines that such payment would jeopardize the ability of the LPS or any other person to fulfill the person's respective obligations. [ARC 9229B, IAB 11/17/10, effective 12/22/10]

### **191—99.11(505,508) Investments.**

**99.11(1) *Administration of assets.*** The investment program developed by an LPS shall take into account the safety of the company's assets, investment yield and return, stability in the value of the investment, and liquidity necessary to meet the company's expected business needs and investment diversification. The assets of an LPS shall be preserved and administered by or on behalf of the LPS to satisfy the liabilities and obligations of the LPS incident to the reinsurance contract, the insurance securitization, and other related agreements. For the purposes of this subrule, assets do not include letters of credit and guaranties of a parent. An LPS shall only invest its assets in cash and securities that are investment grade at the time of acquisition, provided, however, that an LPS may invest up to 10 percent of its assets in securities or other investments that are not investment grade at the time of acquisition and that are not:

- a. Securities rated 5 or higher by the Securities Valuation Office of the National Association of Insurance Commissioners at the time of acquisition;
- b. Asset-backed or mortgage-backed securities rated 3 or higher by the Securities Valuation Office of the National Association of Insurance Commissioners at the time of acquisition;
- c. Convertible bonds;
- d. Preferred or common stock; and
- e. Private equity or hedge funds.

**99.11(2) *Securitization agreements.*** The LPS securitization, the security-offering memorandum or other document issued to prospective investors regarding the offer and sale of a surplus note or other security shall include a disclosure that all or part of the proceeds of such insurance securitization will be used to fund the LPS's obligations to the ceding insurer.

**99.11(3) *Admitted assets.*** Admitted assets of the LPS shall include proceeds from a securitization, premium and other amounts payable by a ceding insurer to the LPS, letters of credit, guaranties of a parent, and any other assets approved by the commissioner, which shall be deemed to be, and reported as, admitted assets of the LPS. The commissioner has the authority to reduce the amount of admitted assets previously approved by the commissioner, other than assets already covered by the Accounting Practices and Procedures Manual of the National Association of Insurance Commissioners, if the commissioner determines that the value of those assets has decreased. At least 30 days prior to reducing the amount of admitted assets previously approved, the commissioner shall notify the LPS and provide the LPS an opportunity to remedy the issues identified by the commissioner.

**99.11(4) *Loans.*** An LPS shall not make a loan to or an investment in any person, other than as permitted in the LPS's plan of operation, without prior written approval of the commissioner, and any

such loan or investment must be evidenced by documentation approved by the commissioner. Loans of minimum capital and surplus funds are prohibited.

**99.11(5) *Investments in LPS.*** The organizing life insurance company shall report its ownership in the LPS and value such ownership equal to the audited statutory surplus of the LPS.

[ARC 9229B, IAB 11/17/10, effective 12/22/10]

**191—99.12(508) *Securities.*** An LPS security shall not be subject to regulation as an insurance or reinsurance contract. An investor in such a security or a holder of such a security shall not be considered to be transacting the business of insurance in this state solely by reason of having an interest in the security. The underwriter's placement or selling agents and their partners, commissioners, officers, members, managers, employees, agents, representatives, and advisors involved in an insurance securitization by an LPS shall not be considered to be insurance producers or brokers or to be conducting business as an insurance or reinsurance company or as an insurance agency, brokerage, intermediary, advisory, or consulting business solely by virtue of their underwriting activities in connection with such securitization.

[ARC 9229B, IAB 11/17/10, effective 12/22/10]

**191—99.13(505,508) *Permitted reinsurance.***

**99.13(1)** An LPS may reinsure, pursuant to a reinsurance contract, only the risks of a ceding insurer.

**99.13(2)** Unless otherwise approved in advance by the commissioner, an LPS may not assume or retain exposure to reinsurance losses for its own account that are not funded by one or more of the following:

- a. Proceeds from a securitization.
- b. Premium and other amounts payable by the ceding insurer to the LPS pursuant to the reinsurance contract.
- c. Letters of credit.
- d. Guaranties of a parent.
- e. Any return on investment of the items in paragraph "a" or "b" of this subrule.

**99.13(3)** An LPS may cede risks assumed through a reinsurance contract to one or more reinsurers through the purchase of reinsurance, subject to the prior approval of the commissioner.

**99.13(4)** An LPS may enter into contracts and conduct other commercial activities related or incidental to and necessary to fulfill the purposes of a reinsurance contract, an insurance securitization, and this chapter, provided such contracts and activities are included in the LPS's plan of operation or are otherwise approved in advance by the commissioner. Such contracts and activities may include but are not limited to: entering into reinsurance contracts; issuing LPS securities; complying with the terms of these contracts or securities; entering into trust, guaranteed investment contract, swap, or other derivative, tax, administration, services reimbursement, or fiscal agent transactions; complying with trust indenture, reinsurance, or retrocession; or entering into other agreements necessary or incidental to effect a reinsurance contract or an insurance securitization in compliance with this chapter and the LPS's plan of operation.

**99.13(5)** Unless otherwise approved in advance by the commissioner, a reinsurance contract shall not contain any provision for payment by the LPS in discharge of its obligations under the reinsurance contract to any person other than the ceding insurer or any receiver of the ceding insurer.

[ARC 9229B, IAB 11/17/10, effective 12/22/10]

**191—99.14(505,508) *Certification of actuarial officer.*** At the time an LPS files an application for a certificate of authority pursuant to subrule 99.5(2) and thereafter by March 1 of each year that an LPS is in operation and is ceded new business from a ceding insurer, a senior actuarial officer of each ceding insurer shall file with the commissioner a certification that the ceding insurer's transactions with an LPS are not being used to gain an unfair advantage in the pricing of the ceding insurer's products. A ceding insurer shall not be deemed to have an unfair advantage if the pricing of the policies and contracts reinsured by the LPS reflects, at the time those policies and contracts were issued, a reasonable long-term estimate of the cost to the ceding insurer of an alternative third-party transaction and utilizes current pricing

assumptions. The ceding insurer shall keep documentation between examinations that sets forth how a senior actuarial officer arrived at the conclusions in the certification.

[ARC 9229B, IAB 11/17/10, effective 12/22/10]

**191—99.15(505,508) Effective date.** This chapter is applicable on or after December 22, 2010.

[ARC 9229B, IAB 11/17/10, effective 12/22/10]

These rules are intended to implement Iowa Code section 505.8 and 2010 Iowa Acts, Senate File 2201, section 9.

[Filed ARC 9229B (Notice ARC 9080B, IAB 9/22/10), IAB 11/17/10, effective 12/22/10]



CHAPTERS 107 to 109  
Reserved



CHAPTER 110  
STANDARDS AND COMMISSIONER'S AUTHORITY FOR COMPANIES  
DEEMED TO BE IN HAZARDOUS FINANCIAL CONDITION

**191—110.1(505) Authority.** This chapter is promulgated by the commissioner of insurance pursuant to Iowa Code section 505.8.

[ARC 9231B, IAB 11/17/10, effective 12/22/10]

**191—110.2(505) Purpose.** The purpose of this chapter is to set forth the standards which the commissioner may use for identifying insurers found to be in such condition as to render the continuance of their business hazardous to their policyholders, creditors, or the general public. This chapter shall not be interpreted to limit the powers granted the commissioner by any laws or parts of laws of Iowa, nor shall this chapter be interpreted to supersede any laws or parts of laws of Iowa. Every insurer shall be subject to this chapter.

[ARC 9231B, IAB 11/17/10, effective 12/22/10]

**191—110.3(505) Definition.**

*"Insurer"* means a licensed insurer under Title XIII of the Iowa Code and fraternal benefit societies licensed under Iowa Code chapter 512B.

[ARC 9231B, IAB 11/17/10, effective 12/22/10]

**191—110.4(505) Standards.** The following standards, either singly or a combination of two or more, may be considered by the commissioner to determine whether the continued operation of any insurer transacting an insurance business in Iowa might be deemed to be hazardous to its policyholders, creditors, or the general public. The commissioner may consider:

**110.4(1)** Adverse findings reported in financial condition and market conduct examination reports, audit reports, and actuarial opinions, reports, or summaries.

**110.4(2)** The National Association of Insurance Commissioners' Insurance Regulatory Information System and its other financial analysis solvency tools and reports.

**110.4(3)** Whether the insurer has made adequate provision, according to presently accepted actuarial standards of practice, for the anticipated cash flows required by the contractual obligations and related expenses of the insurer, when considered in light of the assets held by the insurer with respect to such reserves and related actuarial items including, but not limited to, the investment earnings on such assets, and the considerations anticipated to be received and retained under such policies and contracts.

**110.4(4)** The ability of an assuming reinsurer to perform and whether the insurer's reinsurance program provides sufficient protection for the insurer's remaining surplus after taking into account the insurer's cash flow and the classes of business written as well as the financial condition of the assuming reinsurer.

**110.4(5)** Whether the insurer's operating loss in the last 12-month period or any shorter period of time, including but not limited to net capital gain or loss, change in nonadmitted assets, and cash dividends paid to shareholders, is greater than 50 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

**110.4(6)** Whether the insurer's operating loss in the last 12-month period or any shorter period of time, excluding net capital gains, is greater than 20 percent of the insurer's remaining surplus as regards policyholders in excess of the minimum required.

**110.4(7)** Whether a reinsurer, obligor, or any entity within the insurer's insurance holding company system is insolvent, threatened with insolvency or delinquent in payment of its monetary or other obligations which, in the opinion of the commissioner, may affect the solvency of the insurer.

**110.4(8)** Contingent liabilities, pledges, or guaranties which either individually or collectively involve a total amount which, in the opinion of the commissioner, may affect the solvency of the insurer.

**110.4(9)** Whether any "controlling person" of an insurer is delinquent in the transmitting or payment of net premiums to the insurer.

**110.4(10)** The age and collectability of receivables.

**110.4(11)** Whether the management of an insurer, including officers, directors, or any other person who directly or indirectly controls the operation of the insurer, fails to possess and demonstrate the competence, fitness and reputation deemed necessary to serve the insurer in such position.

**110.4(12)** Whether management of an insurer has failed to respond to inquiries relative to the condition of the insurer or has furnished false or misleading information concerning an inquiry.

**110.4(13)** Whether the insurer has failed to meet financial and holding company filing requirements in the absence of a reason satisfactory to the commissioner.

**110.4(14)** Whether management of an insurer either has filed any false or misleading sworn financial statement, or has released a false or misleading financial statement to lending institutions or to the general public, or has made a false or misleading entry, or has omitted an entry of material amount in the books of the insurer.

**110.4(15)** Whether the insurer has grown so rapidly and to such an extent that it lacks adequate financial and administrative capacity to meet its obligations in a timely manner.

**110.4(16)** Whether the insurer has experienced, or will experience in the foreseeable future, cash flow or liquidity problems.

**110.4(17)** Whether management has established reserves that do not comply with minimum standards established by state insurance laws, regulations, statutory accounting standards, sound actuarial principles, and standards of practice.

**110.4(18)** Whether management persistently engages in material underreserving that results in adverse development.

**110.4(19)** Whether transactions among affiliates, subsidiaries or controlling persons for which the insurer receives assets or capital gains, or both, do not provide sufficient value, liquidity or diversity to ensure the insurer's ability to meet its outstanding obligations as they mature.

**110.4(20)** Whether the insurer's underwriting expenses are in excess of 70 percent of net premiums for three years, excluding companies that write more than 75 percent of gross premium in surety. Companies licensed under Iowa Code chapters 508 and 512B are excluded from this subrule.

**110.4(21)** Any other finding determined by the commissioner to be hazardous to the insurer's policyholders, creditors, or the general public.

[ARC 9231B, IAB 11/17/10, effective 12/22/10]

#### **191—110.5(505) Commissioner's authority.**

**110.5(1)** For the purposes of making a determination of an insurer's financial condition under this chapter, the commissioner may:

- a.* Disregard any credit or amount receivable resulting from transactions with a reinsurer that is insolvent, impaired, or otherwise subject to a delinquency proceeding;
- b.* Make appropriate adjustments including disallowance to asset values attributable to investments in or transactions with parents, subsidiaries, or affiliates consistent with the NAIC Accounting Policies and Procedures Manual, state laws, and regulations;
- c.* Refuse to recognize the stated value of accounts receivable if the ability to collect receivables is highly speculative in view of the age of the account, or the financial condition of the debtor;
- d.* Increase the insurer's liability in an amount equal to any contingent liability, pledge, or guaranty not otherwise included if there is a substantial risk that the insurer will be called upon to meet the obligation undertaken within the next 12-month period.

**110.5(2)** If the commissioner determines that the continued operation of the insurer licensed to transact business in Iowa may be hazardous to its policyholders, creditors, or the general public, then the commissioner may, upon a determination, issue an order requiring the insurer to:

- a.* Reduce the total amount of present and potential liability for policy benefits by reinsurance;
- b.* Reduce, suspend, or limit the volume of business being accepted or renewed;
- c.* Reduce general insurance and commission expenses by specified methods;
- d.* Increase the insurer's capital and surplus;
- e.* Suspend or limit the declaration and payment of a dividend by the insurer to its stockholders or to its policyholders;

- f.* File reports in a form acceptable to the commissioner concerning the market value of the insurer's assets;
- g.* Limit or withdraw from certain investments or discontinue certain investment practices to the extent the commissioner deems necessary;
- h.* Document the adequacy of premium rates in relation to the risks insured;
- i.* File, in addition to regular annual statements, interim financial reports on the form adopted by the National Association of Insurance Commissioners or in such format as promulgated by the commissioner;
- j.* Correct corporate governance practice deficiencies, and adopt and utilize governance practices acceptable to the commissioner;
- k.* Provide a business plan to the commissioner in order to continue to transact business in the state;
- l.* Notwithstanding any other provision of law limiting the frequency or amount of premium rate adjustments, adjust rates for any non-life insurance product written by the insurer that the commissioner considers necessary to improve the financial condition of the insurer.

**110.5(3)** If the insurer is a foreign insurer, the commissioner's order may be limited to the extent provided by statute.

**110.5(4)** An insurer subject to an order under subrule 110.5(2) may request a hearing to review that order. The notice of hearing shall be served upon the insurer pursuant to 191—3.12(17A). The notice of hearing shall state the time and place of hearing and the conduct, condition or ground upon which the commissioner based the order. Unless mutually agreed between the commissioner and the insurer, the hearing shall occur not less than 10 days nor more than 30 days after notice is served and shall be in Polk County, Iowa. The commissioner shall hold all hearings under this subrule privately, unless the insurer requests a public hearing, in which case the hearing shall be public.

[ARC 9231B, IAB 11/17/10, effective 12/22/10]

**191—110.6(505) Judicial review.** Any order or decision of the commissioner shall be subject to review in accordance with 191—3.27(17A) at the instance of any party to the proceedings whose interests are substantially affected.

[ARC 9231B, IAB 11/17/10, effective 12/22/10]

**191—110.7(505) Separability.** If any provisions of this chapter be held invalid, the remainder shall not be affected.

[ARC 9231B, IAB 11/17/10, effective 12/22/10]

**191—110.8(505) Effective date.** This chapter is applicable on or after December 22, 2010.

These rules are intended to implement Iowa Code section 505.8.

[ARC 9231B, IAB 11/17/10, effective 12/22/10]

[Filed ARC 9231B (Notice ARC 9105B, IAB 9/22/10), IAB 11/17/10, effective 12/22/10]



CHAPTER 22  
CONTROLLING POLLUTION

[Prior to 7/1/83, DEQ Ch 3]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

**567—22.1(455B) Permits required for new or existing stationary sources.**

**22.1(1) Permit required.** Unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph “c” of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or conditional permit, or permit pursuant to rule 567—22.8(455B), or permits required pursuant to rules 567—22.4(455B) and 567—22.5(455B) as required in this subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.

*a.* Existing sources. Sources built prior to September 23, 1970, are not subject to this subrule, unless they have been modified, reconstructed, or altered on or after September 23, 1970.

*b.* New or reconstructed major sources of hazardous air pollutants. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR 63.2 and 40 CFR 63.41 as amended through April 22, 2004, unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

*c.* New, reconstructed, or modified sources may initiate construction prior to issuance of the construction permit by the department if they meet the eligibility requirements stated in subparagraph (1) below. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. The applicant has submitted a construction permit application to the department, as specified in subrule 22.1(3);

2. The applicant has notified the department of the applicant’s intentions in writing five working days prior to initiating construction; and

3. The source is not subject to rule 567—22.4(455B), 567—subrule 23.1(2), 567—subrule 23.1(3), 567—subrule 23.1(4), 567—subrule 23.1(5), or paragraph “b” of this subrule. Prevention of significant deterioration (PSD) provisions and prohibitions remain applicable until a proposed project legally obtains PSD synthetic minor status (i.e., obtains permitted limits which limit the source below the PSD thresholds).

(2) The applicant must cease construction if the department’s evaluation demonstrates that the construction, reconstruction or modification of the source will interfere with the attainment or maintenance of the national ambient air quality standards or will result in a violation of a control strategy required by 40 CFR Part 51, Subpart G, as amended through August 12, 1996.

(3) The applicant will be required to make any modification to the source that may be imposed in the issued construction permit.

(4) The applicant must notify the department of the date that construction or reconstruction actually started. All notifications shall be submitted to the department in writing no later than 30 days after construction or reconstruction started. All notifications shall include all of the information listed in 22.3(3) “b.”

*d.* Permit requirements for country grain elevators, country grain terminal elevators, grain terminal elevators, and feed mill equipment. The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment, as “country grain elevator,” “country grain terminal elevator,” “grain terminal elevator,” and “feed mill equipment” are defined in subrule 22.10(1), may elect to comply with the requirements specified in rule 567—22.10(455B) for equipment at these facilities.

**22.1(2) Exemptions.** The requirement to obtain a permit in 567—subrule 22.1(1) is not required for the equipment, control equipment, and processes listed in this subrule. The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Equipment, control equipment, or processes subject to rule 567—22.4(455B), prevention of significant deterioration requirements, or rule 567—22.5(455B), special requirements for nonattainment areas, may not use the exemptions from construction permitting listed in this subrule. Equipment, control equipment, or processes subject to 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, may still use the exemptions from construction permitting listed in this subrule provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. If equipment is permitted under the provisions of rule 567—22.8(455B), then no other exemptions shall apply to that equipment.

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)“a” (for equipment > 1 million Btu per hour input), 22.1(2)“b,”22.1(2)“e,” 22.1(2)“r” or 22.1(2)“s.” The records shall contain the following information: the specific exemption claimed and a description of the associated equipment. These records shall be made available to the department upon request.

The following paragraphs are applicable to 22.1(2)“g” and “i.” A facility claiming to be exempt under the provisions of paragraph “g” or “i” shall provide to the department the information listed below. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed below shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed below is provided to the department:

- A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in rule 567—22.100(455B)), accompanied by documentation of the basis for the emissions estimate;
    - A detailed description of each change being made;
    - The name and location of the facility;
    - The height of the emission point or stack and the height of the highest building within 50 feet;
    - The date for beginning actual construction and the date that operation will begin after the changes are made;
  - A statement that the provisions of rules 567—22.4(455B) and 567—22.5(455B) do not apply;
- and
- A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)“i,” when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences), have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23) as amended through March 12, 1996, and adopted in rule 567—22.4(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

The written statement shall contain certification by a responsible official as defined in rule 567—22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

*a.* Fuel-burning equipment for indirect heating and reheating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than ten million Btu per hour input per combustion unit.

*b.* Fuel-burning equipment for indirect heating or cooling with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, untreated seeds or pellets, other untreated vegetative materials, or fuel oil. Used oils meeting the specification from 40 CFR 279.11 as amended through May 3, 1993, are acceptable fuels for this exemption.

*c.* Mobile internal combustion and jet engines, marine vessels and locomotives.

*d.* Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, which is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1, subsection 6, or a confinement building owned or operated by that person and located in this state.

*e.* Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption.

*f.* Fugitive dust controls unless a control efficiency can be assigned to the equipment or control equipment.

*g.* Equipment or control equipment which reduces or eliminates all emission to the atmosphere. If a source wishes to obtain credit for emission reductions, a permit must be obtained for the reduction prior to the time the reduction is made. If a construction permit has been previously issued for the equipment or control equipment, all other conditions of the construction permit remain in effect.

*h.* Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter, or any other regulated air contaminant (as defined in rule 567—22.100(455B)).

*i.* Construction, modification or alteration to equipment which will not result in a net emissions increase (as defined in paragraph 22.5(1) “*f*”) of more than 1.0 lb/hr of any regulated air pollutant (as defined in rule 567—22.100(455B)). Emission reduction achieved through the installation of control equipment, for which a construction permit has not been obtained, does not establish a limit to potential emissions.

Hazardous air pollutants (as defined in rule 567—22.100(455B)) are not included in this exemption except for those listed in Table 1. Further, the net emissions rate INCREASE must not equal or exceed the values listed in Table 1.

Table 1

<u>Pollutant</u>	<u>Ton/year</u>
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Vinyl Chloride	1
Fluorides	3

This exemption is ONLY applicable to vertical discharges with the exhaust stack height 10 or more feet above the highest building within 50 feet. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with the information submission to the department as described above.

The department reserves the right to require proof that the expected emissions from the source which is being exempted from the air quality construction permit requirement, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department’s rules, the department may require

the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

*j.* Residential heaters, cookstoves, or fireplaces, which burn untreated wood, untreated seeds or pellets, or other untreated vegetative materials.

*k.* Asbestos demolition and renovation projects subject to 40 CFR 61.145 as amended through January 16, 1991.

*l.* The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

*m.* Storage tanks with a capacity of less than 19,812 gallons and an annual throughput of less than 200,000 gallons.

*n.* Stack or vents to prevent escape of sewer gases through plumbing traps. Systems which include any industrial waste are not exempt.

*o.* A nonproduction surface coating process that uses only hand-held aerosol spray cans.

*p.* Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

*q.* Cooling and ventilating equipment: Comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

*r.* An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft, provided that the owner or operator meets all of the conditions in this paragraph. For the purposes of this exemption, the manufacturer's nameplate rated capacity at full load shall be defined as the brake horsepower output at the shaft. The owner or operator of an engine that was manufactured, ordered, modified or reconstructed after March 18, 2009, may use this exemption only if the owner or operator, prior to installing, modifying or reconstructing the engine, submits to the department a completed registration, on forms provided by the department, certifying that the engine is in compliance with the following federal regulations:

(1) New source performance standards (NSPS) for stationary compression ignition internal combustion engines (40 CFR Part 60, Subpart IIII); or

(2) New source performance standards (NSPS) for stationary spark ignition internal combustion engines (40 CFR Part 60, Subpart JJJJ); and

(3) National emission standards for hazardous air pollutants (NESHAP) for reciprocating internal combustion engines (40 CFR Part 63, Subpart ZZZZ).

Use of this exemption does not relieve an owner or operator from any obligation to comply with NSPS or NESHAP requirements.

*s.* Equipment that is not related to the production of goods or services and used exclusively for academic purposes, located at educational institutions (as defined in Iowa Code section 455B.161). The equipment covered under this exemption is limited to: lab hoods, art class equipment, wood shop equipment in classrooms, wood fired pottery kilns, and fuel-burning units with a capacity of less than one million Btu per hour fuel capacity. This exemption does not apply to incinerators.

*t.* Any container, storage tank, or vessel that contains a fluid having a maximum true vapor pressure of less than 0.75 psia. "Maximum true vapor pressure" means the equilibrium partial pressure of the material considering:

- For material stored at ambient temperature, the maximum monthly average temperature as reported by the National Weather Service, or

- For material stored above or below the ambient temperature, the temperature equal to the highest calendar-month average of the material storage temperature.

*u.* Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sandblast cleaning, shot blasting, shot peening, or polishing ceramic artwork,

leather, metals (other than beryllium), plastics, concrete, rubber, paper stock, and wood or wood products, where such equipment is either used for nonproduction activities or exhausted inside a building.

v. Manually operated equipment, as defined in rule 567—22.100(455B), used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding, or turning.

w. Small unit exemption.

(1) “Small unit” means any emission unit and associated control (if applicable) that emits less than the following:

1. 40 pounds per year of lead and lead compounds expressed as lead;
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;
6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 2.5 tons per year of PM10; or
8. 5 tons per year of hazardous air pollutants (as defined in rule 567—22.100(455B)).

For the purposes of this exemption, “emission unit” means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified “small units.”

An emission unit that emits hazardous air pollutants (as defined in rule 567—22.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in rule 567—22.100(455B) shall not be eligible to use this exemption.

(2) Permit requested. If requested in writing by the owner or operator of a small unit, the director may issue a construction permit for the emission point associated with that emission unit.

(3) An owner or operator that utilizes the small unit exemption must maintain on site an “exemption justification document.” The exemption justification document must document conformance and compliance with the emission rate limits contained in the definition of “small unit” for the particular emission unit or group of similar emission units obtaining the exemption. Controls which may be part of the exemption justification document include, but are not limited to, the following: emission control devices, such as cyclones, filters, or baghouses; restricted hours of operation or fuel; and raw material or solvent substitution. The exemption justification document for an emission unit or group of similar emission units must be made available for review during normal business hours and for state or EPA on-site inspections, and shall be provided to the director or the director’s representative upon request. If an exemption justification document does not exist, the applicability of the small unit exemption is voided for that particular emission unit or group of similar emission units. The controls described in the exemption justification document establish a limit on the potential emissions. An exemption justification document shall include the following for each applicable emission unit or group of similar emission units:

1. A narrative description of how the emissions from the emission unit or group of similar emission units were determined and maintained at or below the annual small unit exemption levels.

2. If air pollution control equipment is used, a description of the air pollution control equipment used on the emission unit or group of similar emission units and a statement that the emission unit or group of similar emission units will not be operated without the pollution control equipment operating.

3. If air pollution control equipment is used, applicant shall maintain a copy of any report of manufacturer’s testing results of any emissions test, if available. The department may require a test if it believes that a test is necessary for the exemption claim.

4. A description of all production limits required for the emission unit or group of similar emission units to comply with the exemption levels.

5. Detailed calculations of emissions reflecting the use of any air pollution control devices or production or throughput limitations, or both, for applicable emission unit or group of similar emission units.

6. Records of actual operation that demonstrate that the annual emissions from the emission unit or group of similar emission units were maintained below the exemption levels.

7. Facilities designated as major sources with respect to rules 567—22.4(455B) and 567—22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with the exemption justification document for five years. The record retention requirements supersede any retention conditions of an individual exemption.

8. A certification from the responsible official that the emission unit or group of similar emission units have complied with the exemption levels specified in 22.1(2)“w”(1).

(4) Requirement to apply for a construction permit. An owner or operator of a small unit will be required to obtain a construction permit or take the unit out of service if the emission unit exceeds the small unit emission levels.

1. If, during an inspection or other investigation of a facility, the department believes that the emission unit exceeds the emission levels that define a “small unit,” then the department will submit calculations and detailed information in a letter to the owner or operator. The owner or operator shall have 60 days to respond with detailed calculations and information to substantiate a claim that the small unit does not exceed the emission levels that define a small unit.

2. If the owner or operator is unable to substantiate a claim to the satisfaction of the department, then the owner or operator that has been using the small unit exemption must cease operation of that small unit or apply for a construction permit for that unit within 90 days after receiving a letter of notice from the department. The emission unit and control equipment may continue operation during this period and the associated initial application review period.

3. If the notification of nonqualification as a small unit is made by the department following the process described above, the owner or operator will be deemed to have constructed an emission unit without the required permit and may be subject to applicable penalties.

(5) Required notice for construction or modification of a “substantial small unit.” The owner or operator shall notify the department in writing at least 10 days prior to commencing construction of any new or modified “substantial small unit” as defined in 22.1(2)“w”(6). The owner or operator shall notify the department within 30 days after determining an existing small unit meets the criteria of the “substantial small unit” as defined in 22.1(2)“w”(6). Notification shall include the name of the business, the location where the unit will be installed, and information describing the unit and quantifying its emissions. The owner or operator shall notify the department within 90 days of the end of the calendar year for which the aggregate emissions from substantial small units at the facility have reached any of the cumulative notice thresholds listed below.

(6) For the purposes of this paragraph, “substantial small unit” means a small unit which emits more than the following amounts, as documented in the exemption justification document:

1. 30 pounds per year of lead and lead compounds expressed as lead;
2. 3.75 tons per year of sulfur dioxide;
3. 3.75 tons per year of nitrogen oxides;
4. 3.75 tons per year of volatile organic compounds;
5. 3.75 tons per year of carbon monoxide;
6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 1.875 tons per year of PM10; or
8. 3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.

An emission unit is a “substantial small unit” only for those substances for which annual emissions exceed the above-indicated amounts.

(7) Required notice that a cumulative notice threshold has been reached. Once a “cumulative notice threshold,” as defined in 22.1(2)“w”(8), has been reached for any of the listed pollutants, the owner or

operator at the facility must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been reached. The owner or operator shall have 90 days from the date it determines that the cumulative notice threshold has been reached in which to apply for construction permit(s). The owner or operator shall submit a letter to the department, within 5 working days of making this determination, establishing the date the owner or operator determined that the cumulative notice threshold had been reached.

(8) "Cumulative notice threshold" means the total combined emissions from all substantial small units using the small unit exemption which emit at the facility the following amounts, as documented in the exemption justification document:

1. 0.6 tons per year of lead and lead compounds expressed as lead;
2. 40 tons per year of sulfur dioxide;
3. 40 tons per year of nitrogen oxides;
4. 40 tons per year of volatile organic compounds;
5. 100 tons per year of carbon monoxide;
6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 15 tons per year of PM<sub>10</sub>; or
8. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.

x. The following equipment, processes, and activities:

(1) Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

(2) Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

(3) Janitorial services and consumer use of janitorial products.

(4) Internal combustion engines used for lawn care, landscaping, and groundskeeping purposes.

(5) Laundry activities located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or to dry clothing, bedding, and other fabric items used on site. This exemption does not include laundry activities that use dry cleaning equipment or steam boilers.

(6) Bathroom vent emissions, including toilet vent emissions.

(7) Blacksmith forges.

(8) Plant maintenance and upkeep activities and repair or maintenance shop activities (e.g., groundskeeping, general repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots), provided that these activities are not conducted as part of manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit modification. Cleaning and painting activities qualify if they are not subject to control requirements for volatile organic compounds or hazardous air pollutants as defined in rule 567—22.100(455B).

(9) Air compressors and vacuum, pumps, including hand tools.

(10) Batteries and battery charging stations, except at battery manufacturing plants.

(11) Equipment used to store, mix, pump, handle or package soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, and aqueous salt or caustic solutions, provided that appropriate lids and covers are utilized and that no organic solvent has been mixed with such materials.

(12) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

(13) Vents from continuous emissions monitors and other analyzers.

(14) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

(15) Equipment used by surface coating operations that apply the coating by brush, roller, or dipping, except equipment that emits volatile organic compounds or hazardous air pollutants as defined in rule 567—22.100(455B).

(16) Hydraulic and hydrostatic testing equipment.

(17) Environmental chambers not using gases which are hazardous air pollutants as defined in rule 567—22.100(455B).

(18) Shock chambers, humidity chambers, and solar simulators.

(19) Fugitive dust emissions related to movement of passenger vehicles on unpaved road surfaces, provided that the emissions are not counted for applicability purposes and that any fugitive dust control plan or its equivalent is submitted as required by the department.

(20) Process water filtration systems and demineralizers, demineralized water tanks, and demineralizer vents.

(21) Boiler water treatment operations, not including cooling towers or lime silos.

(22) Oxygen scavenging (deaeration) of water.

(23) Fire suppression systems.

(24) Emergency road flares.

(25) Steam vents, safety relief valves, and steam leaks.

(26) Steam sterilizers.

(27) Application of hot melt adhesives from closed-pot systems using polyolefin compounds, polyamides, acrylics, ethylene vinyl acetate and urethane material when stored and applied at the manufacturer's recommended temperatures. Equipment used to apply hot melt adhesives shall have a safety device that automatically shuts down the equipment if the hot melt temperature exceeds the manufacturer's recommended application temperature.

y. Direct-fired equipment burning natural gas, propane, or liquefied propane with a capacity of less than 10 million Btu per hour input, and direct-fired equipment burning fuel oil with a capacity of less than 1 million Btu per hour input, with emissions that are attributable only to the products of combustion. Emissions other than those attributable to the products of combustion shall be accounted for in an enforceable permit condition or shall otherwise be exempt under this subrule.

z. Closed refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.

aa. Pretreatment application processes that use aqueous-based chemistries designed to clean a substrate, provided that the chemical concentrate contains no more than 5 percent organic solvents by weight. This exemption includes pretreatment processes that use aqueous-based cleaners, cleaner-phosphatizers, and phosphate conversion coating chemistries.

bb. Indoor-vented powder coating operations with filters or powder recovery systems.

cc. Electric curing ovens or curing ovens that run on natural gas or propane with a maximum heat input of less than 10 million Btu per hour and that are used for powder coating operations, provided that the total cured powder usage is less than 75 tons of powder per year at the stationary source. Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that cured powder usage is less than the exemption threshold.

dd. Each production painting, adhesive or coating unit using an application method other than a spray system and associated cleaning operations that use 1,000 gallons or less of coating and solvents annually, unless the production painting, adhesive or coating unit and associated cleaning operations are subject to work practice, process limits, emissions limits, stack testing, record-keeping or reporting requirements under 567—subrule 23.1(2), 567—subrule 23.1(3), or 567—subrule 23.1(4). Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that paint, adhesive, or solvent usage is at or below the exemption threshold.

ee. Any production surface coating activity that uses only nonrefillable hand-held aerosol cans, where the total volatile organic compound emissions from all these activities at a stationary source do not exceed 5.0 tons per year.

ff. Production welding.

(1) Welding using a consumable electrode, provided that the consumable electrodes used fall within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records

that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years.

For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of  $1380x - 19,200$  or 200,000 for GMAW, or

Y = the greater of  $187x - 2,600$  or 28,000 for SMAW or FCAW

Where x is the minimum distance to the property line in feet, and Y is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

(2) Resistance welding, submerged arc welding, or arc welding that does not use a consumable electrode, provided that the base metals do not include stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium and provided that the base metals are uncoated, excluding manufacturing process lubricants.

*gg.* Electric hand soldering, wave soldering, and electric solder paste reflow ovens.

*hh.* Pressurized piping and storage systems for natural gas, propane, liquefied petroleum gas (LPG), and refrigerants, where emissions could only result from an upset condition.

*ii.* Emissions from the storage and mixing of paints and solvents associated with the painting operations, provided that the emissions from the storage and mixing are accounted for in an enforceable permit condition or are otherwise exempt.

*jj.* Product labeling using laser and ink-jet printers with target distances less than or equal to six inches and an annual material throughput of less than 1,000 gallons per year as calculated on a stationary sourcewide basis.

*kk.* Equipment related to research and development activities at a stationary source, provided that:

(1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:

40 pounds per year of lead and lead compounds expressed as lead;

5 tons per year of sulfur dioxide;

5 tons per year of nitrogen dioxides;

5 tons per year of volatile organic compounds;

5 tons per year of carbon monoxide;

5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp) as amended through November 29, 2004);

2.5 tons per year of PM10; and

5 tons per year of hazardous pollutants (as defined in rule 567—22.100(455B)); and

(2) The owner or operator maintains records of actual operations demonstrating that the annual emissions from all research and development activities conducted under this exemption are below the levels listed in subparagraph (1) above. These records shall:

1. Include a list of equipment that is included under the exemption;

2. Include records of actual operation and detailed calculations of actual annual emissions, reflecting the use of any control equipment and demonstrating that the emissions are below the levels specified in the exemption;

3. Include, if air pollution equipment is used in the calculation of emissions, a copy of any report of manufacturer's testing, if available. The department may require a test if it believes that a test is necessary for the exemption claim; and

4. Be maintained on site for a minimum of two years, be made available for review during normal business hours and for state and EPA on-site inspections, and be provided to the director or the director's designee upon request. Facilities designated as major sources pursuant to rules 567—22.4(455B) and 567—22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with this exemption for five years.

(3) An owner or operator using this exemption obtains a construction permit or ceases operation of equipment if operation of the equipment would cause the emission levels listed in this exemption to be exceeded.

For the purposes of this exemption, “research and development activities” shall be defined as activities:

1. That are operated under the close supervision of technically trained personnel; and
2. That are conducted for the primary purpose of theoretical research or research and development into new or improved processes and products; and
3. That do not manufacture more than de minimis amounts of commercial products; and
4. That do not contribute to the manufacture of commercial products by collocated sources in more than a de minimis manner.

*ll.* A regional collection center (RCC), as defined in 567—Chapter 211, involved in the processing of permitted hazardous materials from households and conditionally exempt small quantity generators (CESQG), not to exceed 1,200,000 pounds of VOC containing material in a 12-month rolling period. Latex paint drying may not exceed 120,000 pounds per year on a 12-month rolling total. Other nonprocessing emission units (e.g., standby generators and waste oil heaters) shall not be eligible to use this exemption.

*mm.* Cold solvent cleaning machines that are not in-line cleaning machines, where the maximum vapor pressure of the solvents used shall not exceed 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). The machine must be equipped with a tightly fitted cover or lid that shall be closed at all times except during parts entry and removal. This exemption cannot be used for cold solvent cleaning machines that use solvent containing methylene chloride (CAS # 75-09-2), perchloroethylene (CAS # 127-18-4), trichloroethylene (CAS # 79-01-6), 1,1,1-trichloroethane (CAS # 71-55-6), carbon tetrachloride (CAS # 56-23-5) or chloroform (CAS # 67-66-3), or any combination of these halogenated HAP solvents in a total concentration greater than 5 percent by weight.

*nn.* Emissions from mobile over-the-road trucks, and mobile agricultural and construction internal combustion engines that are operated only for repair or maintenance purposes at equipment repair shops or equipment dealerships, and only when the repair shops or equipment dealerships are not major sources as defined in rule 567—22.100(455B).

*oo.* A non-road diesel fueled engine, as defined in 40 CFR 1068.30 and as amended through October 8, 2008, with a brake horsepower rating of less than 1,100 at full load measured at the shaft, used to conduct periodic testing and maintenance on natural gas pipelines. For the purposes of this exemption, the manufacturer’s nameplate rating shall be defined as the brake horsepower output at the shaft at full load.

- (1) To qualify for the exemption, the engine must:
  1. Be used for periodic testing and maintenance on natural gas pipelines outside the compressor station, which shall not exceed 330 hours in any 12-month consecutive period at a single location; or
  2. Be used for periodic testing and maintenance on natural gas pipelines within the compressor station, which shall not exceed 330 hours in any 12-month consecutive period.

(2) The owner or operator shall maintain a monthly record of the number of hours the engine operated and a record of the rolling 12-month total of the number of hours the engine operated for each location outside the compressor station and within the compressor station. These records shall be maintained for two years. Records shall be made available to the department upon request.

(3) This exemption shall not apply to the replacement or substitution of engines for backup power generation at a pipeline compressor station.

**22.1(3) Construction permits.** The owner or operator of a new or modified stationary source shall apply for a construction permit unless a conditional permit is required by Iowa Code chapter 455B or subrule 22.1(4) or requested by the applicant in lieu of a construction permit. Two copies of a construction permit application for a new or modified stationary source shall be presented or mailed to Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324. Alternatively, the owner or operator may apply for a construction permit for a new or modified stationary source through the electronic submittal format specified by the department. The owner or operator of any

new or modified industrial anaerobic lagoon or a new or modified anaerobic lagoon for an animal feeding operation other than a small operation as defined in rule 567—65.1(455B) shall apply for a construction permit. Two copies of a construction permit application for an anaerobic lagoon shall be presented or mailed to Department of Natural Resources, Water Quality Bureau, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319.

*a. New equipment design in concept review.* If requested in writing, the director will review the design concepts of proposed new equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the proposed equipment. If the review is requested, the requester shall supply the following information:

- (1) Preliminary plans and specifications of proposed equipment and related control equipment.
- (2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.
- (3) The estimated emission rates of any air contaminants which are to be considered.
- (4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.
- (5) An estimate of when construction would begin and when construction would be completed.

*b. Construction permit applications.* Each application for a construction permit shall be submitted to the department on the form "Air Construction Permit Application." Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time employee of any corporation while doing work for that corporation. The application for a permit to construct shall include the following information:

- (1) A description of the equipment or control equipment covered by the application;
- (2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;
- (3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;
- (4) The physical and chemical characteristics of the air contaminants;
- (5) The proposed dates and description of any tests to be made by the owner or operator of the completed installation to verify compliance with applicable emission limits or standards of performance;
- (6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance;
- (7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 567—22.4(455B) and 567—22.5(455B); and
- (8) Application for a case-by-case MACT determination. If the source meets the definition of construction or reconstruction of a major source of hazardous air pollutants, as defined in paragraph 22.1(1)"b," then the owner or operator shall submit an application for a case-by-case MACT determination, as required in subparagraph 23.1(4)"b"(1), with the construction permit application. In addition to this paragraph, an application for a case-by-case MACT determination shall include the following information:

1. The hazardous air pollutants (HAP) emitted by the constructed or reconstructed major source, and the estimated emission rate for each HAP, to the extent this information is needed by the permitting authority to determine MACT;

2. Any federally enforceable emission limitations applicable to the constructed or reconstructed major source;

3. The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source, to the extent this information is needed by the permitting authority to determine MACT;

4. The controlled emissions for the constructed or reconstructed major source in tons/yr at expected and maximum utilization of capacity to the extent this information is needed by the permitting authority to determine MACT;

5. A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in 40 CFR Part 63.43(d) as amended through December 27, 1996;

6. The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer's name, address, telephone number, and relevant specifications and drawings, if requested by the permitting authority);

7. Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology;

8. An identification of any listed source category or categories in which the major source is included.

(9) A signed statement that ensures the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects which are intended to be located at a site only for the duration of the specific, identified construction project.

*c. Application requirements for anaerobic lagoons.* The application for a permit to construct an anaerobic lagoon shall include the following information:

(1) The source of the water being discharged to the lagoon;

(2) A plot plan, including distances to nearby residences or occupied buildings, local land use zoning maps of the vicinity, and a general description of the topography in the vicinity of the lagoon;

(3) In the case of an animal feeding operation, the information required in rule 567—65.15(455B);

(4) In the case of an industrial source, a chemical description of the waste being discharged to the lagoon;

(5) A report of sulfate analyses conducted on the water to be used for any purpose in a livestock operation proposing to use an anaerobic lagoon. The report shall be prepared by using standard methods as defined in 567—60.2(455B);

(6) A description of available water supplies to prove that adequate water is available for dilution;

(7) In the case of an animal feeding operation, a waste management plan describing the method of waste collection and disposal and the land to be used for disposal. Evidence that the waste disposal equipment is of sufficient size to dispose of the wastes within a 20-day period per year shall also be provided;

(8) Any additional information needed by the department to determine compliance with these rules.

**22.1(4) Conditional permits.** The owner or operator of any new or modified major stationary source may elect to apply for a conditional permit in lieu of a construction permit. Electric power generating facilities with a total capacity of 100 megawatts or more are required to apply for a conditional permit.

*a. Applicability determination.* If requested in writing, the director will make a preliminary determination of nonattainment applicability pursuant to rules 567—22.4(455B) and 567—22.5(455B), based upon the information supplied by the requester.

*b. Conditional permit applications.* Each application for a conditional permit shall be submitted to the department in writing and shall consist of the following items:

(1) The results of an air quality impact analysis which characterizes preconstruction air quality and the air quality impacts of facility construction and operation. A quality assurance plan for the preconstruction air monitoring where required in accordance with 40 Code of Federal Regulations Part 58 as amended through July 18, 1997, shall also be submitted.

(2) A description of equipment and pollution control equipment design parameters.

(3) Preliminary plans and specifications showing major equipment items and location.

(4) The fuel specifications of any anticipated energy source, and assurances that any proposed energy source will be utilized.

(5) Certification that the preliminary plans and specifications for the equipment and related control equipment have been prepared by or under the direct supervision of a professional engineer registered in the state of Iowa in conformance with Iowa Code chapter 542B.

(6) An estimate of when construction would begin and when construction would be completed.

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 567—22.4(455B) and 567—22.5(455B).

This rule is intended to implement Iowa Code section 455B.133.

[ARC 7565B, IAB 2/11/09, effective 3/18/09; ARC 8215B, IAB 10/7/09, effective 11/11/09]

#### **567—22.2(455B) Processing permit applications.**

**22.2(1) *Incomplete applications.*** The department will notify the applicant whether the application is complete or incomplete. If the application is found by the department to be incomplete upon receipt, the applicant will be notified within 30 days of that fact and of the specific deficiencies. Sixty days following such notification, the application may be denied for lack of information. When this schedule would cause undue hardship to an applicant, or the applicant has a compelling need to proceed promptly with the proposed installation, modification or location, a request for priority consideration and the justification therefor shall be submitted to the department.

**22.2(2) *Public notice and participation.*** A notice of intent to issue a conditional or construction permit to a major stationary source shall be published by the department in a newspaper having general circulation in the area affected by the emissions of the proposed source. The notice and supporting documentation shall be made available for public inspection upon request from the department's central office. Publication of the notice shall be made at least 30 days prior to issuing a permit and shall include the department's evaluation of ambient air impacts. The public may submit written comments or request a public hearing. If the response indicates significant interest, a public hearing may be held after due notice.

**22.2(3) *Final notice.*** The department shall notify the applicant in writing of the issuance or denial of a construction or conditional permit as soon as practicable and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.

This rule is intended to implement Iowa Code section 455B.133.

#### **567—22.3(455B) Issuing permits.**

**22.3(1) *Stationary sources other than anaerobic lagoons.*** In no case shall a construction permit or conditional permit which results in an increase in emissions be issued to any facility which is in violation of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan. If the facility is in compliance with a schedule for correcting the violation and that schedule is contained in an order or permit condition, the department may consider issuance of a construction permit or conditional permit. A construction or conditional permit shall be issued when the director concludes that the preceding requirement has been met and:

a. That the required plans and specifications represent equipment which reasonably can be expected to comply with all applicable emission standards, and

b. That the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28, and

c. That the applicant has not relied on emission limits based on stack height that exceeds good engineering practice or any other dispersion techniques as defined in 567—subrule 23.1(6), and

d. That the applicant has met all other applicable requirements.

**22.3(2) *Anaerobic lagoons.*** A construction permit for an industrial anaerobic lagoon shall be issued when the director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with the criteria in 567—subrule 23.5(2). A construction permit for an animal feeding operation using an anaerobic lagoon shall be issued when the director concludes that the application has met the requirements of rule 567—65.15(455B).

**22.3(3) *Conditions of approval.*** A permit may be issued subject to conditions which shall be specified in writing. Such conditions may include but are not limited to emission limits, operating

conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting.

*a.* Each permit shall specify the date on which it becomes void if work on the installation for which it was issued has not been initiated.

*b.* Each permit shall list the requirements for notifying the department of the dates of intended startup, start of construction and actual equipment startup. All notifications shall be in writing and include the following information:

- (1) The date or dates required by 22.3(3) “*b*” for which the notice is being submitted.
- (2) Facility name.
- (3) Facility address.
- (4) DNR facility number.
- (5) DNR air construction permit number.
- (6) The name or the number of the emission unit or units in the notification.
- (7) The emission point number or numbers in the notification.
- (8) The name and signature of a company official.
- (9) The date the notification was signed.

*c.* Each permit shall specify that no review has been undertaken on the various engineering aspects of the equipment other than the potential of the equipment for reducing air contaminant emissions.

*d.* A conditional permit shall require the submittal of final plans and specifications for the equipment or control equipment designed to meet the specified emission limits prior to installation of the equipment or control equipment.

*e.* If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained.

*f.* A permit is not transferable from one location to another or from one piece of equipment to another unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least 14 days prior to the transfer of the portable equipment to the new location. However, if the owner or operator is relocating the portable equipment to an area currently classified as nonattainment for ambient air quality standards or to an area under a maintenance plan for ambient air quality standards, the owner or operator shall notify the department at least 30 days prior to transferring the portable equipment to the new location. A list of nonattainment and maintenance areas may be obtained from the department, upon request, or on the department’s Internet Web site. The owner or operator will be notified at least 10 days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case a supplemental permit shall be obtained prior to the initiation of construction, installation, or alteration of such additional control equipment.

*g.* The issuance of a permit or conditional permit (approval to construct) shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirement under local, state or federal law.

**22.3(4) Denial of a permit.**

*a.* When an application for a construction or conditional permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

*b.* The department may deny an application based upon the applicant’s failure to provide a signed statement of the applicant’s legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

**22.3(5) Modification of a permit.** The director may, after public notice of such decision, modify a condition of approval of an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard, or to mitigate excessive deposition of mercury.

**22.3(6) Limits on hazardous air pollutants.** The department may limit a source's hazardous air pollutant potential to emit, as defined at rule 567—22.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit.

**22.3(7) Revocation of a permit.** The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

**22.3(8) Ownership change of permitted equipment.** The new owner shall notify the department in writing no later than 30 days after the change in ownership of equipment covered by a construction permit pursuant to rule 567—22.1(455B). The notification to the department shall be mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, and shall include the following information:

- a. The date of ownership change;
- b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after ownership change; and
- c. The construction permit number of the equipment changing ownership.

This rule is intended to implement Iowa Code section 455B.133.  
[ARC 8215B, IAB 10/7/09, effective 11/11/09]

**567—22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD).** As applicable, the owner or operator of a stationary source shall comply with the rules for prevention of significant deterioration (PSD) as set forth in 567—Chapter 33.

**567—22.5(455B) Special requirements for nonattainment areas.**

**22.5(1) Definitions.**

- a. "Major stationary source" means any of the following:
  - (1) Any stationary source of air contaminants which emits, or has the potential to emit, 100 tons per year or more of any regulated air contaminant;
  - (2) Any physical change that would occur at a stationary source not qualifying under subparagraph (1) as a major stationary source, if the change would constitute a major stationary source by itself;
  - (3) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more in areas classified as "serious," 25 tpy or more in areas classified as "severe" and 10 tpy or more in areas classified as "extreme"; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the Clean Air Act, that requirements under Section 182(f) of the Clean Air Act do not apply;
  - (4) For ozone transport regions established pursuant to Section 184 of the Clean Air Act, sources with potential to emit 50 tpy or more of volatile organic compounds;
  - (5) For carbon monoxide nonattainment areas that both are classified as "serious" and in which there are stationary sources which contribute significantly to carbon monoxide levels, sources with the potential to emit 50 tpy or more of carbon monoxide; or
  - (6) For particulate matter (PM-10), nonattainment areas classified as "serious," sources with the potential to emit 70 tpy or more of PM-10.

A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

- b. "Major modification" means any physical change in or change in the method of operation of a major stationary source, that would result in a significant net emission increase of any regulated air contaminant.

(1) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change, or change in the method of operation, shall not include:

Routine maintenance, repair, and replacement;

Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Co-ordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act;

Any change in ownership at a stationary source; or

Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976, unless such change would be prohibited by any enforceable permit condition.

An increase in the hours of operation or in the production rate, unless such change is prohibited under any enforceable permit condition.

c. *“Potential to emit”* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

The provisions of this paragraph do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

Coal cleaning plants (with thermal dryers);

Kraft pulp mills;

Portland cement plants;

Primary zinc smelters;

Iron and steel mills;

Primary aluminum ore reduction plants;

Primary copper smelters;

Municipal incinerators capable of charging more than 250 tons of refuse per day;

Hydrofluoric, sulfuric, or nitric acid plants;

Petroleum refineries;

Lime plants;

Phosphate rock processing plants;

Coke oven batteries;

Sulfur recovery plants;

Carbon black plants (furnace process);

Primary lead smelters;

Fuel conversion plants;

Sintering plants;

Secondary metal production plants;

Chemical process plants;

Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;

Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

Taconite ore processing plants;

Glass fiber processing plants;

Charcoal production plants;

Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act, 42 U.S.C. §§7401 et seq.

*d. "Lowest achievable emission rate"* means, for any source, that rate of emissions based on the following, whichever is more stringent:

(1) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) The most stringent emission limitation which is achieved in practice by such class or category of source.

This term, applied to a modification, means the lowest achievable emission rate for the new or modified emission units within the stationary source.

This term may include a design, equipment, material, work practice or operational standard or combination thereof.

In no event shall the application of this term permit a proposed new or modified stationary source to emit any regulated air contaminant in excess of the amount allowable under applicable new source standards of performance.

*e. "Secondary emissions"* means emissions which occur or could occur as a result of the construction or operation of a major stationary source or major modification, but do not necessarily come from the major stationary source or major modification itself. For purposes of this rule, secondary emissions must be specific and well-defined, must be quantifiable, and must affect the same general nonattainment area as the stationary source or modification which causes the secondary emission. Secondary emissions may include, but are not limited to:

Emissions from barges or trains coming to or from the new or modified stationary source; and

Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

*f. (1) "Net emissions increase"* means the amount by which the sum of the following exceeds zero:

Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if the director has not relied on it in issuing a permit for the source under this rule which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

It is an enforceable permit condition at and after the time that actual construction on the particular change begins;

The director has not relied on it in issuing any other permit;

Such emission decreases have not been used for showing reasonable further progress; and

It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any

replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

g. “*Emissions unit or installation*” means an identifiable piece of process equipment.

h. “*Reconstruction*” will be presumed to have taken place where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of new source performance standards (see 567—subrule 23.1(2)). A reconstructed stationary source will be treated as a new stationary source for purposes of this rule. In determining lowest achievable emission rate for a reconstructed stationary source, the definitions in the new source performance standards shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

i. “*Fixed capital cost*” means the capital needed to provide all the depreciable components.

j. “*Fugitive emissions*” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

k. “*Significant*” means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

PM<sub>10</sub>: 15 tpy

l. “*Allowable emissions*” means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to an enforceable permit condition which restricts the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) Applicable standards as set forth in 567—Chapter 23;

(2) Any applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

m. “*Enforceable permit condition*” for the purpose of this rule means any of the following limitations and conditions: requirements developed pursuant to new source performance standards, prevention of significant deterioration standards, emission standards for hazardous air pollutants, requirements within the state implementation plan, and any permit requirements established pursuant to this rule, or under conditional, construction or Title V operating permit rules.

n. (1) “*Actual emissions*” means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with subparagraphs (2) to (4) below.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.

(3) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

o. “*Construction*” means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

*p.* “Commence” as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

*q.* “Necessary preconstruction approvals or permits” means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the state implementation plan.

*r.* “Begin actual construction” means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

*s.* “Building, structure, or facility” means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same “Major Group” (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0 respectively).

**22.5(2) Applicability.** Areas designated as attainment, nonattainment, or unclassified are as listed in 40 CFR §81.316 as amended through March 19, 1998.

*a.* The requirements contained in rule 567—22.5(455B) shall apply to any new major stationary source or major modification that, as of the date the permit is issued, is major for any pollutant for which the area in which the source would construct is designated as nonattainment.

*b.* The requirements contained in rule 567—22.5(455B) shall apply to each nonattainment pollutant that the source will emit or has the potential to emit in major amounts. In the case of a modification, the requirements shall apply to the significant net emissions increase of each nonattainment pollutant for which the source is major.

*c.* Particulate matter. If a major source or major modification is proposed to be constructed in an area designated nonattainment for particulate matter, then emission offsets must be achieved prior to startup.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for particulate matter, but the modeled (EPA-approved guideline model) worst case ground level particulate concentrations due to the major source or major modification in a designated particulate matter nonattainment area is equal to or greater than five micrograms per cubic meter (24-hour concentration), or one microgram per cubic meter (annual arithmetic mean), then emission offsets must be achieved prior to startup.

*d.* Sulfur dioxide. If a major source or major modification is proposed to be constructed in an area designated nonattainment for sulfur dioxide, then emission offsets must be achieved prior to startup.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for sulfur dioxide, but the modeled (EPA-approved guideline model) worst case ground level sulfur dioxide concentrations due to the major source or major modification in a designated sulfur dioxide nonattainment area is equal to or greater than 25 micrograms per cubic meter (three-hour concentration), five microgram per cubic meter (24-hour concentration), or one microgram per cubic meter (annual arithmetic mean), then emission offsets must be achieved prior to startup.

*e.* At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such

as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

**22.5(3) Emission offsets.**

a. Emission offsets shall be obtained from the same source or other sources in the same nonattainment area, except that the required emissions reductions may be obtained from a source in another nonattainment area if:

(1) The other area, which must be nonattainment for the same pollutant, has an equal or higher nonattainment classification than the nonattainment area in which the source is located, and

(2) Emissions from such other nonattainment areas contribute to a violation of a National Ambient Air Quality Standard in the nonattainment area in which the proposed new or modified source would construct.

b. Emission offsets for any regulated air contaminant in the designated nonattainment area shall provide for reasonable further progress toward attainment of the applicable National Ambient Air Quality Standards and provide a positive net air quality benefit in the nonattainment area.

c. The increased emissions of any applicable nonattainment air pollutant allowed from the proposed new or modified source shall be offset by an equal or greater reduction, as applicable, in the total tonnage and impact of actual emissions, as stated in subrule 22.5(4), of such air pollutant from the same or other sources. For purposes of subrule 22.5(3), actual emissions shall be determined in accordance with subparagraphs 22.5(1)“n” (1) and (2).

d. All emissions reductions claimed as offset credit shall be federally enforceable prior to, or upon, the issuance of the permit required under this rule and shall be in effect by the time operation of the permitted new source or modification begins.

e. Proposals for emission offsets shall be submitted with the application for a permit for the major source or major modification. All approved emission offsets shall be made a part of the permit and shall be deemed a condition of expected performance of the major source or major modification.

**22.5(4) Acceptable emission offsets.**

a. *Equivalence.* The effect of the reduction of emissions must be measured or predicted to occur in the same area as the emissions of the major source or major modification. It can be assumed that, if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the major source or major modification and if the air contaminant disperses from substantially the same stack height, the emissions will be equivalent and may be offset. Otherwise, an adequate dispersion model must be used to predict the effect. If the reduction accomplished at the source is as specified in subrule 22.5(3) and if the effect of the reduction is measured or predicted to occur in the same area as the emissions of the major source or major modification, the effect of the reduction at the measured or predicted point does not have to exactly offset the effect of the major source or major modification.

b. *Offset ratio.* Rescinded IAB 2/14/96, effective 3/20/96.

c. *Control of uncontrolled existing sources.* If control equipment is proposed for a presently uncontrolled existing source for which controls are not required by rules, then credit may be allowed for any reduction below the source's potential to emit. The reduction shall be proposed at the time of permit application. Any such reductions which occurred prior to January 1, 1978, shall not be accepted for offsets.

d. *Greater control of existing sources.* If more effective control equipment for a source already in compliance with the SIP allowable level is proposed to offset the emissions of the major source or major modification in or affecting a nonattainment area, then the difference in the emissions between the actual level on January 1, 1978, and the new level can be credited for offsets. (This does not allow credit to be granted for any reductions in actual emissions required by the SIP subsequent to January 1, 1978.)

For example, if a cyclone that is being used to meet a SIP emission standard is emitting  $x_1$  lbs/hr and if it is to be replaced by a bag filter emitting  $x_2$  lbs/hr, an emission offset equal to  $(x_1 - x_2)$  lbs/hr may be allowed toward the total required reduction.

e. *Fugitive dust offsets.* Credits may be allowed for permanent control of fugitive dust. EPA's "Technical Guidance for Control of Industrial Process Fugitive Particulate Emissions" (EPA-450/3-77-010, March 1977) shall be used as a guide to estimate reduction from fugitive dust

controls on traditional sources. Traditional source means a source category for which a particulate emission standard has been established in 567—subrule 23.1(2), 567—paragraph 23.3(2)“a” or “b” or 567—23.4(455B). The emission factors shall be modified to reflect realistic reductions. This would correspond to a consideration of particles in the less than 3 micron size range and the effectiveness of the fugitive dust control method.

*f. Fuel switching credits.* Credit may be allowed for fuel switching provided there is a demonstration by the applicant that supplies of the cleaner fuel will be available to the applicant for a minimum of five years. The demonstration must include, as a minimum, a written contract with the fuel supplier that the fuel will not be interrupted. The permit for the existing source shall be amended to provide for maintaining those offsets resulting from the fuel switching before offset credit will be granted.

*g. Reduction credits.* Credit for an emissions reduction can be claimed to the extent that the administrator and the department have not: (1) relied on it in issuing any permit under regulations approved pursuant to 40 CFR Parts 51 (amended through April 9, 1998), 55 (amended through August 4, 1997), 63 (amended through December 28, 1998), 70 (amended through November 26, 1997), or 71 (amended through October 22, 1997); (2) relied on it in demonstrating attainment or reasonable further progress; or (3) the reduction is not otherwise required under the Clean Air Act. Incidental emissions reductions which are not otherwise required under the Act shall be creditable as emissions reductions for such purposes if such emissions reductions meet the requirements of subrule 22.5(3).

*h. Derating of equipment.* If the emissions from a major source or major modification are proposed to be offset by reducing the operating capacity of another existing source, then credit may be allowed for this provided proper documentation (such as stack test results) showing the effect on emissions due to derating is submitted. The permit for the existing source must be amended to limit the operating capacity before offsets will be allowed.

*i. Shutdown or curtailment.*

(1) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are surplus, permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory or attainment demonstration. However, in no event may credit be given for shutdowns which occurred prior to January 1, 1978. For purposes of this paragraph, the director may consider a prior shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown or curtailed sources. The work force shall be notified of the proposed curtailment or shutdown by the source owner or operator.

(2) The reductions described in subparagraph 22.5(4)“i”(1) may be credited in the absence of any approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions in 22.5(4)“i”(1) are observed.

*j. External emission offsets.* If the emissions from the major source or major modification are proposed to be offset by reduction of emissions from a source not owned or operated by the owner or operator of the major source or major modification, then credit may be allowed for such reductions provided the external source’s permit is amended to require the reduced emissions or a consent order is entered into by the department and the existing source. Consent orders for external offsets must be incorporated into the SIP and be approved by EPA before offset credit may be granted.

**22.5(5) Banking of offsets in nonattainment areas.** If the offsets in a given situation are more than required by 22.5(3) the amount of offsets that is greater than required may be banked for the exclusive use or control of the person achieving the reduction, subject to the limitations of this subrule. If the person achieving the reduction is not an individual, an authorized representative of the person must release control of the banked emissions in writing before another person, other than the commission, can utilize

the banked emissions. The banking of offsets creates no property right in those offsets. The commission may proportionally reduce or cancel banked offsets if it is determined that reduction or cancellation is necessary to demonstrate reasonable further progress or to attain the ambient air quality standards. Prior to reduction or cancellation, the commission shall notify the person who banked the offsets.

**22.5(6) Control technology review.**

*a.* Lowest achievable emission rate. A new or modified major source in a nonattainment area shall comply with the lowest achievable emission rate.

*b.* For phased construction projects, the determination of the lowest achievable emissions rate shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to the commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of the LAER for the source.

*c.* State implementation plan, new source performance standards, and emission standards for hazardous air pollutants. A major stationary source or major modification shall meet each applicable emissions limitation under the state implementation plan and each applicable emissions standard of performance under 40 CFR Parts 60 (amended through November 24, 1998), 61 (amended through October 14, 1997), and 63 (amended through December 28, 1998).

**22.5(7) Compliance of existing sources.** If a new major source or major modification is subject to rule 567—22.5(455B), then all major sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control by the applicant) in Iowa shall be either in compliance with applicable emission standards or under a compliance schedule approved by the commission.

**22.5(8) Alternate site analysis.** The permit application shall contain a submittal of an alternative site analysis. Such submittal shall include analysis of alternative sites, sizes, production processes and environmental control techniques for the proposed source. The analysis must demonstrate that benefits of the proposed source significantly outweigh the environmental and social costs that would result from its location, construction or modification. Such analysis shall be completed prior to permit issuance.

**22.5(9) Additional conditions for permit approval.**

*a.* For the air pollution control requirements applicable to subrule 22.5(6), the permit shall require the source to monitor, keep records, and provide reports necessary to determine compliance with and deviations from applicable requirements.

*b.* The state shall not issue the permit if the administrator has determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed stationary source or modification is to be constructed.

**22.5(10) Public availability of information.** No permit shall be issued until notice and opportunity for public comment are made available in accordance with the procedure described in 40 CFR 51.161 (as amended through November 7, 1986).

**567—22.6(455B) Nonattainment area designations.** Section 107(d) of the federal Clean Air Act, 42 U.S.C. §7457(d), requires each state to submit to the Administrator of the federal Environmental Protection Agency a list of areas that exceed the national ambient air quality standards, that are lower than those standards, or that cannot be classified on the basis of current data. A list of Iowa's nonattainment area designations is found at 40 CFR Part 81.316 as amended through January 5, 2005. The commission uses the document entitled "Criteria for Revising Nonattainment Area Designations"<sup>1</sup> (June 14, 1979) to determine when and to what extent the list will be revised and resubmitted.

<sup>1</sup> Filed with Administrative Rules Coordinator, also available from the department.

**567—22.7(455B) Alternative emission control program.**

**22.7(1) Applicability.** The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR §81.316 amended January 5, 2005) or located in an area with

an approved state implementation plan (SIP) demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

- a. The applicant is presently in compliance with EPA approved SIP requirements, or
- b. The applicant is subject to a consent order to meet an EPA approved compliance schedule and the final compliance date will not be delayed by the use of alternative emission limits.

**22.7(2) *Demonstration requirements.*** The applicant for the alternative emission control program shall have the burden of demonstrating that:

- a. The alternative emission control program will not interfere with the attainment and maintenance of ambient air quality standards, including the reasonable further progress or prevention of significant deterioration requirements of the Clean Air Act;
- b. The alternative emission limits are equivalent to existing emission limits in pollution reduction, enforceability, and environmental impact; (In the case of a particulate nonattainment area, the difference between the allowable emission rate and the actual emission rate, as of January 1, 1978, cannot be credited in the emissions tradeoff.)
- c. The pollutants being exchanged are comparable and within the same pollutant category;
- d. Hazardous air pollutants designated in 40 CFR Part 61, as amended through July 20, 2004, will not be exchanged for nonhazardous air pollutants;
- e. The alternative program will not result in any delay in compliance by any source.

Specific situations may require additional demonstration as specified at 44 FR 71780-71788, December 11, 1979, or as requested by the director.

**22.7(3) *Approval process.***

- a. The director shall review all alternative emission control program proposals and shall make recommendations on all completed demonstrations to the commission.
- b. After receiving recommendations from the director and public comments made available through the hearing process, the commission may approve or disapprove the alternative emission control program proposal.
- c. If approved by the commission, the program will be forwarded to the EPA regional administrator as a revision to the State Implementation Plan. The alternative emission control program must receive the approval of the EPA regional administrator prior to becoming effective.

**567—22.8(455B) Permit by rule.**

**22.8(1) *Permit by rule for spray booths.*** Spray booths which comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in 567—22.100(455B).

a. Definition. “Sprayed material” is material sprayed from spray equipment when used in the surface coating process in the spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents.

b. Facilities which facilitywide spray one gallon per day or less of sprayed material are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1) “e” to the department and keep records of daily sprayed material use. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1) “e.”

c. Facilities which facilitywide spray more than one gallon per day but never more than three gallons per day are exempt from all other requirements in 567—Chapter 22, except that they must submit the certification in 22.8(1) “e” to the department, keep records of daily sprayed material use, and vent emissions from a spray booth(s) through a stack(s) which is at least 22 feet tall, measured from ground level. The owner or operator must keep the records of daily sprayed material use for 18 months from the date to which the records apply. The owner or operator must also certify that the facility is in compliance with or otherwise exempt from the federal regulations specified in 22.8(1) “e.”

d. Facilities which facilitywide spray more than three gallons per day are not eligible to use the permit by rule for spray booths and must apply for a construction permit as required by subrules 22.1(1) and 22.1(3) unless otherwise exempt.

e. Notification letter.

(1) Facilities which claim to be permitted by provisions of this rule must submit to the department a written notification letter, on forms provided by the department, certifying that the facility meets the following conditions:

1. All paint booths and associated equipment are in compliance with the provisions of subrule 22.8(1);

2. All paint booths and associated equipment are in compliance with all applicable requirements including, but not limited to, the allowable particulate emission rate for painting and surface coating operations of 0.01 gr/scf of exhaust gas as specified in 567—subrule 23.4(13); and

3. All paint booths and associated equipment currently are or will be in compliance with or otherwise exempt from the national emissions standards for hazardous air pollutants (NESHAP) for paint stripping and miscellaneous surface coating at area sources (40 CFR Part 63, Subpart HHHHHH) and the NESHAP for metal fabricating and finishing at area sources (40 CFR Part 63, Subpart XXXXXX) by the applicable NESHAP compliance dates.

(2) The certification must be signed by one of the following individuals:

1. For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at rule 567—22.100(455B).

2. For partnerships, a general partner.

3. For sole proprietorships, the proprietor.

4. For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

**22.8(2)** Reserved.

[ARC 7565B, IAB 2/11/09, effective 3/18/09; ARC 8215B, IAB 10/7/09, effective 11/11/09]

### **567—22.9(455B) Special requirements for visibility protection.**

**22.9(1) Definitions.** Definitions included in this subrule apply to the provisions set forth in rule 567—22.9(455B).

“*Best available retrofit technology (BART)*” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

“*Deciview*” means a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on an equation found in 40 CFR 51.301, as amended on July 1, 1999.

“*Mandatory Class I area*” means any Class I area listed in 40 CFR Part 81, Subpart D, as amended through October 5, 1989.

**22.9(2) Best available retrofit technology (BART) applicability.** A source shall comply with the provisions of subrule 22.9(3) if the source falls within numbers 1 through 20 or 22 through 26 of the “stationary source categories” of air pollutants listed in rule 22.100(455B) or is a fossil-fuel fired boiler individually totaling more than 250 million Btu’s per hour heat input and meets the following criteria:

a. Any emission unit for which startup began after August 7, 1962; and

b. Construction of the emission unit commenced on or before August 7, 1977; and

c. The sum of the potential to emit, as “potential to emit” is defined in 567—20.2(455B), from emission units identified above is equal to or greater than 250 tons per year or more of one of the following pollutants: nitrogen oxides, sulfur dioxide, particulate matter (PM<sub>10</sub>), or volatile organic compounds.

**22.9(3) *Duty to self-identify.*** The owner or operator or designated representative of a facility meeting the conditions of subrule 22.9(2) shall submit two copies of a completed BART Eligibility Certification Form #542-8125, which shall include all information necessary for the department to complete eligibility determinations. The information submitted shall include source identification, description of processes, potential emissions, emission unit and emission point characteristics, date construction commenced and date of startup, and other information required by the department. The completed form was required to be submitted to the Air Quality Bureau, Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, by September 1, 2005.

**22.9(4) *Notification.*** The department shall notify in writing the owner or operator or designated representative of a source of the department's determination that either:

*a.* A source meets the conditions listed in 22.9(2) (a source that meets these conditions is BART-eligible); or

*b.* For the purposes of the regional haze program, a source may cause or contribute to visibility impairment in any mandatory Class I area, as identified during either:

(1) Regional haze plan development required by 40 CFR 51.308(d) as amended on July 6, 2005; or

(2) A five-year periodic review on the progress toward the reasonable progress goals required by 40 CFR 51.308(g) as amended on July 6, 2005; or

(3) A ten-year comprehensive periodic revision of the implementation plan required by 40 CFR 51.308(f) as amended on July 6, 2005.

**22.9(5) *Analysis.*** The department may request in writing an analysis from the owner or operator or designated representative of a source that the department has determined may be causing or contributing to visibility impairment in a mandatory Class I area.

*a. BART control analysis.* For the purposes of BART, a source that is responsible for an impact of 1.0 deciview or more at a mandatory Class I area is considered to cause visibility impairment. A source that is responsible for an impact of 0.5 deciview or more at a mandatory Class I area is considered to contribute to visibility impairment. If a source meets either of these criteria, the owner or operator or designated representative shall prepare the BART analysis in accordance with Section IV of Appendix Y of 40 CFR Part 51 as amended through July 5, 2005, and shall submit the BART analysis 180 days after receipt of written notification by the department that a BART analysis is required.

*b. Regional haze analysis.* The owner or operator or designated representative of a source subject to 22.9(4) "b" shall prepare and submit an analysis after receipt of written notification by the department that an analysis is required.

**22.9(6) *Control technology implementation.*** Following the department's review of the analysis submitted pursuant to 22.9(5), an owner or operator of a source identified in 22.9(4) shall:

*a.* Submit all necessary permit applications to achieve the emissions requirements established following the completion of analysis performed in accordance with 22.9(5).

*b.* Install, operate, and maintain the control technology as required by permits issued by the department.

**22.9(7) *BART exemption.*** The owner or operator of a source subject to the BART emission control requirements may apply for an exemption from subrule 22.9(5) in accordance with 40 CFR 51.303 as amended on July 1, 1999.

[ARC 8215B, IAB 10/7/09, effective 11/11/09]

**567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment.** The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in subrule 22.10(1). The requirements of this rule do not apply to equipment located at grain processing plants or grain storage elevators, as "grain processing" and "grain storage elevator" are defined in rule 567—20.2(455B). Compliance with the requirements of this rule does not alleviate any affected person's duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations

for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2) “ooo”), may apply.

**22.10(1) Definitions.** For purposes of rule 567—22.10(455B), the following terms shall have the meanings indicated in this subrule.

“*Country grain elevator*” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives more than 50 percent of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Country grain terminal elevator*” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of less than or equal to 2.5 million U.S. bushels, as “permanent storage capacity” is defined in this subrule;
3. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Feed mill equipment*,” for purposes of rule 567—22.10(455B), means grain processing equipment that is used to make animal feed including, but not limited to, grinders, crackers, hammermills, and pellet coolers, and that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

“*Grain*,” as set forth in Iowa Code section 203.1(9), means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

“*Grain processing*” shall have the same definition as “grain processing” set forth in rule 567—20.2(455B).

“*Grain storage elevator*” shall have the same definition as “grain storage elevator” set forth in rule 567—20.2(455B).

“*Grain terminal elevator*,” for purposes of rule 567—22.10(455B), means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of more than 88,100 m<sup>3</sup> (2.5 million U.S. bushels), as “permanent storage capacity” is defined in this subrule;
3. Is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot;
4. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Permanent storage capacity*” means grain storage capacity which is inside a building, bin, or silo.

**22.10(2) Methods for determining potential to emit (PTE).** The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment shall use the following methods for calculating the potential to emit (PTE) for particulate matter (PM) and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM<sub>10</sub>).

*a. Country grain elevators.* The owner or operator of a country grain elevator shall calculate the PTE for PM and PM<sub>10</sub> as specified in the definition of “potential to emit” in rule 567—20.2(455B), except that “maximum capacity” means the greatest amount of grain received at the country grain elevator during one calendar, 12-month period of the previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. The owner or operator may make additional adjustments to the calculations for air pollution control of PM and PM<sub>10</sub> if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or

operator fully implements the applicable air pollution control measures no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs. Credit for the application of some best management practices, as specified in subrule 22.10(3) or in a permit issued by the department, may also be used to make additional adjustments in the PTE for PM and PM<sub>10</sub> if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable best management practices no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs.

*b. Country grain terminal elevators.* The owner or operator of a country grain terminal elevator shall calculate the PTE for PM and PM<sub>10</sub> as specified in the definition of “potential to emit” in rule 567—20.2(455B).

*c. Grain terminal elevators.* For purposes of the permitting and other requirements specified in subrule 22.10(3), the owner or operator of a grain terminal elevator shall calculate the PTE for PM and PM<sub>10</sub> as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1) and in rule 567—22.100(455B), in the PTE calculation.

*d. Feed mill equipment.* The owner or operator of feed mill equipment, as “feed mill equipment” is defined in subrule 22.10(1), shall calculate the PTE for PM and PM<sub>10</sub> for the feed mill equipment as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the stationary source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of feed mill equipment shall sum the PTE of the feed mill equipment with the PTE of the country grain elevator, country grain terminal elevator or grain terminal elevator.

**22.10(3) Classification and requirements for permits, emissions controls, record keeping and reporting for Group 1, Group 2, Group 3 and Group 4 grain elevators.** The requirements for construction permits, operating permits, emissions controls, record keeping and reporting for a stationary source that is a country grain elevator, country grain terminal elevator or grain terminal elevator are set forth in this subrule.

*a. Group 1 facilities.* A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 1 facility if the PTE at the stationary source is less than 15 tons of PM<sub>10</sub> per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 1 facility is one that commenced construction or reconstruction before February 6, 2008. A “new” Group 1 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 1 registration. The owner or operator of a Group 1 facility shall submit to the department a Group 1 registration, including PTE calculations, on forms provided by the department, certifying that the facility’s PTE is less than 15 tons of PM<sub>10</sub> per year. The owner or operator of an existing facility shall provide the Group 1 registration to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the Group 1 registration to the department prior to initiating construction or reconstruction of a facility. The registration becomes effective upon the department’s receipt of the signed registration form and the PTE calculations.

1. If the owner or operator registers with the department as specified in subparagraph 22.10(3) “a”(1), the owner or operator is exempt from the requirement to obtain a construction permit as specified under subrule 22.1(1).

2. Upon department receipt of a Group 1 registration and PTE calculations, the owner or operator is allowed to add, remove and modify the emissions units or change throughput or operations at the facility without modifying the Group 1 registration, provided that the owner or operator calculates the PTE for PM<sub>10</sub> on forms provided by the department prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating

limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM<sub>10</sub> calculations) specified in the Group 1 registration.

3. If equipment at a Group 1 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a registration made pursuant to subparagraph 22.10(3)“a”(1).

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement best management practices (BMP) for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007), as adopted by the commission on January 15, 2008, and adopted by reference herein (available from the department, upon request, and on the department’s Internet Web site. No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP. Upon startup of equipment at the facility, the owner or operator of a new Group 1 facility shall fully implement applicable BMP.

(3) Record keeping. The owner or operator of a Group 1 facility shall retain a record of the previous five calendar years of total annual grain handled and shall calculate the facility’s potential PM<sub>10</sub> emissions annually by January 31 for the previous calendar year. These records shall be kept on site for a period of five years and shall be made available to the department upon request.

(4) Emissions increases. The owner or operator of a Group 1 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that PM<sub>10</sub> emissions at a Group 1 facility will increase to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(5) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 1 facility plans to change the facility’s operations or increase the facility’s permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility’s classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM<sub>10</sub> will occur. If the proposed change will alter the facility’s classification or will increase the facility’s PTE for PM<sub>10</sub> such that the facility PTE increases to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making the change.

*b. Group 2 facilities.* A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 2 facility if the PTE at the stationary source is greater than or equal to 15 tons of PM<sub>10</sub> per year and is less than or equal to 50 tons of PM<sub>10</sub> per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 2 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A “new” Group 2 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 2 permit for grain elevators. The owner or operator of a Group 2 facility may, in lieu of obtaining air construction permits for each piece of emissions equipment at the facility, submit to the department a completed Group 2 permit application for grain elevators, including PTE calculations, on forms provided by the department. Alternatively, the owner or operator may obtain an air construction permit as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the appropriate completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the appropriate, completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department prior to initiating construction or reconstruction of a facility.

1. Upon department issuance of a Group 2 permit to a facility, the owner or operator is allowed to add, remove and modify the emissions units at the facility, or change throughput or operations, without modifying the Group 2 permit, provided that the owner or operator calculates the PTE for PM<sub>10</sub> prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to

meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM<sub>10</sub> calculations) specified in the Group 2 permit.

2. If a Group 2 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a Group 2 permit application for grain elevators made pursuant to this rule. However, the owner or operator of a Group 2 facility may request that the department incorporate any equipment with a previously issued construction permit into the Group 2 permit for grain elevators. The department will grant such requests on a case-by-case basis. If the department grants the request to incorporate previously permitted equipment into the Group 2 permit for grain elevators, the owner or operator of the Group 2 facility is responsible for requesting that the department rescind any previously issued construction permits.

(2) Best management practices (BMP). The owner or operator shall implement BMP, as specified in the Group 2 permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 2 facilities after a facility is issued a Group 2 permit, the owner or operator of the Group 2 facility may request that the department modify the facility's Group 2 permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis. No later than March 31, 2009, the owner or operator of an existing Group 2 facility shall fully implement BMP, as specified in the Group 2 permit. Upon startup of equipment at the facility, the owner or operator of a new Group 2 facility shall fully implement BMP, as specified in the Group 2 permit.

(3) Record keeping. The owner or operator of a Group 2 facility shall retain all records as specified in the Group 2 permit.

(4) Emissions inventory. The owner or operator of a Group 2 facility shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(5) Emissions increases. The owner or operator of a Group 2 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that potential PM<sub>10</sub> emissions at a Group 2 facility will increase to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(6) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 2 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM<sub>10</sub> will occur. If the proposed change will increase the facility's PTE for PM<sub>10</sub> such that the facility PTE increases to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making the change.

*c. Group 3 facilities.* A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 3 facility if the PTE for PM<sub>10</sub> at the stationary source is greater than 50 tons per year, but is less than 100 tons of PM<sub>10</sub> per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 3 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 3 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 3 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified in subrule 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified in subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 3 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 3 facilities after a facility is issued a permit, the owner or operator of the Group 3 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) Emissions inventory. The owner or operator shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(4) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 3 facility plans to change its operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM<sub>10</sub> will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM<sub>10</sub> such that the facility PTE increases to greater than or equal to 100 tons per year, the owner or operator shall comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the change.

(5) PSD applicability. If the PTE for PM or PM<sub>10</sub> at the Group 3 facility is greater than or equal to 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 3 facility that is a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(6) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM<sub>10</sub> emissions on site for a period of five years, and the records shall be made available to the department upon request.

*d. Group 4 facilities.* A facility qualifies as a Group 4 facility if the facility is a stationary source with a PTE equal to or greater than 100 tons of PM<sub>10</sub> per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 4 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A “new” Group 4 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 4 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified by subrule 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified by subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 4 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. If the department revises the BMP requirements for Group 4 facilities after a facility is issued a permit, the owner or operator of the Group 4 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) PSD applicability. If the PTE for PM or PM<sub>10</sub> at the facility is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(4) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM<sub>10</sub> emissions on site for a period of five years, and the records shall be made available to the department upon request.

(5) Operating permits. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the facility's annual PTE for PM<sub>10</sub> is equal to or greater than 100 tons per year as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions in the calculations to determine if the PTE for PM<sub>10</sub> is greater than or equal to 100 tons per year. The owner or operator also shall submit annual emissions inventories and fees, as specified in rule 567—22.106(455B).

**22.10(4) Feed mill equipment.** This subrule sets forth the requirements for construction permits, operating permits, and emissions inventories for an owner or operator of feed mill equipment as “feed mill equipment” is defined in subrule 22.10(1). For purposes of this subrule, the owner or operator of “existing” feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment before February 6, 2008. The owner or operator of “new” feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment on or after February 6, 2008.

*a. Air construction permit.* The owner or operator of feed mill equipment shall obtain an air construction permit as specified under subrule 22.1(1) for each piece of feed mill equipment that emits a regulated air pollutant. The owner or operator of “existing” feed mill equipment shall provide the appropriate permit applications to the department on or before March 31, 2008. The owner or operator of “new” feed mill equipment shall provide the appropriate permit applications to the department prior to initiating construction or reconstruction of feed mill equipment.

*b. Emissions inventory.* The owner or operator shall submit an emissions inventory for the feed mill equipment for all regulated air pollutants as specified under 567—subrule 21.1(3).

*c. Operating permits.* The owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator, as PTE is specified in subrule 22.10(2), to determine if operating permit requirements specified in rules 567—22.100(455B) through 567—22.300(455B) apply to the stationary source. If the operating permit requirements apply, then the owner or operator shall apply for an operating permit as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator also shall begin submitting annual emissions inventories and fees, as specified under rule 567—22.106(455B).

*d. PSD applicability.* For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, the owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator. If the PTE for PM or PM<sub>10</sub> for the stationary source is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements for PSD specified in 567—Chapter 33, as applicable.

**567—22.11 to 22.99** Reserved.

**567—22.100(455B) Definitions for Title V operating permits.** For purposes of rules 567—22.100(455B) to 567—22.116(455B), the following terms shall have the meaning indicated in this rule:

“Act” means the Clean Air Act, 42 U.S.C. Sections 7401, et seq.

“Actual emissions” means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which immediately precedes that date and which is representative of normal source operations. The director may allow the use of a different time period upon a demonstration that it is more representative of normal source operations. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period. Actual emissions for acid rain affected sources are calculated using a one-year period.

2. Lacking specific information to the contrary, the director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

4. For purposes of calculating early reductions of hazardous air pollutants, actual emissions shall not include excess emissions resulting from a malfunction or from startups and shutdowns associated with a malfunction.

Actual emissions for purposes of determining fees shall be the actual emissions calculated over a period of one year.

“*Administrator*” means the administrator for the United States Environmental Protection Agency (EPA) or designee.

“*Affected facility*” means, with reference to a stationary source, any apparatus which emits or may emit any regulated air pollutant or contaminant.

“*Affected source*” means a source that includes one or more affected units subject to any emissions reduction requirement or limitation under Title IV of the Act.

“*Affected state*” means any state which is contiguous to the permitting state and whose air quality may be affected through the modification, renewal or issuance of a Title V permit; or which is within 50 miles of the permitted source.

“*Affected unit*” means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under Title IV of the Act.

“*Allowable emissions*” means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, and the most stringent of the following:

1. The applicable new source performance standards or national emissions standards for hazardous air pollutants, contained in 567—subrules 23.1(2) and 23.1(3);
2. The applicable existing source emission standard contained in 567—Chapter 23; or
3. The emissions rate specified in the air construction permit for the source.

“*Allowance*” means an authorization by the administrator under Title IV of the Act or rules promulgated thereunder to emit during or after a specified calendar year up to one ton of sulfur dioxide.

“*Applicable requirement*” includes the following:

1. Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR 52;
2. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including Parts C and D, of the Act;
3. Any standard or other requirement under Section 111 of the Act (subrule 23.1(2)), including Section 111(d);
4. Any standard or other requirement under Section 112 of the Act, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;
5. Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
6. Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Act;
7. Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;
8. Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;
9. Any standard or other requirement for tank vessels under Section 183(f) of the Act;
10. Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Section 328 of the Act;
11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the administrator has determined that such requirements need not be contained in a Title V permit; and

12. Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act.

“*Area source*” means any stationary source of hazardous air pollutants that is not a major source as defined in rule 567—22.100(455B).

“*CFR*” means the Code of Federal Regulations, with standard references in this chapter by Title and Part, so that “40 CFR 51” means “Title 40 of the Code of Federal Regulations, Part 51.”

“*Consumer Price Index*” means for any calendar year the average of the Consumer Price Index for all urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

“*Country grain elevator*” shall have the same definition as “country grain elevator” set forth in subrule 22.10(1).

“*Designated representative*” means a responsible natural person authorized by the owner(s) or operator(s) of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72 as amended to October 24, 1997, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term “responsible official” is used in rules 567—22.100(455B) to 567—22.208(455B), it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

“*Draft Title V permit*” means the version of a Title V permit for which the department offers public participation or affected state review.

“*Emergency generator*” means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency generator does not include:

1. Peaking units at electric utilities;
2. Generators at industrial facilities that typically operate at low rates, but are not confined to emergency purposes; or
3. Any standby generators that are used during time periods when power is available from the electric utility.

An emergency is an unforeseeable condition that is beyond the control of the owner or operator.

“*Emissions allowable under the permit*” means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

“*Emissions unit*” means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act. This term is not meant to alter or affect the definition of the term “unit” for purposes of Title IV of the Act or any related regulations.

“*EPA conditional method*” means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

“*EPA reference method*” means any method of sampling and analyzing for an air pollutant as described in 40 CFR 51, Appendix M (as amended through June 16, 1997); 40 CFR 52, Appendices D (as amended through February 6, 1975) and E (as amended through February 6, 1975); 40 CFR 60, Appendices A (as amended through September 28, 2007), B (as amended through September 28, 2007), C (as amended through December 16, 1975), and F (as amended through January 12, 2004); 40 CFR 61, Appendix B (as amended through October 17, 2000); 40 CFR 63, Appendix A (as amended through October 17, 2000); and 40 CFR 75, Appendices A (as amended through January 24, 2008), B (as amended through January 24, 2008), F (as amended through January 24, 2008, and corrected on February 13, 2008) and K (as amended through January 24, 2008).

“*Equipment leaks*” means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems.

“*Existing hazardous air pollutant source*” means any source as defined in 40 CFR 61 (as amended through July 20, 2004) and 40 CFR 63.72 (as amended through December 29, 1992) with respect to Section 112(i)(5) of the Act, the construction or reconstruction of which commenced prior to proposal of an applicable Section 112(d) standard.

“*Facility*” means, with reference to a stationary source, any apparatus which emits or may emit any air pollutant or contaminant.

“*Federal implementation plan*” means a plan promulgated by the administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a state implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques, and provides for attainment of the relevant national ambient air quality standard.

“*Federally enforceable*” means all limitations and conditions which are enforceable by the administrator including, but not limited to, the requirements of the new source performance standards and national emission standards for hazardous air pollutants contained in 567—subrules 23.1(2) and 23.1(3); the requirements of such other state rules or orders approved by the administrator for inclusion in the SIP; and any construction, Title V or other federally approved operating permit conditions.

“*Final Title V permit*” means the version of a Title V permit issued by the department that has completed all required review procedures.

“*Fugitive emissions*” are those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

“*Hazardous air pollutant*” means any of the following air pollutants listed in Section 112 of the Act:

cas #	chemical name
75343	1,1-Dichloroethane
57147	1,1-Dimethyl hydrazine
71556	1,1,1-Trichloroethane
79005	1,1,2-Trichloroethane
79345	1,1,2,2-Tetrachloroethane
106887	1,2-Butylene oxide
96128	1,2-Dibromo-3-chloropropane
106934	1,2-Dibromoethane
107062	1,2-Dichloroethane
78875	1,2-Dichloropropane
122667	1,2-Diphenylhydrazine
120821	1,2,4-Trichlorobenzene
106990	1,3-Butadiene
542756	1,3-Dichloropropylene
106467	1,4-Dichlorobenzene
123911	1,4-Dioxane
53963	2-Acetylaminofluorene
532274	2-Chloroacetophenone
79469	2-Nitropropane
540841	2,2,4-Trimethylpentane
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TC-DD)
94757	2,4-D salts and esters
95807	2,4-Diaminotoluene
51285	2,4-Dinitrophenol

cas #	chemical name
121142	2,4-Dinitrotoluene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
91941	3,3'-Dichlorobenzidine
119904	3,3'-Dimethoxybenzidine
119937	3,3'-Dimethylbenzidine
92671	4-Aminobiphenyl
60117	4-Dimethylaminoazobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
101144	4,4'-Methylenebis(2-chloroaniline)
101779	4,4'-methylenedianiline
534521	4,6-Dinitro-o-cresol, and salts
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
62533	Aniline
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
1332214	Asbestos (friable)
71432	Benzene
92875	Benzidine
98077	Benzoic trichloride
100447	Benzyl chloride
0	Beryllium Compounds
57578	Beta-Propiolactone
92524	Biphenyl
111444	Bis(2-chloroethyl) ether
542881	Bis(chloromethyl) ether
75252	Bromoform
74839	Bromomethane
0	Cadmium Compounds
156627	Calcium cyanamide
133062	Captan
63252	Carbaryl

cas #	chemical name
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
108907	Chlorobenzene
510156	Chlorobenzilate
75003	Chloroethane
67663	Chloroform
74873	Chloromethane
107302	Chloromethyl methyl ether
126998	Chloroprene
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
1319773	Cresol/Cresylic acid (isomers & mixture)
98828	Cumene
0	Cyanide Compounds <sup>1</sup>
72559	DDE
117817	Di(2-ethylhexyl) phthalate
334883	Diazomethane
132649	Dibenzofuran
84742	Dibutyl phthalate
75092	Dichloromethane
62737	Dichlorvos
111422	Diethanolamine
64675	Diethyl sulfate
68122	Dimethyl formamide
131113	Dimethyl phthalate
77781	Dimethyl sulfate
79447	Dimethylcarbanyl chloride
106898	Epichlorohydrin
140885	Ethyl acrylate
100414	Ethylbenzene
107211	Ethylene glycol
75218	Ethylene oxide
96457	Ethylene thiourea
151564	Ethyleneimine

cas #	chemical name
0	Fine Mineral Fibers <sup>3</sup>
50000	Formaldehyde
0	Glycol Ethers <sup>2</sup> , except cas #111-76-2, ethylene glycol mono-butyl ether, also known as EGBE or 2-Butoxyethanol
76448	Heptachlor
87683	Hexachloro-1,3-butadiene
118741	Hexachlorobenzene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride
123319	Hydroquinone
78591	Isophorone
0	Lead Compounds
58899	Lindane (all isomers)
108394	m-Cresol
108383	m-Xylene
108316	Maleic anhydride
0	Manganese Compounds
0	Mercury Compounds
67561	Methanol
72435	Methoxychlor
60344	Methyl hydrazine
74884	Methyl iodide
108101	Methyl isobutyl ketone
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tertbutyl ether
101688	Methylene bis(phenylisocyanate)
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
91203	Naphthalene
0	Nickel Compounds
98953	Nitrobenzene
121697	N,N-Dimethylaniline
90040	o-Anisidine

cas #	chemical name
95487	o-Cresol
95534	o-Toluidine
95476	o-Xylene
106445	p-Cresol
106503	p-Phenylenediamine
106423	p-Xylene
56382	Parathion
87865	Pentachlorophenol
108952	Phenol
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus (yellow or white)
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls
0	Polycyclic Organic Matter <sup>4</sup>
1120714	Propane sultone
123386	Propionaldehyde
114261	Propoxur
75569	Propylene oxide
75558	Propyleneimine
91225	Quinoline
106514	Quinone
82688	Quintozene
0	Radionuclides (including Radon) <sup>5</sup>
0	Selenium Compounds
100425	Styrene
96093	Styrene oxide
127184	Tetrachloroethylene
7550450	Titanium tetrachloride
108883	Toluene
584849	Toluene-2,4-diisocyanate
8001352	Toxaphene
79016	Trichloroethylene
121448	Triethylamine
1582098	Trifluralin
51796	Urethane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride
1330207	Xylene (mixed isomers)

NOTE: For all listings above which contain the word “compounds” and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical’s infrastructure.

<sup>1</sup>X’CN where X=H’ or any other group where a formal dissociation may occur. For example KCN or Ca(CN)<sub>2</sub>

<sup>2</sup>Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R(OCH<sub>2</sub>CH<sub>2</sub>)<sub>n</sub>-OR’ where n=1,2, or 3; R=alkyl or aryl groups; R’=R,H, or groups which, when removed, yield glycol ethers with the structure R(OCH<sub>2</sub>CH)<sub>n</sub>-OH. Polymers are excluded from the glycol category.

<sup>3</sup>Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

<sup>4</sup>Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 degrees C.

<sup>5</sup>A type of atom which spontaneously undergoes radioactive decay.

“High-risk pollutant” means one of the following hazardous air pollutants listed in Table 1 in 40 CFR 63.74 as amended through October 21, 1994.

cas #	chemical name	weighting factor
53963	2-Acetylaminofluorene	100
107028	Acrolein	100
79061	Acrylamide	10
107131	Acrylonitrile	10
0	Arsenic compounds	100
1332214	Asbestos	100
71432	Benzene	10
92875	Benzidine	1000
0	Beryllium compounds	10
542881	Bis(chloromethyl) ether	1000
106990	1,3-Butadiene	10
0	Cadmium compounds	10
57749	Chlordane	100
532274	2-Chloroacetophenone	100
0	Chromium compounds	100
107302	Chloromethyl methyl ether	10
0	Coke oven emissions	10
334883	Diazomethane	10
132649	Dibenzofuran	10
96128	1,2-Dibromo-3-chloropropane	10
111444	Dichloroethyl ether(Bis(2-chloroethyl)ether)	10
79447	Dimethylcarbamoyl chloride	100
122667	1,2-Diphenylhydrazine	10
106934	Ethylene dibromide	10
151564	Ethylenimine (Aziridine)	100
75218	Ethylene oxide	10
76448	Heptachlor	100
118741	Hexachlorobenzene	100

cas #	chemical name	weighting factor
77474	Hexachlorocyclopentadiene	100
302012	Hydrazine	100
0	Manganese compounds	10
0	Mercury compounds	100
60344	Methyl hydrazine	10
624839	Methyl isocyanate	10
0	Nickel compounds	10
62759	N-Nitrosodimethylamine	100
684935	N-Nitroso-N-methylurea	1000
56382	Parathion	10
75445	Phosgene	10
7803512	Phosphine	10
7723140	Phosphorus	10
75558	1,2-Propylenimine	100
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
8001352	Toxaphene (chlorinated camphene)	100
75014	Vinyl chloride	10

“*Major source*” means any stationary source (or any group of stationary sources located on one or more contiguous or adjacent properties and under common control of the same person or of persons under common control) belonging to a single major industrial grouping that is any of the following:

1. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant subject to regulation (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the stationary source categories listed in this chapter.

2. A major source of hazardous air pollutants according to Section 112 of the Act as follows:

For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act and these rules or 25 tpy or more of any combination of such hazardous air pollutants. Notwithstanding the previous sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emission from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

For Title V purposes, all fugitive emissions of hazardous air pollutants are to be considered in determining whether a stationary source is a major source.

For radionuclides, “major source” shall have the meaning specified by the administrator by rule.

3. A major stationary source as defined in Part D of Title I of the Act, including:

For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate,” 50 tpy or more in areas classified as “serious,” 25 tpy or more in areas classified as “severe” and 10 tpy or more in areas classified as “extreme”; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

For ozone transport regions established pursuant to Section 184 of the Act, sources with potential to emit 50 tpy or more of volatile organic compounds;

For carbon monoxide nonattainment areas (1) that are classified as “serious” and (2) in which stationary sources contribute significantly to carbon monoxide levels, and sources with the potential to emit 50 tpy or more of carbon monoxide;

For particulate matter (PM-10), nonattainment areas classified as “serious,” sources with the potential to emit 70 tpy or more of PM-10.

For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

“*Manually operated equipment*” means a machine or tool that is handheld, such as a handheld circular saw or compressed air chisel; a machine or tool for which the work piece is held or manipulated by hand, such as a bench grinder; a machine or tool for which the tool or bit is manipulated by hand, such as a lathe or drill press; and any dust collection system which is part of such machine or tool; but not including any machine or tool for which the extent of manual operation is to control power to the machine or tool and not including any central dust collection system serving more than one machine or tool.

“*Maximum achievable control technology (MACT)*” means the following regarding regulated hazardous air pollutant sources:

1. For existing sources, the emissions limitation reflecting the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the category of stationary sources, that shall not be less stringent than the MACT floor.

2. For new sources, the emission limitation which is not less stringent than the emission limitation achieved in practice by the best-controlled similar source, and which reflects the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the Title IV affected source category.

“*Maximum achievable control technology (MACT) floor*” means the following:

1. For existing sources, the average emission limitation achieved by the best 12 percent of the existing sources in the United States (for which the administrator or the department has or could reasonably obtain emission information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate applicable to the source category and prevailing at the time, for categories and subcategories of stationary sources with 30 or more sources in the category or subcategory, or the average emission limitation achieved by the best performing 5 sources in the United States (for which the administrator or the department has or could reasonably obtain emissions information) for a category or subcategory or stationary source with fewer than 30 sources in the category or subcategory.

2. For new sources, the emission limitation achieved in practice by the best-controlled similar source.

“*New Title IV affected source or unit*” means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

“*Nonattainment area*” means an area so designated by the administrator, acting pursuant to Section 107 of the Act.

“*Permit modification*” means a revision to a Title V operating permit that cannot be accomplished under the provisions for administrative permit amendments found at rule 567—22.111(455B). A permit modification for purposes of the acid rain portion of the permit shall be governed by the regulations

pertaining to acid rain found at rules 567—22.120(455B) to 567—22.147(455B). This definition of “permit modification” shall be used solely for purposes of this chapter governing Title V operating permits.

“*Permit revision*” means any permit modification or administrative permit amendment.

“*Permitting authority*” means the Iowa department of natural resources or the director thereof.

“*Potential to emit*” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in subrule 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, “maximum capacity” means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

“*Proposed Title V permit*” means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 22.107(7) “a.”

“*Regulated air contaminant*” shall mean the same thing as “regulated air pollutant.”

“*Regulated air pollutant*” means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;
3. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or
5. Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:
  - Any pollutant subject to requirements under Section 112(j) of the Act. If the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and
  - Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the Section 112(g)(2) requirement.
6. With respect to Title V, particulate matter, except for PM10, is not considered a regulated air pollutant for the purpose of determining whether a source is considered to be a major source.

“*Regulated air pollutant or contaminant (for fee calculation)*,” which is used only for purposes of rule 567—22.106(455B), means any “regulated air pollutant or contaminant” except the following:

1. Carbon monoxide;
2. Particulate matter, excluding PM10;
3. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
4. Any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act.

“*Renewal*” means the process by which a permit is reissued at the end of its term.

“*Responsible official*” means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
- The delegation of authority to such representative is approved in advance by the permitting authority.

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

4. For Title IV affected sources:

- The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and
- The designated representative for any other purposes under this chapter or the Act.

“*Section 502(b)(10) changes*” are changes that contravene an express permit term and which are made pursuant to rule 567—22.110(455B). Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

“*State implementation plan (SIP)*” means the plan adopted by the state of Iowa and approved by the administrator which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as are adopted by the administrator, pursuant to the Act.

“*Stationary source*” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act.

“*Stationary source categories*” means any of the following classes of sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants using the furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants — The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140;

21. Fossil-fuel boilers, or combinations thereof, totaling more than 250 million Btu's per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;
25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million Btu's per hour heat input;
27. Any other stationary source category, which as of August 7, 1980, is regulated under Section 111 or 112 of the Act.

*"Subject to regulation"* means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended on May 7, 2010) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation unless, as of July 1, 2011, the GHG emissions are at a stationary source emitting or having the potential to emit 100,000 tpy CO<sub>2</sub> equivalent emissions.

2. The term "tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)" shall represent an amount of GHGs emitted and shall be computed by multiplying the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, "Global Warming Potentials," (as amended on October 30, 2009) and summing the resultant value for each to compute a tpy CO<sub>2</sub>e.

*"Title V permit"* means an operating permit under Title V of the Act.

*"12-month rolling period"* means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

[ARC 9224B, IAB 11/17/10, effective 12/22/10]

**567—22.101(455B) Applicability of Title V operating permit requirements.**

**22.101(1)** Except as provided in rule 567—22.102(455B), any person who owns or operates any of the following sources shall obtain a Title V operating permit:

- a. Any affected source subject to the provisions of Title IV of the Act;
- b. Any major source;
- c. Any source, including any nonmajor source, subject to a standard, limitation, or other requirement under Section 111 of the Act (567—subrule 23.1(2), new source performance standards; 567—subrule 23.1(5), emission guidelines);
- d. Any source, including any area source, subject to a standard or other requirement under Section 112 of the Act (567—subrules 23.1(3) and 23.1(4), emission standards for hazardous air pollutants), except that a source is not required to obtain a Title V permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;
- e. Any solid waste incinerator unit required to obtain a Title V permit under Section 129(e) of the Act;
- f. Any source category designated by the Administrator pursuant to 40 CFR 70.3 as amended through December 19, 2005.

**22.101(2)** Any nonmajor source required to obtain a Title V operating permit pursuant to subrule 22.101(1) is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program.

**22.101(3)** Election to apply for permit. Rescinded IAB 7/19/06, effective 8/23/06.

**567—22.102(455B) Source category exemptions.**

**22.102(1)** All sources listed in subrule 22.101(1) that are not major sources, affected sources subject to the provisions of Title IV of the Act or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act are exempt from the obligation to obtain a Title V permit until such time as the Administrator completes a rule making to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in subrule 22.102(3).

**22.102(2)** In the case of nonmajor sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act after July 21, 1992, publication, the Administrator will determine at the time the new or amended standard is promulgated whether to exempt any or all such applicable sources from the requirement to obtain a Title V permit.

**22.102(3)** The following source categories are exempt from the obligation to obtain a Title V permit:

*a.* All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters, as amended through December 14, 2000;

*b.* All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, as amended through July 20, 2004;

*c.* All sources and source categories that would be required to obtain a Title V permit solely because they are subject to any of the following subparts from 40 CFR 63:

(1) Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as amended through December 19, 2005.

(2) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as amended through December 19, 2005.

(3) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities, as amended through December 19, 2005.

(4) Subpart T, National Emission Standards for Halogenated Solvent Cleaning, as amended through December 19, 2005.

(5) Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as amended through December 19, 2005.

(6) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as amended through June 23, 2003.

**567—22.103(455B) Insignificant activities.** The following are insignificant activities for purposes of the Title V application if not needed to determine the applicability of or to impose any applicable requirement. Title V permit fees are not required from insignificant activities pursuant to subrule 22.106(7).

**22.103(1)** *Insignificant activities excluded from Title V operating permit application.* In accordance with 40 CFR 70.5 (as amended through July 21, 1992), these activities need not be included in the Title V permit application.

*a.* Mobile internal combustion and jet engines, marine vessels, and locomotives.

*b.* Equipment, other than anaerobic lagoons, used for cultivating land, harvesting crops, or raising livestock. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption also is not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, when that feed is normally not fed to livestock:

(1) Owned by that person or another person, and

(2) Located in a feedlot, as defined in Iowa Code section 172D.1(6), or in a confinement building owned or operated by that person, and

(3) Located in this state.

*c.* Equipment or control equipment which eliminates all emissions to the atmosphere.

- d.* Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter or any other air pollutant or contaminant.
- e.* Air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment.
- f.* Residential wood heaters, cookstoves, or fireplaces.
- g.* The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.
- h.* Recreational fireplaces.
- i.* Barbecue pits and cookers except at a meat packing plant or a prepared meat manufacturing facility.
- j.* Stacks or vents to prevent escape of sewer gases through plumbing traps for systems handling domestic sewage only. Systems which include any industrial waste are not exempt.
- k.* Retail gasoline and diesel fuel handling facilities.
- l.* Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy.
- m.* Equipment used for hydraulic or hydrostatic testing.
- n.* General vehicle maintenance and servicing activities at the source, other than gasoline fuel handling.
- o.* Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.
- p.* Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing provided no organic solvent has been added to the water, the boiling point of the additive is not less than 100°C (212°F), and the water is not heated above 65.5°C (150°F).
- q.* Administrative activities including, but not limited to, paper shredding, copying, photographic activities, and blueprinting machines. This does not include incinerators.
- r.* Laundry dryers, extractors, and tumblers processing clothing, bedding, and other fabric items used at the source that have been cleaned with water solutions of bleach or detergents provided that any organic solvent present in such items before processing that is retained from cleanup operations shall be addressed as part of the volatile organic compound emissions from use of cleaning materials.
- s.* Housekeeping activities for cleaning purposes, including collecting spilled and accumulated materials at the source, but not including use of cleaning materials that contain organic solvent.
- t.* Refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.
- u.* Activities associated with the construction, on-site repair, maintenance or dismantlement of buildings, utility lines, pipelines, wells, excavations, earthworks and other structures that do not constitute emission units.
- v.* Storage tanks of organic liquids with a capacity of less than 500 gallons, provided the tank is not used for storage of any material listed as a hazardous air pollutant pursuant to Section 112(b) of the Clean Air Act.
- w.* Piping and storage systems for natural gas, propane, and liquified petroleum gas, excluding pipeline compressor stations and associated storage facilities.
- x.* Water treatment or storage systems, as follows:
  - (1) Systems for potable water or boiler feedwater.
  - (2) Systems, including cooling towers, for process water provided that such water has not been in direct or indirect contact with process steams that contain volatile organic material or materials listed as hazardous air pollutants pursuant to Section 112(b) of the Clean Air Act.
- y.* Lawn care, landscape maintenance, and groundskeeping activities.
- z.* Containers, reservoirs, or tanks used exclusively in dipping operations to coat objects with oils, waxes, or greases, provided no organic solvent has been mixed with such materials.

*aa.* Cold cleaning degreasers that are not in-line cleaning machines, where the vapor pressure of the solvents used never exceeds 2 kPa (15 mmHg or 0.3 psi) measured at 38°C (100°F) or 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). (Note: Cold cleaners subject to 40 CFR Part 63 Subpart T are not considered insignificant activities.)

*bb.* Manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding or turning.

*cc.* Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), when the product is used at a source in the same manner as normal consumer use.

*dd.* Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.

*ee.* Firefighting activities and training in preparation for fighting fires conducted at the source. (Note: Written notification pursuant to 567—paragraph 23.2(3) “g” is required at least ten working days before such action commences.)

*ff.* Activities associated with the construction, repair or maintenance of roads or other paved or open areas, including operation of street sweepers, vacuum trucks, spray trucks and other vehicles related to the control of fugitive emissions of such roads or other areas.

*gg.* Storage and handling of drums or other transportable containers when the containers are sealed during storage and handling.

*hh.* Individual points of emission or activities as follows:

(1) Individual flanges, valves, pump seals, pressure relief valves and other individual components that have the potential for leaks.

(2) Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions.

(3) Individual features of an emission unit such as each burner and sootblower in a boiler or each use of cleaning materials on a coating or printing line.

*ii.* Construction activities at a source solely associated with the modification or building of a facility, an emission unit or other equipment at the source. (Note: Notwithstanding the status of this activity as insignificant, a particular activity that entails modification or construction of an emission unit or construction of air pollution control equipment may require a construction permit pursuant to 22.1(455B) and may subsequently require a revised Title V operating permit. A revised Title V operating permit may also be necessary for operation of an emission unit after completion of a particular activity if the existing Title V operating permit does not accommodate the new state of the emission unit.)

*jj.* Activities at a source associated with the maintenance, repair, or dismantlement of an emission unit or other equipment installed at the source, including preparation for maintenance, repair or dismantlement, and preparation for subsequent startup, including preparation of a shutdown vessel for entry, replacement of insulation, welding and cutting, and steam purging of a vessel prior to startup.

**22.103(2)** *Insignificant activities which must be included in Title V operating permit applications.*

*a.* The following are insignificant activities based on potential emissions:

An emission unit which has the potential to emit less than:

5 tons per year of any regulated air pollutant, except:

2.5 tons per year of PM-10,

40 lbs per year of lead or lead compounds,

2500 lbs per year of any combination of hazardous air pollutants except high-risk pollutants,

1000 lbs per year of any individual hazardous air pollutant except high-risk pollutants,

250 lbs per year of any combination of high-risk pollutants, or

100 lbs per year of any individual high-risk pollutant.

The definition of “high risk pollutant” is found in rule 567—22.100(455B).

*b.* The following are insignificant activities:

(1) Fuel-burning equipment for indirect heating and reheating furnaces using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

- (2) Fuel-burning equipment for indirect heating with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.
- (3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour.
- (4) Gasoline, diesel fuel, or oil storage tanks with a capacity of 1,000 gallons or less and an annual throughput of less than 40,000 gallons.
- (5) A storage tank which contains no volatile organic compounds above a vapor pressure of 0.75 pounds per square inch at the normal operating temperature of the tank when other emissions from the tank do not exceed the levels in paragraph 22.103(2)“a.”
- (6) Internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft. The manufacturer’s nameplate rating at full load shall be defined as the brake horsepower output at the shaft.

**567—22.104(455B) Requirement to have a Title V permit.** No source may operate after the time that it is required to submit a timely and complete application, except in compliance with a properly issued Title V operating permit. However, if a source submits a timely and complete application for permit issuance (including renewal), the source’s failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied.

**22.104(1)** This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

**22.104(2)** Sources making permit revisions pursuant to rule 567—22.110(455B) shall not be in violation of this rule.

**567—22.105(455B) Title V permit applications.**

**22.105(1) Duty to apply.** For each source required to obtain a Title V permit, the owner or operator or designated representative, where applicable, shall present or mail a complete and timely permit application in accordance with this rule to the following locations: Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324 (two copies); and U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101 (one copy); and, if applicable, the local permitting authority, which is either Linn County Public Health Department, Air Quality Division, 501 13th Street NW, Cedar Rapids, Iowa 52405 (one copy); or Polk County Public Works, Air Quality Division, 5885 NE 14th Street, Des Moines, Iowa 50313 (one copy). Alternatively, an owner or operator may submit a complete and timely application through the electronic submittal format specified by the department.

*a. Timely application.* Each owner or operator applying for a Title V permit shall submit an application as follows:

(1) Initial application for an existing source. The owner or operator of a stationary source that was existing on or before April 20, 1994, shall make the first time submittals of a Title V permit application to the department by November 15, 1994. However, the owner or operator may choose to defer submittal of Part 2 of the permit application until December 31, 1995. The department will mail notice of the deadline for Part 2 of the permit application to all applicants who have filed Part 1 of the application by October 17, 1995.

(2) Initial application for a new source. The owner or operator of a stationary source that commenced construction or reconstruction after April 20, 1994, or that otherwise became subject to the requirement to obtain a Title V permit after April 20, 1994, shall submit an application to the department within 12 months of becoming subject to the Title V permit requirements.

(3) Application related to 112(g), PSD or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to rule 567—22.4(455B) (prevention of significant deterioration (PSD)), or that is subject to rule 567—22.5(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation.

In cases in which an existing Title V permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.

(4) **Renewal application.** The owner or operator of a stationary source with a Title V permit shall submit an application to the department for a permit renewal at least 6 months prior to, but not more than 18 months prior to, the date of permit expiration.

(5) **Changes allowed without a permit revision (off-permit revision).** The owner or operator of a stationary source with a Title V permit who is proposing a change that is allowed without a Title V permit revision (an off-permit revision) as specified in rule 567—22.110(455B) shall submit to the department a written notification as specified in rule 567—22.110(455B) at least 30 days prior to the proposed change.

(6) **Application for an administrative permit amendment.** Prior to implementing a change that satisfies the requirements for an administrative permit amendment as set forth in rule 567—22.111(455B), the owner or operator shall submit to the department an application for an administrative amendment as specified in rule 567—22.111(455B).

(7) **Application for a minor permit modification.** Prior to implementing a change that satisfies the requirements for a minor permit modification as set forth in rule 567—22.112(455B), the owner or operator shall submit to the department an application for a minor permit modification as specified in rule 567—22.112(455B).

(8) **Application for a significant permit modification.** The owner or operator of a source that satisfies the requirements for a significant permit modification as set forth in rule 567—22.113(455B) shall submit to the department an application for a significant permit modification as specified in rule 567—22.113(455B) within three months after the commencing operation of the changed source. However, if the existing Title V permit would prohibit such construction or change in operation, the owner or operator shall not commence operation of the changed source until the department issues a revised Title V permit that allows the change.

(9) **Application for an acid rain permit.** The owner or operator of a source subject to the acid rain program, as set forth in rules 567—22.120(455B) through 567—22.148(455B), shall submit an application for an initial Phase II acid rain permit by January 1, 1996 (for sulfur dioxide), or by January 1, 1998 (for nitrogen oxides).

*b. Complete application.* To be deemed complete, an application must provide all information required pursuant to subrule 22.105(2), except that applications for permit revision need supply such information only if it is related to the proposed change.

**22.105(2) Standard application form and required information.** To apply for a Title V permit, applicants shall complete the standard permit application form available only from the department of natural resources and supply all information required by the filing instructions found on that form. The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by rule 567—22.106(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by paragraphs 22.101(1)“c” and “d,” then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities which are insignificant according to the provisions of rule 567—22.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity. Nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

*a.* Identifying information, including company name and address (or plant or source name if different from the company name), owner’s name and agent, and telephone number and names of plant site manager/contact.

*b.* A description of the source’s processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the applicant.

*c.* The following emissions-related information shall be submitted to the department on the emissions inventory portion of the application:

(1) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit except where such units are exempted. The source shall submit additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the approved fee schedule.

(2) Identification and description of all points of emissions in sufficient detail to establish the basis for fees and the applicability of any and all requirements.

(3) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any.

(4) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(5) Identification and description of air pollution control equipment.

(6) Identification and description of compliance monitoring devices or activities.

(7) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants.

(8) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to Section 123 of the Act).

(9) Calculations on which the information in subparagraphs (1) to (8) above is based.

(10) Fugitive emissions from a source shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

*d.* The following air pollution control requirements:

(1) Citation and description of all applicable requirements, and

(2) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

*e.* Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of these rules or to determine the applicability of such requirements.

*f.* An explanation of any proposed exemptions from otherwise applicable requirements.

*g.* Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to subrule 22.108(12) or to define permit terms and conditions relating to operational flexibility and emissions trading pursuant to subrule 22.108(11) and rule 567—22.112(455B).

*h.* A compliance plan that contains the following:

(1) A description of the compliance status of the source with respect to all applicable requirements.

(2) The following statements regarding compliance status: For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. For requirements for which the stationary source is not in compliance at the time of permit issuance, a narrative description of how the stationary source will achieve compliance with such requirements.

(3) A compliance schedule that contains the following:

1. For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. A statement that the stationary source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

2. A compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an

enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the stationary source will be in noncompliance at the time of permit issuance.

3. This compliance schedule shall resemble and be at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the source is subject. Any compliance schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(4) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a compliance schedule in the permit.

*i.* Requirements for compliance certification, including the following:

(1) A certification of compliance for the prior year with all applicable requirements certified by a responsible official consistent with subrule 22.107(4) and Section 114(a)(3) of the Act.

(2) A statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods.

(3) A schedule for submission of compliance certifications for each compliance period (one year unless required for a shorter time period by an applicable requirement) during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement or by the director.

(4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(5) Notwithstanding any other provisions of these rules, for the purposes of submission of compliance certifications, an owner or operator is not prohibited from using monitoring as required by subrules 22.108(3), 22.108(4) or 22.108(5) and incorporated into a Title V operating permit in addition to any specified compliance methods.

*j.* The compliance plan content requirements specified in these rules shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded by regulations promulgated under Title IV of the Act, with regard to the schedule and method(s) the source shall use to achieve compliance with the acid rain emissions limitations.

**22.105(3) Hazardous air pollutant early reduction application.** Anyone requesting a compliance extension from a standard issued under Section 112(d) of the Act must submit with its Title V permit application information that complies with the requirements established in 567—paragraph 23.1(4) “d.”

**22.105(4) Acid rain application content.** The acid rain application content shall be as prescribed in the acid rain rules found at rules 567—22.128(455B) and 567—22.129(455B).

**22.105(5) More than one Title V operating permit for a stationary source.** Following application made pursuant to subrule 22.105(1), the department may, at its discretion, issue more than one Title V operating permit for a stationary source, provided that the owner or operator does not have, and does not propose to have, a sourcewide emission limit or a sourcewide alternative operating scenario.

[ARC 8215B, IAB 10/7/09, effective 11/11/09]

#### **567—22.106(455B) Title V permit fees.**

**22.106(1) Fee established.** Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than \$56 per ton without adopting the change pursuant to formal rule making.

**22.106(2) Fee calculation.** The fee amount shall be calculated based on the first 4,000 tons of each regulated air pollutant or contaminant emitted each year from each major source.

**22.106(3) Fee and documentation due dates.**

*a.* The fee shall be submitted annually by July 1. For emissions located in Polk County or Linn County, the fee shall be submitted with three copies of the following forms. For emissions in all remaining counties, the fee shall be submitted with two copies of the following forms:

1. Form 1.0 “Facility identification”;
2. Form 5.0 “Title V annual emissions summary/fee”; and
3. Part 3 “Application certification.”

*b.* For emissions located in Polk County or Linn County, three copies of the following forms shall be submitted annually by March 31 documenting actual emissions for the previous calendar year. For emissions in all other counties, two copies of the following forms shall be submitted:

1. Form 1.0 “Facility identification”;
2. Form 4.0 “Emission unit—actual operations and emissions” for each emission unit;
3. Form 5.0 “Title V annual emissions summary/fee”; and
4. Part 3 “Application certification.”

Alternatively, an owner or operator may submit the required emissions inventory information through the electronic submittal format specified by the department.

If there are any changes to the emission calculation form, the department shall make revised forms available to the public by January 1. If revised forms are not available by January 1, forms from the previous year may be used and the year of emissions documented changed. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

**22.106(4) Phase I acid rain sources.** No fee shall be required to be paid for emissions which occur during the years 1993 through 1999 inclusive, with respect to any Phase I acid rain affected unit under Section 404 of the Act.

**22.106(5) Operation in Iowa.** The fee for a portable emissions unit or stationary source which operates both in Iowa and out of state shall be calculated only for emissions from the source while operating in Iowa.

**22.106(6) Title V exempted stationary sources.** No fee shall be required to be paid for emissions until the year in which sources exempted under subrules 22.102(1) and 22.102(2) are required to apply for a Title V permit. Fees shall be paid for the emission year preceding the year in which the application is due and thereafter.

**22.106(7) Insignificant activities.** No fee shall be required to be paid for insignificant activities, as defined in rule 567—22.103(455B).

**22.106(8) Correction of errors.** If an owner or operator, or the department, finds an error in a Title V emissions inventory or Title V fee payment, the owner or operator shall submit to the department revised forms making the necessary corrections to the Title V emissions inventory or Title V fee payment. Forms shall be submitted as soon as possible after the errors are discovered or upon notification by the department.

#### **567—22.107(455B) Title V permit processing procedures.**

**22.107(1) Action on application.**

*a. Conditions for action on application.* A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(1) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under rule 567—22.109(455B);

(2) Except for modifications qualifying for minor permit modification procedures under rule 22.112(455B), the permitting authority has complied with the requirements for public participation under subrule 22.107(6);

(3) The permitting authority has complied with the requirements for notifying and responding to affected states under subrule 22.107(7);

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(5) The administrator has received a copy of the proposed permit and any notices required under subrule 22.107(7), and has not objected to issuance of the permit under subrule 22.107(7) within the time period specified therein;

(6) If the administrator has properly objected to the permit pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, or subrule 22.107(7), then the permitting authority may issue a permit only after the administrator's objection has been resolved; and

(7) No permit for a solid waste incineration unit combusting municipal waste subject to the provisions of Section 129(e) of the Act may be issued by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

*b. Time for action on application.* The permitting authority shall take final action on each complete permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application, except in the following instances:

(1) When otherwise provided under Title V or Title IV of the Act for the permitting of affected sources under the acid rain program.

(2) In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on an application.

(3) Any complete permit applications containing an early reduction demonstration under Section 112(i)(5) of the Act shall be acted upon within nine months of receipt of the complete application.

*c. Prioritization of applications.* The director shall give priority to action on Title V applications involving construction or modification for which a construction permit pursuant to subrule 22.1(1) or Title I of the Act, Parts C and D, is also required. The director also shall give priority to action on Title V applications involving early reduction of hazardous air pollutants pursuant to 567—paragraph 23.1(4) “d.”

*d. Completeness of applications.* The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in rule 567—22.104(455B), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority. For modifications processed through minor permit modification procedures, a completeness determination shall not be required.

*e. Decision to deny a permit application.* The director shall decide to issue or deny the permit. The director shall notify the applicant as soon as practicable that the application has been denied. Upon denial of the permit the provisions of paragraph 22.107(1) “d” shall no longer be applicable. The new application shall be regarded as an entirely separate application containing all the required information and shall not depend on references to any documents contained in the previous denied application.

*f. Fact sheet.* A draft permit and fact sheet shall be prepared by the permitting authority. The fact sheet shall include the rationale for issuance or denial of the permit; a brief description of the type of facility; a summary of the type and quantity of air pollutants being emitted; a brief summary of the legal and factual basis for the draft permit conditions, including references to applicable statutes and rules; a description of the procedures for reaching final decision on the draft permit including the comment period, the address where comments will be received, and procedures for requesting a hearing and the nature of the hearing; and the name and telephone number for a person to contact for additional information. The permitting authority shall provide the fact sheet to EPA and to any other person who requests it.

*g. Relation to construction permits.* The submittal of a complete application shall not affect the requirement that any source have a construction permit under Title I of the Act and subrule 22.1(1).

**22.107(2) Confidential information.** If a source has submitted information with an application under a claim of confidentiality to the department, the source shall also submit a copy of such information directly to the administrator. Requests for confidentiality must comply with 561—Chapter 2.

**22.107(3) Duty to supplement or correct application.** Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the source filed a complete application but prior to release of a draft permit. Applicants who have filed a complete application shall have 60 days following notification by the department to file any amendments. Any MACT determinations in permit applications will be evaluated based on the standards, limitations or levels of technology existing on the date the initial application is deemed complete.

**22.107(4) Certification of truth, accuracy, and completeness.** Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

**22.107(5) Early reduction application evaluation.** Hazardous air pollutant early reduction application evaluation review shall follow the procedures established in 567—paragraph 23.1(4) “d.”

**22.107(6) Public notice and public participation.**

*a.* The permitting authority shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before taking any of the following actions: issuance, denial or renewal of a permit; or significant modification or revocation or reissuance of a permit.

*b.* Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. Notice also shall be given to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. The department may use other means if necessary to ensure adequate notice to the affected public.

*c.* The public notice shall include the following:

- (1) Identification of the Title V source.
- (2) Name and address of the permittee.
- (3) Name and address of the permitting authority processing the permit.
- (4) The activity or activities involved in the permit action.
- (5) The emissions change involved in any permit modification.
- (6) The air pollutants or contaminants to be emitted.
- (7) The time and place of any possible public hearing.
- (8) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit. A statement of procedures to request a public hearing shall be included.

(9) The name, address, and telephone number of a person from whom additional information may be obtained. Information entitled to confidential treatment pursuant to Section 114(c) of the Act or state law shall not be released pursuant to this provision. However, the contents of a Title V permit shall not be entitled to protection under Section 114(c) of the Act.

(10) Locations where copies of the permit application and the proposed permit may be reviewed, including the closest department office, and the times at which they shall be available for public inspection.

*d.* At least 30 days shall be provided for public comment. Notice of any public hearing shall be given at least 30 days in advance of the hearing.

*e.* Any person may request a public hearing. A request for a public hearing shall be in writing and shall state the person’s interest in the subject matter and the nature of the issues proposed to be raised at

the hearing. The director shall hold a public hearing upon finding, on the basis of requests, a significant degree of relevant public interest in a draft permit. A public hearing also may be held at the director's discretion.

*f.* The director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the director's responses shall be made available to the public.

*g.* The permitting authority shall provide notice and opportunity for participation by affected states as provided by subrule 22.107(7).

**22.107(7) Permit review by EPA and affected states.**

*a. Transmission of information to the administrator.* Except as provided in subrule 22.107(2) or waived by the administrator, the director shall provide to the administrator a copy of each permit application or modification application, including any attachments and compliance plans; each proposed permit; and each final permit. For purposes of this subrule, the application information may be submitted in a computer-readable format compatible with the administrator's national database management system.

*b. Review by affected states.* The director shall provide notice of each draft permit to any affected state on or before the time that public notice is provided to the public pursuant to subrule 22.107(6), except to the extent that subrule 22.112(3) requires the timing of the notice to be different. If the director refuses to accept a recommendation of any affected state, submitted during the public or affected state review period, then the director shall notify the administrator and the affected state in writing. The notification shall include the director's reasons for not accepting the recommendation(s). The director shall not be required to accept recommendations that are not based on applicable requirements.

*c. EPA objection.* No permit for which an application must be transmitted to the administrator shall be issued if the administrator objects in writing to its issuance as not in compliance with the applicable requirements within 45 days after receiving a copy of the proposed permit and necessary supporting information under 22.107(7) "a." Within 90 days after the date of an EPA objection made pursuant to this rule, the director shall submit a response to the objection, if the objection has not been resolved.

**22.107(8) Public petitions to the administrator regarding Title V permits.**

*a.* If the administrator does not object to a proposed permit, any person may petition the administrator within 60 days after the expiration of the administrator's 45-day review period to make an objection pursuant to 40 CFR 70.8(d) as amended to July 21, 1992.

*b.* Any person who petitions the administrator pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, shall notify the department by certified mail of such petition immediately, and in no case more than 10 days following the date the petition is submitted to EPA. Such notice shall include a copy of the petition submitted to EPA and a separate written statement detailing the grounds for the objection(s) and whether the objection(s) was raised during the public comment period. A petition for review shall not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day EPA review period and prior to the administrator's objection.

*c.* If the administrator objects to the permit as a result of a petition filed pursuant to 40 CFR 70.8(d) as amended to July 21, 1992, then the director shall not issue a permit until the administrator's objection has been resolved. However, if the director has issued a permit prior to receipt of the administrator's objection, and the administrator modifies, terminates, or revokes such permit, consistent with the procedures in 40 CFR 70.7 as amended to July 21, 1992, then the director may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

**22.107(9) A Title V permit application may be denied if:**

*a.* The director finds that a source is not in compliance with any applicable requirement; or

*b.* An applicant knowingly submits false information in a permit application.

**22.107(10) Retention of permit records.** The director shall keep all records associated with each permit for a minimum of five years.

**567—22.108(455B) Permit content.** Each Title V permit shall include the following elements:

**22.108(1)** Enforceable emission limitations and standards. Each permit issued pursuant to this chapter shall include emissions limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of permit issuance.

*a.* The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

*b.* The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator.

*c.* If an applicable implementation plan allows a determination of an alternative emission limit at a Title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the state elects to use such process, then any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

*d.* If an early reduction demonstration is approved as part of the Title V permit application, the permit shall include enforceable alternative emissions limitations for the source reflecting the reduction which qualified the source for the compliance extension.

*e.* Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

*f.* For all major sources, all applicable requirements for all relevant emissions units in the major source shall be included in the permit.

**22.108(2)** Permit duration. The permit shall specify a fixed term not to exceed five years except:

*a.* Permits issued to Title IV affected sources shall have a fixed term of five years.

*b.* Permits issued to solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

**22.108(3)** Monitoring. Each permit shall contain the following requirements with respect to monitoring:

*a.* All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;

*b.* Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subrule 22.108(5). Such monitoring shall be determined by application of the "Periodic Monitoring Guidance" (June 18, 2001) available from the department;

*c.* As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods; and

*d.* As required, Compliance Assurance Monitoring (CAM) consistent with 40 CFR Part 64 (as amended through October 22, 1997).

**22.108(4)** Record keeping. With respect to record keeping, the permit shall incorporate all applicable record-keeping requirements and require, where applicable, the following:

*a.* Records of required monitoring information that include the following:

(1) The date, place as defined in the permit, and time of sampling or measurements;

(2) The date(s) the analyses were performed;

(3) The company or entity that performed the analyses;

(4) The analytical techniques or methods used;

(5) The results of such analyses; and

(6) The operating conditions as existing at the time of sampling or measurement; and

*b.* Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart and other recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

**22.108(5) Reporting.** With respect to reporting, the permit shall incorporate all applicable reporting requirements and shall require the following:

*a.* Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subrule 22.107(4).

*b.* Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define “prompt” in relation to the degree and type of deviation likely to occur and the applicable requirements.

**22.108(6) Risk management plan.** Pursuant to Section 112(r)(7)(E) of the Act, if the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act, the permit shall state the requirement for submission of the plan to the air quality bureau of the department. The permit shall also require filing the plan with appropriate authorities and an annual certification to the department that the plan is being properly implemented.

**22.108(7) A permit condition prohibiting emissions exceeding any allowances that the affected source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.**

*a.* No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

*b.* No limit shall be placed on the number of allowances held by the Title IV affected source. The Title IV affected source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

*c.* Any such allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

*d.* Any permit issued pursuant to the requirements of these rules and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:

(1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators.

(2) Exceedences of applicable emission rates.

(3) The use of any allowance prior to the year for which it was allocated.

(4) Contravention of any other provision of the permit.

**22.108(8) Severability clause.** The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

**22.108(9) Other provisions.** The Title V permit shall contain provisions stating the following:

*a.* The permittee must comply with all conditions of the Title V permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

*b.* Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

*c.* The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

*d.* The permit does not convey any property rights of any sort, or any exclusive privilege.

*e.* The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee also shall furnish to the director copies of records required to be kept by the permit or, for information claimed

to be confidential, the permittee shall furnish such records directly to the administrator of EPA along with a claim of confidentiality.

**22.108(10) Fees.** The permit shall include a provision to ensure that the Title V permittee pays fees to the director pursuant to rule 567—22.106(455B).

**22.108(11) Emissions trading.** A provision of the permit shall state that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

**22.108(12) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and as approved by the director.** Such terms and conditions:

*a.* Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and

*b.* Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of the department's rules.

**22.108(13) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade.** Such terms and conditions:

*a.* Shall include all terms required under subrules 22.108(1) to 22.108(13) and subrule 22.108(15) to determine compliance;

*b.* Must meet all applicable requirements of the Act and regulations promulgated thereunder and all requirements of this chapter; and

*c.* May extend the permit shield described in subrule 22.108(18) to all terms and conditions that allow such increases and decreases in emissions.

**22.108(14) Federally enforceable requirements.**

*a.* All terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the Act.

*b.* Notwithstanding paragraph "a" of this subrule, the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of 40 CFR 70.7 or 70.8 (as amended through July 21, 1992).

**22.108(15) Compliance requirements.** All Title V permits shall contain the following elements with respect to compliance:

*a.* Consistent with the provisions of subrules 22.108(3) to 22.108(5), compliance certification, testing, monitoring, reporting, and record-keeping requirements sufficient to ensure compliance with the terms and conditions of the permit. Any documents, including reports, required by a permit shall contain a certification by a responsible official that meets the requirements of subrule 22.107(4).

*b.* Inspection and entry provisions which require that, upon presentation of proper credentials, the permittee shall allow the director or the director's authorized representative to:

(1) Enter upon the permittee's premises where a Title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) Sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the permit or other applicable requirements.

*c.* A schedule of compliance consistent with subparagraphs 22.105(2) "h" and "j" and subrule 22.105(3).

*d.* Progress reports, consistent with an applicable schedule of compliance and with the provisions of paragraphs 22.105(2) "h" and "j," to be submitted at least every six months, or more frequently if

specified in the applicable requirement or by the department in the permit. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

*e.* Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(1) The frequency of submissions of compliance certifications, which shall not be less than annually.

(2) The means to monitor the compliance of the source with its emissions limitations, standards, and work practices, in accordance with the provisions of all applicable department rules.

(3) A requirement that the compliance certification include: the identification of each term or condition of the permit that is the basis of the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with all applicable department rules; and other facts as the director may require to determine the compliance status of the source.

(4) A requirement that all compliance certifications be submitted to the administrator and the director.

*f.* Such additional provisions as the director may require.

*g.* Such additional provisions as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Act.

*h.* If there is a federal implementation plan applicable to the source, a provision that compliance with the federal implementation plan is required.

**22.108(16) Emergency provisions.**

*a.* For the purposes of a Title V permit, an “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

*b.* An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph 22.108(16) “*c*” are met.

*c.* Requirements for affirmative defense. The affirmative defense of emergency shall be demonstrated by the source through properly signed, contemporaneous operating logs, or other relevant evidence that:

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

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

(3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements of the permit; and

(4) The permittee submitted notice of the emergency to the director by certified mail within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph 22.108(5) “*b*.” This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

*d.* In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

*e.* This provision is in addition to any emergency or upset provision contained in any applicable requirement.

**22.108(17) Permit reopenings.**

*a.* A Title V permit issued to a major source shall require that revisions be made to incorporate applicable standards and regulations adopted by the administrator pursuant to the Act, provided that:

(1) The reopening and revision on this ground is not required if the permit has a remaining term of less than three years;

(2) The reopening and revision on this ground is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to 40 CFR 70.4(b)(10)(i) or (ii) as amended to May 15, 2001; or

(3) The additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit.

*b.* The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subrule shall be treated as a permit renewal.

**22.108(18) Permit shield.**

*a.* The director may expressly include in a Title V permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

(1) Such applicable requirements are included and are specifically identified in the permit; or

(2) The director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

*b.* A Title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

*c.* A permit shield shall not alter or affect the following:

(1) The provisions of Section 303 of the Act (emergency orders), including the authority of the administrator under that section;

(2) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;

(3) The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act;

(4) The ability of the department or the administrator to obtain information from the facility pursuant to Section 114 of the Act.

**22.108(19) Emission trades.** For emission trades at facilities solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, permit applications under this provision are required to include proposed replicable procedures and proposed permit terms that ensure the emission trades are quantifiable and enforceable.

**567—22.109(455B) General permits.**

**22.109(1) *Applicability.*** The director may issue a general permit for multiple sources that contain a number of operations and processes which emit pollutants with similar characteristics and that have substantially similar requirements regarding emissions, operations, monitoring and record keeping. General permits shall not be issued to Title IV affected sources except as provided in regulations promulgated by the administrator under Title IV of the Act.

**22.109(2) *Issuance of general permits.*** General permits may be issued by the director and codified in this chapter following notice and opportunity for public participation consistent with the procedures contained in subrule 22.107(6). Public participation shall be provided for a new general permit, for any revision of an existing general permit, and for renewal of an existing general permit. Permit review by the administrator and affected states shall be provided consistent with subrule 22.107(7). Each general permit shall identify criteria by which sources may qualify to operate under the general permit and shall comply with all requirements applicable to other Title V permits.

**22.109(3) *Applications.*** Any source that would qualify for a general permit must apply for either (a) coverage under the terms of the general permit or (b) an individual Title V permit. Applications for authority to operate under the terms of a general permit shall be made on the “General Permit Application Form” and shall specify the general permit concerned by citing the subrule containing that general

permit. These applications may deviate from the Title V individual permit application but shall include all information necessary to determine qualification for, and to ensure compliance with, the general permit. If a source is later determined not to qualify for the terms and conditions of the general permit, then the source shall be subject to enforcement action for operation without a Title V operating permit.

**22.109(4) *General permit content.*** A general permit shall include all of the following:

- a. The terms and conditions required for all sources authorized to operate under the permit;
- b. Emission limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of the permit issuance;
- c. A compliance plan;
- d. Monitoring, record keeping, and reporting requirements to ensure compliance with the terms and conditions of the general permit. These requirements shall ensure the use of consistent terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emissions limitations, standards, and other requirements contained in the general permit;
- e. The requirement to submit at least every six months the results of any required monitoring;
- f. References to the authority for the term or condition;
- g. A provision specifying permit duration as a fixed term not to exceed five years;
- h. A severability clause provision pursuant to subrule 22.108(8);
- i. A provision for payment of fees pursuant to subrule 22.108(10);
- j. A provision for emissions trading pursuant to subrules 22.108(11) and 22.108(13);
- k. Other provisions pursuant to subrule 22.108(9);
- l. Statement that the Title V permit is to be kept at the site of the source as well as at the corporate offices; and
- m. The process for individual sources to apply for coverage under the general permit.

**22.109(5) *Action on general permit application.***

- a. Once the director has issued a general permit, any source which is a member of the class of sources covered by the general permit may apply to the director for authority to operate under the general permit.
- b. Review of a general permit application. The director shall grant the conditions and terms of a general permit to all sources that apply and qualify under the identified criteria.
- c. The director may grant a source's request for authorization to operate under a general permit without repeating the public participation procedures followed in subrule 22.109(2). However, such a grant shall not be a final permit action for purposes of judicial review.

**22.109(6) *General permit renewal.*** The director shall review and may renew general permits every five years. A source's authorization to operate under a general permit shall expire when the general permit expires regardless of when the authorization began during the five-year period.

**22.109(7) *Relationship to individual permits.*** Any source covered by a general permit may request to be excluded from coverage by applying for an individual Title V permit. Coverage under the general permit shall terminate on the date the individual Title V permit is issued.

**22.109(8) *Permit shield for general permit.*** Each general permit issued under this chapter shall specifically identify all federal, state, and local air pollution control requirements applicable to the source at the time the permit is issued. The permit shall state that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance. Any permit under this chapter that does not expressly state that a permit shield exists shall be presumed not to provide such a shield. Notwithstanding the above provisions, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

**22.109(9) *Revocations of authority to operate.***

- a. The director may require any source or a class of sources authorized to operate under a general permit to individually apply for and obtain a Title V permit at any time if:
  - (1) The source is not in compliance with the terms and conditions of the general permit;

(2) The director has determined that the emissions from the source or class of sources is contributing significantly to ambient air quality standard violations and that these emissions are not adequately addressed by the terms and conditions of the general permit; or

(3) The director has information which indicates that the cumulative effects on human health and the environment from the sources covered under the general permit are unacceptable.

*b.* The director shall provide written notice to all sources operating under that general permit of the proposed revocation of that general permit. Such notice shall include an explanation of the basis for the proposed action.

**567—22.110(455B) Changes allowed without a Title V permit revision (off-permit revisions).**

**22.110(1)** A source with a Title V permit may make Section 502(b)(10) changes to the permitted installation/facility without a Title V permit revision if:

*a.* The changes are not major modifications under any provision of any program required by Section 110 of the Act, modifications under Section 111 of the Act, modifications under Section 112 of the Act, or major modifications of this chapter;

*b.* The changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

*c.* The changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

*d.* The changes are not subject to any requirement under Title IV of the Act (revisions affecting Title IV permitting are addressed in rules 567—22.140(455B) through 567—22.144(455B));

*e.* The changes comply with all applicable requirements; and

*f.* For each such change, the permitted source provides to the department and the administrator by certified mail, at least 30 days in advance of the proposed change, a written notification, including the following, which shall be attached to the permit by the source, the department, and the administrator:

(1) A brief description of the change within the permitted facility,

(2) The date on which the change will occur,

(3) Any change in emission as a result of the change,

(4) The pollutants emitted subject to the emissions trade,

(5) If the emissions trading provisions of the state implementation plan are invoked, then the Title V permit requirements with which the source shall comply; a description of how the emission increases and decreases will comply with the terms and conditions of the Title V permit;

(6) A description of the trading of emissions increases and decreases for the purpose of complying with a federally enforceable emissions cap as specified in and in compliance with the Title V permit; and

(7) Any permit term or condition no longer applicable as a result of the change.

**22.110(2)** Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

**22.110(3)** Notwithstanding any other part of this rule, the director may, upon review of a notice, require a stationary source to apply for a Title V permit if the change does not meet the requirements of subrule 22.110(1).

**22.110(4)** The permit shield provided in subrule 22.108(18) shall not apply to any change made pursuant to this rule. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the state implementation plan authorizing the emissions trade.

**567—22.111(455B) Administrative amendments to Title V permits.**

**22.111(1)** An administrative permit amendment is a permit revision that does any of the following:

*a.* Corrects typographical errors;

*b.* Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;

- c.* Requires more frequent monitoring or reporting by the permittee; or
- d.* Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director.

**22.111(2)** Administrative permit amendments to portions of permits containing provisions pursuant to Title IV of the Act shall be governed by regulations promulgated by the administrator under Title IV of the Act.

**22.111(3)** The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the director designates any such permit revisions as having been made pursuant to this rule.

**22.111(4)** The director shall submit to the administrator a copy of each Title V permit revised under this rule.

**22.111(5)** The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

**567—22.112(455B) Minor Title V permit modifications.**

**22.112(1)** Minor Title V permit modification procedures may be used only for those permit modifications that satisfy all of the following:

- a.* Do not violate any applicable requirement;
- b.* Do not involve significant changes to existing monitoring, reporting, or record-keeping requirements in the Title V permit;
- c.* Do not require or change a case-by-case determination of an emission limitation or other standard, or an increment analysis;
- d.* Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions caps which the source would assume to avoid classification as a modification under any provision of Title I of the Act; and an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;
- e.* Are not modifications under any provision of Title I of the Act; and
- f.* Are not required to be processed as a significant modification under rule 567—22.113(455B).

**22.112(2)** An application for minor permit revision shall be on the minor Title V modification application form and shall include at least the following:

- a.* A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;
- b.* The source's suggested draft permit;
- c.* Certification by a responsible official, pursuant to subrule 22.107(4), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and
- d.* Completed forms to enable the department to notify the administrator and affected states as required by subrule 22.107(7).

**22.112(3)** The department shall notify the administrator and affected states within five working days of receipt of a complete permit modification application. Notification shall be in accordance with the provisions of subrule 22.107(7). The department shall promptly send to the administrator any notification required by subrule 22.107(7).

**22.112(4)** The director shall not issue a final Title V permit modification until after the administrator's 45-day review period or until the administrator has notified the director that the administrator will not object to issuance of the Title V permit modification, whichever is first. Within 90 days of the director's receipt of an application under the minor permit modification procedures, or

15 days after the end of the administrator's 45-day review period provided for in subrule 22.107(7), whichever is later, the director shall:

- a. Issue the permit modification as proposed;
- b. Deny the permit modification application;
- c. Determine that the requested permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or
- d. Revise the draft permit modification and transmit to the administrator the proposed permit modification, as required by subrule 22.107(7).

**22.112(5)** Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files the application. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in paragraphs 22.112(4) "a" to "c," the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

**22.112(6)** Permit shield. The permit shield under subrule 22.108(18) shall not extend to minor Title V permit revisions.

**567—22.113(455B) Significant Title V permit modifications.**

**22.113(1)** Significant Title V modification procedures shall be used for applications requesting Title V permit modifications that do not qualify as minor Title V modifications or as administrative amendments. These include, but are not limited to, all significant changes in monitoring permit terms, every relaxation of reporting or record-keeping permit terms, and any change in the method of measuring compliance with existing requirements.

**22.113(2)** Significant Title V permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by the administrator, as those requirements that apply to Title V permit issuance and renewal.

**22.113(3)** Unless the director determines otherwise, review of significant Title V permit modification applications shall be completed within nine months of receipt of a complete application.

**22.113(4)** For a change that is subject to the requirements for a significant permit modification (see rule 567—22.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in which event the operation of the changed source may not commence until the department revises the permit.

**567—22.114(455B) Title V permit reopenings.**

**22.114(1)** Each issued Title V permit shall include provisions specifying the conditions under which the permit may be reopened and revised prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

a. The department receives notice that the administrator has granted a petition for disapproval of a permit pursuant to 40 CFR 70.8(d) as amended to July 21, 1992, provided that the reopening may be stayed pending judicial review of that determination;

b. The department or the administrator determines that the Title V permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the Title V permit;

c. Additional applicable requirements under the Act become applicable to a Title V source, provided that the reopening on this ground is not required if the permit has a remaining term of less than three years, the effective date of the requirement is later than the date on which the permit is due to expire, or the additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit. Such a reopening shall be complete not later than 18 months after promulgation of the applicable requirement.

*d.* Additional requirements, including excess emissions requirements, become applicable to a Title IV affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

*e.* The department or the administrator determines that the permit must be revised or revoked to ensure compliance by the source with the applicable requirements.

**22.114(2)** Proceedings to reopen and reissue a Title V permit shall follow the procedures applicable to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

**22.114(3)** A notice of intent shall be provided to the Title V source at least 30 days in advance of the date the permit is to be reopened, except that the director may provide a shorter time period in the case of an emergency.

**22.114(4)** Within 90 days of receipt of a notice from the administrator that cause exists to reopen a permit, the director shall forward to the administrator and the source a proposed determination of termination, modification, revocation, or reissuance of the permit, as appropriate.

**567—22.115(455B) Suspension, termination, and revocation of Title V permits.**

**22.115(1)** Permits may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a Title V permit:

*a.* The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

*b.* The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

*c.* The terms and conditions of the permit have been or are being violated.

*d.* The permittee has failed to pay the Title V permit fees.

*e.* The permittee has failed to pay an administrative, civil or criminal penalty imposed for violations of the permit.

**22.115(2)** If the director suspends, terminates or revokes a Title V permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

**567—22.116(455B) Title V permit renewals.**

**22.116(1)** An application for Title V permit renewal shall be subject to the same procedural requirements that apply to initial permit issuance, including those for public participation and review by the administrator and affected states.

**22.116(2)** Except as provided in rule 567—22.104(455B), permit expiration terminates a source's right to operate unless a timely and complete application for renewal has been submitted in accordance with rule 567—22.105(455B).

**567—22.117 to 22.119** Reserved.

**567—22.120(455B) Acid rain program—definitions.** The terms used in rules 567—22.120(455B) through 567—22.147(455B) shall have the meanings set forth in Title IV of the Clean Air Act, 42 U.S.C. 7401, et seq., as amended through November 15, 1990, and in this rule. The definitions set forth in 40 CFR Part 72 as amended through January 24, 2008, and 40 CFR Part 76 as amended through October 15, 1999, are adopted by reference.

“40 CFR Part 72,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 72, or the cited provision therein, as amended through January 24, 2008.

“40 CFR Part 73,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 73, or the cited provision therein, as amended through April 28, 2006.

“40 CFR Part 74,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 74, or the cited provision therein, as amended through April 28, 2006.

“40 CFR Part 75,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 75, or the cited provision therein, as amended through February 13, 2008.

“40 CFR Part 76,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 76, or the cited provision therein, as amended through October 15, 1999.

“40 CFR Part 77,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 77, or the cited provision therein, as amended through May 12, 2005.

“40 CFR Part 78,” or any cited provision therein, shall mean 40 Code of Federal Regulations Part 78, or the cited provision therein, as amended through April 28, 2006.

“Acid rain permit” means the legally binding written document, or portion of such document, issued by the department (following an opportunity for appeal as set forth in 561—Chapter 7, as adopted by reference at 567—Chapter 7), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owner and operators and the designated representative of the affected source or the affected unit.

“Department” means the department of natural resources and is the state acid rain permitting authority.

“Draft acid rain permit” means the version of the acid rain permit, or the acid rain portion of a Title V operating permit, that the department offers for public comment.

“Permit revision” means a permit modification, fast-track modification, administrative permit amendment, or automatic permit amendment, as provided in rules 567—22.140(455B) through 567—22.144(455B).

“Proposed acid rain permit” means the version of the acid rain permit that the department submits to the Administrator after the public comment period, but prior to completion of the EPA permit review under 40 CFR 70.8(c) as amended through July 21, 1992.

“Title V operating permit” means a permit issued under rules 567—22.100(455B) through 567—22.116(455B) implementing Title V of the Act.

“Ton” or “tonnage” means any short ton (i.e., 2,000 pounds). For purposes of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions) in accordance with rule 567—25.2(455B), with any remaining fraction of a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not equal to a ton.

**567—22.121(455B) Measurements, abbreviations, and acronyms.** Measurements, abbreviations, and acronyms used in rules 567—22.120(455B) to 567—22.147(455B) are defined as follows:

“ASTM” means American Society for Testing and Materials.

“Btu” means British thermal unit.

“CFR” means Code of Federal Regulations.

“DOE” means Department of Energy.

“EPA” means Environmental Protection Agency.

“mmBtu” means million Btu.

“MWe” means megawatt electrical.

“SO<sub>2</sub>” means sulfur dioxide.

**567—22.122(455B) Applicability.**

**22.122(1)** Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the acid rain program:

- a. A unit listed in Table 1 of 40 CFR 73.10(a).
- b. An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10, and any other existing utility unit, except a unit under subrule 22.122(2).
- c. A utility unit, except a unit under subrule 22.122(2), that:

- (1) Is a new unit;
- (2) Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990;
- (3) Was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;
- (4) Was an exempt cogeneration facility under paragraph 22.122(2)“d” but during any three-calendar-year period after November 15, 1990, sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;
- (5) Was an exempt qualifying facility under paragraph 22.122(2)“e” but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;
- (6) Was an exempt independent power production facility under paragraph 22.122(2)“f” but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or
- (7) Was an exempt solid waste incinerator under paragraph 22.122(2)“g” but during any three-calendar-year period after November 15, 1990, consumes 20 percent or more (on a Btu basis) fossil fuel.
- (8) Is a coal-fired substitution unit that is designated in a substitution plan that was not approved and not active as of January 1, 1995, or is a coal-fired compensating unit.

**22.122(2)** The following types of units are not affected units subject to the requirements of the acid rain program:

- a. A simple combustion turbine that commenced operation before November 15, 1990.
- b. Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.
- c. Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.
- d. A cogeneration facility which:
  - (1) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program; or
  - (2) For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program.
- e. A qualifying facility that:
  - (1) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and
  - (2) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

*f.* An independent power production facility that:

- (1) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and
- (2) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of its total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

*g.* A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of nonfossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of nonfossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three-calendar-year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the acid rain program.

*h.* A nonutility unit.

**22.122(3)** A certifying official of any unit may petition the administrator for a determination of applicability under 40 CFR 72.6(c). The administrator's determination of applicability shall be binding upon the department, unless the petition is found to have contained significant errors or omissions.

**567—22.123(455B) Acid rain exemptions.**

**22.123(1)** *New unit exemption.* The new unit exemption, as specified in 40 CFR §72.7, except for 40 CFR §72.7(c)(1)(i), is adopted by reference. This exemption applies to new utility units.

**22.123(2)** *Retired unit exemption.* The retired unit exemption, as specified in 40 CFR §72.8, is adopted by reference. This exemption applies to any affected unit that is permanently retired.

**22.123(3)** *Industrial utility-unit exemption.* The industrial utility-unit exemption, as specified in 40 CFR §72.14, is adopted by reference. This exemption applies to any noncogeneration utility unit.

**567—22.124(455B) Retired units exemption.** Rescinded IAB 9/9/98, effective 10/14/98.

**567—22.125(455B) Standard requirements.**

**22.125(1)** *Permit requirements.*

*a.* The designated representative of each affected source and each affected unit at the source shall:

- (1) Submit a complete acid rain permit application under this chapter in accordance with the deadlines specified in rule 567—22.128(455B);
- (2) Submit in a timely manner any supplemental information that the department determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.

*b.* The owners and operators of each affected source and each affected unit at the source shall:

- (1) Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the department; and
- (2) Have an acid rain permit.

**22.125(2)** *Monitoring requirements.*

*a.* The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in rule 567—25.2(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

*b.* The emissions measurements recorded and reported in accordance with rule 567—25.2(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.

*c.* The requirements of rule 567—25.2(455B) and regulations implementing Section 407 of the Act shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants

or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

**22.125(3) Sulfur dioxide requirements.**

*a.* The owners and operators of each source and each affected unit at the source shall:

(1) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

(2) Comply with the applicable acid rain emissions limitation for sulfur dioxide.

*b.* Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.

*c.* An affected unit shall be subject to the requirements under paragraph 22.125(3) "a" as follows: starting January 1, 2000, an affected unit under paragraph 22.122(1) "b"; or starting on the later of January 1, 2000, or the deadline for monitor certification under rule 567—25.2(455B), an affected unit under paragraph 22.122(1) "c."

*d.* Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.

*e.* An allowance shall not be deducted, in order to comply with the requirements under paragraph 22.125(3) "a," prior to the calendar year for which the allowance was allocated.

*f.* An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under rules 567—22.123(455B) and 567—22.124(455B) and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

*g.* An allowance allocated by the administrator under the acid rain program does not constitute a property right.

**22.125(4) Nitrogen oxides requirements.** The owners and operators of the source and each affected unit at the source shall comply with the applicable acid rain emission limitation for nitrogen oxides, as specified in 40 CFR Sections 76.5 and 76.7; 76.6; and 76.8, 76.11, 76.12, and 76.15; or by alternative emission limitations provided for by 40 CFR 76.10, as long as the alternative emission limitation has been petitioned and demonstrated according to 40 CFR 76.14 and approved by the department.

**22.125(5) Excess emissions requirements.**

*a.* The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR Part 77, and submit a copy to the department.

*b.* The owners and operators of an affected unit that has excess emissions in any calendar year shall:

(1) Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR Part 77; and

(2) Comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

**22.125(6) Record-keeping and reporting requirements.**

*a.* Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the administrator or the department.

(1) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(2) All emissions monitoring information, in accordance with rule 567—25.2(455B).

(3) Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.

(4) Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.

*b.* The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under rules 567—22.146(455B) and 567—22.147(455B) and rule 567—25.2(455B).

**22.125(7) Liability.**

*a.* Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under rules 567—22.123(455B) or 567—22.124(455B), including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to Section 113(c) of the Act and by the department pursuant to Iowa Code section 455B.146.

*b.* Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to Section 113(c) of the Act and 18 U.S.C. 1001 and by the department pursuant to Iowa Code section 455B.146.

*c.* No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.

*d.* Each affected source and each affected unit shall meet the requirements of the acid rain program.

*e.* Any provision of the acid rain program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

*f.* Any provision of the acid rain program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under rule 567—22.132(455B) (Phase II repowering extension plans), Section 407 of the Act and regulations implementing Section 407 of the Act, and except with regard to the requirements applicable to units with a common stack under rule 567—25.2(455B), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated representative and that is located at a source of which they are not owners or operators or the designated representative.

*g.* Each violation of a provision of rules 567—22.120(455B) to 567—22.146(455B) and 40 CFR Parts 72, 73, 75, 76, 77, and 78 and regulations implementing Sections 407 and 410 of the Act by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

**22.125(8) Effect on other authorities.** No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under rule 567—22.123(455B) or 567—22.124(455B) shall be construed as:

*a.* Except as expressly provided in Title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of Title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans;

*b.* Limiting the number of allowances a unit can hold; provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act;

*c.* Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state rule, or limiting such state rule, including any prudence review requirements under such state law;

*d.* Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or

*e.* Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

**567—22.126(455B) Designated representative—submissions.**

**22.126(1)** The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72, and, concurrently, shall submit a copy to the department. Whenever the term “designated representative” is used in this rule, the term shall be construed to include the alternate designated representative.

**22.126(2)** Each submission under the acid rain program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

**22.126(3)** In each submission under the acid rain program, the designated representative shall certify by signature:

*a.* The following statement, which shall be included verbatim in such submission: “I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made.”

*b.* The following statement, which shall be included verbatim in such submission: “I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

**22.126(4)** The department will accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with subrules 22.126(2) and 22.126(3).

**22.126(5)** The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

*a.* By the date of submission, of any acid rain program submissions by the designated representative;

*b.* Within ten business days of receipt of a determination, of any written determination by the administrator or the department; and

*c.* Provided that the submission or determination covers the source or the unit.

**22.126(6)** The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under subrule 22.126(5), unless the owner or operator expressly waives the right to receive such a copy.

**567—22.127(455B) Designated representative—objections.**

**22.127(1)** Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the department, under the acid rain program. In the event of such communication, the department is not required to stay any submission or the effect of any action or inaction under the acid rain program.

**22.127(2)** The department will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

**567—22.128(455B) Acid rain applications—requirement to apply.**

**22.128(1)** *Duty to apply.* The designated representative of any source with an affected unit shall submit a complete acid rain permit application by the applicable deadline in subrules 22.128(2) and 22.128(3), and the owners and operators of such source and any affected unit at the source shall not operate the source or unit without a permit that states its acid rain program requirements.

**22.128(2) Deadlines.**

a. For any source with an existing unit described under paragraph 22.122(1)“b,” the designated representative shall submit a complete acid rain permit application governing such unit to the department on or before January 1, 1996.

b. For any source with a new unit described under subparagraph 22.122(1)“c”(1), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

c. For any source with a unit described under subparagraph 22.122(1)“c”(2), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

d. For any source with a unit described under subparagraph 22.122(1)“c”(3), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the auxiliary firing commences operation.

e. For any source with a unit described under subparagraph 22.122(1)“c”(4), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

f. For any source with a unit described under subparagraph 22.122(1)“c”(5), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. For any source with a unit described under subparagraph 22.122(1)“c”(6), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. For any source with a unit described under subparagraph 22.122(1)“c”(7), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

i. For a Phase II unit with a Group 1 or a Group 2 boiler, the designated representative shall submit a complete permit application and compliance plan for NO<sub>x</sub> emissions to the department no later than January 1, 1998.

**22.128(3) Duty to reapply.** The designated representative shall submit a complete acid rain permit application for each source with an affected unit at least six months prior to the expiration of an existing acid rain permit governing the unit.

**22.128(4) Submission of copies.** The original and three copies of all permit applications shall be presented or mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324.

[ARC 8215B, IAB 10/7/09, effective 11/11/09]

**567—22.129(455B) Information requirements for acid rain permit applications.** A complete acid rain permit application shall be submitted on a form approved by the department, which includes the following elements:

**22.129(1)** Identification of the affected source for which the permit application is submitted;

**22.129(2)** Identification of each affected unit at the source for which the permit application is submitted;

**22.129(3)** A complete compliance plan for each unit, in accordance with rules 567—22.131(455B) and 567—22.132(455B);

**22.129(4)** The standard requirements under rule 567—22.125(455B); and

**22.129(5)** If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

**567—22.130(455B) Acid rain permit application shield and binding effect of permit application.**

**22.130(1)** Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain permit under paragraph 22.125(1)“*b*” and subrule 22.128(1); provided that any delay in issuing an acid rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the department, necessary to issue a permit.

**22.130(2)** Prior to the date on which an acid rain permit is issued as a final agency action subject to judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain permit application shall be deemed to be operating in compliance with the acid rain program.

**22.130(3)** A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

**567—22.131(455B) Acid rain compliance plan and compliance options—general.**

**22.131(1)** For each affected unit included in an acid rain permit application, a complete compliance plan shall include:

*a.* For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit’s compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with rule 567—22.131(455B), one or more of the acid rain compliance options.

*b.* For nitrogen oxides emissions, a certification that the unit will comply with the applicable limitation established by subrule 22.125(4) or shall specify one or more acid rain compliance options, in accordance with Section 407 of the Act, and 40 CFR Section 76.9.

**22.131(2)** The compliance plan may include a multiunit compliance option under rule 567—22.132(455B) or Section 407 of the Act or regulations implementing Section 407.

*a.* A plan for a compliance option that includes units at more than one affected source shall be complete only if:

(1) Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and

(2) A complete permit application is submitted covering each unit governed by such plan.

*b.* The department’s approval of a plan under paragraph 22.131(2)“*a*” that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

**22.131(3)** Conditional approval. In the compliance plan, the designated representative of an affected unit may propose, in accordance with rules 567—22.131(455B) and 567—22.132(455B), any acid rain compliance option for conditional approval; provided that an acid rain compliance option under Section 407 of the Act may be conditionally proposed only to the extent provided in regulations implementing Section 407 of the Act.

*a.* To activate a conditionally approved acid rain compliance option, the designated representative shall notify the department in writing that the conditionally approved compliance option will actually be pursued beginning January 1 of a specified year. If the conditionally approved compliance option includes a plan described in paragraph 22.131(2)“*a*,” the designated representative of each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the

limitations on activation under rule 567—22.132(455B) and regulations implementing Section 407 of the Act.

*b.* The notification under paragraph 22.131(3)“*a*” shall specify the first calendar year and the last calendar year for which the conditionally approved acid rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

*c.* Upon submission of a notification meeting the requirements of paragraphs 22.131(3)“*a*” and “*b*,” the conditionally approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally approved compliance option.

*d.* A notification meeting the requirements of paragraphs 22.131(3)“*a*” and “*b*” will revise the unit’s permit in accordance with rule 567—22.143(455B) (administrative permit amendment).

**22.131(4) Termination of compliance option.**

*a.* The designated representative for a unit may terminate an acid rain compliance option by notifying the department in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under rule 567—22.132(455B) and regulations implementing Section 407 of the Act. If the compliance option includes a plan described in paragraph 22.131(2)“*a*,” the designated representative for each source governed by the plan shall sign and certify the notification.

*b.* The notification under paragraph 22.131(4)“*a*” shall specify the calendar year for which the termination will take effect.

*c.* Upon submission of a notification meeting the requirements of paragraphs 22.131(4)“*a*” and “*b*,” the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

*d.* A notification meeting the requirements of paragraphs 22.131(4)“*a*” and “*b*” will revise the unit’s permit in accordance with rule 567—22.143(455B) (administrative permit amendment).

**567—22.132(455B) Repowering extensions.** Rescinded IAB 4/8/98, effective 5/13/98.

**567—22.133(455B) Acid rain permit contents—general.**

**22.133(1)** Each acid rain permit (including any draft acid rain permit) will contain the following elements:

*a.* All elements required for a complete acid rain permit application under rule 567—22.129(455B), as approved or adjusted by the department;

*b.* The applicable acid rain emissions limitation for sulfur dioxide; and

*c.* The applicable acid rain emissions limitation for nitrogen oxides.

**22.133(2)** Each acid rain permit is deemed to incorporate the definitions of terms under rule 567—22.120(455B).

**567—22.134(455B) Acid rain permit shield.** Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the Act, as provided in rules 567—22.120(455B) to 567—22.146(455B), rule 567—25.2(455B), or 40 CFR Parts 72, 73, 75, 76, 77, and 78, and the regulations implementing Section 407 of the Act, shall be deemed to be operating in compliance with the acid rain program, except as provided in paragraph 22.125(7)“*f*.”

**567—22.135(455B) Acid rain permit issuance procedures—general.** The department will issue or deny all acid rain permits in accordance with rules 567—22.100(455B) to 567—22.116(455B), including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by rules 567—22.135(455B) to 567—22.145(455B).

**567—22.136(455B) Acid rain permit issuance procedures—completeness.** The department will submit a written notice of application completeness to the administrator within ten working days following a determination by the department that the acid rain permit application is complete.

**567—22.137(455B) Acid rain permit issuance procedures—statement of basis.**

**22.137(1)** The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the department relied in issuing or denying the draft acid rain permit.

**22.137(2)** The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

**22.137(3)** The department will submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the Title V operating permit that may affect the draft acid rain permit.

**567—22.138(455B) Issuance of acid rain permits.**

**22.138(1)** Proposed permit. After the close of the public comment and EPA 45-day review period (pursuant to subrules 22.107(6) and 22.107(7)), the department will address any objections by the administrator, incorporate all necessary changes and issue or deny the acid rain permit.

**22.138(2)** The department will submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with rules 567—22.100(455B) to 567—22.116(455B), the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

**22.138(3)** Following the administrator's review of the proposed acid rain permit or denial of a proposed acid rain permit, the department, or under 40 CFR 70.8(c) as amended to July 21, 1992, the administrator, will incorporate any required changes and issue or deny the acid rain permit in accordance with rules 567—22.133(455B) and 567—22.134(455B).

**22.138(4)** No acid rain permit including a draft or proposed permit shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

**22.138(5)** Permit issuance deadline and effective date.

*a.* On or before December 31, 1997, the department will issue an acid rain permit to each affected source whose designated representative submitted a timely and complete acid rain permit application by January 1, 1996, in accordance with rule 567—22.126(455B) and meets the requirements of rules 567—22.135(455B) to 567—22.139(455B) and rules 567—22.100(455B) to 567—22.116(455B).

*b.* Nitrogen oxides. Not later than January 1, 1999, the department will reopen the acid rain permit to add the acid rain program nitrogen oxides requirements; provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with rule 567—22.126(455B). Such reopening shall not affect the term of the acid rain portion of a Title V operating permit.

*c.* Each acid rain permit issued in accordance with paragraph 22.138(5)“*a*” shall take effect by the later of January 1, 2000, or, where the permit governs a unit under paragraph 22.122(1)“*c*,” the deadline for monitor certification under rule 567—25.2(455B).

*d.* Each acid rain permit shall have a term of five years commencing on its effective date.

*e.* An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

**22.138(6)** Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the Title V operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

**22.138(7)** Invalidation of the acid rain portion of a Title V operating permit shall not affect the continuing validity of the rest of the Title V operating permit, nor shall invalidation of any other portion of the Title V operating permit affect the continuing validity of the acid rain portion of the permit.

**567—22.139(455B) Acid rain permit appeal procedures.**

**22.139(1)** Appeals of the acid rain portion of a Title V operating permit issued by the department that do not challenge or involve decisions or actions of the administrator under 40 CFR Parts 72, 73, 75, 76, 77, and 78 and Sections 407 and 410 of the Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in Iowa Code chapter 17A and 561—Chapter 7, as adopted by reference at 567—Chapter 7. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

**22.139(2)** No administrative appeal or judicial appeal of the acid rain portion of a Title V operating permit shall be allowed more than 30 days following respective issuance of the acid rain portion of the permit that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

**22.139(3)** The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

**22.139(4)** No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

*a.* The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

*b.* Any standard requirement under rule 567—22.125(455B);

*c.* The emissions monitoring and reporting requirements applicable to the affected units at an affected source under rule 567—25.2(455B);

*d.* Uncontested provisions of the decision on appeal; and

*e.* The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

**22.139(5)** The department will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any Title V operating permit or denial of an acid rain portion of any Title V operating permit within 30 days of the filing of the appeal.

**22.139(6)** The department will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with subrules 22.107(7) and 22.107(8).

**567—22.140(455B) Permit revisions—general.**

**22.140(1)** Rules 567—22.140(455B) to 567—22.145(455B) shall govern revisions to any acid rain permit issued by the department.

**22.140(2)** A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the acid rain permit to be revised. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

**22.140(3)** The terms of the acid rain permit shall apply while the permit revision is pending.

**22.140(4)** Any determination or interpretation by the state (including the department or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with 40 CFR 70.8(c) as amended to July 21, 1992, as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with rule 567—22.143(455B).

**22.140(5)** The standard requirements of rule 567—22.125(455B) shall not be modified or voided by a permit revision.

**22.140(6)** Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for

such compliance option under rule 567—22.132(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

**22.140(7)** For permit revisions not described in rules 567—22.141(455B) and 567—22.142(455B), the department may, in its discretion, determine which of these rules is applicable.

**567—22.141(455B) Permit modifications.**

**22.141(1)** Permit modifications shall follow the permit issuance requirements of rules 567—22.135(455B) to 567—22.139(455B) and subrules 22.113(2) and 22.113(3).

**22.141(2)** For purposes of applying subrule 22.141(1), a permit modification shall be treated as an acid rain permit application, to the extent consistent with rules 567—22.140(455B) to 567—22.145(455B).

**22.141(3)** The following permit revisions are permit modifications:

- a. Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator;
- b. Incorporation of a final nitrogen oxides alternative emissions limitation following a demonstration period;
- c. Determinations concerning failed repowering projects under subrule 22.132(6); and
- d. At the option of the designated representative submitting the permit revision, the permit revisions listed in subrule 22.142(2).

**567—22.142(455B) Fast-track modifications.**

**22.142(1)** Fast-track modifications shall follow the following procedures:

a. The designated representative shall serve a copy of the fast-track modification on the administrator, the department, and any person entitled to a written notice under subrules 22.107(6) and 22.107(7). Within five business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice.

b. The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the air quality bureau of the department and to the designated representative.

c. The designated representative shall submit the fast-track modification to the department on or before commencement of the public comment period.

d. Within 30 days of the close of the public comment period, the department will consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast-track modification shall be effective immediately upon issuance, in accordance with subrule 22.113(2) as applied to significant modifications.

**22.142(2)** The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this rule or permit modifications under rule 567—22.141(455B):

- a. Incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;
- b. Addition of a nitrogen oxides averaging plan to a permit; and
- c. Changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

**567—22.143(455B) Administrative permit amendment.**

**22.143(1)** Administrative amendments shall follow the procedures set forth at rule 567—22.111(455B). The department will submit the revised portion of the permit to the administrator within ten working days after the date of final action on the request for an administrative amendment.

**22.143(2)** The following permit revisions are administrative amendments:

- a. Activation of a compliance option conditionally approved by the department; provided that all requirements for activation under subrule 22.131(3) and rule 567—22.132(455B) are met;

- b.* Changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72;
- c.* Correction of typographical errors;
- d.* Changes in names, addresses, or telephone or facsimile numbers;
- e.* Changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days to the administrator and the department in accordance with Subpart B of 40 CFR Part 72;
- f.* Termination of a compliance option in the permit; provided that all requirements for termination under subrule 22.131(4) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;
- g.* Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification; provided that they are in accordance with rule 567—22.125(455B);
- h.* The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period; provided that the requirements of regulations implementing Section 407 of the Act are met; and
- i.* Incorporation of changes that the administrator has determined to be similar to those in paragraphs “a” through “h” of this subrule.

**567—22.144(455B) Automatic permit amendment.** The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's acid rain permit by operation of law without any further review:

**22.144(1)** Upon recordation by the administrator under 40 CFR Part 73, all allowance allocations to, transfers to, and deductions from an affected unit's allowance tracking system account; and

**22.144(2)** Incorporation of an offset plan that has been approved by the administrator under 40 CFR Part 77.

**567—22.145(455B) Permit reopenings.**

**22.145(1)** As provided in rule 567—22.114(455B), the department will reopen an acid rain permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.

**22.145(2)** In reopening an acid rain permit for cause, the department will issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary. The draft permit shall be subject to the requirements of rules 567—22.135(455B) to 567—22.139(455B).

**22.145(3)** Any reopening of an acid rain permit shall not affect the term of the permit.

**567—22.146(455B) Compliance certification—annual report.**

**22.146(1)** Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.

**22.146(2)** The submission of complete compliance certifications in accordance with subrule 22.146(1) and rule 567—25.2(455B) shall be deemed to satisfy the requirement to submit compliance certifications under paragraph 22.108(15) “e” with regard to the acid rain portion of the source's Title V operating permit.

**567—22.147(455B) Compliance certification—units with repowering extension plans.** Rescinded IAB 4/8/98, effective 5/13/98.

**567—22.148(455B) Sulfur dioxide opt-ins.** The department adopts by reference the provisions of 40 CFR Part 74, Acid Rain Opt-Ins.

**567—22.149 to 22.199** Reserved.

**567—22.200(455B) Definitions for voluntary operating permits.** For the purposes of rules 567—22.200(455B) to 567—22.208(455B), the definitions shall be the same as the definitions found at rule 567—22.100(455B).

**567—22.201(455B) Eligibility for voluntary operating permits.**

**22.201(1)** Except as provided in 567—subrules 22.201(2) and 22.205(2), any person who owns or operates a major source otherwise required to obtain a Title V operating permit may instead obtain a voluntary operating permit following successful demonstration of the following:

*a.* That the potential to emit, as limited by the conditions of air quality permits obtained from the department, of each regulated air pollutant shall be limited to less than 100 tons per 12-month rolling period. The fugitive emissions of each regulated air pollutant from a stationary source shall not be considered in determining the potential to emit unless the source belongs to one of the stationary source categories listed in this chapter; and

*b.* That the actual emissions of each regulated air pollutant have been and are predicted to be less than 100 tons per 12-month rolling period. The fugitive emissions of each regulated air pollutant from a stationary source shall not be considered in determining the actual emissions unless the source belongs to one of the stationary source categories listed in this chapter; and

*c.* That the potential to emit of each regulated hazardous air pollutant, including fugitive emissions, shall be less than 10 tons per 12-month rolling period and the potential to emit of all regulated hazardous air pollutants, including fugitive emissions, shall be less than 25 tons per 12-month rolling period; and

*d.* That the actual emissions of each regulated hazardous air pollutant, including fugitive emissions, have been and are predicted to be less than 10 tons per 12-month rolling period and the actual emissions of all regulated hazardous air pollutants, including fugitive emissions, have been and are predicted to be less than 25 tons per 12-month rolling period.

**22.201(2) Exceptions.**

*a.* Any affected source subject to the provisions of Title IV of the Act or sources required to obtain a Title V operating permit under paragraph 22.101(1) “f” or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for a voluntary operating permit.

*b.* Sources which are not major sources but subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act; or 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for a voluntary operating permit. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

**567—22.202(455B) Requirement to have a Title V permit.** No source may operate after the time that it is required to submit a timely and complete application for an operating permit, except in compliance with a properly issued Title V operating permit or a properly issued voluntary operating permit or operating permit by rule for small sources. However, if a source submits a timely and complete application for permit issuance (including renewal), the source’s failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

**567—22.203(455B) Voluntary operating permit applications.**

**22.203(1) Duty to apply.** Any source which would qualify for a voluntary operating permit and which would not qualify under the provisions of rule 567—22.300(455B), operating permit by rule for small sources, must apply for either a voluntary operating permit or a Title V operating permit. Any

source determined not to be eligible for a voluntary operating permit shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in rule 567—22.202(455B) and rule 567—22.300(455B). For each source applying for a voluntary operating permit, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, an original and one copy of a timely and complete permit application in accordance with this rule.

*a. Timely application.* Each source applying for a voluntary operating permit shall submit an application:

(1) By July 1, 1996, if the source is existing on or before July 1, 1995, unless otherwise required to obtain a Title V permit under rule 567—22.101(455B);

(2) At least 6 months but not more than 12 months prior to the date of expiration if the application is for renewal;

(3) Within 12 months of becoming subject to rule 567—22.101(455B) for a new source or a source which would otherwise become subject to the Title V permit requirement after July 1, 1995.

*b. Complete application.* To be deemed complete, an application must provide all information required pursuant to subrule 22.203(2).

*c. Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to the issuance of a permit. Applicants who have filed a complete application shall have 30 days following notification by the department to file any amendments to the application.

*d. Certification of truth, accuracy, and completeness.* Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

**22.203(2) Standard application form and required information.** To apply for a voluntary operating permit, applicants shall complete the Voluntary Operating Permit Application Form and supply all information required by the Filing Instructions. The information submitted must be sufficient to evaluate the source, its application, predicted actual emissions from the source, and the potential to emit of the source; and to determine all applicable requirements. The applicant shall submit the information called for by the application form for all emissions units, including those having insignificant activities according to the provisions of rules 567—22.102(455B) and 567—22.103(455B). The standard application form and any attachments shall require that the following information be provided:

*a.* Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact;

*b.* A description of source processes and products (by two-digit Standard Industrial Classification Code);

*c.* The following emissions-related information shall be submitted to the department on the emissions inventory portion of the application:

(1) All emissions of any regulated air pollutants from each emissions unit and information sufficient to determine which requirements are applicable to the source;

(2) Emissions in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any;

(3) The following information to the extent it is needed to determine or regulate emissions, including toxic emissions: fuels, fuel use, raw materials, production rates and operating schedules;

(4) Identification and description of air pollution control equipment;

(5) Identification and description of compliance monitoring devices or activities;

(6) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

(7) Other information required by any applicable requirement; and

(8) Calculations on which the information in (1) to (7) above is based.

(9) Fugitive emissions sources shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

*d.* Requested permit conditions sufficient to limit the operation of the source according to the requirements of rule 567—22.201(455B).

*e.* Requirements for compliance certification. This shall include the following:

(1) Certification of compliance for the prior year with all applicable requirements with an exception for violations of subrules 22.1(1) and 22.105(1);

(2) A list of the emission points, control equipment, and emission units in violation of subrule 22.1(1);

(3) Construction permit applications for emission points and associated equipment listed in subparagraph 22.203(2)“*e*”(2); and

(4) Compliance certification certified by a responsible official consistent with 22.203(1)“*d.*”  
[ARC 8215B, IAB 10/7/09, effective 11/11/09]

**567—22.204(455B) Voluntary operating permit fees.** Each source in compliance with a current voluntary operating permit shall be exempt from Title V operating permit fees.

**567—22.205(455B) Voluntary operating permit processing procedures.**

**22.205(1) Action on application.**

*a. Completeness of applications.* The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take formal action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response.

*b. Public notice and public participation.*

(1) The department shall provide public notice and an opportunity for public comment, including an opportunity for a hearing, before issuing or renewing a permit.

(2) Notice of the intended issuance or renewal of a permit shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. The department shall also provide the administrator a copy of the notice. The department may use other means if necessary to ensure adequate notice to the affected public.

(3) The public notice shall include: identification of the source; name and address of the permittee; the activity or activities involved in the permit action; the air pollutants or contaminants to be emitted; a statement that a public hearing may be requested, or the time and place of any public hearing which has been set; the name, address, and telephone number of a department representative who may be contacted for further information; and the location of copies of the permit application and the proposed permit which are available for public inspection.

(4) At least 30 days shall be provided for public comment.

**22.205(2) Denial of voluntary operating permit applications.**

*a.* A voluntary operating permit application may be denied if:

(1) The director finds that a source is not in compliance with any applicable requirement except for subrule 22.1(1); or

(2) An applicant knowingly submits false information in a permit application.

(3) An applicant is unable to certify that the source was in compliance with all applicable requirements, except for subrule 22.1(1), for the year preceding the application.

*b.* Once agency action has occurred denying a voluntary operating permit, the source shall apply for a Title V operating permit. Any source determined not to be eligible for a voluntary operating permit shall be subject to enforcement action for operating without a Title V operating permit pursuant to rule 567—22.104(455B).

**567—22.206(455B) Permit content.**

**22.206(1)** Each voluntary operating permit shall include all of the following provisions:

- a.* The terms and conditions required for all sources authorized to operate under the permit;
- b.* Emission limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of the permit issuance;
- c.* A certified statement from the source that each emissions unit is in compliance;
- d.* Monitoring, record keeping, and reporting requirements to ensure compliance with the terms and conditions of the permit. These requirements shall ensure the use of consistent terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emissions limitations, standards, and other requirements contained in the permit;
- e.* The requirement to submit the results of any required monitoring at intervals to be specified in the permit;
- f.* References to the authority for the term or condition;
- g.* A provision specifying permit duration as a fixed term not to exceed five years;
- h.* A statement that the voluntary operating permit is to be kept at the site of the source;
- i.* A statement that the permittee must comply with all conditions of the voluntary operating permit and that any permit noncompliance is grounds for enforcement action, for a permit termination or revocation, and for an immediate requirement to obtain a Title V operating permit;
- j.* A statement that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;
- k.* A statement that the permit may be revoked or terminated for cause;
- l.* A statement that the permit does not convey any property rights of any sort, or any exclusive privilege;
- m.* A statement that the permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for revoking or terminating the permit or to determine compliance with the permit; and that, upon request, the permittee also shall furnish to the director copies of records required by the permit to be kept.

**22.206(2)** The following shall apply to voluntary operating permits:

- a.* Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.
- b.* Federally enforceable requirements.
  - (1) All terms and conditions in a voluntary operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the Act.
  - (2) Notwithstanding paragraph “*a*” of this subrule, the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.
- c.* All emission limitations, all controls, and all other requirements included in a voluntary permit shall be at least as stringent as any other applicable limitation or requirement in the state implementation plan or enforceable as a practical matter under the state implementation plan. For the purposes of this paragraph, “enforceable as a practical matter under the state implementation plan” shall mean that the provisions of the permit shall specify technically accurate limitations and the portions of the source subject to each limitation; the time period for the limitation (hourly, daily, monthly, annually); and the method to determine compliance including appropriate monitoring, record keeping and reporting.

d. The director shall not issue a voluntary operating permit that waives any limitation or requirement contained in or issued pursuant to the state implementation plan or that is otherwise federally enforceable.

e. The limitations, controls, and requirements in a voluntary operating permit shall be permanent, quantifiable, and otherwise enforceable.

f. Emergency provisions. For the purposes of a voluntary operating permit, an “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

**567—22.207(455B) Relation to construction permits.**

**22.207(1)** *Construction permits issued after the voluntary operating permit is issued.* If the issuance of a construction permit acts to make the source no longer eligible for a voluntary operating permit, then the source shall, in accordance with subparagraph 22.105(1)“a”(2), not operate without a Title V operating permit, and the source shall be subject to enforcement action for operating without a Title V operating permit.

**22.207(2)** *Relation of construction permits to voluntary operating permit renewal.* At the time of renewal of a voluntary operating permit, the conditions of construction permits issued during the term of the voluntary operating permit shall be incorporated into the voluntary operating permit. Each application for renewal of a voluntary operating permit shall include a list of construction permits issued during the term of the voluntary operating permit and shall state the effect of each of these construction permits on the conditions of the voluntary operating permit. Applications for renewal shall be accompanied by copies of all construction permits issued during the term of the voluntary operating permit.

**567—22.208(455B) Suspension, termination, and revocation of voluntary operating permits.**

**22.208(1)** Permits may be terminated, modified, revoked or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a voluntary permit:

a. The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

b. The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

c. The terms and conditions of the permit have been or are being violated.

d. The permittee has failed to pay an administrative, civil or criminal penalty for violations of the permit.

**22.208(2)** If the director suspends, terminates or revokes a voluntary permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

**567—22.209(455B) Change of ownership for facilities with voluntary operating permits.** The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by a voluntary operating permit. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, and shall include the following information:

1. The date of ownership change;

2. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after the change of ownership; and

3. The voluntary operating permit number for the equipment changing ownership.

[ARC 8215B, IAB 10/7/09, effective 11/11/09]

**567—22.210 to 22.299** Reserved.

**567—22.300(455B) Operating permit by rule for small sources.** Except as provided in 567—subrules 22.201(2) and 22.300(11), any source which otherwise would be required to obtain a Title V operating permit may instead register for an operation permit by rule for small sources. Sources which comply with the requirements contained in this rule will be deemed to have an operating permit by rule for small sources. Sources which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source thresholds for regulated air pollutants and hazardous air pollutants as defined in rule 567—22.100(455B).

**22.300(1) Definitions for operating permit by rule for small sources.** For the purposes of rule 567—22.300(455B), the definitions shall be the same as the definitions found at rule 567—22.100(455B).

**22.300(2) Registration for operating permit by rule for small sources.**

*a.* Except as provided in subrules 22.300(3) and 22.300(11), any person who owns or operates a stationary source and meets the following criteria may register for an operating permit by rule for small sources:

(1) The potential to emit air contaminants is equal to or in excess of the threshold for a major stationary source of regulated air pollutants or hazardous air pollutants, and

(2) For every 12-month rolling period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in subrule 22.300(6).

*b.* Eligibility for an operating permit by rule for small sources does not eliminate the source's responsibility to meet any and all applicable federal requirements including, but not limited to, a maximum achievable control technology (MACT) standard.

*c.* Nothing in this rule shall prevent any stationary source which has had a Title V operating permit or a voluntary operating permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Title V operating permit or a voluntary operating permit or upon rescission of a Title V operating permit or a voluntary operating permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in subrule 22.300(6).

*d.* The department reserves the right to require proof that the expected emissions from the stationary source, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28.

**22.300(3) Exceptions to eligibility.**

*a.* Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

*b.* Sources which meet the registration criteria established in 22.300(2)“*a*” and meet all applicable requirements of rule 567—22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

*c.* Sources which meet the registration criteria established in 22.300(2)“*a*” and meet all applicable requirements of rule 567—22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a

Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

**22.300(4) Stationary source with de minimus emissions.** Stationary sources with de minimus emissions must submit the standard registration form and must meet and fulfill all registration and reporting requirements as found in 22.300(8). Only the record-keeping and reporting provisions listed in 22.300(4)“b” shall apply to a stationary source with de minimus emissions or operations as specified in 22.300(4)“a”:

*a. De minimus emission and usage limits.* For the purpose of this rule a stationary source with de minimus emissions means:

(1) In every 12-month rolling period, the stationary source emits less than or equal to the following quantities of emissions:

1. 5 tons per year of a regulated air pollutant (excluding HAPs), and
2. 2 tons per year of a single HAP, and
3. 5 tons per year of any combination of HAPs.

(2) In every 12-month rolling period, at least 90 percent of the stationary source’s emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in paragraphs “1” to “9” below:

1. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;

2. 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;

3. 365 gallons of solvent-containing material used at a paint spray unit(s);

4. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;

5. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;

6. 1,400 gallons of gasoline combusted;

7. 16,600 gallons of diesel fuel combusted;

8. 500,000 gallons of distillate oil combusted; or

9. 71,400,000 cubic feet of natural gas combusted.

*b. Record keeping for de minimis sources.* Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small sources shall comply with all applicable record-keeping requirements of this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in a construction permit or in a local, state, or federal rule or regulation.

(1) De minimis sources shall always maintain an annual log of each raw material used and its amount. The annual log and all related material safety data sheets (MSDS) for all materials shall be maintained for a period of not less than the most current five years. The annual log will begin on the date the small source operating permit application is submitted, then on an annual basis, based on a calendar year.

(2) Within 30 days of a written request by the state or the U.S. EPA, the owner or operator of a stationary source not maintaining records pursuant to subrule 22.300(7) shall demonstrate that the stationary source’s emissions or throughput is not in excess of the applicable quantities set forth in paragraph “a” above.

**22.300(5) Provision for air pollution control equipment.** The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by federal, state, or local air pollution control agency rules and regulations or permit terms and conditions that are federally enforceable.

The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

**22.300(6) Emission limitations.**

a. No stationary source subject to this rule shall emit in every 12-month rolling period more than the following quantities of emissions:

- (1) 50 percent of the major source thresholds for regulated air pollutants (excluding hazardous air pollutants), and
- (2) 5 tons per year of a single hazardous air pollutant, and
- (3) 12.5 tons per year of any combination of hazardous air pollutants.

b. The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the limits specified in paragraph "a" of this subrule.

**22.300(7) Record-keeping requirements for non-de minimis sources.** Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small stationary sources shall comply with all applicable record-keeping requirements in this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in any operating permit, a construction permit, or in a local, state, or federal rule or regulation.

a. A stationary source previously covered by the provisions in 22.300(4) shall comply with the applicable provisions of subrule 22.300(7) (record-keeping requirements) and subrule 22.300(8) (reporting requirements) if the stationary source exceeds the quantities specified in paragraph 22.300(4) "a."

b. The owner or operator of a stationary source subject to this rule shall keep and maintain records, as specified in 22.300(7) "c" below, for each permitted emission unit and each piece of emission control equipment sufficient to determine actual emissions. Such information shall be maintained on site for five years, and be made available to local, state, or U.S. EPA staff upon request.

c. Record-keeping requirements for emission units and emission control equipment. Record-keeping requirements for emission units are specified below in 22.300(7) "c" (1) through 22.300(7) "c" (4). Record-keeping requirements for emission control equipment are specified in 22.300(7) "c" (5).

(1) Coating/solvent emission unit. The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit not permitted under 22.8(1) (permit by rule for spray booths) or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include: material safety data sheets (MSDS), manufacturer's product specifications, and material VOC content reports for each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used showing at least the product manufacturer, product name and code, VOC and hazardous air pollutant content;

2. A description of any equipment used during and after coating/solvent application, including type, make and model; maximum design process rate or throughput; and control device(s) type and description (if any);

3. A monthly log of the consumption of each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used; and

4. All purchase orders, invoices, and other documents to support information in the monthly log.

(2) Organic liquid storage unit. The owner or operator of a stationary source subject to this rule that contains an organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and

2. Information on the tank design and specifications including control equipment.

(3) Combustion emission unit. The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity and all source test information; and

2. A monthly log of fuel type, fuel usage, fuel heating value (for nonfossil fuels; in terms of Btu/lb or Btu/gal), and percent sulfur for fuel oil and coal.

(4) General emission unit. The owner or operator of a stationary source subject to this rule that contains an emission unit not included in subparagraph (1), (2), or (3) above shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make and model; and maximum design process rate or throughput;

2. A monthly log of operating hours and each raw material used and its amount; and

3. Purchase orders, invoices, or other documents to support information in the monthly log.

(5) Emission control equipment. The owner or operator of a stationary source subject to this rule that contains emission control equipment shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control equipment;

2. Information on equipment design including, where applicable: pollutant(s) controlled; control effectiveness; and maximum design or rated capacity; other design data as appropriate including any available source test information and manufacturer's design/repair/maintenance manual; and

3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, maintenance and any other deviations from design parameters.

**22.300(8) Registration and reporting requirements.**

*a.* Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and which would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources, apply for a voluntary operating permit, or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V or a valid voluntary operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained in rules 567—22.104(455B) and 567—22.202(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, one original and one copy of a timely and complete registration form in accordance with this rule.

(1) Timely registration. Each source registering for an operating permit by rule for small sources shall submit a registration form:

1. By August 1, 1996, if the source became subject to rule 567—22.101(455B) on or before August 1, 1995, unless otherwise required to obtain a Title V permit under rule 567—22.101(455B).

2. Within 12 months of becoming subject to rule 567—22.101(455B) (the requirement to obtain a Title V operating permit) for a new source or a source which would otherwise become subject to the Title V permit requirement after August 1, 1995.

(2) Complete registration form. To be deemed complete the registration form must provide all information required pursuant to 22.300(8) "b."

(3) Duty to supplement or correct registration. Any registrant who fails to submit any relevant facts or who has submitted incorrect information in an operating permit by rule for small sources registration shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the registrant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete registration.

(4) Certification of truth, accuracy, and completeness. Any registration form, report, or supplemental information submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

*b.* At the time of registration for an operating permit by rule for small sources each owner or operator of a stationary source shall submit to the department a standard registration form and required

attachments. To register for an operating permit by rule for small sources, applicants shall complete the registration form and supply all information required by the filing instructions. The information submitted must be sufficient to evaluate the source, its registration, predicted actual emissions from the source; and to determine whether the source is subject to the exceptions listed in subrule 22.300(3). The standard registration form and attachments shall require that the following information be provided:

(1) Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and responsible official, and telephone number and names of plant site manager or contact;

(2) A description of source processes and products;

(3) The following emissions-related information shall be submitted to the department on the standard registration form:

1. The total actual emissions of each regulated air pollutant. Actual emissions shall be reported for one contiguous 12-month period within the 18 months preceding submission of the registration to the department;

2. Identification and description of each emission unit with the potential to emit a regulated air pollutant;

3. Identification and description of air pollution control equipment;

4. Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

5. Fugitive emissions sources shall be included in the registration form in the same manner as stack emissions if the source is one of the source categories defined as a stationary source category in rule 567—22.100(455B).

(4) Requirements for certification. Facilities which claim to meet the requirements set forth in this rule to qualify for an operating permit by rule for small sources must submit to the department, with a complete registration form, a written statement as follows:

"I certify that all equipment at the facility with a potential to emit any regulated pollutant is included in the registration form, and submitted to the department as required in 22.300(8) "b." I understand that the facility will be deemed to have been granted an operating permit by rule for small sources under the terms of rule 567—22.300(455B) only if all applicable requirements of rule 567—22.300(455B) are met and if the registration is not denied by the director under rule 567—22.300(11). This certification is based on information and belief formed after reasonable inquiry; the statements and information in the document are true, accurate, and complete." The certification must be signed by one of the following individuals.

For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at rule 567—22.100(455B).

For partnerships, a general partner.

For sole proprietorships, the proprietor.

For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

**22.300(9)** *Construction permits issued after registration for an operating permit by rule for small sources.* This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable construction permit, or to replace a condition or term of any construction permit, or any provision of a construction permitting program. This does not preclude issuance of any construction permit with conditions or terms necessary to ensure compliance with this rule.

*a.* If the issuance of a construction permit acts to make the source no longer eligible for an operating permit by rule for small sources, the source shall, within 12 months of issuance of the construction permit, submit an application for either a Title V operating permit or a voluntary operating permit.

*b.* If the issuance of a construction permit does not prevent the source from continuing to be eligible to operate under an operating permit by rule for small sources, the source shall, within 30 days of issuance of a construction permit, provide to the department the information as listed in 22.300(8) "b" for the new or modified source.

**22.300(10) Violations.**

*a.* Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule.

*b.* A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including rules 567—22.101(455B) to 567—22.116(455B) when the conditions specified in either subparagraph (1) or (2) below, occur:

(1) Commencing on the first day following every 12-month rolling period in which the stationary source exceeds a limit specified in subrule 22.300(6), or

(2) Commencing on the first day following every 12-month rolling period in which the owner or operator cannot demonstrate that the stationary source is in compliance with the limits in subrule 22.300(6).

**22.300(11) Suspension, termination, and revocation of an operating permit by rule for small sources.**

*a.* Registrations may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of an operating permit by rule for small sources:

(1) The director has reasonable cause to believe that the operating permit by rule for small sources was obtained by fraud or misrepresentation.

(2) The person registering for the operating permit by rule for small sources failed to disclose a material fact required by the registration form or the rules applicable to the operating permit by rule for small sources, of which the applicant had or should have had knowledge at the time the registration form was submitted.

(3) The terms and conditions of the operating permit by rule for small sources have been or are being violated.

(4) The owner or operator of the source has failed to pay an administrative, civil or criminal penalty for violations of the operating permit by rule for small sources.

*b.* If the director suspends, terminates or revokes an operating permit by rule for small sources under this rule, the notice of such action shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

**22.300(12) Change of ownership.** The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by an operating permit by rule for small sources. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Windsor Heights, Iowa 50324, and shall include the following information:

*a.* The date of ownership change; and

*b.* The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after the change of ownership.

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<sup>◇</sup> Two or more ARCs

- <sup>1</sup> Effective date of 22.1(455B) [DEQ, 3.1] delayed by the Administrative Rules Review Committee 70 days from June 21, 1978. The Administrative Rules Review Committee at the August 15, 1978 meeting delayed 22.1 [DEQ, 3.1] under provisions of 67GA, SF244, §19. (See HJR 6, 1/22/79).
- <sup>2</sup> Effective date of 22.100(455B), definition of “12-month rolling period”; 22.200(455B); 22.201(1) “a,” “b,”; 22.201(2) “a”; 22.206(2) “c,” delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995; delay lifted by this Committee December 13, 1995, effective December 14, 1995.
- <sup>3</sup> Effective date of 22.300 delayed 70 days by the Administrative Rules Review Committee at its meeting held June 11, 1996; delay lifted by this Committee at its meeting held June 12, 1996, effective June 12, 1996.
- <sup>4</sup> Effective date of 22.1(2), unnumbered introductory paragraphs and paragraphs “g” and “i,” delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 2001.



CHAPTER 33  
SPECIAL REGULATIONS AND CONSTRUCTION PERMIT REQUIREMENTS  
FOR MAJOR STATIONARY SOURCES—PREVENTION OF SIGNIFICANT  
DETERIORATION (PSD) OF AIR QUALITY

**567—33.1(455B) Purpose.** This chapter implements the major New Source Review (NSR) program contained in Part C of Title I of the federal Clean Air Act as amended on November 15, 1990, and as promulgated under 40 CFR 51.166 and 52.21 as amended through November 29, 2005. This is a preconstruction review and permitting program applicable to new or modified major stationary sources of air pollutants regulated under Part C of the Clean Air Act as amended on November 15, 1990. In areas that do not meet the national ambient air quality standards (NAAQS), the nonattainment NSR program applies. The requirements for the nonattainment NSR program are set forth in 567—22.5(455B) and 567—22.6(455B). In areas that meet the NAAQS, the PSD program applies. Collectively, the nonattainment NSR and PSD programs are referred to as the major NSR program.

Rule 567—33.2(455B) is reserved.

Rule 567—33.3(455B) sets forth the definitions, standards and permitting requirements that are specific to the PSD program.

Rules 567—33.4(455B) through 567—33.8(455B) are reserved.

Rule 567—33.9(455B) includes the conditions under which a source subject to PSD may obtain a plantwide applicability limitation (PAL) on emissions.

In addition to the requirements in this chapter, stationary sources may also be subject to the permitting requirements in 567—Chapter 22, including requirements for Title V operating permits.

**567—33.2(455B)** Reserved.

**567—33.3(455B) Special construction permit requirements for major stationary sources in areas designated attainment or unclassified (PSD).**

**33.3(1) Definitions.** Definitions included in this subrule apply to the provisions set forth in this rule (PSD program requirements). For purposes of this rule, the definitions herein shall apply, rather than the definitions contained in 40 CFR 52.21 and 51.166, except for the PAL program definitions referenced in rule 567—33.9(455B). For purposes of this rule, the following terms shall have the meanings indicated in this subrule:

“*Act*” means the Clean Air Act, 42 U.S.C. Sections 7401, et seq., as amended through November 15, 1990.

“*Actual emissions*” means:

1. The actual rate of emissions of a regulated NSR pollutant from an emissions unit, as determined in accordance with paragraphs “2” through “4,” except that this definition shall not apply for calculating whether a significant emissions increase has occurred, or for establishing a PAL under rule 567—33.9(455B). Instead, the requirements specified under the definitions for “projected actual emissions” and “baseline actual emissions” shall apply for those purposes.

2. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a consecutive 24-month period which precedes the particular date and which is representative of normal source operation. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit’s actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

3. The department may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

4. For any emissions unit that has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

“*Administrator*” means the administrator for the United States Environmental Protection Agency (EPA) or designee.

“*Allowable emissions*” means the emissions rate of a stationary source calculated using the maximum rated capacity of the source (unless the source is subject to federally enforceable limits or enforceable permit conditions which restrict the operating rate, or hours of operation, or both) and the most stringent of the following:

1. The applicable standards as set forth in 567—subrules 23.1(2) through 23.1(5) (new source performance standards, emissions standards for hazardous air pollutants, and federal emissions guidelines) or an applicable federal standard not adopted by the state, as set forth in 40 CFR Parts 60, 61 and 63;
2. The applicable state implementation plan (SIP) emissions limitation, including those with a future compliance date; or
3. The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

“*Baseline actual emissions*,” for the purposes of this chapter, means the rate of emissions, in tons per year, of a regulated NSR pollutant, as “regulated NSR pollutant” is defined in this subrule, and as determined in accordance with paragraphs “1” through “4.”

1. For any existing electric utility steam generating unit, “baseline actual emissions” means the average rate, in tons per year, at which the unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the five-year period immediately preceding the date on which the owner or operator begins actual construction of the project. The department shall allow the use of a different time period upon a determination that it is more representative of normal source operation.

(a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(d) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraph “1”(b) of this definition.

2. For an existing emissions unit, other than an electric utility steam generating unit, “baseline actual emissions” means the average rate, in tons per year, at which the emissions unit actually emitted the pollutant during any consecutive 24-month period selected by the owner or operator within the ten-year period immediately preceding either the date on which the owner or operator begins actual construction of the project, or the date on which a complete permit application is received by the department for a permit required either under this chapter or under a SIP approved by the Administrator, whichever is earlier, except that the ten-year period shall not include any period earlier than November 15, 1990.

(a) The average rate shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions.

(b) The average rate shall be adjusted downward to exclude any noncompliant emissions that occurred while the source was operating above an emissions limitation that was legally enforceable during the consecutive 24-month period.

(c) The average rate shall be adjusted downward to exclude any emissions that would have exceeded an emissions limitation with which the major stationary source must currently comply, had such major stationary source been required to comply with such limitations during the consecutive 24-month period. However, if an emissions limitation is part of a maximum achievable control technology standard that the Administrator proposed or promulgated under 40 CFR Part 63, the baseline actual emissions need only be adjusted if the state has taken credit for such emissions reductions

in an attainment demonstration or maintenance plan consistent with the requirements of 40 CFR 51.165(a)(3)(ii)(G) as amended through November 29, 2005.

(d) For a regulated NSR pollutant, when a project involves multiple emissions units, only one consecutive 24-month period must be used to determine the baseline actual emissions for the emissions units being changed. A different consecutive 24-month period may be used for each regulated NSR pollutant.

(e) The average rate shall not be based on any consecutive 24-month period for which there is inadequate information for determining annual emissions, in tons per year, and for adjusting this amount if required by paragraphs “2”(b) and “2”(c) of this definition.

3. For a new emissions unit, the baseline actual emissions for purposes of determining the emissions increase that will result from the initial construction and operation of such unit shall equal zero; and thereafter, for all other purposes, shall equal the unit’s potential to emit.

4. For a PAL for a stationary source, the baseline actual emissions shall be calculated for existing electric utility steam generating units in accordance with the procedures contained in paragraph “1”; for other existing emissions units in accordance with the procedures contained in paragraph “2”; and for a new emissions unit in accordance with the procedures contained in paragraph “3.”

“*Baseline area*” means:

1. Any intrastate area (and every part thereof) designated as attainment or unclassifiable under Section 107(d)(1)(D) or (E) of the Act in which the major source or major modification establishing the minor source baseline date would construct or would have an air quality impact equal to or greater than 1 ug/m<sup>3</sup> (annual average) of the pollutant for which the minor source baseline date is established.

2. Area redesignations under Section 107(d)(1)(D) or (E) of the Act cannot intersect or be smaller than the area of impact of any major stationary source or major modification which establishes a minor source baseline date or is subject to regulations specified in this rule, in 40 CFR 52.21 (PSD requirements), or in department rules approved by EPA under 40 CFR Part 51, Subpart I, and would be constructed in the same state as the state proposing the redesignation.

3. Any baseline area established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that such baseline area shall not remain in effect if the permitting authority rescinds the corresponding minor source baseline date in accordance with the definition of “baseline date” specified in this subrule.

“*Baseline concentration*” means:

1. The ambient concentration level that exists in the baseline area at the time of the applicable minor source baseline date. A baseline concentration is determined for each pollutant for which a minor source baseline date is established and shall include:

(a) The actual emissions representative of sources in existence on the applicable minor source baseline date, except as provided in paragraph “2” of this definition;

(b) The allowable emissions of major stationary sources that commenced construction before the major source baseline date, but were not in operation by the applicable minor source baseline date.

2. The following will not be included in the baseline concentration and will affect the applicable maximum allowable increase(s):

(a) Actual emissions from any major stationary source on which construction commenced after the major source baseline date; and

(b) Actual emissions increases and decreases at any stationary source occurring after the minor source baseline date.

“*Baseline date*” means:

1. Either “major source baseline date” or “minor source baseline date” as follows:

(a) The “major source baseline date” means, in the case of particulate matter and sulfur dioxide, January 6, 1975, and in the case of nitrogen dioxide, February 8, 1988.

(b) The “minor source baseline date” means the earliest date after the trigger date on which a major stationary source or a major modification subject to 40 CFR 52.21 as amended through November 29, 2005, or subject to this rule (PSD program requirements), or subject to a department rule approved by

EPA under 40 CFR Part 51, Subpart I, submits a complete application under the relevant regulations. The trigger date for particulate matter and sulfur dioxide is August 7, 1977. For nitrogen dioxide, the trigger date is February 8, 1988.

2. The “baseline date” is established for each pollutant for which increments or other equivalent measures have been established if:

(a) The area in which the proposed source or modification would construct is designated as attainment or unclassifiable under Section 107(d)(i)(D) or (E) of the Act for the pollutant on the date of its complete application under 40 CFR 52.21 as amended through November 29, 2005, or under regulations specified in this rule (PSD program requirements); and

(b) In the case of a major stationary source, the pollutant would be emitted in significant amounts, or in the case of a major modification, there would be a significant net emissions increase of the pollutant.

Any minor source baseline date established originally for the total suspended particulate increments shall remain in effect and shall apply for purposes of determining the amount of available PM<sub>10</sub> increments, except that the reviewing authority may rescind any such minor source baseline date where it can be shown, to the satisfaction of the reviewing authority, that the emissions increase from the major stationary source, or the net emissions increase from the major modification, responsible for triggering that date did not result in a significant amount of PM<sub>10</sub> emissions.

“*Begin actual construction*” means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework, and construction of permanent storage structures. With respect to a change in method of operation, this term refers to those on-site activities, other than preparatory activities, which mark the initiation of the change.

“*Best available control technology*” or “*BACT*” means an emissions limitation, including a visible emissions standard, based on the maximum degree of reduction for each regulated NSR pollutant which would be emitted from any proposed major stationary source or major modification which the reviewing authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such source or modification through application of production processes or available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combination techniques for control of such pollutant. In no event shall application of best available control technology result in emissions of any pollutant which would exceed the emissions allowed by any applicable standard under 567—subrules 23.1(2) through 23.1(5) (standards for new stationary sources, federal standards for hazardous air pollutants, and federal emissions guidelines), or federal regulations as set forth in 40 CFR Parts 60, 61 and 63 but not yet adopted by the state. If the department determines that technological or economic limitations on the application of measurement methodology to a particular emissions unit would make the imposition of an emissions standard infeasible, a design, equipment, work practice, operational standard or combination thereof may be prescribed instead to satisfy the requirement for the application of best available control technology. Such standard shall, to the degree possible, set forth the emissions reduction achievable by implementation of such design, equipment, work practice or operation and shall provide for compliance by means which achieve equivalent results.

“*Building, structure, facility, or installation*” means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control) except the activities of any vessel. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same major group (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0, respectively).

“*CFR*” means the Code of Federal Regulations, with standard references in this chapter by title and part, so that “40 CFR 51” or “40 CFR Part 51” means “Title 40 Code of Federal Regulations, Part 51.”

“*Clean coal technology*” means any technology, including technologies applied at the precombustion, combustion, or postcombustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the

utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

“*Clean coal technology demonstration project*” means a project using funds appropriated under the heading “Department of Energy—Clean Coal Technology,” up to a total amount of \$2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

“*Commence*,” as applied to construction of a major stationary source or major modification, means that the owner or operator has all necessary preconstruction approvals or permits and either has:

1. Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or
2. Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

“*Complete*” means, in reference to an application for a permit, that the application contains all the information necessary for processing the application. Designating an application complete for purposes of permit processing does not preclude the department from requesting or accepting any additional information.

“*Construction*” means any physical change or change in the method of operation, including fabrication, erection, installation, demolition, or modification of an emissions unit, that would result in a change in emissions.

“*Continuous emissions monitoring system*” or “*CEMS*” means all of the equipment that may be required to meet the data acquisition and availability requirements of this chapter, to sample, to condition (if applicable), to analyze, and to provide a record of emissions on a continuous basis.

“*Continuous emissions rate monitoring system*” or “*CERMS*” means the total equipment required for the determination and recording of the pollutant mass emissions rate (in terms of mass per unit of time).

“*Continuous parameter monitoring system*” or “*CPMS*” means all of the equipment necessary to meet the data acquisition and availability requirements of this chapter, to monitor the process device operational parameters and the control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and to record the average operational parameter value(s) on a continuous basis.

“*Electric utility steam generating unit*” means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

“*Emissions unit*” means any part of a stationary source that emits or would have the potential to emit any regulated NSR pollutant and includes an electric utility steam generating unit. For purposes of this chapter, there are two types of emissions units:

1. A new emissions unit is any emissions unit that is (or will be) newly constructed and that has existed for less than two years from the date such emissions unit first operated.
2. An existing emissions unit is any emissions unit that does not meet the requirements in “1” above. A replacement unit is an existing emissions unit.

“*Enforceable permit condition*,” for the purpose of this chapter, means any of the following limitations and conditions: requirements development pursuant to new source performance standards, prevention of significant deterioration standards, emissions standards for hazardous air pollutants, requirements within the SIP, and any permit requirements established pursuant to this chapter, any permit requirements established pursuant to 40 CFR 52.21 or Part 51, Subpart I, as amended through November 29, 2005, or under conditional, construction or Title V operating permit rules.

“*Federal land manager*” means, with respect to any lands in the United States, the secretary of the department with authority over such lands.

“*Federally enforceable*” means all limitations and conditions which are enforceable by the Administrator and the department, including those federal requirements not yet adopted by the state, developed pursuant to 40 CFR Parts 60, 61 and 63; requirements within 567—subrules 23.1(2) through 23.1(5); requirements within the SIP; any permit requirements established pursuant to 40 CFR 52.21 or under regulations approved pursuant to 40 CFR Part 51, Subpart I, as amended through November 29, 2005, including operating permits issued under an EPA-approved program, that are incorporated into the SIP and expressly require adherence to any permit issued under such program.

“*Fugitive emissions*” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

“*High terrain*” means any area having an elevation 900 feet or more above the base of the stack of a source.

“*Indian governing body*” means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.

“*Indian reservation*” means any federally recognized reservation established by treaty, agreement, executive order, or Act of Congress.

“*Innovative control technology*” means any system of air pollution control that has not been adequately demonstrated in practice, but would have a substantial likelihood of achieving greater continuous emissions reduction than any control system in current practice or of achieving at least comparable reductions at lower cost in terms of energy, economics, or non-air quality environmental impacts.

“*Lowest achievable emissions rate*” or “*LAER*” means, for any source, the more stringent rate of emissions based on the following:

1. The most stringent emissions limitation which is contained in the SIP for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

2. The most stringent emissions limitation which is achieved in practice by such class or category of stationary sources. This limitation, when applied to a modification, means the lowest achievable emissions rate for the new or modified emissions units within a stationary source. In no event shall the application of the term permit a proposed new or modified stationary source to emit any pollutant in excess of the amount allowable under an applicable new source standard of performance.

“*Low terrain*” means any area other than high terrain.

“*Major modification*” means any physical change in or change in the method of operation of a major stationary source that would result in a significant emissions increase of a regulated NSR pollutant and a significant net emissions increase of that pollutant from the major stationary source.

1. Any significant emissions increase from any emissions units or net emissions increase at a major stationary source that is significant for volatile organic compounds or NO<sub>x</sub> shall be considered significant for ozone.

2. A physical change or change in the method of operation shall not include:

- (a) Routine maintenance, repair and replacement

- (b) Use of an alternative fuel or raw material by reason of any order under Section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974 or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

- (c) Use of an alternative fuel by reason of an order or rule under Section 125 of the Act;

- (d) Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

- (e) Use of an alternative fuel or raw material by a stationary source that the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any federally enforceable permit condition, or that the source is approved to use under any federally enforceable permit condition;

(f) An increase in the hours of operation or in the production rate, unless such change would be prohibited under any federally enforceable permit condition which was established after January 6, 1975;

(g) Any change in ownership at a stationary source;

(h) Reserved.

(i) The installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with the requirements within the SIP; and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated;

(j) The installation or operation of a permanent clean coal technology demonstration project that constitutes repowering, provided that the project does not result in an increase in the potential to emit of any regulated pollutant emitted by the unit. This exemption shall apply on a pollutant-by-pollutant basis;

(k) The reactivation of a very clean coal-fired electric utility steam generating unit.

3. This definition shall not apply with respect to a particular regulated NSR pollutant when the major stationary source is complying with the requirements under rule 567—33.9(455B) for a PAL for that pollutant. Instead, the definition under rule 567—33.9(455B) shall apply.

“*Major source baseline date*” is defined under the definition of “baseline date.”

“*Major stationary source*” means:

(1) (a) Any one of the following stationary sources of air pollutants which emits, or has the potential to emit, 100 tons per year or more of any regulated NSR pollutant:

- Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;

- Coal cleaning plants (with thermal dryers);

- Kraft pulp mills;

- Portland cement plants;

- Primary zinc smelters;

- Iron and steel mill plants;

- Primary aluminum ore reduction plants;

- Primary copper smelters;

- Municipal incinerators capable of charging more than 250 tons of refuse per day;

- Hydrofluoric, sulfuric, and nitric acid plants;

- Petroleum refineries;

- Lime plants;

- Phosphate rock processing plants;

- Coke oven batteries;

- Sulfur recovery plants;

- Carbon black plants (furnace process);

- Primary lead smelters;

- Fuel conversion plants;

- Sintering plants;

- Secondary metal production plants;

- Chemical process plants (which does not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140);

- Fossil-fuel boilers (or combinations thereof) totaling more than 250 million British thermal units per hour heat input;

- Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;

- Taconite ore processing plants;

- Glass fiber processing plants; and

- Charcoal production plants.

(b) Notwithstanding the stationary source size specified in paragraph “1”(a), any stationary source which emits, or has the potential to emit, 250 tons per year or more of a regulated NSR pollutant; or

(c) Any physical change that would occur at a stationary source not otherwise qualifying under this definition as a major stationary source if the change would constitute a major stationary source by itself.

(2) A major source that is major for volatile organic compounds or NO<sub>x</sub> shall be considered major for ozone.

(3) The fugitive emissions of a stationary source shall not be included in determining for any of the purposes of this rule whether it is a major stationary source, unless the source belongs to one of the categories of stationary sources listed in paragraph "1"(a) of this definition or to any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Act.

*"Minor source baseline date"* is defined under the definition of "baseline date."

*"Necessary preconstruction approvals or permits"* means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the SIP.

*"Net emissions increase"* means, with respect to any regulated NSR pollutant emitted by a major stationary source, the amount by which the following exceeds zero:

- The increase in emissions from a particular physical change or change in the method of operation at a stationary source as calculated according to the applicability requirements under subrule 33.3(2); and

- Any other increases and decreases in actual emissions at the major stationary source that are contemporaneous with the particular change and are otherwise creditable. Baseline actual emissions for calculating increases and decreases under this definition of "net emissions increase" shall be determined as provided for under the definition of "baseline actual emissions," except that paragraphs "1"(c) and "2"(d) of the definition of "baseline actual emissions," which describe provisions for multiple emissions units, shall not apply.

1. An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if the increase or decrease in actual emissions occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

2. An increase or decrease in actual emissions is creditable only if:

- (a) The increase or decrease in actual emissions occurs within the contemporaneous time period, as noted in paragraph "1" of this definition; and

- (b) The department has not relied on the increase or decrease in actual emissions in issuing a permit for the source under this rule, which permit is in effect when the increase in actual emissions from the particular change occurs.

3. An increase or decrease in actual emissions of sulfur dioxide, particulate matter, or nitrogen oxides that occurs before the applicable minor source baseline date is creditable only if the increase or decrease in actual emissions is required to be considered in calculating the amount of maximum allowable increases remaining available.

4. An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

5. A decrease in actual emissions is creditable only to the extent that:

- (a) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

- (b) The decrease in actual emissions is enforceable as a practical matter at and after the time that actual construction on the particular change begins; and

- (c) The decrease in actual emissions has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

6. An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

7. The definition of "actual emissions," paragraph "2," shall not apply for determining creditable increases and decreases.

*"Nonattainment area"* means an area so designated by the Administrator, acting pursuant to Section 107 of the Act.

*“Permitting authority”* means the Iowa department of natural resources or the director thereof.

*“Pollution prevention”* means any activity that, through process changes, product reformulation or redesign, or substitution of less polluting raw materials, eliminates or reduces the release of air pollutants (including fugitive emissions) and other pollutants to the environment prior to recycling, treatment, or disposal. “Pollution prevention” does not mean recycling (other than certain “in-process recycling” practices), energy recovery, treatment, or disposal.

*“Potential to emit”* means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

*“Predictive emissions monitoring system”* or *“PEMS”* means all of the equipment necessary to monitor the process device operational parameters and the control device operational parameters (e.g., control device secondary voltages and electric currents) and other information (e.g., gas flow rate, O<sub>2</sub> or CO<sub>2</sub> concentrations), and calculate and record the mass emissions rate (e.g., lb/hr) on a continuous basis.

*“Prevention of significant deterioration (PSD) program”* means a major source preconstruction permit program that has been approved by the Administrator and incorporated into the SIP or means the program in 40 CFR 52.21. Any permit issued under such a program is a major NSR permit.

*“Project”* means a physical change in, or change in method of operation of, an existing major stationary source.

*“Projected actual emissions,”* for the purposes of this chapter, means the maximum annual rate, in tons per year, at which an existing emissions unit is projected to emit a regulated NSR pollutant in any one of the five years (12-month period) beginning on the first day of the month following the date when the unit resumes regular operation after the project, or in any one of the ten years following that date, if the project involves increasing the emissions unit’s design capacity or its potential to emit that regulated NSR pollutant, and full utilization of the unit would result in a significant emissions increase, or a significant net emissions increase at the major stationary source. For purposes of this definition, “regular” shall be determined by the department on a case-by-case basis.

In determining the projected actual emissions before beginning actual construction, the owner or operator of the major stationary source:

1. Shall consider all relevant information including, but not limited to, historical operational data, the company’s own representations, the company’s expected business activity and the company’s highest projections of business activity, the company’s filings with the state or federal regulatory authorities, and compliance plans under the approved plan; and
2. Shall include fugitive emissions to the extent quantifiable and emissions associated with startups, shutdowns, and malfunctions; and
3. Shall exclude, in calculating any increase in emissions that results from the particular project, that portion of the unit’s emissions following the project that an existing unit could have accommodated during the consecutive 24-month period used to establish the baseline actual emissions and that are also unrelated to the particular project, including any increased utilization due to product demand growth; or
4. In lieu of using the method set out in paragraphs “1” through “3,” may elect to use the emissions unit’s potential to emit, in tons per year.

*“Reactivation of a very clean coal-fired electric utility steam generating unit”* means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation in which the unit:

1. Has not been in operation for the two-year period prior to the enactment of the Act, and the emissions from such unit continue to be carried in the permitting authority’s emissions inventory at the time of the enactment;
2. Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

3. Is equipped with low-NO<sub>x</sub> burners prior to the time of commencement of operations following reactivation; and

4. Is otherwise in compliance with the requirements of the Act.

*“Regulated NSR pollutant”* means the following:

1. Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., volatile organic compounds and NO<sub>x</sub> are precursors for ozone);

2. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;

3. Any Class I or Class II substance subject to a standard promulgated under or established by Title VI of the Act; or

4. Any pollutant that otherwise is subject to regulation under the Act as defined in 33.3(1), definition of “subject to regulation.”

5. Notwithstanding paragraphs “1” through “4,” the definition of “regulated NSR pollutant” shall not include any or all hazardous air pollutants that are either listed in Section 112 of the Act or added to the list pursuant to Section 112(b)(2) of the Act and that have not been delisted pursuant to Section 112(b)(3) of the Act, unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under Section 108 of the Act.

*“Replacement unit”* means an emissions unit for which all the criteria listed in paragraphs “1” through “4” of this definition are met. No creditable emissions reductions shall be generated from shutting down the existing emissions unit that is replaced.

1. The emissions unit is a reconstructed unit within the meaning of 40 CFR 60.15(b)(1) as amended through December 16, 1975, or the emissions unit completely takes the place of an existing emissions unit.

2. The emissions unit is identical to or functionally equivalent to the replaced emissions unit.

3. The replacement does not change the basic design parameter(s) of the process unit.

4. The replaced emissions unit is permanently removed from the major stationary source, otherwise permanently disabled, or permanently barred from operation by a permit that is enforceable as a practical matter. If the replaced emissions unit is brought back into operation, it shall constitute a new emissions unit.

*“Repowering”* means:

1. Replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion; integrated gasification combined cycle; magnetohydrodynamics; direct and indirect coal-fired turbines; integrated gasification fuel cells; or, as determined by the Administrator in consultation with the Secretary of Energy, a derivative of one or more of these technologies; and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

2. Repowering shall also include any oil or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

3. The department shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under Section 409 of the Act.

*“Reviewing authority”* means the department, or the Administrator in the case of EPA-implemented permit programs under 40 CFR 52.21.

*“Secondary emissions”* means emissions which occur as a result of the construction or operation of a major stationary source or major modification, but do not come from the major stationary source or major modification itself. For the purposes of this chapter, “secondary emissions” must be specific, well-defined, and quantifiable, and must impact the same general areas as the stationary source modification which causes the secondary emissions. “Secondary emissions” includes emissions from any offsite support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major stationary source or major modification. “Secondary

emissions” does not include any emissions which come directly from a mobile source, such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

“*Significant*” means:

1. In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

- Carbon monoxide: 100 tons per year (tpy)
- Nitrogen oxides: 40 tpy
- Sulfur dioxide: 40 tpy
- Particulate matter: 25 tpy of particulate matter emissions or 15 tpy of PM<sub>10</sub> emissions
- Ozone: 40 tpy of volatile organic compounds or NO<sub>x</sub>
- Lead: 0.6 tpy
- Fluorides: 3 tpy
- Sulfuric acid mist: 7 tpy
- Hydrogen sulfide (H<sub>2</sub>S): 10 tpy
- Total reduced sulfur (including H<sub>2</sub>S): 10 tpy
- Reduced sulfur compounds (including H<sub>2</sub>S): 10 tpy
- Municipal waste combustor organics (measured as total tetra- through octa-chlorinated dibenzo-p-dioxins and dibenzofurans):  $3.2 \times 10^{-6}$  megagrams per year ( $3.5 \times 10^{-6}$  tons per year)
- Municipal waste combustor metals (measured as particulate matter): 14 megagrams per year (15 tons per year)
- Municipal waste combustor acid gases (measured as sulfur dioxide and hydrogen chloride): 36 megagrams per year (40 tons per year)
- Municipal solid waste landfill emissions (measured as nonmethane organic compounds): 45 megagrams per year (50 tons per year)

2. “Significant” means, for purposes of this rule and in reference to a net emissions increase or the potential of a source to emit a regulated NSR pollutant not listed in paragraph “1,” any emissions rate.

3. Notwithstanding paragraph “1,” “significant,” for purposes of this rule, means any emissions rate or any net emissions increase associated with a major stationary source or major modification, which would construct within ten kilometers of a Class I area, and have an impact on such area equal to or greater than 1 ug/m<sup>3</sup> (24-hour average).

“*Significant emissions increase*” means, for a regulated NSR pollutant, an increase in emissions that is significant for that pollutant.

“*State implementation plan*” or “*SIP*” means the plan adopted by the state of Iowa and approved by the Administrator which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as they are adopted by the Administrator, pursuant to the Act.

“*Stationary source*” means any building, structure, facility, or installation which emits or may emit a regulated NSR pollutant.

“*Subject to regulation*” means, for any air pollutant, that the pollutant is subject to either a provision in the Clean Air Act, or a nationally applicable regulation codified by the Administrator in 40 CFR Subchapter C (Air Programs) that requires actual control of the quantity of emissions of that pollutant, and that such a control requirement has taken effect and is operative to control, limit or restrict the quantity of emissions of that pollutant released from the regulated activity, except that:

1. Greenhouse gases (GHGs), the air pollutant defined in 40 CFR §86.1818-12(a) (as amended on May 7, 2010) as the aggregate group of six greenhouse gases that includes carbon dioxide, nitrous oxide, methane, hydrofluorocarbons, perfluorocarbons, and sulfur hexafluoride, shall not be subject to regulation except as provided in paragraphs “4” and “5.”

2. For purposes of paragraphs “3,” “4,” and “5,” the term “tpy CO<sub>2</sub> equivalent emissions (CO<sub>2</sub>e)” shall represent an amount of GHGs emitted and shall be computed as follows:

(a) Multiply the mass amount of emissions (tpy) for each of the six greenhouse gases in the pollutant GHGs by the associated global warming potential of the gas published at 40 CFR Part 98, Subpart A, Table A-1, "Global Warming Potentials," (as amended on October 30, 2009), and

(b) Sum the resultant value from paragraph (a) for each gas to compute a tpy CO<sub>2</sub>e.

3. The term "emissions increase," as used in this paragraph and in paragraphs "4" and "5," shall mean that both a significant emissions increase (as calculated using the procedures specified in 33.3(2) "c" through 33.3(2) "h") and a significant net emissions increase (as specified in 33.3(1), in the definitions of "net emissions increase" and "significant") occur. For the pollutant GHGs, an emissions increase shall be based on tpy CO<sub>2</sub>e and shall be calculated assuming the pollutant GHGs are a regulated NSR pollutant, and "significant" is defined as 75,000 tpy CO<sub>2</sub>e rather than calculated by applying the value specified in 33.3(1), in paragraph "2" of the definition of "significant."

4. Beginning January 2, 2011, the pollutant GHGs are subject to regulation if:

(a) The stationary source is a new major stationary source for a regulated NSR pollutant that is not a GHG, and also will emit or will have the potential to emit 75,000 tpy CO<sub>2</sub>e or more, or

(b) The stationary source is an existing major stationary source for a regulated NSR pollutant that is not a GHG, and also will have an emissions increase of a regulated NSR pollutant and an emissions increase of 75,000 tpy CO<sub>2</sub>e or more; and

5. Beginning July 1, 2011, in addition to the provisions in paragraph "4," the pollutant GHGs shall also be subject to regulation:

(a) At a new stationary source that will emit or have the potential to emit 100,000 tpy CO<sub>2</sub>e, or

(b) At an existing stationary source that emits or has the potential to emit 100,000 tpy CO<sub>2</sub>e, when such stationary source undertakes a physical change or change in the method of operation that will result in an emissions increase of 75,000 tpy CO<sub>2</sub>e or more.

*"Temporary clean coal technology demonstration project"* means a clean coal technology demonstration project that is operated for a period of five years or less and that complies with the SIP and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after the project is terminated.

*"Title V permit"* means an operating permit under Title V of the Act.

*"Volatile organic compounds"* or *"VOC"* means any compound included in the definition of "volatile organic compounds" found at 40 CFR 51.100(s) as amended through January 21, 2009.

**33.3(2) Applicability.** The requirements of this rule (PSD program requirements) apply to the construction of any new "major stationary source" as defined in subrule 33.3(1) or any project at an existing major stationary source in an area designated as attainment or unclassifiable under Section 107(d)(1)(A)(ii) or (iii) of the Act. In addition to the provisions set forth in rules 567—33.3(455B) through 567—33.9(455B), the provisions of 40 CFR Part 51, Appendix W (Guideline on Air Quality Models) as amended through November 9, 2005, are adopted by reference.

a. The requirements of subrules 33.3(10) through 33.3(18) apply to the construction of any new major stationary source or the major modification of any existing major stationary source, except as this rule (PSD program requirements) otherwise provides.

b. No new major stationary source or major modification to which the requirements of subrule 33.3(10) through paragraph 33.3(18) "e" apply shall begin actual construction without a permit that states that the major stationary source or major modification will meet those requirements.

c. Except as otherwise provided in paragraphs 33.3(2) "i" and "j," and consistent with the definition of "major modification" contained in subrule 33.3(1), a project is a major modification for a "regulated NSR pollutant" if it causes two types of emissions increases: a "significant emissions increase"; and a "net emissions increase" which is "significant." The project is not a major modification if it does not cause a significant emissions increase. If the project causes a significant emissions increase, then the project is a major modification only if it also results in a significant net emissions increase.

d. The procedure for calculating (before beginning actual construction) whether a significant emissions increase (i.e., the first step of the process) will occur depends upon the type of emissions units being modified, according to paragraphs "e" through "h" of this subrule. The procedure for calculating (before beginning actual construction) whether a significant net emissions increase will

occur at the major stationary source (i.e., the second step of the process) is contained in the definition of “net emissions increase.” Regardless of any such preconstruction projections, a major modification results if the project causes a significant emissions increase and a significant net emissions increase.

*e.* Actual-to-projected-actual applicability test for projects that only involve existing emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the “projected actual emissions” and the “baseline actual emissions” for each existing emissions unit equals or exceeds the significant amount for that pollutant.

*f.* Actual-to-potential test for projects that involve only construction of a new emissions unit(s). A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the difference between the “potential to emit” from each new emissions unit following completion of the project and the “baseline actual emissions” for a new emissions unit before the project equals or exceeds the significant amount for that pollutant.

*g.* Reserved.

*h.* Hybrid test for projects that involve multiple types of emissions units. A significant emissions increase of a regulated NSR pollutant is projected to occur if the sum of the emissions increases for each emissions unit, using the method specified in paragraphs “e” through “g” of this subrule, as applicable with respect to each emissions unit, for each type of emissions unit equals or exceeds the significant amount for that pollutant.

*i.* For any major stationary source with a PAL for a regulated NSR pollutant, the major stationary source shall comply with requirements under rule 567—33.9(455B).

*j.* Reserved.

**33.3(3) *Ambient air increments.*** The provisions for ambient air increments as specified in 40 CFR 52.21(c) as amended through November 29, 2005, are adopted by reference.

**33.3(4) *Ambient air ceilings.*** The provisions for ambient air ceilings as specified in 40 CFR 52.21(d) as amended through November 29, 2005, are adopted by reference.

**33.3(5) *Restrictions on area classifications.*** The provisions for restrictions on area classifications as specified in 40 CFR 52.21(e) as amended through November 29, 2005, are adopted by reference.

**33.3(6) *Exclusions from increment consumption.*** The provisions by which the SIP may provide for exclusions from increment consumption as specified in 40 CFR 51.166(f) as amended through November 29, 2005, are adopted by reference. The following phrases contained in 40 CFR 51.166(f) are not adopted by reference: “the plan may provide that,” “the plan provides that,” and “it shall also provide that.” Additionally, the term “the plan” shall mean “SIP.”

**33.3(7) *Redesignation.*** The provisions for redesignation as specified in 40 CFR 52.21(g) as amended through November 29, 2005, are adopted by reference.

**33.3(8) *Stack heights.*** The provisions for stack heights as specified in 40 CFR 52.21(h) as amended through November 29, 2005, are adopted by reference.

**33.3(9) *Exemptions.*** The provisions for allowing exemptions from certain requirements for PSD-subject sources as specified in 40 CFR 52.21(i) as amended through May 1, 2007, are adopted by reference.

**33.3(10) *Control technology review.*** The provisions for control technology review as specified in 40 CFR 52.21(j) as amended through November 29, 2005, are adopted by reference.

**33.3(11) *Source impact analysis.*** The provisions for a source impact analysis as specified in 40 CFR 52.21(k) as amended through November 29, 2005, are adopted by reference.

**33.3(12) *Air quality models.*** The provisions for air quality models as specified in 40 CFR 52.21(l) as amended through November 29, 2005, are adopted by reference.

**33.3(13) *Air quality analysis.*** The provisions for an air quality analysis as specified in 40 CFR 52.21(m) as amended through November 29, 2005, are adopted by reference.

**33.3(14) *Source information.*** The provisions for providing source information as specified in 40 CFR 52.21(n) as amended through November 29, 2005, are adopted by reference.

**33.3(15) *Additional impact analyses.*** The provisions for an additional impact analysis as specified in 40 CFR 52.21(o) as amended through November 29, 2005, are adopted by reference.

**33.3(16) Sources impacting federal Class I areas—additional requirements.** The provisions for sources impacting federal Class I areas as specified in 40 CFR 51.166(p) as amended through November 29, 2005, are adopted by reference. The following phrases contained in 40 CFR 51.166(p) are not adopted by reference: “the plan may provide that,” “the plan shall provide that,” “the plan shall provide” and “mechanism whereby.”

**33.3(17) Public participation.**

*a.* The department shall notify all applicants within 30 days as to the completeness of the application or any deficiency in the application or information submitted. In the event of such a deficiency, the date of receipt of the application shall be the date on which the department received all required information.

*b.* Within one year after receipt of a complete application, the department shall:

(1) Make a preliminary determination whether construction should be approved, approved with conditions, or disapproved.

(2) Make available in at least one location in each region in which the proposed source would be constructed a copy of all materials the applicant submitted, a copy of the preliminary determination, and a copy or summary of other materials, if any, considered in making the preliminary determination.

(3) Notify the public, by advertisement in a newspaper of general circulation in each region in which the proposed source would be constructed, of the application, of the preliminary determination, of the degree of increment consumption that is expected from the source or modification, and of the opportunity for comment at a public hearing as well as written public comment. At least 30 days shall be provided for public comment and for notification of any public hearing.

(4) Send a copy of the notice of public comment to the applicant, to the Administrator and to officials and agencies having cognizance over the location where the proposed construction would occur as follows: any other state or local air pollution control agencies; the chief executives of the city and county where the source would be located; any comprehensive regional land use planning agency; and any state, federal land manager, or Indian governing body whose lands may be affected by emissions from the source or modification.

(5) Provide opportunity for a public hearing for interested persons to appear and submit written or oral comments on the air quality impact of the source, alternatives to the proposed source or modification, the control technology required, and other appropriate considerations. At least 30 days' notice shall be provided for any public hearing.

(6) Consider all written comments submitted within a time specified in the notice of public comment and all comments received at any public hearing(s) in making a final decision on the approvability of the application. The department shall make all comments available for public inspection at the same locations where the department made available preconstruction information relating to the proposed source or modification.

(7) Make a final determination whether construction should be approved, approved with conditions, or disapproved.

(8) Notify the applicant in writing of the final determination and make such notification available for public inspection at the same locations where the department made available preconstruction information and public comments relating to the proposed source or modification.

*c.* Reopening of the public comment period.

(1) If comments submitted during the public comment period raise substantial new issues concerning the permit, the department may, at its discretion, take one or more of the following actions:

1. Prepare a new draft permit, appropriately modified;

2. Prepare a revised fact sheet;

3. Prepare a revised fact sheet and reopen the public comment period; or

4. Reopen or extend the public comment period to provide interested persons an opportunity to comment on the comments submitted.

(2) The public notice provided by the department pursuant to this rule shall define the scope of the reopening. Department review of any comments filed during a reopened comment period shall be limited to comments pertaining to the substantial new issues causing the reopening.

**33.3(18) Source obligation.**

*a.* Approval to construct shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the plan and any other requirements under local, state or federal law.

*b.* At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, the requirements of subrules 33.3(10) through 33.3(19) shall apply to the source or modification as though construction had not yet commenced on the source or modification.

*c.* Any owner or operator who constructs or operates a source or modification not in accordance with the application pursuant to the provisions in rule 567—33.3(455B) or with the terms of any approval to construct, or any owner or operator of a source or modification subject to the provisions in rule 567—33.3(455B) who commences construction after April 15, 1987 (the effective date of Iowa's PSD program), without applying for and receiving department approval, shall be subject to appropriate enforcement action.

*d.* Approval to construct shall become invalid if construction is not commenced within 18 months after receipt of such approval, if construction is discontinued for a period of 18 months or more, or if construction is not completed within a reasonable time. The department may extend the 18-month period upon a satisfactory showing that an extension is justified. These provisions do not apply to the time between construction of the approved phases of a phased construction project; each phase must commence construction within 18 months of the projected and approved commencement date.

*e.* Reserved.

*f.* The following specific provisions shall apply to projects at existing emissions units at a major stationary source, other than projects at a source with a PAL, in circumstances in which a project is not part of a major modification, and the owner or operator elects to use the method for calculating projected actual emissions as specified in subrule 33.3(1), paragraphs "1" through "3" of the definition of "projected actual emissions."

(1) Before beginning actual construction of the project, the owner or operator shall document and maintain a record of the following information:

1. A description of the project;

2. Identification of the emissions unit(s) whose emissions of a regulated NSR pollutant could be affected by the project; and

3. A description of the applicability test used to determine that the project is not a major modification for any regulated NSR pollutant, including the baseline actual emissions, the projected actual emissions, the amount of emissions excluded under paragraph "3" of the definition of "projected actual emissions" in subrule 33.3(1), an explanation describing why such amount was excluded, and any netting calculations, if applicable.

(2) No less than 30 days before beginning actual construction, the owner or operator shall meet with the department to discuss the owner's or operator's determination of projected actual emissions for the project and shall provide to the department a copy of the information specified in paragraph "f." The owner or operator is not required to obtain a determination from the department regarding the project's projected actual emissions prior to beginning actual construction.

(3) If the emissions unit is an existing electric utility steam generating unit, before beginning actual construction, the owner or operator shall provide a copy of the information set out in subparagraph (1) to the department. The requirements in subparagraphs (1), (2) and (3) shall not be construed to require the owner or operator of such a unit to obtain any determination from the department before beginning actual construction.

(4) The owner or operator shall:

1. Monitor the emissions of any regulated NSR pollutant that could increase as a result of the project and that is emitted by any emissions unit identified in subparagraph (1);

2. Calculate the annual emissions, in tons per year on a calendar-year basis, for a period of five years following resumption of regular operations and maintain a record of regular operations after the change, or for a period of ten years following resumption of regular operations after the change if the

project increases the design capacity or potential to emit of that regulated NSR pollutant at such emissions unit (for purposes of this requirement, “regular” shall be determined by the department on a case-by-case basis); and

3. Maintain a written record containing the information required in this subparagraph.

(5) The written record containing the information required in subparagraph (4) shall be retained by the owner or operator for a period of ten years after the project is completed.

(6) If the unit is an existing electric utility steam generating unit, the owner or operator shall submit a report to the department within 60 days after the end of each year during which records must be generated under subparagraph (4) setting out the unit’s annual emissions during the calendar year that preceded submission of the report.

(7) If the unit is an existing unit other than an electric utility steam generating unit, the owner or operator shall submit a report to the department if the annual emissions, in tons per year, from the project identified in subparagraph (1), exceed the baseline actual emissions, as documented and maintained pursuant to subparagraph (4), by an amount that is “significant” as defined in subrule 33.3(1) for that regulated NSR pollutant, and if such emissions differ from the preconstruction projection as documented and maintained pursuant to subparagraph (4). Such report shall be submitted to the department within 60 days after the end of such year. The report shall contain the following:

1. The name, address and telephone number of the major stationary source;

2. The annual emissions as calculated pursuant to subparagraph (4); and

3. Any other information that the owner or operator wishes to include in the report (e.g., an explanation as to why the emissions differ from the preconstruction projection).

g. The owner or operator of the source shall make the information required to be documented and maintained pursuant to paragraph “f” available for review upon request for inspection by the department or the general public pursuant to the requirements for Title V operating permits contained in 567—subrule 22.107(6).

**33.3(19) Innovative control technology.** The provisions for innovative control technology as specified in 40 CFR 51.166(s) as amended through November 29, 2005, are adopted by reference. The following phrases contained in 40 CFR 51.166(s) are not adopted by reference: “the plan may provide that” and “the plan shall provide that.”

**33.3(20) Conditions for permit issuance.** Except as explained below, a permit may not be issued to any new “major stationary source” or “major modification” as defined in subrule 33.3(1) that would locate in any area designated as attainment or unclassifiable for any national ambient air quality standard pursuant to Section 107 of the Act, when the source or modification would cause or contribute to a violation of any national ambient air quality standard. A major stationary source or major modification will be considered to cause or contribute to a violation of a national ambient air quality standard when such source or modification would, at a minimum, exceed the following significance levels at any locality that does not or would not meet the applicable national standard:

Pollutant	Averaging Time				
	Annual (ug/m <sup>3</sup> )	24 hrs. (ug/m <sup>3</sup> )	8 hrs. (ug/m <sup>3</sup> )	3 hrs. (ug/m <sup>3</sup> )	1 hr. (ug/m <sup>3</sup> )
SO <sub>2</sub>	1.0	5	_____	25	_____
PM <sub>10</sub>	1.0	5	_____	_____	_____
NO <sub>2</sub>	1.0	_____	_____	_____	_____
CO	_____	_____	500	_____	2000

A permit may be granted to a major stationary source or major modification as identified above if the major stationary source or major modification reduces the impact of its emissions upon air quality by obtaining sufficient emissions reductions to compensate for its adverse ambient air impact where the major stationary source or major modification would otherwise contribute to a violation of any national ambient air quality standard. This subrule shall not apply to a major stationary source or major

modification with respect to a particular pollutant if the owner or operator demonstrates that the source is located in an area designated under Section 107 of the Act as nonattainment for that pollutant.

**33.3(21) Administrative amendments.**

*a.* Upon request for an administrative amendment, the department may take final action on any such request and may incorporate the requested changes without providing notice to the public or to affected states, provided that the department designates any such permit revisions as having been made pursuant to subrule 33.3(21).

*b.* An administrative amendment is a permit revision that does any of the following:

- (1) Corrects typographical errors;
- (2) Corrects word processing errors;
- (3) Identifies a change in name, address or telephone number of any person identified in the permit or provides a similar minor administrative change at the source; or
- (4) Allows for a change in ownership or operational control of a source where the department determines that no other change in the permit is necessary, provided that a written agreement that contains a specific date for transfer of permit responsibility, coverage, and liability between the current permittee and the new permittee has been submitted to the department.

[ARC 8215B, IAB 10/7/09, effective 11/11/09; ARC 9224B, IAB 11/17/10, effective 12/22/10]

**567—33.4 to 33.8** Reserved.

**567—33.9(455B) Plantwide applicability limitations (PALs).** This rule provides an existing major source the option of establishing a plantwide applicability limitation (PAL) on emissions, provided the conditions in this rule are met. The provisions for a PAL as set forth in 40 CFR 52.21(aa) as amended through November 29, 2005, are adopted by reference, except that the term “Administrator” shall mean “the department of natural resources.”

**567—33.10(455B) Exceptions to adoption by reference.** All references to Clean Units and Pollution Control Projects set forth in 40 CFR Sections 52.21 and 51.166 are not adopted by reference.

These rules are intended to implement Iowa Code chapter 455B.

[Filed 8/25/06, Notice 6/7/06—published 9/27/06, effective 11/1/06]

[Filed 2/8/07, Notice 12/6/06—published 2/28/07, effective 4/4/07]

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CHAPTER 61  
WATER QUALITY STANDARDS

[Prior to 7/1/83, DEQ Ch 16]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

WATER QUALITY STANDARDS

**567—61.1** Rescinded, effective August 31, 1977.

**567—61.2(455B) General considerations.**

**61.2(1) Policy statement.** It shall be the policy of the commission to protect and enhance the quality of all the waters of the state. In the furtherance of this policy it will attempt to prevent and abate the pollution of all waters to the fullest extent possible consistent with statutory and technological limitations. This policy shall apply to all point and nonpoint sources of pollution.

These water quality standards establish selected criteria for certain present and future designated uses of the surface waters of the state. The standards establish the areas where these uses are to be protected and provide minimum criteria for waterways having nondesignated uses as well. Many surface waters are designated for more than one use. In these cases the more stringent criteria shall govern for each parameter.

Certain of the criteria are in narrative form without numeric limitations. In applying such narrative standards, decisions will be based on the U.S. Environmental Protection Agency's methodology described in "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses," (1985) and on the rationale contained in "Quality Criteria for Water," published by the U.S. Environmental Protection Agency (1977), as updated by supplemental Section 304 (of the Act) Ambient Water Quality Criteria documents. To provide human health criteria for parameters not having numerical values listed in 61.3(3) Table 1, the required criteria will be based on the rationale contained in these EPA criteria documents. The human health criterion considered will be the value associated with the consumption of fish flesh and a risk factor of  $10^{-5}$  for carcinogenic parameters. For noncarcinogenic parameters, the recommended EPA criterion will be selected. For Class C water, the EPA criteria for fish and water consumption will be selected using the same considerations for carcinogenic and noncarcinogenic parameters as noted above.

All methods of sample collection, preservation, and analysis used in applying any of the rules in these standards shall be in accord with those prescribed in 567—Chapter 63.

**61.2(2) Antidegradation policy.** It is the policy of the state of Iowa that:

a. Tier 1 protection. Existing surface water uses and the level of water quality necessary to protect the existing uses will be maintained and protected.

b. Tier 2 protection. Where the quality of the waters exceeds levels necessary to support propagation of fish, shellfish, and wildlife and recreation in and on the water, that quality shall be maintained and protected unless the department finds, after full satisfaction of the intergovernmental coordination and public participation provisions, that allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. In allowing such degradation or lower water quality, the department shall ensure water quality adequate to protect existing uses fully. Further, the department shall ensure the highest statutory and regulatory requirements for all new and existing point sources and all cost-effective and reasonable best management practices for nonpoint source control before allowing any lowering of water quality.

c. Tier 2½ protection—outstanding Iowa waters. Where high quality waters constitute an outstanding state resource, such as waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected.

d. Tier 3 protection—outstanding national resource waters. Where high quality waters constitute an outstanding national resource, such as waters of national and state parks and wildlife refuges and waters of exceptional recreational or ecological significance, that water quality shall be maintained and protected. Any proposed activity that would result in a permanent new or expanded source of pollutants in an outstanding national resource water is prohibited.

*e.* The four levels of protection provided by the antidegradation policy in paragraphs “a” through “d” of this subrule shall be implemented according to procedures hereby incorporated by reference and known as the “Iowa Antidegradation Implementation Procedure,” effective February 17, 2010. This document may be obtained on the department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

*f.* All unapproved facility plans for new or expanded construction permits, except for construction permits issued for nondischarging facilities, shall undergo an antidegradation review if degradation is likely in the receiving water or downstream waters following February 17, 2010.

*g.* This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 as well as Corps regional permits 7, 33, and 34 as promulgated October 29, 2008, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.

(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee to provide proof of that recording to the Corps.

(3) Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.

(4) For discharges of dredged or fill material resulting in the permanent loss of more than 1/10 acre of waters of the United States (including jurisdictional wetlands), a compensatory mitigation plan to offset those losses will be required. In addition, a preconstruction notice to the Corps of Engineers in accordance with general condition 27 will be required.

(5) For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.

(6) For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.

(7) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

(8) For projects that impact fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(9) For nationwide permits when the Corps’ district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition). Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide permit or the Corps, and the activities are allowed subject to the terms and conditions of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require preconstruction notice under nationwide permit conditions.

**61.2(3) *Minimum treatment required.*** All wastes discharged to the waters of the state must be of such quality that the discharge will not cause the narrative or numeric criteria limitations to be exceeded. Where the receiving waters provide sufficient assimilative capacity that the water quality standards are not the limiting factor, all point source wastes shall receive treatment in compliance with minimum effluent standards as adopted in rules by the department.

There are numerous parameters of water quality associated with nonpoint source runoff which are of significance to the designated water uses specified in the general and specific designations in 61.3(455B), but which are not delineated. It shall be the intent of these standards that the limits on such nonpoint source related parameters when adopted shall be those that can be achieved by best management practices as defined in the course of the continuing planning process from time to time. Existing water quality and nonpoint source runoff control technology will be evaluated in the course of the Iowa continuing planning process, and best management practices and limitations on specific water quality parameters will be reviewed and revised from time to time to ensure that the designated water uses and water quality enhancement goals are met.

**61.2(4) *Regulatory mixing zones.*** Mixing zones are recognized as being necessary for the initial assimilation of point source discharges which have received the required degree of treatment or control. Mixing zones shall not be used for, or considered as, a substitute for minimum treatment technology required by subrule 61.2(3). The objective of establishing mixing zones is to provide a means of control over the placement and emission of point source discharges so as to minimize environmental impacts. Waters within a mixing zone shall meet the general water quality criteria of subrule 61.3(2). Waters at and beyond mixing zone boundaries shall meet all applicable standards and the chronic and human health criteria of subrule 61.3(3), Tables 1 and 3, for that particular water body or segment. A zone of initial dilution may be established within the mixing zone beyond which the applicable standards and the acute criteria of subrule 61.3(3) will be met. For waters designated under subrule 61.3(5), any parameter not included in Tables 1, 2 and 3 of subrule 61.3(3), the chronic and human health criteria, and the acute criterion calculated following subrule 61.2(1), will be met at the mixing zone and zone of initial dilution boundaries, respectively.

*a.* Due to extreme variations in wastewater and receiving water characteristics, spatial dimensions of mixing zones shall be defined on a site-specific basis. These rules are not intended to define each individual mixing zone, but will set maximum limits which will satisfy most biological, chemical, physical and radiological considerations in defining a particular mixing zone. Additional details are noted in the “Supporting Document for Iowa Water Quality Management Plans,” Chapter IV, July 1976, as revised on November 11, 2009, for considering unusual site-specific features such as side channels and sand bars which may influence a mixing zone. Applications for operation permits under 567—subrule 64.3(1) may be required to provide specific information related to the mixing zone characteristics below their outfall so that mixing zone boundaries can be determined.

*b.* For parameters included in Table 1 only (which does not include ammonia nitrogen), the dimensions of the mixing zone and the zone of initial dilution will be calculated using a mathematical model presented in the “Supporting Document for Iowa Water Quality Management Plans,” Chapter IV, July 1976, as revised on November 11, 2009, or from instream studies of the mixing characteristics during low flow. In addition, the most restrictive of the following factors will be met:

- (1) The stream flow in the mixing zone may not exceed the most restrictive of the following:
  1. Twenty-five percent of the design low stream flows noted in subrule 61.2(5) for interior streams and rivers, and the Big Sioux and Des Moines Rivers.
  2. Ten percent of the design low stream flows noted in subrule 61.2(5) for the Mississippi and Missouri Rivers.
  3. The stream flow contained in the mixing zone at the most restrictive of the applicable mixing zone length criteria, noted below.
- (2) The length of the mixing zone below the point of discharge shall be set by the most restrictive of the following:
  1. The distance to the juncture of two perennial streams.
  2. The distance to a public water supply intake.

3. The distance to the upstream limits of an established recreational area, such as public beaches, and state, county and local parks.

4. The distance to the middle of a crossover point in a stream where the main current flows from one bank across to the opposite bank.

5. The distance to another mixing zone.

6. Not to exceed a distance of 2000 feet.

7. The location where the mixing zone contained the percentages of stream flow noted in 61.2(4) "b"(1).

(3) The width of the mixing zone is calculated as the portion of the stream containing the allowed mixing zone stream flow. The mixing zone width will be measured perpendicular to the basic direction of stream flow at the downstream boundary of the mixing zone. This measurement will only consider the distance of continuous water surface.

(4) The width and length of the zone of initial dilution may not exceed 10 percent of the width and length of the mixing zone.

c. The stream flow used in determining wasteload allocations to ensure compliance with the maximum contaminant level (MCL), chronic and human health criteria of Table 1 will be that value contained at the boundary of the allowed mixing zone. This stream flow may not exceed the following percentages of the design low stream flow as measured at the point of discharge:

(1) Twenty-five percent for interior streams and rivers, and the Big Sioux and Des Moines Rivers.

(2) Ten percent for the Mississippi and Missouri Rivers.

The stream flow in the zone of initial dilution used in determining effluent limits to ensure compliance with the acute criteria of Table 1 may not exceed 10 percent of the calculated flow associated with the mixing zone.

d. For toxic parameters noted in Table 1, the following exceptions apply to the mixing zone requirements:

(1) No mixing zone or zone of initial dilution will be allowed for waters designated as lakes or wetlands.

(2) No zone of initial dilution will be allowed in waters designated as cold water.

(3) The use of a diffuser device to promote rapid mixing of an effluent in a receiving stream will be considered on a case-by-case basis with its usage as a means for dischargers to comply with an acute numerical criterion.

(4) A discharger to interior streams and rivers, the Big Sioux and Des Moines Rivers, and the Mississippi or Missouri Rivers may provide to the department, for consideration, instream data which technically supports the allowance of an increased percentage of the stream flow contained in the mixing zone due to rapid and complete mixing. Any allowed increase in mixing zone flow would still be governed by the mixing zone length restrictions. The submission of data should follow the guidance provided in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

e. For ammonia criteria noted in Table 3, the dimensions of the mixing zone and the zone of initial dilution will be calculated using a mathematical model presented in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009, or from instream studies of the mixing characteristics during low flow. In addition, the most restrictive of the following factors will be met:

(1) The stream flow in the mixing zone may not exceed the most restrictive of the following:

1. One hundred percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is less than or equal to 2:1.

2. Fifty percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is greater than 2:1, but less than or equal to 5:1.

3. Twenty-five percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is greater than 5:1.

4. The stream flow contained in the mixing zone at the most restrictive of the applicable mixing zone length criteria, noted below.

(2) The length of the mixing zone below the point of discharge shall be set by the most restrictive of the following:

1. The distance to the juncture of two perennial streams.
2. The distance to a public water supply intake.
3. The distance to the upstream limits of an established recreational area, such as public beaches, and state, county, and local parks.
4. The distance to the middle of a crossover point in a stream where the main current flows from one bank across to the opposite bank.
5. The distance to another mixing zone.
6. Not to exceed a distance of 2000 feet.
7. The location where the mixing zone contained the percentages of stream flow noted in 61.2(4) "e"(1).

(3) The width of the mixing zone is calculated as the portion of the stream containing the allowed mixing zone stream flow. The mixing zone width will be measured perpendicular to the basic direction of stream flow at the downstream boundary of the mixing zone. This measurement will only consider the distance of continuous water surface.

(4) The width and length of the zone of initial dilution may not exceed 10 percent of the width and length of the mixing zone.

*f.* For ammonia criteria noted in Table 3, the stream flow used in determining wasteload allocations to ensure compliance with the chronic criteria of Table 3 will be that value contained at the boundary of the allowed mixing zone. This stream flow may not exceed the percentages of the design low stream flow noted in 61.2(4) "e"(1) as measured at the point of discharge.

The pH and temperature values at the boundary of the mixing zone used to select the chronic ammonia criteria of Table 3 will be from one of the following sources. The source of the pH and temperature data will follow the sequence listed below, if applicable data exists from the source.

(1) Specific pH and temperature data provided by the applicant gathered at their mixing zone boundary. Procedures for obtaining this data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

(2) Regional background pH and temperature data provided by the applicant gathered along the receiving stream and representative of the background conditions at the outfall. Procedures for obtaining this data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

(3) The statewide average background values presented in Table IV-2 of the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

The stream flow in the zone of initial dilution used in determining effluent limits to ensure compliance with the acute criteria of Table 3 may not exceed 5 percent of the calculated flow associated with the mixing zone for facilities with a dilution ratio of less than or equal to 2:1, and not exceed 10 percent of the calculated flow associated with the mixing zone for facilities with a dilution ratio of greater than 2:1. The pH and temperature values at the boundary of the zone of initial dilution used to select the acute ammonia criteria of Table 3 will be from one of the following sources and follow the sequence listed below, if applicable data exists from the source.

1. Specific effluent pH and temperature data if the dilution ratio is less than or equal to 2:1.
2. If the dilution ratio is greater than 2:1, the logarithmic average pH of the effluent and the regional or statewide pH provided in 61.2(4) "f" will be used. In addition, the flow proportioned average temperature of the effluent and the regional or statewide temperature provided in 61.2(4) "f" will be used. The procedures for calculating these data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

*g.* For ammonia criteria noted in Table 3, the following exceptions apply to the mixing zone requirements.

- (1) No mixing zone or zone of initial dilution will be allowed for waters designated as lakes or wetlands.
- (2) No zone of initial dilution will be allowed in waters designated as cold water.

(3) The use of a diffuser device to promote rapid mixing of an effluent in a receiving stream will be considered on a case-by-case basis with its usage as a means for dischargers to comply with an acute numerical criterion.

(4) A discharger to interior streams and rivers, the Big Sioux and Des Moines Rivers, and the Mississippi and Missouri Rivers may provide to the department, for consideration, instream data which technically supports the allowance of an increased percentage of the stream flow contained in the mixing zone due to rapid and complete mixing. Any allowed increase in mixing zone flow would still be governed by the mixing zone length restrictions. The submission of data should follow the guidance provided in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on November 11, 2009.

*h.* Temperature changes within mixing zones established for heat dissipation will not exceed the temperature criteria in 61.3(3) "b"(5).

*i.* The appropriateness of establishing a mixing zone where a substance discharged is bioaccumulative, persistent, carcinogenic, mutagenic, or teratogenic will be carefully evaluated. In such cases, effects such as potential groundwater contamination, sediment deposition, fish attraction, bioaccumulation in aquatic life, bioconcentration in the food chain, and known or predicted safe exposure levels shall be considered.

**61.2(5) Implementation strategy.** Numerical criteria specified in these water quality standards shall be met when the flow of the receiving stream equals or exceeds the design low flows noted below.

Type of Numerical Criteria	Design Low Flow Regime
Aquatic Life Protection (TOXICS)	
Acute	1Q <sub>10</sub>
Chronic	7Q <sub>10</sub>
Aquatic Life Protection (AMMONIA - N)	
Acute	1Q <sub>10</sub>
Chronic	30Q <sub>10</sub>
Human Health Protection & MCL	
Noncarcinogenic	30Q <sub>5</sub>
Carcinogenic	Harmonic mean

*a.* The allowable 3°C temperature increase criterion for warm water interior streams, 61.3(3) "b"(5) "1," is based in part on the need to protect fish from cold shock due to rapid cessation of heat source and resultant return of the receiving stream temperature to natural background temperature. On low flow streams, in winter, during certain conditions of relatively cold background stream temperature and relatively warm ambient air and groundwater temperature, certain wastewater treatment plants with relatively constant flow and constant temperature discharges will cause temperature increases in the receiving stream greater than allowed in 61.3(3) "b"(5) "1."

*b.* During the period November 1 to March 31, for the purpose of applying the 3°C temperature increase criterion, the minimum protected receiving stream flow rate below such discharges may be increased to not more than three times the rate of flow of the discharge, where there is reasonable assurance that the discharge is of such constant temperature and flow rate and continuous duration as to not constitute a threat of heat cessation and not cause the receiving stream temperature to vary more than 3°C per day.

*c.* Site-specific water quality criteria may be allowed in lieu of the specific numerical criteria listed in Tables 1 and 3 of this chapter if adequate documentation is provided to show that the proposed criteria will protect all existing or potential uses of the surface water. Site-specific water quality criteria may be appropriate where:

- (1) The types of organisms differ significantly from those used in setting the statewide criteria; or
- (2) The chemical characteristics of the surface water such as pH, temperature, and hardness differ significantly from the characteristics used in setting the statewide criteria.

Development of site-specific criteria shall include an evaluation of the chemical and biological characteristics of the water resource and an evaluation of the impact of the discharge. All evaluations for site-specific criteria modification must be coordinated through the department, and be conducted using scientifically accepted procedures approved by the department. Any site-specific criterion developed under the provisions of this subrule is subject to the review and approval of the U.S. Environmental Protection Agency. All criteria approved under the provisions of this subrule will be published periodically by the department. Guidelines for establishing site-specific water quality criteria can be found in “Water Quality Standards Handbook,” published by the U.S. Environmental Protection Agency, December 1983.

*d.* A wastewater treatment facility may submit to the department technically valid instream data which provides additional information to be used in the calculations of their wasteload allocations and effluent limitations. This information would be in association with the low flow characteristics, width, length and time of travel associated with the mixing zone or decay rates of various effluent parameters. The wasteload allocation will be calculated considering the applicable data and consistent with the provisions and restrictions in the rules.

*e.* The department may perform use assessment and related use attainability analyses on water bodies where uses may not be known or adequately documented. The preparation of use attainability analysis documents will consider available U.S. Environmental Protection Agency guidance or other applicable guidance. Credible data and documentation will be used to assist in the preparation of use assessments and use attainability analysis reports.

[ARC 8214B, IAB 10/7/09, effective 11/11/09; ARC 8466B, IAB 1/13/10, effective 2/17/10]

#### **567—61.3(455B) Surface water quality criteria.**

**61.3(1) *Surface water classification.*** All waters of the state are classified for protection of beneficial uses. These classified waters include general use segments and designated use segments.

*a. General use segments.* These are intermittent watercourses and those watercourses which typically flow only for short periods of time following precipitation and whose channels are normally above the water table. These waters do not support a viable aquatic community during low flow and do not maintain pooled conditions during periods of no flow.

The general use segments are to be protected for livestock and wildlife watering, aquatic life, noncontact recreation, crop irrigation, and industrial, agricultural, domestic and other incidental water withdrawal uses.

*b. Designated use segments.* These are water bodies which maintain flow throughout the year or contain sufficient pooled areas during intermittent flow periods to maintain a viable aquatic community.

All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa not specifically listed in the surface water classification of 61.3(5) are designated as Class B(WW-1) waters.

All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa are designated as Class A1 waters.

Designated uses of segments may change based on a use attainability analysis consistent with 61.2(5)“e.” Designated use changes will be specifically listed in the surface water classification of 61.3(5).

Designated use waters are to be protected for all uses of general use segments in addition to the specific uses assigned. Designated use segments include:

(1) Primary contact recreational use (Class “A1”). Waters in which recreational or other uses may result in prolonged and direct contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard. Such activities would include, but not be limited to, swimming, diving, water skiing, and water contact recreational canoeing.

(2) Secondary contact recreational use (Class “A2”). Waters in which recreational or other uses may result in contact with the water that is either incidental or accidental. During the recreational use, the probability of ingesting appreciable quantities of water is minimal. Class A2 uses include fishing,

commercial and recreational boating, any limited contact incidental to shoreline activities and activities in which users do not swim or float in the water body while on a boating activity.

(3) Children's recreational use (Class "A3"). Waters in which recreational uses by children are common. Class A3 waters are water bodies having definite banks and bed with visible evidence of the flow or occurrence of water. This type of use would primarily occur in urban or residential areas.

(4) Cold water aquatic life—Type 1 (Class "B(CW1)"). Waters in which the temperature and flow are suitable for the maintenance of a variety of cold water species, including reproducing and nonreproducing populations of trout (*Salmonidae* family) and associated aquatic communities.

(5) Cold water aquatic life—Type 2 (Class "B(CW2)"). Waters that include small, channeled streams, headwaters, and spring runs that possess natural cold water attributes of temperature and flow. These waters usually do not support consistent populations of trout (*Salmonidae* family), but may support associated vertebrate and invertebrate organisms.

(6) Warm water—Type 1 (Class "B(WW-1)"). Waters in which temperature, flow and other habitat characteristics are suitable to maintain warm water game fish populations along with a resident aquatic community that includes a variety of native nongame fish and invertebrate species. These waters generally include border rivers, large interior rivers, and the lower segments of medium-size tributary streams.

(7) Warm water—Type 2 (Class "B(WW-2)"). Waters in which flow or other physical characteristics are capable of supporting a resident aquatic community that includes a variety of native nongame fish and invertebrate species. The flow and other physical characteristics limit the maintenance of warm water game fish populations. These waters generally consist of small perennially flowing streams.

(8) Warm water—Type 3 (Class "B(WW-3)"). Waters in which flow persists during periods when antecedent soil moisture and groundwater discharge levels are adequate; however, aquatic habitat typically consists of nonflowing pools during dry periods of the year. These waters generally include small streams of marginally perennial aquatic habitat status. Such waters support a limited variety of native fish and invertebrate species that are adapted to survive in relatively harsh aquatic conditions.

(9) Lakes and wetlands (Class "B(LW)"). These are artificial and natural impoundments with hydraulic retention times and other physical and chemical characteristics suitable to maintain a balanced community normally associated with lake-like conditions.

(10) Human health (Class "HH"). Waters in which fish are routinely harvested for human consumption or waters both designated as a drinking water supply and in which fish are routinely harvested for human consumption.

(11) Drinking water supply (Class "C"). Waters which are used as a raw water source of potable water supply.

**61.3(2) General water quality criteria.** The following criteria are applicable to all surface waters including general use and designated use waters, at all places and at all times for the uses described in 61.3(1) "a."

*a.* Such waters shall be free from substances attributable to point source wastewater discharges that will settle to form sludge deposits.

*b.* Such waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance.

*c.* Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions.

*d.* Such waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life.

*e.* Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

*f.* The turbidity of the receiving water shall not be increased by more than 25 Nephelometric turbidity units by any point source discharge.

g. Cations and anions guideline values to protect livestock watering may be found in the “Supporting Document for Iowa Water Quality Management Plans,” Chapter IV, July 1976, as revised on November 11, 2009.

h. The *Escherichia coli* (*E. coli*) content of water which enters a sinkhole or losing stream segment, regardless of the water body’s designated use, shall not exceed a Geometric Mean value of 126 organisms/100 ml or a sample maximum value of 235 organisms/100 ml. No new wastewater discharges will be allowed on watercourses which directly or indirectly enter sinkholes or losing stream segments.

**61.3(3) Specific water quality criteria.**

a. *Class “A” waters.* Waters which are designated as Class “A1,” “A2,” or “A3” in subrule 61.3(5) are to be protected for primary contact, secondary contact, and children’s recreational uses. The general criteria of subrule 61.3(2) and the following specific criteria apply to all Class “A” waters.

(1) The *Escherichia coli* (*E. coli*) content shall not exceed the levels noted in the Bacteria Criteria Table when the Class “A1,” “A2,” or “A3” uses can reasonably be expected to occur.

Bacteria Criteria Table (organisms/100 ml of water)

Use or Category	Geometric Mean	Sample Maximum
Class A1		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply
Class A2 (Only)		
3/15 – 11/15	630	2880
11/16 – 3/14	Does not apply	Does not apply
[Class A2 and B(CW)] or OIW or ONRW		
Year-Round	630	2880
Class A3		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply
Class A1 - Primary Contact Recreational Use Class A2 - Secondary Contact Recreational Use Class A3 - Children’s Recreational Use		

When a water body is designated for more than one of the recreational uses, the most stringent criteria for the appropriate season shall apply.

(2) The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of a waste discharge shall not exceed 0.5 pH units.

b. *Class “B” waters.* All waters which are designated as Class B(CW1), B(CW2), B(WW-1), B(WW-2), B(WW-3) or B(LW) are to be protected for wildlife, fish, aquatic, and semiaquatic life. The following criteria shall apply to all Class “B” waters designated in subrule 61.3(5).

(1) Dissolved oxygen. Dissolved oxygen shall not be less than the values shown in Table 2 of this subrule.

(2) pH. The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of a waste discharge shall not exceed 0.5 pH units.

(3) General chemical constituents. The specific numerical criteria shown in Tables 1, 2, and 3 of this subrule apply to all waters designated in subrule 61.3(5). The sole determinant of compliance with these criteria will be established by the department on a case-by-case basis. Effluent monitoring or instream monitoring, or both, will be the required approach to determine compliance.

1. The acute criteria represent the level of protection necessary to prevent acute toxicity to aquatic life. Instream concentrations above the acute criteria will be allowed only within the boundaries of the zone of initial dilution.

2. The chronic criteria represent the level of protection necessary to prevent chronic toxicity to aquatic life. Excursions above the chronic criteria will be allowed only inside of mixing zones or only for short-term periods outside of mixing zones; however, these excursions cannot exceed the acute criteria shown in Tables 1 and 3. The chronic criteria will be met as short-term average conditions at all times the flow equals or exceeds either the design flows noted in subrule 61.2(5) or any site-specific low flow established under the provisions of subrule 61.2(5).

3. Rescinded IAB 2/15/06, effective 3/22/06.

(4) Rescinded IAB 2/15/06, effective 3/22/06.

(5) Temperature.

1. No heat shall be added to interior streams or the Big Sioux River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the stream temperature above 32°C.

2. No heat shall be added to streams designated as cold water fisheries that would cause an increase of more than 2°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the stream temperature above 20°C.

3. No heat shall be added to lakes and reservoirs that would cause an increase of more than 2°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the temperature of the lake or reservoirs above 32°C.

4. No heat shall be added to the Missouri River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added that would raise the stream temperature above 32°C.

5. No heat shall be added to the Mississippi River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In addition, the water temperature at representative locations in the Mississippi River shall not exceed the maximum limits in the table below during more than 1 percent of the hours in the 12-month period ending with any month. Moreover, at no time shall the water temperature at such locations exceed the maximum limits in the table below by more than 2°C.

Zone II—Iowa-Minnesota state line to the northern Illinois border (Mile Point 1534.6).

Zone III—Northern Illinois border (Mile Point 1534.6) to Iowa-Missouri state line.

Month	Zone II	Zone III
January	4°C	7°C
February	4°C	7°C
March	12°C	14°C
April	18°C	20°C
May	24°C	26°C
June	29°C	29°C
July	29°C	30°C
August	29°C	30°C
September	28°C	29°C
October	23°C	24°C
November	14°C	18°C
December	9°C	11°C

(6) Early life stage for each use designation. The following seasons will be used in applying the early life stage present chronic criteria noted in Table 3b, “Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Present.”

1. For all Class B(CW1) waters, the early life stage will be year-round.

2. For all Class B(CW2) waters, the early life stage will begin on April 1 and last through September 30.

3. For all Class B(WW-1) waters, the early life stage will begin in March and last through September, except as follows:

- For the following, the early life stage will begin in February and last through September:

—The entire length of the Mississippi and Missouri Rivers,

—The lower reach of the Des Moines River south of the Ottumwa dam, and

—The lower reach of the Iowa River below the Cedar River.

- For the following, the early life stage will begin in April and last through September:

—All Class B(WW-1) waters in the Southern Iowa River Basin,

—All of the Class B(WW-1) reach of the Skunk River, the North Skunk River and the South Skunk River south of Indian Creek (Jasper County), and the Class B(WW-1) tributaries to these reaches, and the entire Class B(WW-1) reach of the English River.

4. For all Class B(WW-2) and Class B(WW-3) waters, the early life stage will begin in April and last through September.

5. For all Class B(LW) lake and wetland waters, the early life stage will begin in March and last through September except for the Class B(LW) waters in the southern two tiers of Iowa counties which will have the early life stage of April through September.

*c. Class "C" waters.* Waters which are designated as Class "C" are to be protected as a raw water source of potable water supply. The following criteria shall apply to all Class "C" waters designated in subrule 61.3(5).

- (1) Radioactive substances.

1. The combined radium-226 and radium-228 shall not exceed 5 picocuries per liter at the point of withdrawal.

2. Gross alpha particle activity (including radium-226 but excluding radon and uranium) shall not exceed 15 picocuries per liter at the point of withdrawal.

3. The average annual concentration at the point of withdrawal of beta particle and photon radioactivity from man-made radionuclides other than tritium and strontium-90 shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.

4. The average annual concentration of tritium shall not exceed 20,000 picocuries per liter at the point of withdrawal; the average annual concentration of strontium-90 shall not exceed 8 picocuries per liter at the point of withdrawal.

- (2) All substances toxic or detrimental to humans or detrimental to treatment process shall be limited to nontoxic or nondetrimental concentrations in the surface water.

- (3) The pH shall not be less than 6.5 nor greater than 9.0.

*d. Class "HH" waters.* Waters which are designated as Class HH shall contain no substances in concentrations which will make fish or shellfish inedible due to undesirable tastes or cause a hazard to humans after consumption.

- (1) The human health criteria represent the level of protection necessary, in the case of noncarcinogens, to prevent adverse health effects in humans and, in the case of carcinogens, to prevent a level of incremental cancer risk not exceeding 1 in 100,000. Instream concentrations in excess of the human health criteria will be allowed only within the boundaries of the mixing zone.

- (2) Reserved.

#### **TABLE 1. Criteria for Chemical Constituents**

*(all values as micrograms per liter as total recoverable unless noted otherwise)*

Human health criteria for carcinogenic parameters noted below were based on the prevention of an incremental cancer risk of 1 in 100,000. For parameters not having a noted human health criterion, the U.S. Environmental Protection Agency has not developed final national human health guideline values. For noncarcinogenic parameters, the recommended EPA criterion was selected. For Class C waters, the EPA criteria for fish and water consumption were selected using the same considerations for carcinogenic and noncarcinogenic parameters as noted above. For Class C waters for which no EPA human health criteria were available, the EPA MCL value was selected.

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Alachlor	MCL	—	—	—	—	—	—	2	—
Aldrin	Acute	—	—	3	3	3	—	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.00050 <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	.00049 <sup>(f)</sup>
Aluminum	Chronic	87	—	87	87	87	748	—	—
	Acute	1106	—	750	750	750	983	—	—
Antimony	Human Health — Fish	—	—	—	—	—	—	—	640 <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	5.6 <sup>(f)</sup>
Arsenic (III)	Chronic	200	—	150	150	150	200	—	—
	Acute	360	—	340	340	340	360	—	—
	Human Health — Fish	—	—	—	—	—	—	—	50 <sup>(e)(g)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	.18 <sup>(f)(g)</sup>
Asbestos	Human Health — F & W	—	—	—	—	—	—	—	7 <sup>(a)(f)</sup>
Atrazine	MCL	—	—	—	—	—	—	3	—
Barium	Human Health + — F & W	—	—	—	—	—	—	—	1000 <sup>(f)</sup>
Benzene	Human Health — F & W	—	—	—	—	—	—	—	22 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	510 <sup>(e)</sup>
Benzo(a)Pyrene	Human Health — F & W	—	—	—	—	—	—	—	.038 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	.18 <sup>(e)</sup>
Beryllium	MCL	—	—	—	—	—	—	4	—
Bromoform	Human Health — F & W	—	—	—	—	—	—	—	43 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	1400 <sup>(e)</sup>
Cadmium	Chronic	1	—	.45 <sup>(h)</sup>	.45 <sup>(h)</sup>	.45 <sup>(h)</sup>	1	—	—
	Acute	4	—	4.32 <sup>(h)</sup>	4.32 <sup>(h)</sup>	4.32 <sup>(h)</sup>	4	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	168 <sup>(e)</sup>
	MCL	—	—	—	—	—	—	5	—
Carbofuran	MCL	—	—	—	—	—	—	40	—
Carbon Tetrachloride	Human Health — F & W	—	—	—	—	—	—	—	2.3 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	16 <sup>(e)</sup>
Chlordane	Chronic	.004	—	.0043	.0043	.0043	.004	—	—
	Acute	2.5	—	2.4	2.4	2.4	2.5	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0081 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	.008 <sup>(f)</sup>

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Chloride	Chronic	389(m)*	389(m)*	389(m)*	389(m)*	389(m)*	389(m)*	—	—
	Acute	629(m)*	629(m)*	629(m)*	629(m)*	629(m)*	629(m)*	—	—
	MCL	—	—	—	—	—	—	250*	—
Chlorobenzene	Human Health + — Fish	—	—	—	—	—	—	—	1.6*(e)
	Human Health + — F & W	—	—	—	—	—	—	—	130 <sup>(f)</sup>
	MCL	—	—	—	—	—	—	100	—
Chlorodibromomethane	Human Health — F & W	—	—	—	—	—	—	—	4.0 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	130 <sup>(e)</sup>
Chloroform	Human Health — F & W	—	—	—	—	—	—	—	57 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	4700 <sup>(e)</sup>
Chloropyrifos	Chronic	.041	—	.041	.041	.041	.041	—	—
	Acute	.083	—	.083	.083	.083	.083	—	—
Chromium (VI)	Chronic	40	—	11	11	11	10	—	—
	Acute	60	—	16	16	16	15	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	3365 <sup>(e)</sup>
	MCL	—	—	—	—	—	—	100	—
Copper	Chronic	20	—	16.9 <sup>(f)</sup>	16.9 <sup>(f)</sup>	16.9 <sup>(f)</sup>	10	—	—
	Acute	30	—	26.9 <sup>(f)</sup>	26.9 <sup>(f)</sup>	26.9 <sup>(f)</sup>	20	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	1000 <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	1300 <sup>(f)</sup>
Cyanide	Chronic	5	—	5.2	5.2	5.2	10	—	—
	Acute	20	—	22	22	22	45	—	—
	Human Health + — F & W	—	—	—	—	—	—	—	140 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	140 <sup>(e)</sup>
Dalapon	MCL	—	—	—	—	—	—	200	—
Dibromochloropropane	MCL	—	—	—	—	—	—	.2	—
4,4-DDT ++	Chronic	.001	—	.001	.001	.001	.001	—	—
	Acute	.9	—	1.1	1.1	1.1	.55	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0022 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	.0022 <sup>(f)</sup>
o-Dichlorobenzene	MCL	—	—	—	—	—	—	600	—
para-Dichlorobenzene	Human Health + — F & W	—	—	—	—	—	—	—	63 <sup>(f)</sup>
	Human Health + — Fish	—	—	—	—	—	—	—	190 <sup>(e)</sup>
3,3-Dichlorobenzidine	Human Health — Fish	—	—	—	—	—	—	—	.28 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	.21 <sup>(f)</sup>





Parameter		Use Designations							C	HH
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)			
Oxamyl (Vydate)	MCL	—	—	—	—	—	—	—	200	—
Parathion	Chronic	.013	—	.013	.013	.013	.013	.013	—	—
	Acute	.065	—	.065	.065	.065	.065	.065	—	—
Pentachlorophenol (PCP)	Chronic	(d)	—	(d)	(d)	(d)	(d)	(d)	—	—
	Acute	(d)	—	(d)	(d)	(d)	(d)	(d)	—	—
	Human Health — Fish	—	—	—	—	—	—	—	—	30 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	—	2.7 <sup>(f)</sup>
Phenols	Chronic	50	—	50	50	50	50	50	—	—
	Acute	1000	—	2500	2500	2500	1000	1000	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	—	1700* <sup>(e)</sup>
	Human Health + — F & W	—	—	—	—	—	—	—	—	21* <sup>(f)</sup>
Picloram	MCL	—	—	—	—	—	—	—	500	—
Polychlorinated Biphenyls (PCBs)	Chronic	.014	—	.014	.014	.014	.014	.014	—	—
	Acute	2	—	2	2	2	2	2	—	—
	Human Health — Fish	—	—	—	—	—	—	—	—	.00064 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	—	.00064 <sup>(f)</sup>
Polynuclear Aromatic Hydrocarbons (PAHs)**	Chronic	.03	—	.03	3	3	.03	.03	—	—
	Acute	30	—	30	30	30	30	30	—	—
	Human Health — Fish	—	—	—	—	—	—	—	—	.18 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	—	—	.038 <sup>(f)</sup>
Selenium	Chronic	10	—	5	5	5	70	70	—	—
	Acute	15	—	19.3	19.3	19.3	100	100	—	—
	Human Health + — F & W	—	—	—	—	—	—	—	—	170 <sup>(f)</sup>
	Human Health + — Fish	—	—	—	—	—	—	—	—	4200 <sup>(e)</sup>
Silver	Chronic	N/A	—	N/A	N/A	N/A	N/A	N/A	—	—
	Acute	30	—	3.8	3.8	3.8	4	4	—	—
	MCL	—	—	—	—	—	—	—	50	—
2,4,5-TP (Silvex)	MCL	—	—	—	—	—	—	—	10	—
Simazine	MCL	—	—	—	—	—	—	—	4	—
Styrene	MCL	—	—	—	—	—	—	—	100	—
Tetrachlorethylene	Human Health — F & W	—	—	—	—	—	—	—	—	6.9 <sup>(f)</sup>
	Human Health — Fish	—	—	—	—	—	—	—	—	33 <sup>(e)</sup>
Thallium	Human Health + — F & W	—	—	—	—	—	—	—	—	.24 <sup>(f)</sup>
	Human Health + — Fish	—	—	—	—	—	—	—	—	.47 <sup>(e)</sup>

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Toluene	Chronic	50	—	50	150	150	50	—	—
	Acute	2500	—	2500	7500	7500	2500	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	15*(e)
	Human Health + — F & W	—	—	—	—	—	—	—	1300(f)
Total Residual Chlorine (TRC)	Chronic	10	—	11	11	11	10	—	—
	Acute	35	—	19	19	19	20	—	—
Toxaphene	Chronic	.037	—	.002	.002	.002	.037	—	—
	Acute	.73	—	.73	.73	.73	.73	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0028(e)
	Human Health — F & W	—	—	—	—	—	—	—	.0028(f)
1,2,4-Trichlorobenzene	MCL	—	—	—	—	—	—	70	—
1,1,1-Trichloroethane	MCL	—	—	—	—	—	—	200	—
	Human Health + — Fish	—	—	—	—	—	—	—	173*(e)
1,1,2-Trichloroethane	Human Health — F & W	—	—	—	—	—	—	—	6(f)
Trichloroethylene (TCE)	Chronic	80	—	80	80	80	80	—	—
	Acute	4000	—	4000	4000	4000	4000	—	—
	Human Health — Fish	—	—	—	—	—	—	—	300(e)
	Human Health — F & W	—	—	—	—	—	—	—	25(f)
Trihalomethanes (total)(c)	MCL	—	—	—	—	—	—	80	—
Vinyl Chloride	Human Health — F & W	—	—	—	—	—	—	—	.25(f)
	Human Health — Fish	—	—	—	—	—	—	—	24(e)
Xylenes (Total)	MCL	—	—	—	—	—	—	10*	—
Zinc	Chronic	200	—	215(f)	215(f)	215(f)	100	—	—
	Acute	220	—	215(f)	215(f)	215(f)	110	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	26*(e)
	Human Health + — F & W	—	—	—	—	—	—	—	7.4*(f)

\* units expressed as milligrams/liter

\*\* to include the sum of known and suspected carcinogenic PAHs (includes benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene)

† expressed as nanograms/liter

+ represents the noncarcinogenic human health parameters

++ The concentrations of 4,4-DDT or its metabolites; 4,4-DDE and 4,4-DDD, individually shall not exceed the human health criteria.

(a) units expressed as million fibers/liter (longer than 10 micrometers)

(b) includes alpha-endosulfan, beta-endosulfan, and endosulfan sulfate in combination or as individually measured

(c) The sum of the four trihalomethanes (bromoform [tribromomethane], chlorodibromomethane, chloroform [trichloromethane], and dichlorobromomethane) may not exceed the MCL.

(d) Class B numerical criteria for pentachlorophenol are a function of pH using the equation: Criterion ( $\mu\text{g/l}$ ) =  $e^{[1.005(\text{pH}) - x]}$ , where  $e = 2.71828$  and  $x$  varies according to the following table:

	B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)
Acute	3.869	—	4.869	4.869	4.869	4.869
Chronic	4.134	—	5.134	5.134	5.134	5.134

- (e) This Class HH criterion would be applicable to any Class B(LW), B(CW1), B(WW-1), B(WW-2), or B(WW-3) water body that is also designated Class HH.
- (f) This Class HH criterion would be applicable to any Class C water body that is also designated Class HH.
- (g) inorganic form only
- (h) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 200 mg/l (as CaCO<sub>3</sub> (mg/l)). Numerical criteria (µg/l) for cadmium are a function of hardness (as CaCO<sub>3</sub> (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$
Chronic	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$

- (i) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 200 mg/l (as CaCO<sub>3</sub> (mg/l)). Numerical criteria (µg/l) for copper are a function of hardness (CaCO<sub>3</sub> (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$
Chronic	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$

- (j) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 200 mg/l (as CaCO<sub>3</sub> (mg/l)). Numerical criteria (µg/l) for lead are a function of hardness (CaCO<sub>3</sub> (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$
Chronic	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$

- (k) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 200 mg/l (as CaCO<sub>3</sub> (mg/l)). Numerical criteria (µg/l) for nickel are a function of hardness (CaCO<sub>3</sub> (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$
Chronic	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$

- (l) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 200 mg/l (as CaCO<sub>3</sub> (mg/l)). Numerical criteria (µg/l) for zinc are a function of hardness (CaCO<sub>3</sub> (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$
Chronic	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$

- (m) Acute and chronic criteria listed in main table are based on a hardness of 200 mg/l (as CaCO<sub>3</sub> (mg/l)) and a sulfate concentration of 63 mg/l. Numerical criteria (µg/l) for chloride are a function of hardness (CaCO<sub>3</sub> (mg/l)) and sulfate (mg/l) using the equation for each use according to the following table:

	B(CW1), B(CW2), B(WW-1), B(WW-2), B(WW-3), B(LW)
Acute	$287.8(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452}$
Chronic	$177.87(\text{Hardness})^{0.205797}(\text{Sulfate})^{-0.07452}$

**TABLE 2. Criteria for Dissolved Oxygen***(all values expressed in milligrams per liter)*

	B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)
Minimum value for at least 16 hours of every 24-hour period	7.0	7.0	5.0	5.0	5.0	5.0*
Minimum value at any time during every 24-hour period	5.0	5.0	5.0	4.0	4.0	5.0*

*\*applies only to the upper layer of stratification in lakes*

**TABLE 3a. Acute Criterion for Ammonia in Iowa Streams**

Acute Criterion, mg/l as N (or Criterion Maximum Concentration, CMC)		
pH	Class B(WW-1), B(WW-2), B(WW-3) & B(LW)	Class B(CW1) & B(CW2)
6.5	48.8	32.6
6.6	46.8	31.3
6.7	44.6	29.8
6.8	42.0	28.0
6.9	39.1	26.1
7.0	36.1	24.1
7.1	32.8	21.9
7.2	29.5	19.7
7.3	26.2	17.5
7.4	23.0	15.3
7.5	19.9	13.3
7.6	17.0	11.4
7.7	14.4	9.64
7.8	12.1	8.11
7.9	10.1	6.77
8.0	8.40	5.62
8.1	6.95	4.64
8.2	5.72	3.83
8.3	4.71	3.15
8.4	3.88	2.59
8.5	3.20	2.14
8.6	2.65	1.77
8.7	2.20	1.47
8.8	1.84	1.23
8.9	1.56	1.04
9.0	1.32	0.885

**TABLE 3b. Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Present**

Chronic Criterion - Early Life Stages Present, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61

Chronic Criterion - Early Life Stages Present, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0	14	16	18	20	22	24	26	28	30
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.8	2.8	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.879	0.773
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.973	0.855	0.752	0.661
8.3	1.52	1.52	1.39	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	1.29	1.29	1.17	1.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	1.09	1.09	0.990	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.920	0.920	0.836	0.735	0.646	0.568	0.499	0.439	0.386	0.339
8.7	0.778	0.778	0.707	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.661	0.661	0.601	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.565	0.565	0.513	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.486	0.486	0.442	0.389	0.342	0.300	0.264	0.232	0.204	0.179

**TABLE 3c. Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Absent**

Chronic Criterion - Early Life Stages Absent, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0-7	8	9	10	11	12	13	14	15*	16*
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.35	6.89	6.46	6.06
6.6	10.7	9.99	9.37	8.79	8.24	7.72	7.24	6.79	6.36	5.97
6.7	10.5	9.81	9.20	8.62	8.08	7.58	7.11	6.66	6.25	5.86
6.8	10.2	9.58	8.98	8.42	7.90	7.40	6.94	6.51	6.10	5.72
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.93	5.56
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.73	5.37
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.49	5.15
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	5.22	4.90
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.92	4.61
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.59	4.30
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	4.23	3.97
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.85	3.61
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.47	3.25
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.71	2.54
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.36	2.21
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	2.03	1.91
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.74	1.63
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.48	1.39
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.25	1.17

Chronic Criterion - Early Life Stages Absent, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0-7	8	9	10	11	12	13	14	15*	16*
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	1.06	0.99
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.892	0.836
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.754	0.707
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.641	0.601
8.9	0.917	0.860	0.806	0.756	0.709	0.664	0.623	0.584	0.548	0.513
9.0	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.471	0.442

\*At 15°C and above, the criterion for fish early life stage (ELS) absent is the same as the criterion for fish ELS present.

**TABLE 4. Aquatic Life Criteria for Sulfate for Class B Waters**

(all values expressed in milligrams per liter)

Hardness mg/l as CaCO <sub>3</sub>	Chloride		
	Cl <sup>-</sup> < 5 mg/l	5 ≤ Cl <sup>-</sup> < 25	25 ≤ Cl <sup>-</sup> ≤ 500
H < 100 mg/l	500	500	500
100 ≤ H ≤ 500	500	$[-57.478 + 5.79$ (hardness) + 54.163 (chloride)] × 0.65	$[1276.7 + 5.508$ (hardness) - 1.457 (chloride)] × 0.65
H > 500	500	2,000	2,000

**61.3(4)** Class “C” waters. Rescinded IAB 4/18/90, effective 5/23/90.

**61.3(5)** Surface water classification. The department hereby incorporates by reference “Surface Water Classification,” effective December 22, 2010. This document may be obtained on the department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

**61.3(6)** Cold water use designation assessment protocol. The department hereby incorporates by reference “Cold Water Use Designation Assessment Protocol,” effective December 15, 2004. This document may be obtained on the department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

**61.3(7)** Warm water stream use assessment and attainability analysis protocol. The department hereby incorporates by reference “Warm Water Stream Use Assessment and Attainability Analysis Protocol,” effective March 22, 2006. This document may be obtained on the departments Web site at <http://www.iowadnr.com/water/standards/index.html>.

**61.3(8)** Recreational use assessment and attainability analysis protocol. The department hereby incorporates by reference “Recreational Use Assessment and Attainability Analysis Protocol,” effective March 19, 2008. This document may be obtained on the department’s Web site.

This rule is intended to implement Iowa Code chapter 455B, division I, and division III, part 1. [ARC 8039B, IAB 8/12/09, effective 9/16/09; ARC 8214B, IAB 10/7/09, effective 11/11/09; ARC 8226B, IAB 10/7/09, effective 11/11/09; ARC 8466B, IAB 1/13/10, effective 2/17/10; ARC 9223B, IAB 11/17/10, effective 12/22/10]

**567—61.4 to 61.9** Reserved.

#### VOLUNTEER MONITORING DATA REQUIREMENTS

**567—61.10(455B) Purpose.** The department uses water quality monitoring data for a number of purposes, including determining compliance with effluent limits for operation permits issued under 567—Chapter 64. The department also uses water quality monitoring data to determine the relative health of a water body by comparing monitoring data to the appropriate water quality standards established in 567—Chapter 61, a process known as water body assessments. Water body assessments

are performed to prepare the biennial water quality report required under Section 305(b) of the Act and the list of impaired waters under Section 303(d) of the Act.

Iowa Code sections 455B.193 to 455B.195 require that credible data, as defined in Iowa Code section 455B.171, be used for the purpose of preparing Section 303(d) lists and other water quality program functions. Data provided by a volunteer are not considered credible data unless provided by a qualified volunteer. The purpose of this chapter is to establish minimum requirements for data produced by volunteers to meet the credible data and qualified volunteer requirements.

**567—61.11(455B) Monitoring plan required.** Volunteer water quality monitoring data submitted to the department must have been produced in accordance with a department-approved volunteer water quality monitoring plan before the data may be used for any of the purposes listed in Iowa Code section 455B.194. Approval of a plan will establish qualified volunteer status for the personnel identified in the plan for those monitoring activities covered under the plan.

**61.11(1) Submittal of the plan.** Prior to initiation of volunteer water quality monitoring activities intended to produce credible data, a water quality monitoring plan must be submitted to the department for review and approval. The plan must be submitted to the Volunteer Monitoring Coordinator, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319, a minimum of 90 days before planned initiation of volunteer monitoring activities. A letter transmitting the plan must specifically request formal review and approval of the plan and identify a contact person. Volunteer monitors are encouraged to communicate with the department and to attend volunteer monitoring training sessions prior to formal submittal of a plan.

**61.11(2) Content of the plan.** A volunteer monitoring plan must contain, at a minimum, the following to be considered an acceptable volunteer monitoring plan:

- a. A statement of the intent of the monitoring effort.
- b. The name(s) of the person or persons that will be involved in data collection or analysis, the specific responsibilities of each person or group of people, and the general qualifications of the volunteers to carry out those responsibilities. For groups, such as educational institutions, it will be acceptable to identify the persons involved by general description (e.g., tenth grade biology class) with the exception of persons in responsible charge.
- c. The name(s) of the person or persons that will oversee the monitoring plan, ensure that quality assurance and control objectives are being met, and certify the data. The person or persons in responsible charge must have training commensurate with the level of expertise to ensure that credible data is being generated.
- d. The duration of the volunteer monitoring effort. In general, the department will not approve plans of greater than three years' duration unless a longer duration is justified.
- e. Location and frequency of sample collection.
- f. Methods of data collection and analysis.
- g. Record keeping and data reporting procedures.

**61.11(3) Department review of the plan.** The department will review monitoring plans and normally approve or disapprove the plan within 90 days of receipt. The department will work with the contact person identified in the plan to make any necessary changes prior to taking formal action. The department will use guidelines contained in the publications EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5, 2001) and Volunteer Monitor's Guide to Quality Assurance Project Plans (1966, EPA 841-B-96-003) or equivalent updates to determine if the plans provide adequate quality assurance and quality control measures. Approval or disapproval of the plan will be in the form of a letter and approval may include conditions or limitations.

**61.11(4) Changes in monitoring plans.** The department must approve any changes to an approved monitoring plan. Data collected under a modified plan will not be considered credible data until such time as the department has approved the modifications. Modifications to an approved plan should be submitted at the earliest possible time to avoid interruptions in data collection and to ensure continuity of data.

**61.11(5) Appeal of disapproval.** If a monitoring plan submitted for approval is disapproved, the decision may be appealed by filing an appeal with the director within 30 days of disapproval. The form of the notice of appeal and appeal procedures are governed by 567—Chapter 7.

**567—61.12(455B) Use of volunteer monitoring data.** Data produced under an approved water quality monitoring plan will be considered credible data for the purposes listed in Iowa Code section 455B.194 if the following conditions are met.

**61.12(1) Data submittal.** A qualified volunteer monitor or qualified volunteer monitoring group must specifically request that data produced under an approved volunteer monitoring plan be considered credible data. A letter identifying the specific data must be submitted along with a certification from the volunteer or the person in responsible charge for volunteer groups that the data, to the best of the volunteer's or responsible person's knowledge, was produced in accordance with the approved volunteer monitoring plan. The department shall provide a standard format on the IOWATER Web site for submittal of qualified volunteer data and related information. The department encourages volunteers to enter monitoring data on the IOWATER volunteer monitoring database maintained by the department, but doing so does not constitute submittal to or acceptance of the data by the department for uses requiring credible data. Volunteer data shall be labeled as such in any departmental reports, Web sites, or databases.

**61.12(2) Department review of submitted data.** The department must review and approve the submitted data. The person submitting the data will be informed of the department's decision either to accept or reject the data. The department will attempt to resolve any apparent inconsistencies or questionable values in the submitted data prior to making a final decision.

**567—61.13(455B) Department audits of volunteer monitoring activities.** The department shall conduct field audits of a statistically valid and representative sample of volunteer data collection and analysis procedures to ensure compliance with an approved plan and may conduct confirmatory monitoring tests. Volunteers shall be informed of any audit results and be provided with an opportunity to address any concerns to the extent possible. The department reserves the right to rescind approval of an approved plan if it finds substantial problems that cannot be addressed in a timely manner to ensure the quality of the data being produced.

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

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## CHAPTERS 1 to 3

Reserved

## CHAPTER 4

## BOARD ADMINISTRATIVE PROCESSES

- 4.1(17A) Definitions
- 4.2(17A) Purpose of board
- 4.3(17A,147,272C) Organization of board and proceedings
- 4.4(17A) Official communications
- 4.5(17A) Office hours
- 4.6(21) Public meetings
- 4.7(147) Licensure by reciprocal agreement
- 4.8(147) Duplicate certificate or wallet card
- 4.9(147) Reissued certificate or wallet card
- 4.10(17A,147,272C) License denial
- 4.11(272C) Audit of continuing education
- 4.12(272C,83GA,SF2325) Automatic exemption
- 4.13(272C) Grounds for disciplinary action
- 4.14(272C) Continuing education exemption for disability or illness
- 4.15(147,272C) Order for physical, mental, or clinical competency examination or alcohol or drug screening
- 4.16(252J,261,272D) Noncompliance rules regarding child support, loan repayment and nonpayment of state debt

## CHAPTER 5

## FEES

- 5.1(147,152D) Athletic training license fees
- 5.2(147,158) Barbering license fees
- 5.3(147,154D) Behavioral science license fees
- 5.4(151) Chiropractic license fees
- 5.5(147,157) Cosmetology arts and sciences license fees
- 5.6(147,152A) Dietetics license fees
- 5.7(147,154A) Hearing aid dispensers license fees
- 5.8(147) Massage therapy license fees
- 5.9(147,156) Mortuary science license fees
- 5.10(147,155) Nursing home administrators license fees
- 5.11(147,148B) Occupational therapy license fees
- 5.12(147,154) Optometry license fees
- 5.13(147,148A) Physical therapy license fees
- 5.14(148C) Physician assistants license fees
- 5.15(147,149) Podiatry license fees
- 5.16(147,154B) Psychology license fees
- 5.17(147,152B) Respiratory care license fees
- 5.18(147,154E) Sign language interpreters and transliterators license fees
- 5.19(147,154C) Social work license fees
- 5.20(147) Speech pathology and audiology license fees

CHAPTER 6  
PETITIONS FOR RULE MAKING

- 6.1(17A) Petition for rule making  
6.2(17A) Inquiries

CHAPTER 7  
AGENCY PROCEDURE FOR RULE MAKING

- 7.1(17A) Adoption by reference

CHAPTER 8  
DECLARATORY ORDERS  
(Uniform Rules)

- 8.1(17A) Petition for declaratory order  
8.2(17A) Notice of petition  
8.3(17A) Intervention  
8.5(17A) Inquiries

CHAPTER 9  
COMPLAINTS AND INVESTIGATIONS

- 9.1(272C) Complaints  
9.2(272C) Report of malpractice claims or actions or disciplinary actions  
9.3(272C) Report of acts or omissions  
9.4(272C) Investigation of complaints or reports  
9.5(17A,272C) Issuance of investigatory subpoenas  
9.6(272C) Peer review committees  
9.7(17A) Appearance

CHAPTER 10  
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES  
(Uniform Rules)

- 10.1(17A,22) Definitions  
10.3(17A,22) Requests for access to records  
10.5(17A,22) Request for treatment of a record as a confidential record and its withholding from examination  
10.6(17A,22) Procedures by which additions, dissents, or objections may be entered into certain records  
10.9(17A,22) Disclosures without the consent of the subject  
10.10(17A,22) Routine use  
10.11(17A,22) Consensual disclosure of confidential records  
10.12(17A,22) Release to subject  
10.13(17A,22) Availability of records  
10.14(17A,22) Personally identifiable information  
10.15(22) Other groups of records routinely available for public inspection  
10.16(17A,22) Applicability

CHAPTER 11  
CONTESTED CASES

- 11.1(17A) Scope and applicability  
11.2(17A) Definitions  
11.3(17A) Time requirements  
11.4(17A) Probable cause  
11.5(17A) Legal review  
11.6(17A) Statement of charges and notice of hearing  
11.7(17A,272C) Legal representation

11.8(17A,272C)	Presiding officer in a disciplinary contested case
11.9(17A)	Presiding officer in a nondisciplinary contested case
11.10(17A)	Disqualification
11.11(17A)	Consolidation—severance
11.12(17A)	Answer
11.13(17A)	Service and filing
11.14(17A)	Discovery
11.15(17A,272C)	Issuance of subpoenas in a contested case
11.16(17A)	Motions
11.17(17A)	Prehearing conferences
11.18(17A)	Continuances
11.19(17A,272C)	Hearing procedures
11.20(17A)	Evidence
11.21(17A)	Default
11.22(17A)	Ex parte communication
11.23(17A)	Recording costs
11.24(17A)	Interlocutory appeals
11.25(17A)	Applications for rehearing
11.26(17A)	Stays of agency actions
11.27(17A)	No factual dispute contested cases
11.28(17A)	Emergency adjudicative proceedings
11.29(17A)	Appeal
11.30(272C)	Publication of decisions
11.31(272C)	Reinstatement
11.32(17A,272C)	License denial

CHAPTER 12  
INFORMAL SETTLEMENT

12.1(17A,272C)	Informal settlement
----------------	---------------------

CHAPTER 13  
DISCIPLINE

13.1(272C)	Method of discipline
13.2(272C)	Discretion of board
13.3(272C)	Conduct of persons attending meetings

CHAPTERS 14 and 15  
Reserved

CHAPTER 16  
IMPAIRED PRACTITIONER REVIEW COMMITTEE

16.1(272C)	Definitions
16.2(272C)	Purpose
16.3(272C)	Composition of the committee
16.4(272C)	Organization of the committee
16.5(272)	Eligibility
16.6(272C)	Meetings
16.7(272C)	Terms of participation
16.8(272C)	Noncompliance
16.9(272C)	Practice restrictions
16.10(272C)	Limitations
16.11(272C)	Confidentiality

CHAPTER 17  
MATERIALS FOR BOARD REVIEW

17.1(147) Materials for board review

CHAPTER 18  
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

18.1(17A,147,272C) Definitions  
 18.2(17A,147,272C) Scope of chapter  
 18.3(17A,147,272C) Applicability of chapter  
 18.4(17A,147,272C) Criteria for waiver or variance  
 18.5(17A,147,272C) Filing of petition  
 18.6(17A,147,272C) Content of petition  
 18.7(17A,147,272C) Additional information  
 18.8(17A,147,272C) Notice  
 18.9(17A,147,272C) Hearing procedures  
 18.10(17A,147,272C) Ruling  
 18.11(17A,147,272C) Public availability  
 18.12(17A,147,272C) Summary reports  
 18.13(17A,147,272C) Cancellation of a waiver  
 18.14(17A,147,272C) Violations  
 18.15(17A,147,272C) Defense  
 18.16(17A,147,272C) Judicial review

CHAPTERS 19 and 20  
Reserved

*BARBERS*

CHAPTER 21  
LICENSURE

21.1(158) Definitions  
 21.2(158) Requirements for licensure  
 21.3(158) Examination requirements for barbers and barber instructors  
 21.4 Reserved  
 21.5(158) Licensure by endorsement  
 21.6 Reserved  
 21.7(158) Temporary permits to practice barbering  
 21.8(158) Demonstrator's permit  
 21.9(158) License renewal  
 21.10 Reserved  
 21.11(158) Requirements for a barbershop license  
 21.12(158) Barbershop license renewal  
 21.13 to 21.15 Reserved  
 21.16(17A,147,272C) License reactivation  
 21.17(17A,147,272C) Reactivation of a barbershop license  
 21.18(17A,147,272C) License reinstatement

CHAPTER 22  
SANITATION

22.1(158) Definitions  
 22.2(158) Posting of sanitation rules and inspection report  
 22.3(147) Display of licenses  
 22.4(158) Responsibilities of barbershop owner and supervisor  
 22.5(158) Building standards

22.6(158)	Barbershops in residential buildings
22.7(158)	Barbershops adjacent to other businesses
22.8(142D,158)	Smoking
22.9(158)	Personal cleanliness
22.10(158)	Universal precautions
22.11(158)	Minimum equipment and supplies
22.12(158)	Disinfecting nonelectrical instruments and equipment
22.13(158)	Disinfecting electrical instruments
22.14(158)	Instruments and supplies that cannot be disinfected
22.15(158)	Semisolids, dusters, and styptics
22.16(158)	Disposal of materials
22.17(158)	Prohibited hazardous substances and use of products
22.18(158)	Proper protection of neck
22.19(158)	Proper laundering and storage
22.20(158)	Pets
22.21(158)	Records

#### CHAPTER 23 BARBER SCHOOLS

23.1(158)	Definitions
23.2(158)	Licensing for barber schools
23.3(158)	School license renewal
23.4(272C)	Inactive school license
23.5	Reserved
23.6(158)	Physical requirements for barber schools
23.7(158)	Minimum equipment requirements
23.8(158)	Course of study requirements
23.9(158)	Instructors
23.10(158)	Students
23.11(158)	Attendance requirements
23.12(158)	Graduate of a barber school
23.13(147)	Records requirements
23.14(158)	Public notice
23.15(158)	Apprenticeship

#### CHAPTER 24 CONTINUING EDUCATION FOR BARBERS

24.1(158)	Definitions
24.2(158)	Continuing education requirements
24.3(158,272C)	Standards

#### CHAPTER 25 DISCIPLINE FOR BARBERS, BARBER INSTRUCTORS, BARBERSHOPS AND BARBER SCHOOLS

25.1(158)	Definitions
25.2(272C)	Grounds for discipline
25.3(158,272C)	Method of discipline
25.4(272C)	Discretion of board

#### CHAPTERS 26 to 30 Reserved

*BEHAVIORAL SCIENTISTS*

## CHAPTER 31

LICENSURE OF MARITAL AND FAMILY THERAPISTS  
AND MENTAL HEALTH COUNSELORS

31.1(154D)	Definitions
31.2(154D)	Requirements for permanent and temporary licensure
31.3(154D)	Examination requirements
31.4(154D)	Educational qualifications for marital and family therapists
31.5(154D)	Clinical experience requirements for marital and family therapists
31.6(154D)	Educational qualifications for mental health counselors
31.7(154D)	Clinical experience requirements for mental health counselors
31.8(154D)	Licensure by endorsement
31.9	Reserved
31.10(147)	License renewal
31.11	Reserved
31.12(147)	Licensee record keeping
31.13 to 31.15	Reserved
31.16(17A,147,272C)	License reactivation
31.17(17A,147,272C)	License reinstatement
31.18(154D)	Marital and family therapy and mental health counselor services subject to regulation

## CHAPTER 32

CONTINUING EDUCATION FOR MARITAL AND  
FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS

32.1(272C)	Definitions
32.2(272C)	Continuing education requirements
32.3(154D,272C)	Standards
32.4(154D,272C)	Audit of continuing education report

## CHAPTER 33

DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS  
AND MENTAL HEALTH COUNSELORS

33.1(154D)	Definitions
33.2(154D,272C)	Grounds for discipline
33.3(147,272C)	Method of discipline
33.4(272C)	Discretion of board

## CHAPTERS 34 to 40

Reserved

*CHIROPRACTIC*

## CHAPTER 41

## LICENSURE OF CHIROPRACTIC PHYSICIANS

41.1(151)	Definitions
41.2(151)	Requirements for licensure
41.3(151)	Examination requirements
41.4(151)	Educational qualifications
41.5(151)	Temporary certificate
41.6(151)	Licensure by endorsement
41.7	Reserved
41.8(151)	License renewal

- 41.9 to 41.13 Reserved  
 41.14(17A,147,272C) License reactivation  
 41.15(17A,147,272C) License reinstatement

## CHAPTER 42

## COLLEGES FOR CHIROPRACTIC PHYSICIANS

- 42.1(151) Definitions  
 42.2(151) Board-approved chiropractic colleges  
 42.3(151) Practice by chiropractic interns and chiropractic residents  
 42.4(151) Approved chiropractic preceptorship program  
 42.5(151) Approved chiropractic physician preceptors  
 42.6(151) Termination of preceptorship

## CHAPTER 43

## PRACTICE OF CHIROPRACTIC PHYSICIANS

- 43.1(151) Definitions  
 43.2(147,272C) Principles of chiropractic ethics  
 43.3(514F) Utilization and cost control review  
 43.4(151) Chiropractic insurance consultant  
 43.5(151) Acupuncture  
 43.6 Reserved  
 43.7(151) Adjunctive procedures  
 43.8(151) Physical examination  
 43.9(151) Gonad shielding  
 43.10(151) Record keeping  
 43.11(151) Billing procedures  
 43.12(151) Chiropractic assistants

## CHAPTER 44

## CONTINUING EDUCATION FOR CHIROPRACTIC PHYSICIANS

- 44.1(151) Definitions  
 44.2(272C) Continuing education requirements  
 44.3(151,272C) Standards

## CHAPTER 45

## DISCIPLINE FOR CHIROPRACTIC PHYSICIANS

- 45.1(151) Definitions  
 45.2(151,272C) Grounds for discipline  
 45.3(147,272C) Method of discipline  
 45.4(272C) Discretion of board

## CHAPTERS 46 to 59

Reserved

*COSMETOLOGISTS*

## CHAPTER 60

LICENSURE OF COSMETOLOGISTS, ELECTROLOGISTS, ESTHETICIANS,  
 MANICURISTS, NAIL TECHNOLOGISTS, AND INSTRUCTORS  
 OF COSMETOLOGY ARTS AND SCIENCES

- 60.1(157) Definitions  
 60.2(157) Requirements for licensure  
 60.3(157) Criteria for licensure in specific practice disciplines  
 60.4(157) Practice-specific training requirements

60.5(157)	Licensure restrictions relating to practice
60.6(157)	Consent form requirements
60.7(157)	Licensure by endorsement
60.8(157)	License renewal
60.9(157)	Temporary permits
60.10 to 60.16	Reserved
60.17(17A,147,272C)	License reactivation
60.18(17A,147,272C)	License reinstatement

## CHAPTER 61

LICENSURE OF SALONS AND SCHOOLS  
OF COSMETOLOGY ARTS AND SCIENCES

61.1(157)	Definitions
61.2(157)	Salon licensing
61.3(157)	Salon license renewal
61.4(272C)	Inactive salon license
61.5(157)	Display requirements for salons
61.6(147)	Duplicate certificate or wallet card for salons
61.7(157)	Licensure for schools of cosmetology arts and sciences
61.8(157)	School license renewal
61.9(272C)	Inactive school license
61.10(157)	Display requirements for schools
61.11	Reserved
61.12(157)	Physical requirements for schools of cosmetology arts and sciences
61.13(157)	Minimum equipment requirements
61.14(157)	Course of study requirements
61.15(157)	Instructors
61.16(157)	Student instructors
61.17(157)	Students
61.18(157)	Attendance requirements
61.19(157)	Accelerated learning
61.20(157)	Mentoring program
61.21(157)	Graduate of a school of cosmetology arts and sciences
61.22(157)	Records requirements
61.23(157)	Classrooms used for other educational purposes
61.24(157)	Public notice

## CHAPTER 62

Reserved

## CHAPTER 63

## SANITATION FOR SALONS AND SCHOOLS OF COSMETOLOGY ARTS AND SCIENCES

63.1(157)	Definitions
63.2(157)	Posting of sanitation rules and inspection report
63.3(157)	Responsibilities of salon owners
63.4(157)	Responsibilities of licensees
63.5(157)	Joint responsibility
63.6(157)	Building standards
63.7(157)	Salons in residential buildings
63.8(157)	Salons adjacent to other businesses
63.9(157)	Smoking
63.10(157)	Personal cleanliness
63.11(157)	Universal precautions

63.12(157)	Blood spill procedures
63.13(157)	Disinfecting instruments and equipment
63.14(157)	Instruments and supplies that cannot be disinfected
63.15(157)	Sterilizing instruments
63.16(157)	Sanitary methods for creams, cosmetics and applicators
63.17	Reserved
63.18(157)	Prohibited hazardous substances and use of products and equipment
63.19(157)	Proper protection of neck
63.20(157)	Proper laundering and storage
63.21(157)	Pets
63.22(157)	General maintenance
63.23(157)	Records
63.24(157)	Salons and schools providing electrology or esthetics
63.25(157)	Cleaning and disinfecting circulating and noncirculating tubs, bowls, and spas
63.26(157)	Paraffin wax

## CHAPTER 64

## CONTINUING EDUCATION FOR COSMETOLOGY ARTS AND SCIENCES

64.1(157)	Definitions
64.2(157)	Continuing education requirements
64.3(157,272C)	Standards

## CHAPTER 65

DISCIPLINE FOR COSMETOLOGY ARTS AND SCIENCES LICENSEES,  
INSTRUCTORS, SALONS, AND SCHOOLS

65.1(157,272C)	Definitions
65.2(157,272C)	Grounds for discipline
65.3(157,272C)	Method of discipline
65.4(272C)	Discretion of board
65.5(157)	Civil penalties against nonlicensees

## CHAPTERS 66 to 80

Reserved

*DIETITIANS*

## CHAPTER 81

## LICENSURE OF DIETITIANS

81.1(152A)	Definitions
81.2(152A)	Nutrition care
81.3(152A,272C)	Principles
81.4(152A)	Requirements for licensure
81.5(152A)	Educational qualifications
81.6(152A)	Supervised experience
81.7(152A)	Licensure by endorsement
81.8	Reserved
81.9(152A)	License renewal
81.10 to 81.14	Reserved
81.15(17A,147,272C)	License reactivation
81.16(17A,147,272C)	License reinstatement

CHAPTER 82  
CONTINUING EDUCATION FOR DIETITIANS

- 82.1(152A) Definitions  
82.2(152A) Continuing education requirements  
82.3(152A,272C) Standards

CHAPTER 83  
DISCIPLINE FOR DIETITIANS

- 83.1(152A) Definitions  
83.2(152A,272C) Grounds for discipline  
83.3(152A,272C) Method of discipline  
83.4(272C) Discretion of board

CHAPTERS 84 to 99  
Reserved

*FUNERAL DIRECTORS*

CHAPTER 100  
PRACTICE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS,  
AND CREMATION ESTABLISHMENTS

- 100.1(156) Definitions  
100.2(156) Funeral director duties  
100.3(156) Permanent identification tag  
100.4(142,156) Removal and transfer of dead human remains and fetuses  
100.5(135,144) Burial transit permits  
100.6(156) Prepreparation and embalming activities  
100.7(156) Arranging and directing funeral and memorial ceremonies  
100.8(142,156) Unclaimed dead human remains for scientific use  
100.9(144) Disinterments  
100.10(156) Cremation of human remains and fetuses

CHAPTER 101  
LICENSURE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS, AND  
CREMATION ESTABLISHMENTS

- 101.1(156) Definitions  
101.2(156) Requirements for licensure  
101.3(156) Educational qualifications  
101.4(156) Examination requirements  
101.5(147,156) Internship and preceptorship  
101.6(156) Student practicum  
101.7(156) Funeral establishment license or cremation establishment license or both establishment licenses  
101.8(156) Licensure by endorsement  
101.9 Reserved  
101.10(156) License renewal  
101.11 and 101.12 Reserved  
101.13(272C) Renewal of a funeral establishment license or cremation establishment license or both establishment licenses  
101.14(272C) Inactive funeral establishment license or cremation establishment license or both establishment licenses  
101.15(17A,147,272C) License reinstatement  
101.16 and 101.17 Reserved

- 101.18(17A,147,272C) License reactivation
- 101.19(17A,147,272C) License reinstatement

#### CHAPTER 102

##### CONTINUING EDUCATION FOR FUNERAL DIRECTORS

- 102.1(272C) Definitions
- 102.2(272C) Continuing education requirements
- 102.3(156,272C) Standards
- 102.4 Reserved
- 102.5(83GA,SF2325) Automatic exemption

#### CHAPTER 103

##### DISCIPLINARY PROCEEDINGS

- 103.1(156) Definitions
- 103.2(17A,147,156,272C) Disciplinary authority
- 103.3(17A,147,156,272C) Grounds for discipline against funeral directors
- 103.4(17A,147,156,272C) Grounds for discipline against funeral establishments and cremation establishments
- 103.5(17A,147,156,272C) Method of discipline
- 103.6(17A,147,156,272C) Board discretion in imposing disciplinary sanctions
- 103.7(156) Order for mental, physical, or clinical competency examination or alcohol or drug screening
- 103.8(17A,147,156,272C) Informal discussion

#### CHAPTER 104

##### ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

- 104.1(156) Civil penalties against nonlicensees
- 104.2(156) Unlawful practices
- 104.3(156) Investigations
- 104.4(156) Subpoenas
- 104.5(156) Notice of intent to impose civil penalties
- 104.6(156) Requests for hearings
- 104.7(156) Factors to consider
- 104.8(156) Enforcement options

#### CHAPTERS 105 to 120

Reserved

##### *HEARING AID DISPENSERS*

#### CHAPTER 121

##### LICENSURE OF HEARING AID DISPENSERS

- 121.1(154A) Definitions
- 121.2(154A) Temporary permits
- 121.3(154A) Supervision requirements
- 121.4(154A) Requirements for initial licensure
- 121.5(154A) Examination requirements
- 121.6(154A) Licensure by endorsement
- 121.7 Reserved
- 121.8(154A) Display of license
- 121.9(154A) License renewal
- 121.10 to 121.13 Reserved
- 121.14(17A,147,272C) License reactivation
- 121.15(17A,147,272C) License reinstatement

## CHAPTER 122

## CONTINUING EDUCATION FOR HEARING AID DISPENSERS

- 122.1(154A) Definitions
- 122.2(154A) Continuing education requirements
- 122.3(154A,272C) Standards

## CHAPTER 123

Reserved

## CHAPTER 124

## DISCIPLINE FOR HEARING AID DISPENSERS

- 124.1(154A,272C) Definitions
- 124.2(154A,272C) Grounds for discipline
- 124.3(154A,272C) Method of discipline
- 124.4(272C) Discretion of board

## CHAPTERS 125 to 130

Reserved

*MASSAGE THERAPISTS*

## CHAPTER 131

## LICENSURE OF MASSAGE THERAPISTS

- 131.1(152C) Definitions
- 131.2(152C) Requirements for licensure
- 131.3(152C) Educational qualifications
- 131.4(152C) Examination requirements
- 131.5(152C) Temporary licensure of a licensee from another state
- 131.6(152C) Licensure by endorsement
- 131.7 Reserved
- 131.8(152C) License renewal
- 131.9 to 131.13 Reserved
- 131.14(17A,147,272C) License reactivation
- 131.15(17A,147,272C) License reinstatement

## CHAPTER 132

## MASSAGE THERAPY EDUCATION CURRICULUM

- 132.1(152C) Definitions
- 132.2(152C) Application for approval of massage therapy education curriculum
- 132.3(152C) Curriculum requirements
- 132.4(152C) Student clinical practicum standards
- 132.5(152C) School certificate or diploma
- 132.6(152C) School records retention
- 132.7(152C) Massage school curriculum compliance
- 132.8(152C) Denial or withdrawal of approval

## CHAPTER 133

## CONTINUING EDUCATION FOR MASSAGE THERAPISTS

- 133.1(152C) Definitions
- 133.2(152C) Continuing education requirements
- 133.3(152C,272C) Continuing education criteria

CHAPTER 134  
DISCIPLINE FOR MASSAGE THERAPISTS

- 134.1(152C) Definitions
- 134.2(152C,272C) Grounds for discipline
- 134.3(147,272C) Method of discipline
- 134.4(272C) Discretion of board
- 134.5(152C) Civil penalties

CHAPTERS 135 to 140  
Reserved

*NURSING HOME ADMINISTRATORS*

CHAPTER 141  
LICENSURE OF NURSING HOME ADMINISTRATORS

- 141.1(155) Definitions
- 141.2(155) Requirements for licensure
- 141.3(147,155) Examination requirements
- 141.4(155) Educational qualifications
- 141.5(155) Practicum experience
- 141.6(155) Provisional administrator
- 141.7(155) Licensure by endorsement
- 141.8(147,155) Licensure by reciprocal agreement
- 141.9(147,155) License renewal
- 141.10 to 141.14 Reserved
- 141.15(17A,147,272C) License reactivation
- 141.16(17A,147,272C) License reinstatement

CHAPTER 142  
Reserved

CHAPTER 143  
CONTINUING EDUCATION FOR NURSING HOME ADMINISTRATION

- 143.1(272C) Definitions
- 143.2(272C) Continuing education requirements
- 143.3(155,272C) Standards
- 143.4(155,272C) Audit of continuing education report
- 143.5(155,272C) Automatic exemption
- 143.6(272C) Continuing education exemption for disability or illness
- 143.7(155,272C) Grounds for disciplinary action

CHAPTER 144  
DISCIPLINE FOR NURSING HOME ADMINISTRATORS

- 144.1(155) Definitions
- 144.2(155,272C) Grounds for discipline
- 144.3(155,272C) Method of discipline
- 144.4(272C) Discretion of board
- 144.5(155) Order for mental, physical, or clinical competency examination or alcohol or drug screening

CHAPTERS 145 to 179  
Reserved

*OPTOMETRISTS*CHAPTER 180  
LICENSURE OF OPTOMETRISTS

180.1(154)	Definitions
180.2(154)	Requirements for licensure
180.3(154)	Licensure by endorsement
180.4	Reserved
180.5(154)	License renewal
180.6 to 180.10	Reserved
180.11(17A,147,272C)	License reactivation
180.12(17A,147,272C)	License reinstatement

CHAPTER 181  
CONTINUING EDUCATION FOR OPTOMETRISTS

181.1(154)	Definitions
181.2(154)	Continuing education requirements
181.3(154,272C)	Standards

CHAPTER 182  
PRACTICE OF OPTOMETRISTS

182.1(154)	Code of ethics
182.2(154,272C)	Record keeping
182.3(154)	Furnishing prescriptions
182.4(155A)	Prescription drug orders

CHAPTER 183  
DISCIPLINE FOR OPTOMETRISTS

183.1(154)	Definitions
183.2(154,272C)	Grounds for discipline
183.3(147,272C)	Method of discipline
183.4(272C)	Discretion of board

CHAPTERS 184 to 199  
Reserved*PHYSICAL AND OCCUPATIONAL THERAPISTS*CHAPTER 200  
LICENSURE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

200.1(147)	Definitions
200.2(147)	Requirements for licensure
200.3	Reserved
200.4(147)	Examination requirements for physical therapists and physical therapist assistants
200.5(147)	Educational qualifications
200.6(272C)	Supervision requirements
200.7(147)	Licensure by endorsement
200.8	Reserved
200.9(147)	License renewal
200.10 to 200.14	Reserved
200.15(17A,147,272C)	License reactivation
200.16(17A,147,272C)	License reinstatement

CHAPTER 201  
PRACTICE OF PHYSICAL THERAPISTS  
AND PHYSICAL THERAPIST ASSISTANTS

- 201.1(148A,272C) Code of ethics for physical therapists and physical therapist assistants  
201.2(147) Record keeping

CHAPTER 202  
DISCIPLINE FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

- 202.1(148A) Definitions  
202.2(272C) Grounds for discipline  
202.3(147,272C) Method of discipline  
202.4(272C) Discretion of board

CHAPTER 203  
CONTINUING EDUCATION FOR PHYSICAL THERAPISTS  
AND PHYSICAL THERAPIST ASSISTANTS

- 203.1(272C) Definitions  
203.2(148A) Continuing education requirements  
203.3(148A,272C) Standards

CHAPTERS 204 and 205  
Reserved

CHAPTER 206  
LICENSURE OF OCCUPATIONAL THERAPISTS  
AND OCCUPATIONAL THERAPY ASSISTANTS

- 206.1(147) Definitions  
206.2(147) Requirements for licensure  
206.3(147) Limited permit to practice pending licensure  
206.4(147) Applicant occupational therapist and occupational therapy assistant  
206.5(147) Practice of occupational therapy limited permit holders and endorsement applicants  
prior to licensure  
206.6(147) Examination requirements  
206.7(147) Educational qualifications  
206.8(272C) Supervision requirements  
206.9(147) Occupational therapy assistant responsibilities  
206.10(147) Licensure by endorsement  
206.11 Reserved  
206.12(147) License renewal  
206.13 to 206.17 Reserved  
206.18(17A,147,272C) License reactivation  
206.19(17A,147,272C) License reinstatement

CHAPTER 207  
CONTINUING EDUCATION FOR OCCUPATIONAL THERAPISTS  
AND OCCUPATIONAL THERAPY ASSISTANTS

- 207.1(148B) Definitions  
207.2(272C) Continuing education requirements  
207.3(148B,272C) Standards

CHAPTER 208  
PRACTICE OF OCCUPATIONAL THERAPISTS  
AND OCCUPATIONAL THERAPY ASSISTANTS

- 208.1(148B,272C) Code of ethics for occupational therapists and occupational therapy assistants  
208.2(147) Record keeping

CHAPTER 209  
DISCIPLINE FOR OCCUPATIONAL THERAPISTS  
AND OCCUPATIONAL THERAPY ASSISTANTS

- 209.1(148B) Definitions  
209.2(272C) Grounds for discipline  
209.3(147,272C) Method of discipline  
209.4(272C) Discretion of board

CHAPTERS 210 to 219

Reserved

*PODIATRISTS*

CHAPTER 220  
LICENSURE OF PODIATRISTS

- 220.1(149) Definitions  
220.2(149) Requirements for licensure  
220.3(149) Written examinations  
220.4(149) Educational qualifications  
220.5(149) Title designations  
220.6(147,149) Temporary license  
220.7(149) Licensure by endorsement  
220.8 Reserved  
220.9(149) License renewal  
220.10 to 220.14 Reserved  
220.15(17A,147,272C) License reactivation  
220.16(17A,147,272C) License reinstatement

CHAPTER 221

Reserved

CHAPTER 222  
CONTINUING EDUCATION FOR PODIATRISTS

- 222.1(149,272C) Definitions  
222.2(149,272C) Continuing education requirements  
222.3(149,272C) Standards

CHAPTER 223  
PRACTICE OF PODIATRY

- 223.1(149) Definitions  
223.2(149) Requirements for administering conscious sedation  
223.3(139A) Preventing HIV and HBV transmission  
223.4(149) Unlicensed graduate of a podiatric college

CHAPTER 224  
DISCIPLINE FOR PODIATRISTS

- 224.1(149) Definitions  
224.2(149,272C) Grounds for discipline

- 224.3(147,272C) Method of discipline  
 224.4(272C) Discretion of board

## CHAPTERS 225 to 239

Reserved

*PSYCHOLOGISTS*

## CHAPTER 240

## LICENSURE OF PSYCHOLOGISTS

- 240.1(154B) Definitions  
 240.2(154B) Requirements for licensure  
 240.3(154B) Educational qualifications  
 240.4(154B) Examination requirements  
 240.5(154B) Title designations  
 240.6(154B) Supervised professional experience  
 240.7(154B) Certified health service provider in psychology  
 240.8(154B) Exemption to licensure  
 240.9(154B) Psychologists' supervision of unlicensed persons in a practice setting  
 240.10(147) Licensure by endorsement  
 240.11(147) Licensure by reciprocal agreement  
 240.12(147) License renewal  
 240.13 to 240.17 Reserved  
 240.18(17A,147,272C) License reactivation  
 240.19(17A,147,272C) License reinstatement

## CHAPTER 241

## CONTINUING EDUCATION FOR PSYCHOLOGISTS

- 241.1(272C) Definitions  
 241.2(272C) Continuing education requirements  
 241.3(154B,272C) Standards

## CHAPTER 242

## DISCIPLINE FOR PSYCHOLOGISTS

- 242.1(154B) Definitions  
 242.2(147,272C) Grounds for discipline  
 242.3(147,272C) Method of discipline  
 242.4(272C) Discretion of board  
 242.5(154B) Order for mental, physical, or clinical competency examination or alcohol or drug screening

## CHAPTERS 243 to 260

Reserved

*RESPIRATORY CARE PRACTITIONERS*

## CHAPTER 261

## LICENSURE OF RESPIRATORY CARE PRACTITIONERS

- 261.1(152B) Definitions  
 261.2(152B) Requirements for licensure  
 261.3(152B) Educational qualifications  
 261.4(152B) Examination requirements  
 261.5(152B) Students  
 261.6(152B) Licensure by endorsement  
 261.7 Reserved

- 261.8(152B) License renewal
- 261.9 to 261.13 Reserved
- 261.14(17A,147,272C) License reactivation
- 261.15(17A,147,272C) License reinstatement

## CHAPTER 262

## CONTINUING EDUCATION FOR RESPIRATORY CARE PRACTITIONERS

- 262.1(152B,272C) Definitions
- 262.2(152B,272C) Continuing education requirements
- 262.3(152B,272C) Standards
- 262.4(152B,272C) Audit of continuing education report
- 262.5(152B,272C) Automatic exemption
- 262.6(152B,272C) Grounds for disciplinary action
- 262.7(152B,272C) Continuing education exemption for disability or illness

## CHAPTER 263

## DISCIPLINE FOR RESPIRATORY CARE PRACTITIONERS

- 263.1(152B) Definitions
- 263.2(152B,272C) Grounds for discipline
- 263.3(147,272C) Method of discipline
- 263.4(272C) Discretion of board

## CHAPTER 264

Reserved

## CHAPTER 265

## PRACTICE OF RESPIRATORY CARE PRACTITIONERS

- 265.1(152B,272C) Code of ethics
- 265.2(152B,272C) Intravenous administration

## CHAPTERS 266 to 279

Reserved

*SOCIAL WORKERS*

## CHAPTER 280

## LICENSURE OF SOCIAL WORKERS

- 280.1(154C) Definitions
- 280.2(154C) Social work services subject to regulation
- 280.3(154C) Requirements for licensure
- 280.4(154C) Written examination
- 280.5(154C) Educational qualifications
- 280.6(154C) Supervised professional practice for the LISW
- 280.7(154C) Licensure by endorsement
- 280.8 Reserved
- 280.9(154C) License renewal
- 280.10 to 280.13 Reserved
- 280.14(17A,147,272C) License reactivation
- 280.15(17A,147,272C) License reinstatement

## CHAPTER 281

## CONTINUING EDUCATION FOR SOCIAL WORKERS

- 281.1(154C) Definitions
- 281.2(154C) Continuing education requirements
- 281.3(154C,272C) Standards

CHAPTER 282  
PRACTICE OF SOCIAL WORKERS

- 282.1(154C) Definitions
- 282.2(154C) Rules of conduct

CHAPTER 283  
DISCIPLINE FOR SOCIAL WORKERS

- 283.1(154B) Definitions
- 283.2(272C) Grounds for discipline
- 283.3(147,272C) Method of discipline
- 283.4(272C) Discretion of board

CHAPTERS 284 to 299

Reserved

*SPEECH PATHOLOGISTS AND AUDIOLOGISTS*

CHAPTER 300  
LICENSURE OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

- 300.1(147) Definitions
- 300.2(147) Speech pathology and audiology services subject to regulation
- 300.3(147) Requirements for licensure
- 300.4(147) Educational qualifications
- 300.5(147) Examination requirements
- 300.6(147) Temporary clinical license
- 300.7(147) Temporary permit
- 300.8(147) Use of assistants
- 300.9(147) Licensure by endorsement
- 300.10 Reserved
- 300.11(147) License renewal
- 300.12 to 300.16 Reserved
- 300.17(17A,147,272C) License reactivation
- 300.18(17A,147,272C) License reinstatement

CHAPTERS 301 and 302

Reserved

CHAPTER 303  
CONTINUING EDUCATION FOR SPEECH PATHOLOGISTS  
AND AUDIOLOGISTS

- 303.1(147) Definitions
- 303.2(147) Continuing education requirements
- 303.3(147,272C) Standards

CHAPTER 304  
DISCIPLINE FOR SPEECH PATHOLOGISTS AND AUDIOLOGISTS

- 304.1(147) Definitions
- 304.2(272C) Grounds for discipline
- 304.3(272C) Method of discipline
- 304.4(272C) Discretion of board

CHAPTERS 305 to 325

Reserved

*PHYSICIAN ASSISTANTS*

## CHAPTER 326

## LICENSURE OF PHYSICIAN ASSISTANTS

326.1(148C)	Definitions
326.2(148C)	Requirements for licensure
326.3(148C)	Temporary licensure
326.4(148C)	Licensure by endorsement
326.5	Reserved
326.6(148C)	Examination requirements
326.7(148C)	Educational qualifications
326.8(148C)	Supervision requirements
326.9(148C)	License renewal
326.10 to 326.14	Reserved
326.15(148C)	Use of title
326.16(148C)	Address change
326.17(148C)	Student physician assistant
326.18(148C)	Recognition of an approved program
326.19(17A,147,272C)	License reactivation
326.20(17A,147,272C)	License reinstatement

## CHAPTER 327

## PRACTICE OF PHYSICIAN ASSISTANTS

327.1(148C)	Duties
327.2(148C)	Prohibition
327.3	Reserved
327.4(148C)	Remote medical site
327.5(147)	Identification as a physician assistant
327.6(147)	Prescription requirements
327.7(147)	Supplying—requirements for containers, labeling, and records

## CHAPTER 328

## CONTINUING EDUCATION FOR PHYSICIAN ASSISTANTS

328.1(148C)	Definitions
328.2(148C)	Continuing education requirements
328.3(148C,272C)	Standards

## CHAPTER 329

## DISCIPLINE FOR PHYSICIAN ASSISTANTS

329.1(148C)	Definitions
329.2(148C,272C)	Grounds for discipline
329.3(147,272C)	Method of discipline
329.4(272C)	Discretion of board

## CHAPTERS 330 to 350

## Reserved

*ATHLETIC TRAINERS*

## CHAPTER 351

## LICENSURE OF ATHLETIC TRAINERS

351.1(152D)	Definitions
351.2(152D)	Requirements for licensure
351.3(152D)	Educational qualifications

351.4(152D)	Examination requirements
351.5(152D)	Documentation of physician direction
351.6(152D)	Athletic training plan for direct service
351.7(152D)	Licensure by endorsement
351.8	Reserved
351.9(147)	License renewal
351.10(272C)	Exemptions for inactive practitioners
351.11 and 351.12	Reserved
351.13(272C)	Lapsed licenses
351.14	Reserved
351.15(17A,147,272C)	License reactivation
351.16(17A,147,272C)	License reinstatement

#### CHAPTER 352

##### CONTINUING EDUCATION FOR ATHLETIC TRAINERS

352.1(272C)	Definitions
352.2(152D)	Continuing education requirements
352.3(152D,272C)	Standards
352.4(152D,272C)	Audit of continuing education report
352.5 and 352.6	Reserved
352.7(152D,272C)	Continuing education waiver for active practitioners
352.8(152D,272C)	Continuing education exemption for inactive practitioners
352.9	Reserved
352.10(152D,272C)	Reinstatement of inactive practitioners
352.11(272C)	Hearings

#### CHAPTER 353

##### DISCIPLINE FOR ATHLETIC TRAINERS

353.1(152D)	Definitions
353.2(152D,272C)	Grounds for discipline
353.3(152D,272C)	Method of discipline
353.4(272C)	Discretion of board

#### CHAPTERS 354 to 360

Reserved

##### *SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS*

#### CHAPTER 361

##### LICENSURE OF SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS

361.1(154E)	Definitions
361.2(154E)	Requirements for licensure
361.3(154E)	Licensure by endorsement
361.4	Reserved
361.5(154E)	License renewal
361.6 to 361.8	Reserved
361.9(17A,147,272C)	License reactivation
361.10(17A,147,272C)	License reinstatement

CHAPTER 362  
CONTINUING EDUCATION FOR SIGN LANGUAGE INTERPRETERS AND  
TRANSLITERATORS

- 362.1(154E,272C) Definitions
- 362.2(154E,272C) Continuing education requirements
- 362.3(154E,272C) Standards

CHAPTER 363  
DISCIPLINE FOR SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS

- 363.1(154E) Definitions
- 363.2(154E,272C) Grounds for discipline
- 363.3(147,272C) Method of discipline
- 363.4(272C) Discretion of board

CHAPTER 4  
BOARD ADMINISTRATIVE PROCESSES

**645—4.1(17A) Definitions.**

*“Board”* means the professional licensing board of any of the following: athletic training, barbering, behavioral science, chiropractic, cosmetology arts and sciences, dietetics, hearing aid dispensers, massage therapy, mortuary science, nursing home administrators, optometry, physical and occupational therapy, physician assistants, podiatry, psychology, respiratory care, sign language interpreters and transliterators, social work, and speech pathology and audiology.

*“Board office”* means the office of the administrative staff of each professional licensing board.

*“Department”* means the department of public health.

*“Disciplinary proceeding”* means any proceeding under the authority of each board pursuant to which licensee discipline may be imposed.

*“License”* means a license to practice the specific practice governed by one of the boards defined in this chapter.

*“Licensee”* means a person licensed to practice the specific practice governed by one of the boards defined in this chapter.

*“Overpayment”* means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

**645—4.2(17A) Purpose of board.** The purpose of each professional licensing board is to administer and enforce the provisions of Iowa Code chapters 17A, 21, 147, 272C and the practice-specific provisions in Iowa Code chapters 148A, 148B, 148C, 149, 151, 152A, 152B, 152C, 152D, 154, 154A, 154B, 154C, 154D, 154E, 155, 156, 157 and 158 applicable to each board. The mission of each professional licensing board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and rules of each board. Responsibilities of each professional licensing board include, but are not limited to:

**4.2(1)** Licensing qualified applicants by examination, renewal, endorsement, and reciprocity.

**4.2(2)** Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

**4.2(3)** Imposing discipline on licensees as provided by statute or rule.

**645—4.3(17A,147,272C) Organization of board and proceedings.**

**4.3(1)** Each professional licensing board is composed of members appointed by the governor and confirmed by the senate as defined in Iowa Code chapter 147.

**4.3(2)** Each board shall elect a chairperson and vice chairperson from its membership at the first meeting after April 30 of each year.

**4.3(3)** Each board shall hold at least one meeting annually.

**4.3(4)** A majority of the members of each board shall constitute a quorum.

**4.3(5)** Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board’s proceedings shall be conducted in accordance with Robert’s Rules of Order, Revised.

**4.3(6)** The professional licensure division shall furnish each board with the necessary facilities and employees to perform the duties required by this chapter and shall be reimbursed for all costs incurred from funds collected from licensure-related fees.

**4.3(7)** Each professional licensing board has the authority to:

a. Develop and implement continuing education rules to ensure the continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board, the members of which shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons.

*d.* Hold a closed session if the board votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if fewer are present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. The board shall keep minutes of all discussion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

*e.* Investigate alleged violations of statutes or rules that relate to the practice of licensees upon receipt of a complaint or upon the board's own initiation. The investigation will be based on information or evidence received by the board.

*f.* Initiate and impose licensee discipline.

*g.* Monitor licenses that are restricted by a board order.

*h.* Establish and register peer reviewers.

*i.* Refer complaints to one or more registered peer reviewers for investigation and review. The peer reviewers will review cases and recommend appropriate action. However, the referral of any matter shall not relieve the board of any of its duties and shall not divest the board of any authority or jurisdiction.

*j.* Perform any other functions authorized by a provision of law.

[ARC 7586B, IAB 2/25/09, effective 4/1/09]

#### **645—4.4(17A) Official communications.**

**4.4(1)** All official communications, including submissions and requests, may be addressed to the specific professional licensing board, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**4.4(2)** Notice of change of address. Each licensee shall notify the board of a change of the licensee's current mailing address within 30 days after the change of address occurs.

**4.4(3)** Notice of change of name. Each licensee shall notify the board in writing of a change of name within 30 days after changing the name.

**645—4.5(17A) Office hours.** The board office is open for public business from 8 a.m. to 4:30 p.m., Monday through Friday of each week, except holidays.

**645—4.6(21) Public meetings.** Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and location of board meetings may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office.

**4.6(1)** At every regularly scheduled board meeting, time will be designated for public comment. No more than ten minutes will be allotted for public comment at any one time unless the chairperson indicates otherwise.

**4.6(2)** Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

**4.6(3)** The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that obstructs the meeting.

**4.6(4)** Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

**645—4.7(147) Licensure by reciprocal agreement.** The board may enter into a reciprocal agreement with the District of Columbia or any state, territory, province or foreign country with equal or similar requirements for licensure of the specific professional board. The applicant shall take the examination required by the board.

**645—4.8(147) Duplicate certificate or wallet card.**

**4.8(1)** A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or a duplicate certificate shall be issued only under such circumstances.

**4.8(2)** A duplicate wallet card or duplicate certificate shall be issued upon receipt of the completed application for duplicate license and payment of the fee as specified in 645—Chapter 5.

**4.8(3)** If the board receives a completed application for a duplicate license stating that the wallet card or certificate was not received within 60 days after being mailed by the board, no fee shall be required for issuing the duplicate wallet card or duplicate certificate.

**645—4.9(147) Reissued certificate or wallet card.** The board shall reissue a certificate or current wallet card upon receipt of a written request from the licensee, return of the original document and payment of the fee as specified in 645—Chapter 5.

**645—4.10(17A,147,272C) License denial.**

**4.10(1)** When the board denies an applicant licensure, the board shall notify the applicant of the denial in writing by certified mail, return receipt requested, or in the manner of service of an original notice, and shall cite the reasons for which the application was denied.

**4.10(2)** An applicant who has been denied licensure by the board may appeal the denial and request a hearing on the issues related to the licensure denial by serving a written notice of appeal and request for hearing upon the board by certified mail, return receipt requested, not more than 30 days following the date of mailing of the notification of licensure denial to the applicant. The request for hearing shall specifically describe the facts to be contested and determined at the hearing.

**4.10(3)** If an applicant who has been denied licensure by the board appeals the licensure denial and requests a hearing pursuant to this rule, the hearing and subsequent procedures shall be held pursuant to the process outlined in Iowa Code chapters 17A and 272C and 645—Chapter 11.

**645—4.11(272C) Audit of continuing education.** The board may select licensees for audit following license renewal.

**4.11(1)** Licensees shall provide information to the board for auditing purposes as follows:

*a.* The licensee shall provide an individual certificate of completion issued to the licensee or evidence of successful completion of the course from the course sponsor. These documents must contain the course date, title, contact hours, sponsor and licensee's name.

*b.* Information identified in paragraph 4.11(1) "a" must be submitted within 30 days after the date on the letter of notification of the audit. Extension of time may be granted on an individual basis.

**4.11(2)** For auditing purposes, all licensees must retain the information identified in paragraph 4.11(1) "a" for two years after the biennium has ended.

**4.11(3)** If the submitted materials are incomplete or unsatisfactory, the licensee may be given the opportunity to submit make-up credit to cover the deficit found through the audit. The deadline for receipt of the documentation for this make-up credit is 90 days from the date of mailing of the notice of deficit to the address of record at the board office. The license shall be re-audited following the next renewal period when make-up credit has been accepted.

**4.11(4)** Failure to notify the board of a current mailing address will not absolve the licensee from meeting the audit requirement.

[ARC 9171B, IAB 11/3/10, effective 12/8/10]

**645—4.12(272C,83GA,SF2325) Automatic exemption.**

**4.12(1)** A licensee, except a funeral director, shall be exempt from the continuing education requirement during the license biennium when the licensee:

*a.* Served honorably on active duty in the military service; or

*b.* Resided in another state or district having continuing education requirements for the profession and met all requirements of that state or district for practice therein; or

c. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or

d. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

**4.12(2)** Automatic exemptions for a funeral director are identified in rule 645—102.5(83GA,SF2325).

[ARC 9239B, IAB 11/17/10, effective 12/22/10]

**645—4.13(272C) Grounds for disciplinary action.** The board may take formal disciplinary action on the following grounds:

1. Failure to cooperate with a board audit.
2. Failure to meet the continuing education requirement for licensure.
3. Falsification of information on the license renewal form.
4. Falsification of continuing education information.

**645—4.14(272C) Continuing education exemption for disability or illness.** A licensee who has had a physical or mental disability or illness during the license period may apply for an exemption. An exemption provides for an extension of time or exemption from some or all of the continuing education requirements. An applicant shall submit a completed application form approved by the board for an exemption. The application form is available upon request from the board office. The application requires the signature of a licensed health care professional who can attest to the existence of a disability or illness during the license period. If the application is from a licensee who is the primary caregiver for a relative who is ill or disabled and needs care from that primary caregiver, the physician shall verify the licensee's status as the primary caregiver. A licensee who applies for an exemption shall be notified of the decision regarding the application. A licensee who obtains approval shall retain a copy of the exemption to be presented to the board upon request.

**4.14(1)** The board may grant an extension of time to fulfill the continuing education requirement.

**4.14(2)** The board may grant an exemption from the continuing education requirement for any period of time not to exceed two calendar years. If the physical or mental disability or illness for which an extension or exemption was granted continues beyond the period initially approved by the board, the licensee must reapply for a continuance of the extension or exemption.

**4.14(3)** The board may, as a condition of any extension or exemption granted, require the licensee to make up a portion of the continuing education requirement in the manner determined by the board.

**645—4.15(147,272C) Order for physical, mental, or clinical competency examination or alcohol or drug screening.** A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a physical, mental, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

**4.15(1) Content of order.** A board order for a physical, mental, or clinical competency examination shall include the following items:

- a. A description of the type of examination to which the licensee must submit.
- b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.
- c. The time period in which the licensee must schedule the required examination.
- d. The amount of time the licensee has to complete the examination.
- e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.
- f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.
- g. A requirement that the licensee communicate with the board regarding the status of the examination.

*h.* A concise statement of the facts relied on by the board to order the evaluation.

**4.15(2) Alternatives.** Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request that the board approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

**4.15(3) Objection to order.** A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. A licensee who fails to timely file a request for hearing to object to an examination order waives any future objection to the examination order in the event formal disciplinary charges are filed for failure to comply with the examination order or on any other grounds. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. On judicial review of a board decision in a contested case involving an objection to an examination order, the case will be captioned in the name of Jane Doe or John Doe to maintain the licensee's confidentiality.

**4.15(4) Closed hearing.** Any hearing on an objection to the examination order shall be closed pursuant to Iowa Code section 272C.6(1).

**4.15(5) Order and reports confidential.** An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4). However, all investigative information regarding the examination order shall be provided to the licensee in the event the licensee files an objection, under subrule 4.15(3), in order to allow the licensee an opportunity to prepare for hearing.

**4.15(6) Admissibility.** In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

**4.15(7) Failure to submit.** Failure of a licensee to submit to a board-ordered physical, mental, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

[ARC 7586B, IAB 2/25/09, effective 4/1/09]

**645—4.16(252J,261,272D) Noncompliance rules regarding child support, loan repayment and nonpayment of state debt.**

**4.16(1) Child support noncompliance.** The board hereby adopts by reference 641—Chapter 192, "Child Support Noncompliance," Iowa Administrative Code.

**4.16(2) Noncompliance of loan repayment.** The board hereby adopts by reference 641—Chapter 195, "Student Loan Default/Noncompliance with Agreement for Payment of Obligation," Iowa Administrative Code.

**4.16(3) Nonpayment of state debt.** The board hereby adopts by reference 641—Chapter 194, "Nonpayment of State Debt," Iowa Administrative Code.

[ARC 8706B, IAB 4/21/10, effective 5/26/10]

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 252J, 261, 272C and 272D.

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## FUNERAL DIRECTORS

CHAPTER 100	PRACTICE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS, AND CREMATION ESTABLISHMENTS
CHAPTER 101	LICENSURE OF FUNERAL DIRECTORS
CHAPTER 102	CONTINUING EDUCATION FOR FUNERAL DIRECTORS
CHAPTER 103	DISCIPLINARY PROCEEDINGS
CHAPTER 104	ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

CHAPTER 100  
PRACTICE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS,  
AND CREMATION ESTABLISHMENTS

[Prior to 9/21/88, see Health Department[470] Ch 146]

**645—100.1(156) Definitions.**

*“Alternative container”* means an unfinished wood box or other nonmetal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed wood, composition materials (with or without an outside covering) or like materials which prevents the leakage of body fluid.

*“Authorized person”* means that person or persons upon whom a funeral director may reasonably rely when making funeral arrangements including, but not limited to, embalming, cremation, funeral services, and the disposition of human remains pursuant to 2008 Iowa Acts, Senate File 473, section 10.

*“Autopsy”* means the postmortem examination of a human remains.

*“Board”* means the board of mortuary science.

*“Body parts”* means appendages or other portions of the anatomy that are from a human body.

*“Burial.”* See *“Interment.”*

*“Burial transit permit”* means a legal document authorizing the removal and transportation of a human remains.

*“Casket”* means a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic or like material and ornamented and lined with fabric.

*“Cemetery”* means an area designated for the final disposition of human remains.

*“Change of ownership”* means a change of controlling interest in a funeral establishment or crematory establishment.

*“Columbarium”* means a structure, room or space in a mausoleum or other building containing niches or recesses for disposition of cremated remains.

*“Common carrier”* means any carrier engaged in the business of transportation of persons or property from place to place for compensation, and who offers services to the public generally.

*“Cremated remains”* means all the remains of the cremated human body recovered after the completion of the cremation process, including pulverization which leaves only bone fragments reduced to unidentifiable dimensions and may possibly include the residue of any foreign matter including casket material, bridgework or eye glasses that were cremated with the human remains.

*“Cremation”* means the technical process, using heat and flame, that reduces human remains to bone fragments. The reduction takes place through heat and evaporation. Cremation shall include the processing, and may include the pulverization, of the bone fragments.

*“Cremation authorization form”* means a form, completed and signed, to accompany all human remains accepted for cremation.

*“Cremation chamber”* means the enclosed space within which the cremation takes place.

*“Cremation establishment”* means a place of business which provides any aspect of cremation services.

*“Cremation permit”* means a permit issued by a medical examiner allowing cremation of human remains.

“*Cremation room*” means the room in which the cremation chamber is located.

“*Crematory*” means any person, partnership or corporation that performs cremation.

“*Crypt*” means a chamber in a mausoleum of sufficient size to contain casketed human remains.

“*Custody*” means immediate charge and control exercised by a person or an authority.

“*Dead body.*” See “*Human remains.*”

“*Death certificate*” means a legal document containing vital statistics pertaining to the life and death of the decedent.

“*Decedent.*” See “*Human remains.*”

“*Disinterment*” means to remove human remains from their place of final disposition.

“*Disinterment application*” means a legal document requesting authorization from the department of public health to disinter a casketed human remains or an urn containing cremated remains from its place of final disposition.

“*Disinterment application number*” means the number assigned to a disinterment application by the department of public health, giving the funeral director the authority to disinter a casketed human remains or an urn containing cremated remains from its place of final disposition.

“*Embalming*” means the disinfecting or preserving of dead human remains, entire or in part, by the use of chemical substances, fluids or gases in the body, or by the introduction of same into the body by vascular or hypodermic injections, or by surface application into or on the organs or cavities for the purpose of preservation or disinfection.

“*Entombment*” means to place a casketed body or an urn containing cremated remains in a structure such as a mausoleum, crypt, tomb or columbarium.

“*Final disposition*” means the burial, interment, cremation, removal from the state, or other disposition of a dead body or fetus.

“*First call*” means the original notification to the funeral director indicating the place of death from which the human remains are to be removed.

“*Funeral ceremony*” means a service commemorating the decedent.

“*Funeral director*” means a person licensed by the board to practice mortuary science.

“*Funeral establishment*” means a place of business as defined by the board devoted to providing any aspect of mortuary science.

“*Funeral rule*” means the Federal Trade Commission rule.

“*Funeral services*” means any services which may be used to (1) care for and prepare deceased human remains for burial, cremation or other final disposition; and (2) arrange, supervise or conduct the funeral ceremony or final disposition of deceased human remains.

“ *Holding facility*” means an area isolated from the general public that is designated for the temporary retention of human remains.

“*Human remains*” means a deceased human being for which a death certificate or fetal death certificate is required.

“*Interment*” means to place a casketed human remains or an urn containing cremated remains in the ground.

“*Intern*” means a person registered by the board to practice mortuary science under the direct supervision of a preceptor certified by the board pursuant to 645—subrule 101.5(2).

“*Mausoleum*” means an aboveground structure designed for entombment of human remains.

“*Medical examiner*” means a public official whose primary function is to investigate and determine cause of death when death may be thought to be from other than natural causes.

“*Memorial ceremony*” means a service commemorating the decedent.

“*Niche*” means a recess or space in a columbarium or mausoleum used for placement of cremated human remains.

“*Outer burial container*” means any container which is designed for placement in the ground around a casket or an urn including, but not limited to, containers commonly known as burial vaults, urn vaults, grave boxes, grave liners, and lawn crypts.

“*Preparation room*” means a room in a funeral establishment where human remains are prepared, sanitized, embalmed or held for ceremonies and final disposition.

“*Pulverization*” means a process following cremation which reduces identifiable bone fragments into granulated particles.

“*Removal*” means the act of taking a human remains from the place of death or place where a human remains is being held, to a funeral establishment or other designated place.

“*Scattering area*” means a designated area where cremated remains may be commingled with other cremated remains.

“*Temporary cremated remains container*” means a durable receptacle designed for short-term retention of cremated remains.

“*Their own dead*” refers to the legal authority the authorized person has regarding a human remains.

“*Topical disinfection*” means the direct application of chemical substances on the surface of a human remains for the purpose of preservation or disinfection.

“*Transfer.*” See “*Removal.*”

“*Universal precautions*” means a concept of care based upon the assumption that all blood and body fluids, and materials that have come into contact with blood or body fluids, are potentially infectious.

“*Urn*” means a receptacle designed for permanent retention of cremated remains.

[ARC 9239B, IAB 11/17/10, effective 12/22/10]

#### **645—100.2(156) Funeral director duties.**

**100.2(1)** Practices requiring a funeral director’s license include but are not limited to:

- a. Removal as specified in rule 645—100.4(142,156).
- b. Embalming deceased human beings as specified in rule 645—100.6(156).
- c. Conducting funeral arrangements as specified in subrule 100.7(2).
- d. Conducting funeral services when contracted to do so, including:
  - (1) Direct supervision of visitation and viewing.
  - (2) Funeral and memorial ceremonies.
  - (3) Committal and final disposition services.
- e. Cremation services as specified in rule 645—100.10(156).
- f. Signing death certificates.

**100.2(2)** Registered interns. Registered interns may provide funeral director services identified in subrule 100.2(1), paragraphs “a” through “e,” under the direct supervision of an Iowa-licensed preceptor. Registered interns shall not sign death certificates.

**100.2(3)** CDC universal precautions and OSHA standards. The funeral director shall observe current guidelines of universal precautions as prescribed by the Centers for Disease Control (CDC) as well as Occupational Safety and Health Administration (OSHA) standards.

**100.2(4)** Funeral directors who provide mortuary science services from funeral establishments located in another state. A funeral director who holds an active Iowa funeral director’s license and whose practice is conducted from a funeral establishment located in another state may provide mortuary science services in Iowa if the establishment holds a current license in the state in which it is located, if such a license is required.

**100.2(5)** Withholding human remains. A funeral director shall not withhold human remains based solely on nonpayment of fees.

[ARC 9239B, IAB 11/17/10, effective 12/22/10]

#### **645—100.3(156) Permanent identification tag.**

**100.3(1)** The funeral director who assumes possession of the human remains shall attach a permanent identification tag.

**100.3(2)** The identification tag shall initially contain, at a minimum, the name of the deceased.

**100.3(3)** Before final disposition, the identification tag shall contain the name of the deceased, date of birth, date of death and social security number of the deceased and the name and license number of the funeral home in charge of disposition.

**100.3(4)** The identification tag shall be attached to the remains throughout the entire time the body is in the possession of the funeral home and shall remain with the human remains.

**645—100.4(142,156) Removal and transfer of dead human remains and fetuses.**

**100.4(1)** Removal and transfer of dead human remains. The funeral director shall perform the following duties upon notification of a death.

*a.* Comply with jurisdictional authority, with respect to medico-legal responsibilities, regarding the removal of the human remains.

*b.* Provide signature and license number when removing a dead human remains from a hospital, nursing establishment or any other institution involved with the care of the public.

**100.4(2)** After the funeral director has assumed custody of the human remains, the funeral director may delegate the task of transferring the dead human remains to an unlicensed employee or agent. Prior to transfer, the funeral director shall topically disinfect the body, secure all body orifices to retain all secretions, place the human remains in a leakproof container for transfer that will control odor and prevent the leakage of body fluids, and issue a burial transit permit.

**100.4(3)** A funeral director may delegate the transportation of unembalmed human remains to an unlicensed employee or agent of the funeral home without first assuming custody and without topically disinfecting or securing body orifices if all of the following are true:

*a.* The transportation is to or from the medical examiner's office, or otherwise at the direction of the medical examiner;

*b.* The remains are placed in a leakproof container by medical examiner personnel; and

*c.* The employee or agent is issued a burial transit permit or other evidence of authorization.

**100.4(4)** An unlicensed employee or agent referred to in subrules 100.4(2) and 100.4(3) shall have completed the annual OSHA training related to blood-borne pathogens.

[ARC 9239B, IAB 11/17/10, effective 12/22/10]

**645—100.5(135,144) Burial transit permits.** A licensed funeral director may issue a burial transit permit for the removal and transfer of dead human remains and such burial transit permit shall be issued in accordance with state law and the administrative rules promulgated by the department of public health regarding burial transit permits.

**645—100.6(156) Prepreparation and embalming activities.**

**100.6(1)** The funeral director shall perform the following duties prior to and during embalming according to commonly accepted industry standards.

*a.* Permission for embalming. The funeral director shall obtain authorization for embalming from an authorized person. If permission to embalm cannot be obtained from the authorized person, the funeral director may proceed with the embalming if necessary to comply with subrule 100.6(3).

*b.* Embalming shall be done entirely in private. No one except the funeral director, intern, immediate family, or student shall be allowed in the preparation room without the written permission of the authorized person. A student must be under the direct physical supervision of the funeral director and currently enrolled and attending a program of mortuary science which is recognized by the board to be allowed in the preparation room during the embalming without written permission.

*c.* The human remains shall be properly covered at all times.

*d.* Conduct a preembalming case analysis of the human remains. Recognize the potential chemical effects on the body and select the proper embalming chemicals based upon the analysis.

*e.* Position the human remains on the preparation table and pose the facial features.

*f.* Select points of drainage and injection, and raise the necessary vessels.

*g.* Embalming shall include arterial and cavity injection of embalming chemicals. If the condition of the human remains does not allow arterial and cavity injection of embalming chemicals, topical embalming, using appropriate chemicals and procedures, shall be performed.

*h.* Once the arterial and cavity injection of the embalming chemicals is complete, evaluate the distribution of the embalming chemicals and perform treatment for discoloration, vascular difficulties, decomposition, dehydration, purge and close any incisions.

**100.6(2)** Postembalming activities. The funeral director shall perform the following duties at the conclusion of the embalming activities if necessary.

- a. Pack or otherwise secure all body orifices with material which will absorb and retain all secretions.
- b. Apply chemicals topically and perform hypodermic treatments.
- c. Bathe, disinfect and reposition the human remains.
- d. Clean and disinfect the embalming instruments, equipment and preparation room.
- e. Perform any restorative treatments.
- f. Select and apply the appropriate cosmetic treatments.
- g. Prepare the human remains for viewing.

**100.6(3) Care of the unembalmed human remains.**

- a. Embalming may be omitted provided that interment or cremation is performed within 72 hours after death or within 24 hours of taking custody if the human remains were previously in the custody of others, whichever is longer.
- b. If refrigeration is utilized, embalming or final disposition may be extended up to 72 hours longer than the maximum period provided in paragraph 100.6(3) "a." The body must be kept between 38 and 42 degrees Fahrenheit.
- c. If viewing of the unembalmed human remains is requested, the human remains shall be topically disinfected and all body orifices shall be packed or otherwise secured with material which will absorb and retain all secretions.

[ARC 9239B, IAB 11/17/10, effective 12/22/10]

**645—100.7(156) Arranging and directing funeral and memorial ceremonies.**

**100.7(1) *The Federal Trade Commission.*** The funeral director shall observe current guidelines of the Federal Trade Commission (FTC) funeral rule.

**100.7(2) *Arrangement conference activities.*** If responsible the funeral director shall perform the following duties associated with arranging ceremonies and the final disposition of a human remains.

- a. Gather necessary statistical and biographical information relating to the decedent and explain the varied use of the information gathered.
- b. Present, discuss and explain the mandated Federal Trade Commission price lists and assist or provide the consumer with:
  - (1) The types of ceremony or final disposition.
  - (2) The specific goods and services.
  - (3) The prices of any goods and services.
  - (4) The written, itemized statement of the funeral goods and services.
  - (5) A general price list.

At the conclusion of arrangements the itemized statement shall be signed by the purchaser and the funeral director.

**100.7(3) *Directing of funeral and memorial ceremonies.*** If responsible, the funeral director shall perform the following duties:

1. Direct and supervise ceremonies.
2. Direct and supervise final disposition.

**645—100.8(142,156) Unclaimed dead human remains for scientific use.**

**100.8(1)** A human remains is unclaimed when:

- a. The decedent did not express a desire to be interred, entombed or cremated.
- b. Relatives or friends of the decedent did not request that the human remains be interred, entombed or cremated.

**100.8(2)** Friend distinguished from casual acquaintance. A friend shall be distinguished from a casual acquaintance by the friend's having been closely associated with the decedent during the decedent's lifetime.

**100.8(3)** Delivery of human remains for scientific purposes. The funeral director, the medical examiner or managing officer of a public health institution, hospital, county home, penitentiary or

reformatory shall notify the state department of public health as soon as any human remains, which are unclaimed and may be suitable for scientific purposes, shall come into their custody.

**100.8(4)** Department instructions. When the department of public health receives notice, the funeral director shall be instructed as to the proper disposition of the human remains.

**100.8(5)** Expenses incurred by funeral director. The expenses incurred by the funeral director for the transportation of the human remains to a medical college shall be paid by the medical college receiving the human remains.

**645—100.9(144) Disinterments.** A funeral director in charge of a disinterment shall ensure that the disinterment is performed in accordance with rules promulgated by the Iowa department of public health and shall first secure a disinterment application issued by the Iowa department of public health.

1. No person shall disinter a human remains or cremated remains unless the funeral director, in charge of the disinterment, has a numbered disinterment application which has been issued by the department of public health or by an order of the district court of the county in which the human remains or cremated remains are interred or entombed.

2. All disinterment applications shall be requested and provided by the department of public health.

3. All disinterment applications shall be signed by the authorizing person.

4. Disinterment applications shall be furnished upon request from the department of public health and will remain valid for 30 days after issuance.

5. Disinterment numbers will only be issued to the funeral director, and the disinterment must be done under the direct supervision of the funeral director.

6. Disinterment applications and numbers shall be required for any relocation of a human remains or cremated remains from the original site of interment or entombment.

7. No disinterment application or number is necessary to remove a human remains or cremated remains from a holding facility for interment or entombment in the same cemetery where being temporarily held.

**645—100.10(156) Cremation of human remains and fetuses.**

**100.10(1) Record keeping.**

*a.* Delivery receipt. When a human remains is delivered to a crematory, the crematory shall furnish to the delivery person a delivery receipt containing:

(1) The name, address, age, gender, and cause of death of the human remains that are delivered to the crematory.

(2) The date and time of delivery and the type of container that contains the human remains.

(3) If applicable, the name of the funeral director who sent the human remains and the name and license number of the funeral director's associated funeral establishment.

(4) The signature of the person who delivered the human remains.

(5) The signature of the person receiving the human remains on behalf of the crematory.

(6) The name and business address of the crematory establishment.

The crematory shall retain a copy of this receipt in its permanent records.

*b.* Receiving receipt. The crematory authority shall furnish to any person who receives the cremated remains from the crematory a receiving receipt containing:

(1) The name of the decedent whose cremated remains are released from the crematory.

(2) The date and time when the cremated remains were released from the crematory.

(3) The name of the person to whom the cremated remains are released and the name and license number of the funeral establishment, cemetery, family or other person or entity with which they are affiliated.

(4) The signature of the person who receives the cremated remains.

(5) The signature of the person who released the cremated remains on behalf of the crematory.

(6) The name of the crematory operator and the date and time of the cremation.

The crematory shall retain a copy of this receipt in its permanent records.

c. Permanent record. A crematory shall maintain at its place of business a permanent record that includes the following:

- (1) Name of deceased person.
- (2) Date and time of the cremation.
- (3) Copies of the delivery receipt and the receiving receipt.
- (4) Disposition of the cremated remains.
- (5) Cremation authorization.
- (6) Permit for cremation from a medical examiner if required in jurisdiction of death.

**100.10(2) *Employment of a funeral director by a crematory.*** No aspect of these rules shall be construed to require a funeral director to supervise or perform any functions at a crematory not otherwise required by law to be performed by a funeral director. The crematory establishment shall contract only with a licensed funeral establishment and shall not contract directly with the general public.

**100.10(3) *Authorizing person and preneed cremation arrangements.*** The authorized person has legal authority and may make decisions regarding the final disposition of the decedent. If the decedent in the decedent's lifetime requested that the decedent's body be cremated by signing a cremation authorization, the authorized person at the time of death may revoke the cremation authorization to cancel the cremation.

**100.10(4) *Authorization to cremate.***

a. The crematory shall have the authority to cremate human remains upon the receipt of the following:

(1) Cremation authorization form signed by the authorizing person. The cremation authorization form shall contain the following:

1. The name, address, age and gender of the decedent whose human remains are to be cremated.
2. The date, time of death and cause of death of the decedent.
3. The name and license number of the funeral establishment and of the funeral director who obtained the cremation authorization form signed by the authorizing person.
4. The signature of the funeral director.
5. The name and address of the crematory authorized to cremate the human remains.
6. The name and signature of the authorizing person granting permission to cremate the human remains and the authorizing person's relationship to the decedent.
7. A representation that the authorizing person has the right to authorize the cremation of the decedent in accordance with this rule.
8. A representation that in the event there is another person who has superior priority right to that of the authorizing person, the authorizing person has made all reasonable efforts to contact that person and has no reason to believe that the person would object to the cremation of the decedent.
9. A representation that the human remains do not contain any material or implants that may be potentially hazardous to equipment or persons performing the cremation.
10. A representation that the authorizing person has made a positive identification of the decedent or, if the authorizing person is unavailable or declines, there are alternative means of positive identification.

11. The name of the person, funeral establishment or funeral establishment's designee to which the cremated remains are to be released.

12. The manner of the final disposition of the cremated remains.

13. A listing of all items of value and instructions for their disposition.

(2) Permit for cremation from a medical examiner if required in jurisdiction of death.

(3) Any other documentation required by this state.

b. If the authorizing person is not available to execute the cremation authorization form in person, the funeral director may accept written authorization by facsimile, E-mail, or such alternative written or electronic means the funeral director reasonably believes to be reliable and credible.

c. The authorizing person may revoke the authorization and instruct the funeral director or funeral establishment to cancel the cremation. The crematory shall honor any instructions from a funeral director

or funeral establishment under this rule if the crematory receives instructions prior to beginning the cremation.

**100.10(5) Cremation procedures.**

*a.* A crematory shall cremate human remains within 24 hours of issuance of the delivery receipt as defined in subrule 100.10(1).

*b.* No crematory shall cremate human remains when it has actual knowledge that the human remains contain a pacemaker or have any other implants or materials which will present a health hazard to those performing the cremation and processing and pulverizing the cremated remains.

*c.* No crematory shall refuse to accept human remains for cremation because such human remains are not embalmed.

*d.* Whenever a crematory is unable or unauthorized to cremate human remains immediately upon taking custody of the remains, the crematory shall place the human remains in a holding facility in accordance with the crematory rules and regulations and within the parameters of rules 100.5(135,144) and 100.6(156).

*e.* No crematory shall accept human remains unless they are delivered to the crematory in a container which prevents the leakage of body fluids.

*f.* Under no circumstances shall an alternative container or casket be opened at the cremation establishment except to facilitate proper cremation.

*g.* The container in which the human remains are delivered to the crematory shall be cremated with the human remains or safely destroyed.

*h.* The simultaneous cremation of the human remains of more than one person within the same cremation chamber, without the prior written consent of the authorized person, is prohibited. Nothing in this rule, however, shall prevent the simultaneous cremation within the same cremation chamber of body parts delivered to the crematory from multiple sources, or the use of cremation equipment that contains more than one cremation chamber.

*i.* No unauthorized person shall be permitted in the holding facility or cremation room while any human remains are being held there awaiting cremation, being cremated, or being removed from the cremation chamber.

*j.* A crematory shall not allow removal of any dental gold, body parts, organs, or any item of value prior to or subsequent to a cremation without previously having received specific written authorization from the authorizing person and written instructions for the delivery of these items to the authorizing person.

*k.* Upon the completion of each cremation, and insofar as is practicable, all of the recoverable residue of the cremation process shall be removed from the cremation chamber.

*l.* If all of the recovered cremated remains will not fit within the receptacle that has been selected, the remainder of the cremated remains shall be returned to the authorizing person or this person's designee in a separate container. The crematory shall not return to an authorized person or this person's designee more or less cremated remains than were removed from the cremation chamber.

*m.* A crematory shall not knowingly represent to an authorized person or this person's designee that a temporary cremation container or urn contains the cremated remains of a specific decedent when it does not.

*n.* Cremated remains shall be shipped only by a method that has an internal tracing system available and that provides a receipt signed by the person accepting delivery.

*o.* A crematory shall maintain an identification system that shall ensure the identity of human remains in its possession throughout all phases of the cremation process. A noncombustible tag or disc that includes the name and license number of the crematory and the city and state where the crematory is located shall be attached to the plastic bag with the cremated remains or placed in amongst the cremated remains.

**100.10(6) Disposition of cremated remains.** If responsible, the funeral director shall supervise the final disposition of the cremated remains as follows:

*a.* Cremated remains may be disposed of by placing them in a grave, crypt, or niche; by scattering them in a scattering area as defined in these rules; or they may remain in the personal care and custody

of the authorized person. After supervising the transfer of cremated remains to the authorized person or place of final disposition, the funeral director shall be discharged.

*b.* Upon the completion of the cremation process, the crematory shall release the cremated remains to the funeral establishment or the authorized person or the authorized person's designee. Upon the receipt of the cremated remains, the individual receiving them may transport them in any manner in this state without a permit and may dispose of them in accordance with this rule. After releasing the cremated remains, the crematory shall be discharged from any legal obligation or liability concerning the cremated remains.

*c.* If, after a period of 60 days from the date of the cremation, the authorizing person or designee has not instructed the funeral director to arrange for the final disposition of the cremated remains, the funeral director may dispose of the cremated remains in any manner permitted by this rule. The funeral establishment, however, shall keep a permanent record identifying the site of final disposition. The authorizing person shall be responsible for reimbursing the funeral establishment for all reasonable expenses incurred in disposing of the cremated remains. Any entity that was in possession of cremated remains prior to the effective date of these rules may dispose of them in accordance with this rule.

*d.* Except with the express written permission of the authorizing person, no funeral director or cremation establishment shall:

(1) Dispose of cremated remains in a manner or in a location so that the cremated remains are commingled with those of another person. This prohibition shall not apply to the scattering of cremated remains in an area located in a cemetery and used exclusively for those purposes.

(2) Place cremated remains of more than one person in the same temporary cremation container or urn.

**100.10(7)** *Scope of rules.* These rules shall be construed and interpreted as a comprehensive cremation statute, and the provisions of these rules shall take precedence over any existing laws containing provisions applicable to cremation, but that do not specifically or comprehensively address cremation.

**100.10(8)** *Establishment rule.* Rescinded IAB 4/2/03, effective 5/7/03.  
[ARC 9239B, IAB 11/17/10, effective 12/22/10]

These rules are intended to implement Iowa Code chapters 147, 156, and 272C.

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<sup>1</sup> Effective date of 645—100.1(4)“a,” 100.1(5)“c,” 100.1(8)“a,” 100.6(135,144) and 100.7(135,144) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 13, 1995; delay lifted by this Committee May 9, 1995.

CHAPTER 101  
LICENSURE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS, AND  
CREMATION ESTABLISHMENTS

[Prior to 9/21/88, see Health Department[470] Ch 147]

[Prior to 7/10/02, see 645—100.9(156) and 645—100.10(156)]

**645—101.1(156) Definitions.** For purposes of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of mortuary science.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Licensee*” means any person licensed to practice as a funeral director in the state of Iowa.

“*License expiration date*” means the fifteenth day of the birth month every two years following initial licensure.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice mortuary science to an applicant who is or has been licensed in another state.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 101.18(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice mortuary science to an applicant who is currently licensed in another state which has a mutual agreement with the Iowa board of mortuary science to license persons who have the same or similar qualifications to those required in Iowa.

“*Reinstatement*” means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

**645—101.2(156) Requirements for licensure.** The following criteria shall apply to licensure:

**101.2(1)** The applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to Board of Mortuary Science, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**101.2(2)** The applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

**101.2(3)** Each application shall be accompanied by the appropriate fees payable to the Board of Mortuary Science. The fees are nonrefundable.

**101.2(4)** No application will be considered by the board until official copies of academic transcripts showing the completion of training in a college of mortuary science approved by the Iowa board of mortuary science have been sent directly from the school to the board.

**101.2(5)** Licensees who were issued their initial licenses within six months prior to the renewal shall not be required to renew their licenses until the renewal month two years later.

**101.2(6)** Incomplete applications that have been on file in the board office for more than two years shall be:

- a. Considered invalid and shall be destroyed; or
- b. Maintained upon written request of the candidate. The candidate is responsible for requesting that the file be maintained.

**645—101.3(156) Educational qualifications.**

**101.3(1)** The applicant shall be issued a license to practice mortuary science by the board when the applicant has successfully completed:

*a.* A minimum of 60 hours as indicated on the transcript from a regionally accredited college or university with a minimum of a 2.0 or “C” grade point average. The 60 semester hours shall not include any technical mortuary science courses; and

*b.* A program in mortuary science from a school accredited by the American Board of Funeral Service Education.

*c.* A college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed.

**101.3(2)** Foreign-trained funeral directors shall:

*a.* Provide an equivalency evaluation of their educational credentials by International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone (310)258-9451, Web site [www.ierf.org](http://www.ierf.org), or E-mail at [info@ierf.org](mailto:info@ierf.org). The professional curriculum must be equivalent to that stated in these rules. A candidate shall bear the expense of the curriculum evaluation.

*b.* Provide a notarized copy of the certificate or diploma awarded to the applicant from a mortuary science program in the country in which the applicant was educated.

*c.* Receive a final determination from the board regarding the application for licensure.

*d.* Successfully complete a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed.

[ARC 9239B, IAB 11/17/10, effective 12/22/10]

**645—101.4(156) Examination requirements.**

**101.4(1)** The board shall accept a certificate of examination issued by the International Conference of Funeral Service Examining Boards, Inc., indicating a passing score on both the arts and sciences portions of the examination.

**101.4(2)** Prior to being registered as an intern in Iowa, an applicant shall successfully complete a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed.

[ARC 9239B, IAB 11/17/10, effective 12/22/10]

**645—101.5(147,156) Internship and preceptorship.**

**101.5(1)** *Internship.*

*a.* The intern must serve a minimum of one year of internship under the direct supervision of an Iowa board-certified preceptor. The beginning and ending dates of the internship shall be indicated on the internship certificate. The intern shall engage in the practice of mortuary science only during the time indicated on the internship certificate.

*b.* The intern shall, during the internship, be a full-time employee with the funeral establishment at the site of internship except as provided in paragraph 101.5(2)“j.”

*c.* No licensed funeral director shall permit any person in the funeral director’s employ or under the funeral director’s supervision or control to serve an internship in funeral directing unless that person has a certificate of registration as a registered intern from the department of public health. The registration shall be posted in a conspicuous place in the intern’s primary place of practice.

*d.* No licensed funeral director or licensed funeral establishment shall have more than one intern funeral director for the first 100 human remains embalmed or funerals conducted per year, and with a maximum of two interns per funeral establishment.

*e.* Registered interns shall not advertise or hold themselves out as funeral directors or use the degree F.D. or any other title or abbreviation indicating that the intern is a funeral director.

*f.* The intern shall, during the internship, embalm not fewer than 25 human remains and direct or assist in the direction of not fewer than 25 funerals under the direct supervision of the certified preceptor and shall submit reports on forms furnished by the department of public health. Work on the first 5 embalming cases and funeral cases must be completed in the physical presence of the preceptor. The first 12 embalming cases and the first 12 funeral case reports must be completed and submitted by the completion of the sixth month of the internship.

*g.* Before being eligible for licensure, the intern must have filed the 25 completed embalming and funeral directing case reports and a 6-month and a 12-month evaluation form with the department of public health.

*h.* When, for any valid reason, the board determines that the education a registered intern is receiving under the supervision of the present preceptor might be detrimental to the intern or the profession at large, the intern may be required to serve the remainder of the internship under the supervision of a licensed funeral director who is approved by the board.

*i.* The length of an internship may be extended if the board determines that the intern requires additional time or supervision in order to meet the minimum proficiency in the practice of mortuary science.

*j.* The board views a one-year internship completed in a consecutive 12-month period as the best training option. If an internship is interrupted, the internship must be completed within 24 months of the date it started in order to be readily accepted by the board. Internships that are not completed within 24 months shall be preapproved by the board on such terms as the board deems reasonable under the circumstances. The board may require any or all of the following:

(1) Completion of a college course or continuing education course covering mortuary science laws and rules;

(2) Additional case reports;

(3) Extension of an internship up to an additional 12 months depending on such factors as the number of months completed during the internship, length of time that has lapsed since the intern was actively involved in the internship program, and the experience attained by the intern.

*k.* Application for change of preceptor or any other alteration must be made in writing and approval granted by the board before the status of the intern is altered.

*l.* The intern shall complete on a form provided by the board a confidential evaluation of the preceptorship program at the end of the internship. This form shall be submitted before the funeral director's license is issued to the intern.

*m.* The intern must be approved and licensed following a successful internship before the intern may practice mortuary science.

**101.5(2) Preceptorship.**

*a.* A preceptor must have completed a training course within five years prior to accepting an intern. This training course shall cover Iowa law and rule content areas, including but not limited to Iowa law and rules governing licensure and the practice of mortuary science and human resource issues. The training course may be counted toward the continuing education hours required for the licensure biennium in which the training course was completed.

*b.* Any duly Iowa-licensed funeral director who has been practicing for a minimum of five years and who has not had any formal disciplinary action within the past five years with the board of mortuary science and has completed a preceptor training course detailed in paragraph 101.5(2) "a" will be eligible to be a preceptor.

*c.* The preceptor shall be affiliated with a funeral establishment that has not had any formal disciplinary action within the past five years.

*d.* The preceptor is required to file a progress report of the intern that has been signed by both the preceptor and the intern on a board-prescribed form. The 6-month progress report form shall be submitted to the board by the end of the sixth month. The 12-month progress report form shall be submitted to the board by the end of the twelfth month.

*e.* The preceptor shall certify that the intern engages in the practice of mortuary science only during the time frame designated on the official intern certificate.

- f.* A preceptor's duties shall include the following:
- (1) Be physically present and supervise the first five embalmings and first five funeral cases;
  - (2) Familiarize the intern in the areas specified by the preceptor training outline;
  - (3) Read and sign each of the 25 embalming reports and the 25 funeral directing reports completed by the intern;
  - (4) Complete a written six-month report of the intern on a form provided by the board. This report is to be reviewed with and signed by the intern and submitted to the board before the end of the seventh month; and
  - (5) At the end of the internship, complete a confidential evaluation of the intern on a form provided by the board. This evaluation shall be submitted within two weeks of the end of the internship.
- g.* Failure of a preceptor to fulfill the requirements set forth by the board, including failure to remit the required six-month progress report, as well as the final evaluation, shall result in an investigation of the preceptor by the board.
- h.* If a preceptor does not serve the entire year, the board will evaluate the situation; and if a certified preceptor is not available, a licensed funeral director may serve with the approval of the board.
- i.* No licensed funeral director or licensed funeral establishment shall have more than one intern funeral director for the first 100 human remains embalmed or funerals conducted per year, and with a maximum of two interns per funeral establishment.
- j.* With prior board approval, an intern may serve under the supervision of more than one preceptor under the following terms and conditions:
- (1) A single preceptor must act in the role of the primary preceptor.
  - (2) The primary preceptor is responsible for coordinating all intern training and activities.
  - (3) The intern shall be a full-time employee of the funeral establishment of the primary preceptor; however, compensation may be shared between preceptors.
  - (4) The primary preceptor may make arrangements with a maximum of two additional preceptors to share preceptor responsibilities for such purposes as providing an intern with a higher volume practice or a broader range of intern experiences.
  - (5) Each preceptor shall be individually responsible for directly supervising the intern's activities performed under the preceptor's guidance, but the primary preceptor remains responsible for coordinating the intern's activities and submitting all forms to the board.

[ARC 9239B, IAB 11/17/10, effective 12/22/10]

**645—101.6(156) Student practicum.**

**101.6(1)** A student may participate in a student practicum in a licensed funeral establishment in Iowa if the student's school is accredited by and in good standing with the American Board of Funeral Service Education (ABFSE). The student practicum must meet the requirements of the ABFSE.

**101.6(2)** Students serving a practicum in Iowa shall be under the direct physical supervision of a funeral director who meets the following requirements:

- a.* Has completed the Iowa preceptor training course within the immediately preceding five years.
- b.* Has not had any formal disciplinary action within the past five years.
- c.* Is affiliated with a funeral establishment that has not had formal disciplinary action within the past five years.

**645—101.7(156) Funeral establishment license or cremation establishment license or both establishment licenses.**

**101.7(1)** A place of business devoted to providing any aspect of mortuary science or cremation services shall hold an establishment license issued by the board. An establishment license shall not be issued more than 30 days prior to the opening of a new establishment.

- a.* A funeral establishment, a cremation establishment, or a combined funeral and cremation establishment shall not be operated until it has obtained a license from the board. Such an establishment shall timely renew the license in order to continue operations.

*b.* A funeral or cremation establishment shall surrender its license to the board if it fails to engage in or ceases to engage in the business for which the license was issued, pursuant to Iowa Code section 156.15(2)“*d.*”

*c.* A funeral or cremation establishment license is not transferable or assignable.

*d.* A change in ownership shall require the issuance of a new license. A change in ownership shall be reported to the board prior to the date ownership will change or, in the case of change of ownership by death or other unexpected event, within 30 days following change of ownership. The board may request legal proof of the ownership transfer. A change in ownership shall be defined as any change of controlling interest in any corporation or other business entity.

*e.* An establishment license shall be issued for a specific physical location. A change in location or site of an establishment shall require the submission of an application for a new license and payment of the fee required by 645—subrule 105.1(9). A new establishment license must be issued prior to the commencement of business in a new location.

*f.* A change in the name of an establishment shall be reported to the board within 30 days. The establishment owner shall pay the fee for reissuing the certificate.

*g.* A change in address or of the funeral director in responsible charge shall be reported to the board within 30 days.

*h.* An establishment shall have an employment or other relationship with one or more licensed funeral directors who shall perform all mortuary science services for which licensure as a funeral director is required by Iowa Code chapter 156. A cremation establishment is not, however, required to employ or contract with a funeral director on an ongoing basis because a cremation establishment shall not offer services directly to the general public. When a funeral establishment has an employment or other relationship with multiple funeral directors, the funeral establishment shall designate the funeral director who shall be in responsible charge of all mortuary science services performed at the funeral establishment. The funeral establishment shall report to the board any change of the funeral director in responsible charge within 30 days of the change.

*i.* Rescinded IAB 10/8/08, effective 11/12/08.

*j.* The board shall not routinely issue more than one establishment license for a single location, but the board may do so if the multiple applicants provide proof, satisfactory to the board, that the establishments are wholly separate except for the sharing of facilities. If the board issues more than one establishment license for a single location, the licensees shall ensure that the public will not be confused or deceived as to the establishment with which the public is interacting. A facility may have a funeral establishment license and a separate cremation establishment license at a single location.

*k.* The establishment license shall be displayed in a conspicuous place at the location of the establishment.

*l.* Failure to comply with any of these rules shall constitute grounds for discipline pursuant to 645—Chapter 103 or civil penalties for unlicensed practice pursuant to 645—Chapter 104.

**101.7(2)** A funeral establishment, cremation establishment, or both establishments shall be subject to applicable local, state and federal health and environmental requirements and shall obtain all necessary licenses and permits from the agencies with jurisdiction.

**101.7(3)** License application. An application for a funeral establishment license, cremation establishment license, or both establishment licenses shall be in writing on forms furnished by the board and shall be accompanied by the funeral or cremation establishment fee. The application shall contain all of the following:

*a.* The name, mailing address and telephone number of the applicant.

*b.* The physical location of the establishment.

*c.* The mailing address, telephone number, fax and E-mail address of the establishment.

*d.* The name, home address and telephone number of the individual in charge who has the authority and responsibility for the establishment’s compliance with laws and rules pertaining to the operation of the establishment.

*e.* The name and address of all owners and managers of the establishment (e.g., sole proprietor, partner, director, officer, managing partner, member, or shareholder with 10 percent or more of the stock).

*f.* The legal name of the establishment and all trade names, assumed names, or other names used by the establishment.

*g.* The signature of the responsible authority at the site of the establishment and an acknowledgment of the funeral director in responsible charge of mortuary science services at the funeral establishment that the funeral director is aware of and consents to the designation.

*h.* The names and license numbers of all funeral directors employed by or associated with the establishment through contract or otherwise who provide mortuary science services at or for the establishment. When a funeral establishment has an employment or other relationship with multiple funeral directors, the funeral establishment shall designate the funeral director who shall be in responsible charge of all mortuary science services performed at the funeral establishment. No funeral establishment shall be issued a license if it fails to designate the funeral director in responsible charge of the mortuary science services to be performed at the establishment.

*i.* All felony or misdemeanor convictions of the applicant and all owners and managing officers of the applicant (except minor traffic offenses with fines of less than \$500).

*j.* All disciplinary actions against any professional or occupational license of the applicant by any jurisdiction including, but not limited to, disciplinary action by the Iowa insurance division under Iowa Code chapter 523A or 523I, or action by the Federal Trade Commission.

*k.* Further information that the board may reasonably require, such as whether the establishment includes a preparation room.

**645—101.8(156) Licensure by endorsement.** An applicant who has been a licensed funeral director under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. Applicants licensed before 1980 are exempt from showing a passing grade on the national board examination. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

**101.8(1)** Submits to the board a completed application;

**101.8(2)** Pays the licensure fee;

**101.8(3)** Shows evidence of licensure requirements that are similar to those required in Iowa;

**101.8(4)** Provides official copies of the academic transcripts showing the completion of a mortuary science program accredited by the American Board of Funeral Service Education;

**101.8(5)** Provides official transcript of grades showing 60 semester hours from a regionally accredited college or university with a minimum of a 2.0 or “C” grade point average;

**101.8(6)** Completes a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed;

**101.8(7)** Furnishes certified evidence of two or more years of actual practice as a licensed funeral director in the state from which the applicant desires to endorse;

**101.8(8)** Was issued the initial license by endorsement within six months of the birth month and will not be required to renew the license until the fifteenth day of the birth month two years later. The new licensee is exempt from meeting the continuing education requirement for the continuing education biennium in which the license was originally issued;

**101.8(9)** Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction’s board office if the verification provides:

*a.* Licensee’s name;

*b.* Date of initial licensure;

*c.* Current licensure status; and

*d.* Any disciplinary action taken against the license.

[ARC 9239B, IAB 11/17/10, effective 12/22/10]

**645—101.9(156) Licensure by reciprocal agreement.** Rescinded IAB 10/8/08, effective 11/12/08.

**645—101.10(156) License renewal.**

**101.10(1)** The biennial license renewal period for a license to practice as a funeral director shall begin on the sixteenth day of the licensee's birth month and end on the fifteenth day of the licensee's birth month two years later. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license. All licensees shall renew on a biennial basis.

**101.10(2)** An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal date two years later. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The licensee will be required to complete a minimum of 24 hours of continuing education per biennium for each subsequent license renewal, with 2 of the 24 hours covering current Iowa law and rules as identified in 645—paragraph 102.3(2) "f."

**101.10(3)** A licensee seeking renewal shall:

*a.* Meet the continuing education requirements of rule 645—102.2(272C). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

*b.* Submit the completed renewal application and renewal fee before the license expiration date.

*c.* Persons licensed to practice funeral directing shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

**101.10(4)** Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

**101.10(5)** A person licensed to practice as a funeral director shall keep the license certificate displayed in a conspicuous public place at the primary site of practice.

**101.10(6)** Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 105.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

**101.10(7)** Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a funeral director in Iowa until the license is reactivated. A licensee who practices as a funeral director in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

[ARC 9239B, IAB 11/17/10, effective 12/22/10]

**645—101.11(147) Duplicate certificate or wallet card.** Rescinded IAB 10/8/08, effective 11/12/08.

**645—101.12(147) Reissued certificate or wallet card.** Rescinded IAB 10/8/08, effective 11/12/08.

**645—101.13(272C) Renewal of a funeral establishment license or cremation establishment license or both establishment licenses.**

**101.13(1)** The renewal cycle shall be triennial beginning July 1 and ending on June 30 of the third year. The renewal shall be:

*a.* Submitted on a form provided by the board; and

*b.* Accompanied by the renewal fee.

**101.13(2)** A renewal of license application shall be mailed at least 60 days prior to the expiration of the license. Failure to receive the notice shall not relieve the license holder of the obligation to pay triennial renewal fees on or before the renewal date.

**101.13(3)** Funeral and cremation establishments shall keep their renewal licenses displayed in a conspicuous public place at the primary site of practice.

**101.13(4)** Late renewal. If the renewal fee and renewal application are received within 30 days after the license renewal expiration date, the late fee for failure to renew before expiration shall be charged.

**101.13(5)** When all requirements for license renewal are met, the licensee shall be sent a license renewal card by regular mail.

**645—101.14(272C) Inactive funeral establishment license or cremation establishment license or both establishment licenses.**

**101.14(1)** If the renewal application and fee are not postmarked within 30 days after the license expiration date, the funeral establishment license or cremation establishment license is inactive. To reactivate a funeral establishment license or a cremation establishment license, the reactivation application and fee shall be submitted to the board office.

**101.14(2)** A funeral establishment or a cremation establishment that has not renewed the funeral establishment license or cremation establishment license within the required time frame will have an inactive license and shall not provide mortuary science services until the license is reactivated.

**645—101.15(17A,147,272C) License reinstatement.** For a funeral or cremation establishment license that has been revoked, suspended, or voluntarily surrendered, the owner must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 101.14(272C) prior to offering mortuary science services from that establishment in this state.

**645—101.16(272C) Reinstatement of a funeral establishment license or a cremation establishment license or both establishment licenses.** Rescinded IAB 1/4/06, effective 2/8/06.

**645—101.17(17A,147,272C) License denial.** Rescinded IAB 1/4/06, effective 2/8/06.

**645—101.18(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**101.18(1)** Submit a reactivation application on a form provided by the board.

**101.18(2)** Pay the reactivation fee that is due as specified in 645—Chapter 105.

**101.18(3)** Provide verification of current competence to practice as a funeral director by satisfying one of the following criteria:

*a.* If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 24 hours of continuing education that meet continuing education standards defined in 645—102.3(156,272C) within two years prior to filing the application for reactivation; and

(3) Verification of completion of 2 hours of continuing education in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed. These 2 hours shall be included as a part of the 24 hours required in 101.18(3) "a"(2).

*b.* If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 48 hours of continuing education that meet continuing education standards defined in 645—subrule 102.3(1) and 645—paragraphs 102.3(2)“a,” “b,” “c,” and “e,” within two years prior to filing the application for reactivation. Independent study identified in 645—paragraph 102.3(2)“f” shall not exceed 24 hours of the 48 hours; and

(3) Verification of completion of a college course of at least one semester hour or equivalent in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed. [ARC 9239B, IAB 11/17/10, effective 12/22/10]

**645—101.19(17A,147,272C) License reinstatement.** A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 101.18(17A,147,272C) prior to practicing as a funeral director in this state. The owner of a funeral home establishment whose establishment license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the establishment license and must apply for and be granted reactivation of the establishment license prior to reopening the funeral home establishment.

These rules are intended to implement Iowa Code chapters 17A, 147, 156 and 272C.

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<sup>◇</sup> Two or more ARCs

<sup>1</sup> Effective date of 645—101.3(147,156), 101.98(3), 101.212(16) delayed 70 days by the Administrative Rules Review Committee at its meeting held March 13, 1995; delay lifted by this Committee May 9, 1995.

CHAPTER 102  
CONTINUING EDUCATION FOR FUNERAL DIRECTORS

**645—102.1(272C) Definitions.** For the purpose of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Approved program/activity*” means a continuing education program/activity meeting the standards set forth in these rules.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“*Board*” means the board of mortuary science.

“*Continuing education*” means planned, organized learning acts designed to maintain, improve, or expand a licensee’s knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

“*Direct supervision*” means under the direction and immediate supervision of a licensed funeral director.

“*Full-time*” means a minimum of a 35-hour work week.

“*Hour of continuing education*” means at least 50 minutes spent by a licensee in actual attendance at and completion of an approved continuing education activity.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Independent study*” means a subject/program/activity that a person pursues autonomously that meets standards for approval criteria in these rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as a funeral director in the state of Iowa.

**645—102.2(272C) Continuing education requirements.**

**102.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on the fifteenth day of the licensee’s birth month and ending on the fifteenth day of the licensee’s birth month. Each biennium, each person who is licensed to practice as a licensee in this state shall be required to complete a minimum of 24 hours of continuing education approved by the board. Two of the 24 hours of continuing education shall be in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed. Beginning January 1, 2009, 12 hours of the 24 hours of continuing education required for renewal shall be earned by completing a program in which an instructor conducts the class employing either in-person or live, real-time interactive media.

**102.2(2)** Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 24 hours of continuing education per biennium for each subsequent license renewal.

**102.2(3)** Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be in accordance with these rules.

**102.2(4)** No hours of continuing education shall be carried over into the next biennium except as stated for the second renewal. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

**102.2(5)** It is the responsibility of each licensee to finance the cost of continuing education.

**645—102.3(156,272C) Standards.**

**102.3(1) General criteria.** A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if the continuing education activity:

*a.* Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

*b.* Pertains to subject matters which integrally relate to the practice of the profession;

*c.* Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered qualified concerning the subject matter of the program. At the time of audit, the board may request the qualifications of presenters.

*d.* Fulfills stated program goals, objectives, or both; and

*e.* Provides proof of attendance to licensees in attendance including:

(1) Date(s), location, course title, presenter(s);

(2) Number of program contact hours; and

(3) Certificate of completion or evidence of successful completion of the course provided by the course sponsor.

**102.3(2) Specific criteria.**

*a.* The following categories of continuing education are accepted:

(1) Public health and technical: chemistry, microbiology and public health, anatomy, pathology, restorative art, arterial and cavity embalming.

(2) Business management: accounting, funeral home and crematory management and merchandising, computer application, funeral directing, and small business management.

(3) Social sciences/humanities: psychology of grief, counseling, sociology of funeral service, history of funeral service, communication skills, and philosophy.

(4) Legal, ethical, regulatory: mortuary law; business law; ethics; Federal Trade Commission, OSHA, ADA, and EPA regulations; preneed regulation; social services; veterans affairs benefits; insurance; state and county benefits; legislative concerns. Insurance shall be related to life insurance and shall not exceed 8 hours each biennium.

*b.* Academic coursework that meets the criteria set forth in the rule is accepted. Continuing education credit equivalents are as follows:

1 academic semester hour = 10 continuing education hours

1 academic trimester hour = 8 continuing education hours

1 academic quarter hour = 7 continuing education hours

A course description and an official school transcript indicating successful completion of the course must be provided by the licensee to receive credit for an academic course if continuing education is audited.

*c.* Attendance at or participation in a program or course which is offered or sponsored by a state or national funeral association that meets the criteria in paragraph 102.3(2) "a."

*d.* Independent study, including television viewing, Internet, video- or sound-recorded programs, or correspondence work, or by other similar means that meet the criteria in paragraph 102.3(2) "a." Independent study credits must be accompanied by a certificate from the sponsoring organization that indicates successful completion of the test. After January 1, 2009, continuing education credit obtained by independent study shall not exceed 12 hours of the 24 hours required during the compliance period.

*e.* Presentations of a structured continuing education program or a college course that meets the criteria established in standards for approval may receive 1.5 times the number of hours granted the attendees. These hours shall be granted only once per biennium for identical presentations.

*f.* Two of the 24 hours of continuing education shall be in current Iowa law and rules covering mortuary science content areas including but not limited to Iowa law and rules governing the practice of mortuary science, cremation, vital statistics, cemeteries and preneed.

**645—102.4(156,272C) Audit of continuing education report.** Rescinded IAB 10/8/08, effective 11/12/08.

**645—102.5(83GA,SF2325) Automatic exemption.** A licensee shall be exempt from the continuing education requirement during the license biennium when that person:

1. Served honorably on active duty in the military service; or
2. Was a government employee working in the licensee's specialty and assigned to duty outside the United States; or
3. Was absent from the state but engaged in active practice under circumstances which are approved by the board.

[ARC 9239B, IAB 11/17/10, effective 12/22/10]

**645—102.6(272C) Grounds for disciplinary action.** Rescinded IAB 10/8/08, effective 11/12/08.

**645—102.7(272C) Continuing education waiver for active practitioners.** Rescinded IAB 7/6/05, effective 8/10/05.

**645—102.8(272C) Continuing education exemption for inactive practitioners.** Rescinded IAB 7/6/05, effective 8/10/05.

**645—102.9(272C) Continuing education exemption for disability or illness.** Rescinded IAB 10/8/08, effective 11/12/08.

**645—102.10(272C) Reinstatement of inactive practitioners.** Rescinded IAB 7/6/05, effective 8/10/05.

**645—102.11(272C) Hearings.** Rescinded IAB 7/6/05, effective 8/10/05.

These rules are intended to implement Iowa Code section 272C.2 and chapter 156.

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## **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 AND IOWA PROFESSIONAL PERMITS TO CARRY WEAPONS

91.1(724) Definitions  
 91.2(724) Forms  
 91.3(724) Federal and state prohibitions—permit to carry weapons  
 91.4(724) Application procedures for an Iowa professional permit to carry weapons  
 91.5(724) Issuance or denial of application for permit to carry weapons  
 91.6(724) Suspension or revocation of permit to carry weapons  
 91.7(724) Appeals  
 91.8(724) Reports and remittance to the state  
 91.9(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
- 226.7(101) Use of railroad tank cars in stationary service
- 226.8(101) Installation and use of DOT specification MC330 or MC331 cargo tanks in stationary service

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 91  
WEAPONS AND IOWA PROFESSIONAL PERMITS TO CARRY WEAPONS

[Prior to 5/9/07, see rules 661—4.1(724) to 661—4.12(17A,724)]

**661—91.1(724) Definitions.** The following definitions apply to rules in this chapter:

*“Addicted to the use of alcohol”* means physiological or psychological dependence on the continued use of alcohol, or a maladaptive pattern of alcohol use leading to significant occupational, educational, familial, social, legal, or health-related problems.

Alcohol addiction does not mean nonpathological alcohol use, such as social drinking or occasional or periodic intoxication not accompanied by disruption in social and family relationships, vocational or financial difficulties, or legal problems. Alcohol addiction also does not mean alcohol dependence with sustained full remission, as evidenced by a period of at least 12 months without instances or indicators of alcohol dependence or alcohol abuse. One or more instances of alcohol intoxication alone shall not constitute alcohol addiction, unless accompanied by alcohol dependence or a maladaptive pattern of alcohol use leading to significant occupational, educational, familial, social, legal, or health-related problems.

Any of the following shall create a presumption that a person is addicted to the use of alcohol:

1. Affirmation by the person that the person is addicted to the use of alcohol and has not achieved sustained full remission;

2. Treatment for alcohol dependence, abuse, or addiction within the last 12 months, not including follow-up treatment or attendance at support groups during a period of sustained full remission;

3. A diagnosis of alcohol dependence or alcohol abuse from a properly licensed medical or psychological professional in the past 12 months;

4. Two or more arrests, at least one of which resulted in a conviction, for unlawful use or possession of alcohol or other criminal act committed while under the influence of alcohol in the past 12 months;

5. Three or more arrests, at least one of which resulted in a conviction, for unlawful use or possession of alcohol or other criminal act committed while under the influence of alcohol in the past five years if the most recent arrest occurred in the past 12 months;

6. Disciplinary action taken by any employer or organization for prohibited use or possession of alcohol in the past 12 months;

7. Failure to successfully complete alcohol rehabilitation or treatment in the past 12 months;

8. One or more instances of founded child or dependent adult abuse related to alcohol use in the past five years;

9. A test of the person’s breath, blood, urine, or other bodily fluid which indicates that the person has engaged in unlawful acts involving alcohol, provided that the test was administered within the past 12 months; or

10. Documented reports or information from at least two credible sources that evidence a pattern of conduct indicating that the person is currently addicted to the use of alcohol as defined herein.

*“Adjudicated as a mental defective”* means a determination by a court, board, commission, or other lawful authority that a person, as a result of marked subnormal intelligence, or mental illness, incompetency, condition, or disease:

1. Is a danger to the person’s self or to others; or

2. Lacks the mental capacity to contract or manage the person’s own affairs.

The term shall include:

- A finding of insanity by a court in a criminal case; and

- Those persons found incompetent to stand trial or found not guilty by reason of lack of mental responsibility.

*“Applicant”* means a person who is applying for a permit to carry weapons.

*“Background check”* means an inquiry through the IOWA system to NICS, the IOWA and the National Crime Information Center (NCIC) systems person files and the driver’s license file of the applicant as well as other available sources of information to be used to determine eligibility.

*“Commissioner”* means the commissioner of the Iowa department of public safety or, as applicable, the commissioner’s designee.

*“Committed to a mental institution”* means a formal commitment of a person to a mental institution by a court, board, commission, or other lawful authority. The term includes a commitment to a mental institution involuntarily either as an inpatient or outpatient. The term includes commitment for mental defectiveness or mental illness. It also includes commitments for other reasons, such as for drug or alcohol abuse. The term does not include admission to a mental institution for observation or a voluntary admission to a mental institution.

*“Crime punishable by imprisonment for a term exceeding one year”* means any federal or state offense for which the maximum penalty, whether or not imposed, is capital punishment or imprisonment in excess of one year. The term shall not include any federal or state offenses pertaining to antitrust violations, unfair trade practices, restraints of trade, or other similar offenses relating to the regulation of business practices or any state offense classified by the laws of the state as a misdemeanor and punishable by a term of imprisonment of two years or less. What constitutes a conviction of such a crime shall be determined in accordance with the law of the jurisdiction in which the proceedings were held. Any conviction which has been expunged or set aside or for which a person has been pardoned or has had civil rights restored shall not be considered a conviction unless such pardon, expunction, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms, or unless the person is prohibited by the law of the jurisdiction in which the proceedings were held from receiving or possessing any firearms.

*“Felony”* means any crime punishable by imprisonment for a term exceeding one year as defined in this rule or any crime involving a firearm or explosive that is punishable by imprisonment for a term exceeding one year and is classified as a misdemeanor under the laws of this state.

*“Firearm training documentation”* means a photocopy of a certificate of completion or any similar document indicating completion of any firearm training program course; an affidavit from the instructor, school, organization or group that conducted or taught a firearm training program; a copy of or the display of an honorable discharge or general discharge under honorable conditions or Form DD-214 for personnel released or retired from active duty with the armed forces of the United States; or possession of a certificate of completion of basic training with a service record of successful completion of small arms training and qualification for active duty personnel in the armed forces of the United States. For a renewal application, firearm training documentation also includes documentation of qualifying on a firing range under the supervision of an instructor certified by the National Rifle Association or the Iowa law enforcement academy or another state’s department of public safety, state police department, or similar certifying body.

*“Firearm training program”* means any National Rifle Association handgun safety training course; any handgun safety training course available to the general public utilizing instructors certified by the National Rifle Association or the Iowa law enforcement academy or another state’s department of public safety, state police department, or similar certifying body; any handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency approved by the Iowa department of public safety; or completion of small arms training while serving with the armed forces of the United States. Any person or entity seeking approval by the Iowa department of public safety for a handgun safety training course offered for security guards, investigators, special deputies, or any division or subdivision of a law enforcement or security enforcement agency, other than those certified by the National Rifle Association or the Iowa law enforcement academy or courses conducted by instructors certified by the National Rifle Association or the Iowa law enforcement academy, shall submit a detailed description of the course content to the commissioner for review. Any handgun safety training course submitted for review shall be reviewed by the commissioner to determine if the course is substantially equivalent to the Iowa law enforcement academy marksmanship qualification course.

*“Identification documentation for an Iowa resident”* means any of the following:

1. A driver’s license or nonoperator identification card that contains a photograph of the person and that has been issued by the Iowa department of transportation; or

2. A motor vehicle license or nonoperator identification card that contains a photograph of the person and that has been issued by a state other than Iowa and at least one current document indicating Iowa residency, including a residential lease agreement, utility bill, voter registration, tuition receipt for a college or university in Iowa, or other documentation that is acceptable to the officer issuing the permit and that indicates the intent of the person's presence in Iowa is something other than merely transitory in nature; or

3. A document which contains the name, place of residence, date of birth and photograph of the holder issued by or under the authority of the United States, a state or a political subdivision of a state and which is of a type intended or commonly accepted for the purpose of identification of individuals and at least one current document indicating Iowa residency, including a residential lease agreement, utility bill, voter registration, tuition receipt for a college or university in Iowa, or other documentation that is acceptable to the officer issuing the permit and that indicates the intent of the person's presence in Iowa is something other than merely transitory in nature; or

4. A motor vehicle license or nonoperator identification card that contains a photograph of the person and that has been issued by a state other than Iowa and a document indicating that the person is a member of the United States armed forces on active duty and whose permanent duty station is located in Iowa; or

5. A driver's license or nonoperator identification card that contains a photograph of the person and that has been issued by the Iowa department of transportation and an immigration document containing the alien registration number (ARN) of a permanent resident alien or nonimmigrant alien and documentation indicating that the person has resided in the state for at least 90 consecutive days prior to the person's making application. A nonimmigrant alien shall also be required to display a valid hunting license issued in any state, meet the requirements of an exception pursuant to 18 U.S.C. § 922(y)(2), or display a waiver granted by the United States Attorney General.

*"Identification documentation for a nonresident"* means a motor vehicle license or nonoperator identification card which has been issued by a state other than Iowa and which contains a photograph of the person to whom it was issued.

*"IOWA system"* means the Iowa on-line warrants and articles criminal justice information system operated by the Iowa department of public safety for use by law enforcement and criminal justice agencies in the exchange of criminal history and other criminal justice information.

*"Misdemeanor crime of domestic violence"* means an offense that:

1. Is a misdemeanor under federal or state law; and
2. Has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a current or former spouse, parent, or guardian of the victim, by a person with whom the victim shares a child in common, by a person who is cohabiting with or has cohabited with the victim as a spouse, parent, or guardian, or by a person similarly situated to a spouse, parent, or guardian of the victim.

*"New application"* means an application for an Iowa professional permit to carry weapons that is filed when the applicant does not currently hold an Iowa permit to carry weapons or when the applicant does not file the application at least 30 days prior to the expiration of a currently held Iowa permit to carry weapons.

*"NICS"* means the National Instant Criminal Background Check System established by the United States Attorney General pursuant to United States Code 18 U.S.C. § 922(t).

*"Professional permit to carry weapons"* means a permit to carry weapons issued to a person whose employment in a private investigation business or private security business licensed under Iowa Code chapter 80A, or whose employment as a peace officer, correctional officer with the Iowa department of corrections, private security officer, bank messenger or other person transporting property of a value requiring security, or whose employment in police work reasonably justifies that person's going armed. Property of value includes large quantities of cash transported in an armored car, negotiable instruments, gems, other high-value items transported by couriers, and other high-value property that may be vulnerable. Such a permit is valid only while the permitted person is engaged in the employment stated on the permit and while the person is traveling to and from that employment.

“*Qualifying on a firing range*” means successful completion of a course of live fire on a firing range under the supervision of an instructor certified by the National Rifle Association, the Iowa law enforcement academy, or another state’s department of public safety, state police department, or similar certifying body.

“*Renewal application*” means an application for an Iowa professional permit to carry weapons filed at least 30 days prior to the expiration of a currently held permit.

“*State employee*” means a person whose need to go armed arises out of employment by the state of Iowa. “State employee” includes a railroad special agent as described in Iowa Code chapter 80.

“*Unlawful user of or addicted to any controlled substance*” means a person who uses a controlled substance and has lost the power of self-control with reference to the use of the controlled substance or any person who is a current user of a controlled substance in a manner other than as prescribed by a licensed physician. Such use is not limited to the use of drugs on a particular day, or within a matter of days or weeks before, but rather that the unlawful use has occurred recently enough to indicate that the individual is actively engaged in such conduct. A person may be an unlawful current user of a controlled substance even though the substance is not being used at the precise time the person applies for an Iowa permit to carry weapons or seeks to acquire a firearm or receives or possesses a firearm. An inference of current use may be drawn from evidence of a recent use or possession of a controlled substance or a pattern of use or possession that reasonably covers the present time, e.g., a conviction for use or possession of a controlled substance within the past year; multiple arrests for such offenses within the past five years if the most recent arrest occurred within the past year; or persons found through a drug test to use a controlled substance unlawfully, provided that the test was administered within the past year. For a current or former member of the armed forces, an inference of current use may be drawn from recent disciplinary or other administrative action based on confirmed drug use, e.g., court-martial conviction, nonjudicial punishment, or an administrative discharge based on drug use or drug rehabilitation failure. [ARC 9238B, IAB 11/17/10, effective 1/1/11]

**661—91.2(724) Forms.** The following forms, the use of which is required by provisions of this chapter, are provided by the commissioner to Iowa sheriffs:

1. Form WP1. Professional Permit to Carry Weapons
2. Form WP2. Nonprofessional Permit to Carry Weapons
3. Form WP3. Application for Annual Permit to Acquire Pistols or Revolvers
4. Form WP4. Annual Permit to Acquire Pistols or Revolvers
5. Form WP5. Application for Permit to Carry Weapons
6. Form WP6. Revocation/Cancellation of Permit to Carry/Permit to Acquire Weapons
7. Form WP7. Certified Peace Officer Permit to Carry Weapons
8. Form WP8. Reserve Peace Officer Permit to Carry Weapons
9. Form WP9. Authorization for Wallet-Size Permit to Carry Weapons, to be generated by the issuing officer including the type of permit, and, at a minimum, the individual identifiers of name and date of birth. A professional permit to carry weapons shall state the nature of employment requiring the holder to go armed.
10. Form WP10. Authorization for Wallet-Size Annual Permit to Acquire Pistols or Revolvers, to be generated by the issuing officer including the type of permit, and, at a minimum, the individual identifiers of name and date of birth, the residence of the permittee, and the effective date of the permit.
11. Form WP11. Nonprofessional Permit to Carry Weapons (issued to an Iowa resident who is serving on active duty in any branch of the United States military and whose permanent duty station is located in a state other than Iowa).

[ARC 9238B, IAB 11/17/10, effective 1/1/11]

**661—91.3(724) Federal and state prohibitions—permit to carry weapons.**

- 91.3(1)** United States Code 18 U.S.C. § 922(g) prohibits the possession of any firearm by any person:
- a. Who has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year; or
  - b. Who is a fugitive from justice; or

- c. Who is an unlawful user of or addicted to any controlled substance; or
  - d. Who has been adjudicated as a mental defective or who has been committed to a mental institution; or
  - e. Who, being an alien, is illegally or unlawfully in the United States. Persons lawfully admitted to the United States as immigrant or nonimmigrant aliens must have resided in Iowa for at least 90 continuous days before becoming eligible for an Iowa permit to carry weapons. Additionally, nonimmigrant aliens must display a current valid hunting license issued in any state, meet the requirements of an exception pursuant to 18 U.S.C. § 922(y)(2), or display a waiver granted by the United States Attorney General; or
  - f. Who has been discharged from the armed forces under dishonorable conditions; or
  - g. Who, having been a citizen of the United States, has renounced the person's citizenship; or
  - h. Who is subject to a court order that:
    - (1) Was issued after a hearing for which such person received actual notice and at which such person had an opportunity to participate;
    - (2) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
    - (3) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
  - i. Who has been convicted in any court of a misdemeanor crime of domestic violence.
- 91.3(2)** United States Code 18 U.S.C. § 922(g) prohibits the receiving of any firearm by any person:
- a. Who is under indictment for a crime punishable by imprisonment for a term exceeding one year.
  - b. Reserved.
- 91.3(3)** Iowa Code chapter 724 as amended by 2010 Iowa Acts, Senate File 2379, prohibits the issuance of an Iowa professional permit to carry weapons to any person:
- a. Who is less than 18 years of age for a private security officer licensed by the Iowa department of public safety, or otherwise who is less than 21 years of age; or
  - b. Who is addicted to the use of alcohol; or
  - c. For whom probable cause exists to believe, based upon documented specific actions of the person, where at least one of the actions occurred within two years immediately preceding the date of the permit application, that the person is likely to use a weapon unlawfully or in such other manner as would endanger the person's self or others; or
  - d. Who has been convicted of a felony in a state or federal court, or who has been adjudicated delinquent on the basis of conduct that would constitute a felony if committed by an adult; or
  - e. Who is subject to a court order that:
    - (1) Was issued after a hearing for which such person received actual notice and at which such person had an opportunity to participate;
    - (2) Restrains such person from harassing, stalking, or threatening an intimate partner of such person or child of such intimate partner or person or from engaging in other conduct that would place an intimate partner in reasonable fear of bodily injury to the partner or child; and
    - (3) Includes a finding that such person represents a credible threat to the physical safety of such intimate partner or child or by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against such intimate partner or child that would reasonably be expected to cause bodily injury; or
  - f. Who has been convicted in any court of a misdemeanor crime of domestic violence; or
  - g. Who has, within the previous three years, been convicted of any serious or aggravated misdemeanor defined in Iowa Code chapter 708 not involving the use of a firearm or explosive.

**661—91.4(724) Application procedures for an Iowa professional permit to carry weapons.**

**91.4(1)** A nonresident of Iowa or a state employee who is required by employment to go armed may apply to the commissioner for a professional permit to carry weapons. The applicant shall comply with all of the following:

- a. Submit a fully and accurately completed and signed application for permit to carry weapons.
- b. Submit firearm training documentation. For a new application, training may have occurred at any time prior to the submission of the application. For a renewal application, training must have occurred within the 12-month period prior to the expiration date displayed on the applicant's current permit.
- c. Submit the required fee:
  - (1) \$50 for a new application, or
  - (2) \$25 for a renewal application.
- d. Display identification documentation as defined in rule 661—91.1(724) or provide a photocopy thereof.

**91.4(2)** The commissioner will return an incomplete application to the applicant.

[ARC 9238B, IAB 11/17/10, effective 1/1/11]

**661—91.5(724) Issuance or denial of application for permit to carry weapons.**

**91.5(1)** Upon receipt of a completed application, the commissioner shall conduct a background check to determine that issuance of a permit to the applicant is not prohibited pursuant to rule 661—91.3(724).

**91.5(2)** Within 30 days, the commissioner shall approve or deny an application submitted pursuant to subrule 91.4(1). The commissioner's failure to act within 30 days of receipt of a complete application shall result in an application's being deemed to have been approved.

**91.5(3)** A permit issued pursuant to this chapter may be delivered, at the discretion of the applicant, to the applicant by U.S. mail or may be picked up personally by the applicant or a person designated by the applicant.

**91.5(4)** In the event an application is denied pursuant to this chapter, the commissioner shall issue a written statement of the reasons for the denial.

**91.5(5)** The commissioner may conduct a background check annually on a person issued a permit to carry weapons pursuant to this chapter but such check shall not include a NICS inquiry.

[ARC 9238B, IAB 11/17/10, effective 1/1/11]

**661—91.6(724) Suspension or revocation of permit to carry weapons.**

**91.6(1)** When the commissioner finds that a person who has been issued a permit to carry weapons has been arrested for a disqualifying offense or is the subject of proceedings that could lead to the person's ineligibility for such permit, the commissioner may immediately suspend the permit.

**91.6(2)** A permit holder shall be notified immediately of such suspension by personal service or certified mail. The suspension shall become effective upon the permit holder's receipt of such notice. If notified by personal service, the permit shall be surrendered to the person serving such notice for return to the commissioner. If notified by certified mail, the permit holder will be instructed to return the permit to the commissioner.

**91.6(3)** If the arrest or proceeding does not result in a disqualifying conviction or finding against the permit holder, the commissioner shall immediately reinstate the permit upon proof of the matter's final disposition and shall return the permit to the permit holder.

**91.6(4)** If the arrest or proceeding results in a disqualifying conviction or finding against the permit holder, the commissioner shall revoke the permit.

[ARC 9238B, IAB 11/17/10, effective 1/1/11]

**661—91.7(724) Appeals.**

**91.7(1)** If the commissioner denies, suspends or revokes a professional permit to carry weapons for any reason other than the federal disqualifiers in subrule 91.3(1) or 91.3(2) or the reasons in paragraph 91.3(3) "e" or "f," the applicant or permit holder may file an appeal with an administrative law judge by

filing a copy of the denial, suspension, or revocation notice with a written statement that clearly states the applicant's reasons rebutting the denial, suspension, or revocation.

**91.7(2)** If the commissioner denies, suspends or revokes a professional permit to carry weapons solely for one or more of the federal disqualifiers in subrule 91.3(1) or 91.3(2) or the reasons in paragraph 91.3(3) "e" or "f," the applicant or permit holder may pursue relief of the NICS determination pursuant to Public Law 103-159.

**91.7(3)** The outcome of proceedings conducted pursuant to subrule 91.7(2) shall be binding on the commissioner.

[ARC 9238B, IAB 11/17/10, effective 1/1/11]

**661—91.8(724) Reports and remittance to the state.**

**91.8(1)** Each sheriff shall remit to the commissioner, by the seventh working day of the month that follows the month in which one or more permits to carry a weapon were issued, information about such permits, including the permit holder's name, date of birth, NICS transaction number, type of permit issued and the portion of the fee to be remitted to the department as required by the Iowa Code. The reporting of issued permits to carry a weapon shall be in a format designated for that purpose.

**91.8(2)** Fees for each reporting period shall be remitted by the sheriff and shall be in the form of a check made payable to Iowa Department of Public Safety.

[ARC 9238B, IAB 11/17/10, effective 1/1/11]

**661—91.9(724) Offensive weapons as collector's items—method of classification.** An offensive weapon, other than a machine gun, shall be classified by the commissioner as a collector's item when the firearm is so defined as a curio or relic in 27 CFR 478.11 as published April 1, 2010, in the Code of Federal Regulations.

[ARC 9238B, IAB 11/17/10, effective 1/1/11]

These rules are intended to implement Iowa Code chapter 724 as amended by 2010 Iowa Acts, Senate File 2357 and Senate File 2379.

[Filed 4/13/07, Notice 9/27/06—published 5/9/07, effective 7/1/07]

[Filed ARC 9238B (Notice ARC 9085B, IAB 9/22/10), IAB 11/17/10, effective 1/1/11]



CHAPTER 226  
LIQUEFIED PETROLEUM GAS

[Prior to 5/23/07, see rules 661—51.100(101) to 661—51.102(101)]

**661—226.1(101) General requirements.** The provisions of the International Fire Code, Chapter 38, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, and all references contained therein, are hereby adopted by reference as the general requirements for transportation, storage, handling, and use of liquefied petroleum gas, with the following amendments:

Delete section 3801.1 and insert in lieu thereof the following new section:

**3801.1** Scope. Storage, handling and transportation of liquefied petroleum gas (LP-gas) and the installation of LP-gas equipment pertinent to systems for such uses shall comply with this chapter, NFPA 54, ANSI Z223.1-2009 National Fuel Gas Code, 2009 edition, and NFPA 58, Liquefied Petroleum Gas Code, 2008 edition, with the following amendments:

Amend NFPA 54, ANSI Z223.1-2009 National Fuel Gas Code, 2009 edition, as follows:

Delete section 7.3.5.2 and insert in lieu thereof the following new section:

**7.3.5.2** Gas piping underground, outside a building, shall not be in physical contact with any concrete. Where it is necessary to install piping that will extend through or under an exterior concrete slab for connection to a regulator or other part of the system, before entering a building, the gas piping shall be sleeved. The sleeve shall extend through the concrete and be sealed only at the end extending above grade to prevent the entrance of insects, debris, or moisture. All piping, fittings, and risers shall be protected against corrosion in accordance with NFPA 54, National Fuel Gas Code, 2009 edition, section 5.6.6.

Delete section 8.2.1 and insert in lieu thereof the following new section:

**8.2.1** Leak checks using fuel gas (propane vapor) shall be permitted in piping systems that have been pressure-tested in accordance with 661—subrule 226.5(1).

Amend NFPA 58, Liquefied Petroleum Gas Code, 2008 edition, as follows:

Properties of LP-gases shall be determined in accordance with Annex B of NFPA 58.

Delete section 5.2.3 and insert in lieu thereof the following new section:

**5.2.3** DOT cylinders in stationary service that are filled on site and therefore are not under the jurisdiction of DOT shall be either requalified in accordance with DOT requirements or visually inspected within 12 years of the date of manufacture and every 5 years thereafter, in accordance with 5.2.3.1 through 5.2.3.3. The effective date for qualification and requalification requirements of this section shall be July 1, 2010.

**5.2.3.1** Any cylinder that fails one or more of the criteria in 5.2.3.3 shall not be refilled or continued in service until the condition is corrected.

**5.2.3.2** Personnel shall be trained and qualified to perform inspections. Initial and refresher training shall be in accordance with rule 661—226.4(101).

**5.2.3.3** Visual inspection shall be performed in accordance with the following:

(A) The cylinder is checked for exposure to fire, dents, cuts, digs, gouges, and corrosion according to CGA C-6-2007, Standards for Visual Inspection of Steel Compressed Gas Cylinders, ninth edition, except that paragraph 5.2.1.1(1) of that standard (which requires tare weight verification) shall not be part of the required inspection criteria.

(B) The cylinder protective collar (where utilized) and the foot ring are intact and are firmly attached.

(C) The cylinder is painted or coated to retard corrosion.

(D) The cylinder pressure relief valve indicates no visible damage, corrosion of operating components, or obstructions.

(E) There is no leakage from the cylinder or its appurtenances that is detectable without the use of instruments.

(F) The cylinder is installed on a firm foundation and is not in contact with the soil.

(G) A cylinder that passes the visual examination shall be marked with the month and year of the examination followed by the letter “E” (for example, 10-01E, indicating requalification in October 2001

by the external inspection method) and the requalifier identification number (RIN) in accordance with the requalifying agency's permit issued by the United States Department of Transportation.

(H) The results of the visual inspection shall be documented, and a record of the inspection shall be retained for a 5-year period or until the cylinder is again requalified, whichever occurs first.

Delete section 6.6.7.1 and insert in lieu thereof the following:

**6.6.7.1** Installation of permanent, stationary containers on roofs of buildings shall be prohibited.

Delete section 6.6.7.2.

Delete section 6.9.3.14 and insert in lieu thereof the following new section:

**6.9.3.14** Underground metallic piping shall be protected against corrosion as warranted by soil conditions (see section 6.16). Underground gas piping that is outside a building shall not be in physical contact with any concrete.

Delete sections 6.14, 6.14.1, 6.14.2, and 6.14.3.

Delete paragraph 6.19.1.2(C) and insert in lieu thereof the following new paragraph:

**6.19.1.2(C)** Cylinders installed permanently on roofs of buildings shall be prohibited.

Delete section 6.19.11.1, including paragraphs (A) through (F), and insert in lieu thereof the following new section:

**6.19.11.1** Cylinders installed permanently on roofs of buildings shall be prohibited.

Delete section 6.19.11.2.

Delete section 7.2.1.1 and insert in lieu thereof the following new section:

**7.2.1.1** Transfer operations shall be conducted by qualified personnel meeting the provisions of rule 661—226.4(101).

Delete section 11.2 and insert in lieu thereof the following new section:

**11.2** Each person engaged in installing, repairing, filling, or otherwise servicing an LP-gas engine fuel system shall be trained in accordance with rule 661—226.4(101) and trained under the applicable installation and maintenance procedures established by the manufacturer.

Delete section 3801.2.

Delete section 3801.3 and insert in lieu thereof the following new section:

**3801.3** Construction documents. Where a single container is more than 2,000 gallons (7,570 L) in water capacity or the aggregate capacity of containers is more than 4,000 gallons (15,140 L) in water capacity, the installer shall submit construction documents for such installation to the fire marshal for review and approval. Installation shall not commence until written approval from the fire marshal has been received.

Delete section 3803.1 and insert in lieu thereof the following new section:

**3803.1** General. LP-gas equipment shall be installed in accordance with NFPA 54, ANSI Z223.1-2009 National Fuel Gas Code, 2009 edition, and NFPA 58, Liquefied Petroleum Gas Code, 2008 edition, except as otherwise provided in this chapter.

Delete section 3803.2.1.7 and insert in lieu thereof the following new section:

**3803.2.1.7** Use for food preparation. Where approved, listed LP-gas commercial food service appliances are allowed to be used for food preparation within restaurants and in attended commercial food-catering operations in accordance with NFPA 54, ANSI Z223.1-2009 National Fuel Gas Code, 2009 edition, the International Mechanical Code, 2009 edition, and NFPA 58, Liquefied Petroleum Gas Code, 2008 edition.

Delete section 3803.3 and insert in lieu thereof the following new section:

**3803.3** Location of equipment and piping. Equipment and piping shall not be installed in locations where such equipment and piping are prohibited by NFPA 54, ANSI Z223.1-2009 National Fuel Gas Code, 2009 edition.

Delete sections 3804 through 3804.4.

Delete section 3805.1 and insert in lieu thereof the following new section:

**3805.1** Nonapproved equipment. LP-gas shall not be used for the purpose of operating devices or equipment unless such device or equipment is approved for use with LP-gas in accordance with NFPA 58, Liquefied Petroleum Gas Code, 2008 edition, sections 1.5 through 1.5.3.

Delete section 3806.1 and insert in lieu thereof the following new section:

**3806.1** Attendants. Transfer operations shall be conducted by qualified personnel meeting the provisions of rule 661—226.4(101).

Amend sections 3803.2.1.6, 3809.3, and 3809.9, exception 3 to section 308.1.4, and the exception to section 3809.7 by deleting the phrase “water capacity of 2½ pounds” and inserting in lieu thereof the phrase “water capacity of 2.7 pounds.”

Delete section 3809.10 and insert in lieu thereof the following new section:

**3809.10** Storage within buildings not accessible to the public. The maximum quantity allowed in one storage location in buildings not accessible to the public, such as industrial buildings, shall not exceed a water capacity of 735 pounds (334 kg) (nominal 300 pounds (136 kg) of LP-gas). Where additional storage locations are required on the same floor within the same building, they shall be approved by the authority having jurisdiction. Storage beyond these limitations shall comply with section 3809.11.

[ARC 9235B, IAB 11/17/10, effective 1/1/11]

**661—226.2(101) Transfer into container.** No person shall transfer any liquefied petroleum gas into a container, regardless of the container’s size, if the container has previously been used for the storage of any other product until the container has been thoroughly purged, inspected for contamination, provided with proper appurtenances, and determined suitable for use as a container for liquefied petroleum gas as prescribed in the standards established under rule 661—226.1(101).

**661—226.3(101) Prohibition of certain refrigerants.** The distribution, sale or use of refrigerants containing liquefied petroleum gas, as defined in Iowa Code section 101.1, for use in mobile air-conditioning systems is prohibited.

**661—226.4(101) Qualifications of personnel.**

**226.4(1)** Persons who transfer liquefied petroleum gas, who are employed to transport liquefied petroleum gas, or whose primary duties fall within the scope of this chapter shall be trained in proper handling procedures.

*a.* Training shall include both initial training and refresher training.

(1) Initial training shall include participation in a training program and shall include both a written qualification assessment (closed-book test) and a skills assessment, based on the objectives set forth in the recognized training program and the requirements of NFPA 54 National Fuel Gas Code, 2009 edition, NFPA 58 Liquefied Petroleum Gas Code, 2008 edition, and any applicable requirements established in this chapter.

(2) Refresher training shall include both a written qualification assessment (closed-book test) and a hands-on skills assessment based on requirements of NFPA 54 National Fuel Gas Code, 2009 edition, NFPA 58 Liquefied Petroleum Gas Code, 2008 edition, and any applicable requirements established in this chapter.

(3) The written qualification assessment shall be proctored through the training agency providing the refresher training or another qualified party.

(4) The hands-on skills assessment shall be completed by the training agency or another qualified party and shall include a verification of completion that shall be signed by the individual completing the required skills and the skills evaluator.

(5) Refresher training shall be provided at least every three years.

*b.* All training shall be documented. Documentation shall be maintained by the current employer of the person receiving the training.

**226.4(2)** Persons who install, service, test, or maintain propane gas utilization equipment, or gas piping systems of which the equipment is a part, or accessories shall be trained in the proper procedures in accordance with applicable codes.

*a.* Initial training shall include participation in a training program and shall include both a written qualification assessment (closed-book test) and a skills assessment, based on the objectives set forth in the recognized training program and the requirements of NFPA 54 National Fuel Gas Code, 2009 edition, NFPA 58 Liquefied Petroleum Gas Code, 2008 edition, and this chapter.

b. Refresher training shall include both a written qualification assessment (closed-book test) and a hands-on skills assessment based on requirements of NFPA 54 National Fuel Gas Code, 2009 edition, NFPA 58 Liquefied Petroleum Gas Code, 2008 edition, and this chapter.

c. The written qualification assessment shall be proctored through the training agency providing the refresher training or another qualified party.

d. The hands-on skills assessment shall be completed by the training agency or another qualified party and shall include a verification of completion that shall be signed by the individual completing the required skills and the skills evaluator.

e. Refresher training shall be provided at least every three years.

f. All training shall be documented. Documentation shall be maintained by the current employer of the person receiving the training.

**226.4(3)** Successful completion of the written qualification assessment and hands-on skills assessment shall satisfy the refresher training requirements of subrules 226.4(1) and 226.4(2).

[ARC 9235B, IAB 11/17/10, effective 1/1/11]

### **661—226.5(101) Pressure testing.**

**226.5(1)** Pressure testing required. After assembly and after any modification or repair, metallic LP-gas piping and hose shall be pressure-tested as follows:

a. Piping systems having operating pressures greater than 20 psig shall be pressure-tested in accordance with the following:

(1) Prior to acceptance and initial operation, all piping installations shall be inspected and pressure-tested to determine that the materials, design, fabrication, and installation practices comply with the requirements of this chapter.

(2) Inspection shall consist of visual examination, during or after manufacture, fabrication, assembly, or pressure tests as appropriate. Supplementary types of nondestructive inspection techniques, such as magnetic-particle, radiographic, and ultrasonic, shall not be required unless specifically required in this chapter or a standard or code adopted by reference in this chapter or in the engineering design.

(3) When repairs or additions are made following the pressure test, the affected piping shall be tested. Minor repairs and additions are not required to be pressure-tested, provided that the work is inspected and connections are tested with a noncorrosive, leak-detecting fluid or other leak-detecting methods approved by the authority having jurisdiction.

(4) When new branches are installed to a new appliance or appliances, only the newly installed branch or branches shall be required to be pressure-tested. Connections between the new piping and the existing piping shall be tested with a noncorrosive, leak-detecting fluid or approved leak-detecting methods.

(5) A piping system shall be tested as a complete unit or in sections. A valve in a line shall not be used as a bulkhead between gas in one section of the piping system and test medium in an adjacent section, unless two valves are installed in series with a valved “telltale” located between these valves. A valve shall not be subjected to the test pressure unless it can be determined that the valve, including the valve-closing mechanism, is designed to safely withstand the pressure applied during the test.

(6) Regulator and valve assemblies fabricated independently of the piping system in which they are to be installed shall be permitted to be tested with inert gas or air at the time of fabrication.

(7) The test medium shall be air, nitrogen, carbon dioxide, or an inert gas. Oxygen shall not be used.

(8) Test pressure shall be measured with a pressure-measuring device designed and calibrated to read, record, or indicate a pressure loss due to leakage during the pressure test period. The source of pressure shall be isolated before the pressure tests are made. Mechanical gauges used to measure test pressures shall have a range such that the highest end of the scale is not greater than five times the test pressure.

(9) The test pressure to be used shall be no less than 50 psi and shall not exceed 75 psi.

(10) Expansion joints shall be provided with temporary restraints, if required, for the additional thrust load under test.

(11) Appliances and equipment that are not to be included in the test shall be either disconnected from the piping or isolated by blanks, blind flanges, or caps. Flanged joints at which blinds are inserted to blank off other equipment during the test shall not be required to be tested.

(12) Where the piping system is connected to appliances or equipment designed for operating pressures of less than the test pressure, such appliances or equipment shall be isolated from the piping system by disconnecting them and capping the outlet(s).

(13) Where the piping system is connected to appliances or equipment designed for operating pressures equal to or greater than the test pressure, such appliances or equipment shall be isolated from the piping system by closing the individual appliance or equipment shutoff valve(s).

(14) All testing of piping systems shall be done with due regard for the safety of employees and the public during the test. Bulkheads, anchorage, and bracing suitably designed to resist test pressures shall be installed if necessary. Prior to testing, the interior of the pipe shall be cleared of all foreign material.

(15) Test duration shall be not less than one-half hour for each 500 ft<sup>3</sup> (14 m<sup>3</sup>) of pipe volume or fraction thereof. The duration of the test shall not be required to exceed 24 hours.

EXCEPTION: When a system having a volume of less than 10 ft<sup>3</sup> (0.28 m<sup>3</sup>) is tested, the test duration shall be a minimum of 10 minutes.

*b.* Piping systems having operating pressures of 20 psig or less, all polyethylene and polyamide piping, and piping to which NFPA 54 National Fuel Gas Code, 2009 edition, is applicable shall be tested in accordance with that code.

**226.5(2)** Testing for leakage. Immediately after the gas is turned on into a new system or into a system that has been initially restored after an interruption of service, the piping system shall be checked for leakage in accordance with this chapter and Section 8.2 of NFPA 54, National Fuel Gas Code, 2009 edition. Where leakage is indicated, the gas supply shall be shut off until the necessary repairs have been made.

*a.* All LP-gas piping systems that have operating pressures of 20 psig or less and all polyethylene and polyamide piping shall have system and equipment leakage tests performed in accordance with this chapter and Section 8.2 of NFPA 54, National Fuel Gas Code, 2009 edition.

*b.* Piping systems that serve industrial occupancies with LP-gas vapor pressures between 20 psig and 50 psig shall be tested in accordance with the requirements of the authority having jurisdiction.

*c.* All LP-gas liquid piping systems and vapor piping systems operating at pressures greater than 20 psig shall be tested for leakage in accordance with this chapter as follows:

(1) Propane liquid shall not be used.

(2) Propane vapor may be utilized.

(3) Methods utilized to perform leak tests may be measurement of flow, measurement of sustained pressure for a period of time sufficient to disclose any leaks, or other procedures adequate to verify the system is gas-tight.

**226.5(3)** Tests shall not be made with flame.

**226.5(4)** Out-of-gas customers or interruption of service system start-up procedure. When a delivery of propane is made to any on-site container which is out of gas, or if propane service was interrupted, the delivery person shall comply with the following procedures.

*a.* When the "out-of-gas customer" is not present:

(1) The container service valve shall be shut off; and

(2) A tag shall be placed on the container service valve for the equipment the container services, indicating the container is out of service. The tag shall inform the gas customer to contact a qualified person to perform a leak check or other test on the system, as required by rules of the fire marshal, before turning on the container. Further action is the responsibility of the customer.

*b.* When the "out-of-gas customer" is present:

(1) The container service valve shall be shut off; and

(2) The gas customer shall be informed that the container is out of service and a qualified person must perform a leak check or other test on the system as required by this chapter or Section 8.2 of NFPA

54 National Fuel Gas Code, 2009 edition, before turning on the container service valve. Further action is the responsibility of the customer.  
[ARC 9235B, IAB 11/17/10, effective 1/1/11]

**661—226.6(101) Damages—reporting.**

**226.6(1) Responsibility to report.**

a. Any person who causes damage to any LP-gas piping system, including hoses, other than a person qualified in accordance with rule 661—226.4(101) and who has been authorized by the owner or occupant to repair the LP-gas installation, shall immediately turn off the supply of propane to the affected system and shall immediately notify the local fire department. After the call to the fire department, the person shall immediately notify the occupant of the property of the damage and the shutoff. If the occupant of the property cannot be contacted immediately, the owner of the property shall immediately be notified.

b. If the occupant or owner of property on which an LP-gas system is located has received notification that the system has been damaged and the occupant or owner finds that the supply of propane to the system has not been shut off, then the occupant or owner shall immediately shut off the supply of propane to the system and shall immediately notify the local fire department.

c. If the occupant or owner of property on which an LP-gas system is located finds that an LP-gas piping system has been damaged and the damage has not been reported to the occupant or owner as required by paragraph “a” of this subrule, the occupant or owner shall immediately shut off the supply of propane to the system and shall immediately notify the local fire department.

**226.6(2) Notification to qualified person.** The occupant or owner of the property on which an LP-gas system is located shall notify a person qualified pursuant to rule 661—226.4(101) of any damage to an LP-gas piping system immediately after receiving notification or otherwise becoming aware of the damage and shall arrange for the qualified person to inspect, repair, and test the damaged system prior to restoration of service to the damaged or repaired system.

Arrangement by the occupant or owner of the property for required repairs and testing shall not relieve the person who damaged the system of any liability, including the costs of repair or testing.

**226.6(3) Restoration of service.** LP-gas service shall not be restored to an LP-gas piping system which has been damaged until the system has been repaired and tested in accordance with rule 661—226.5(101).

**661—226.7(101) Use of railroad tank cars in stationary service.** On or after January 1, 2012, the use of railroad tank cars in stationary propane service shall be prohibited.

EXCEPTION: Existing installations for which prior written approval of the state fire marshal is documented in writing shall be permitted to remain in service.  
[ARC 9235B, IAB 11/17/10, effective 1/1/11]

**661—226.8(101) Installation and use of DOT specification MC330 or MC331 cargo tanks in stationary service.** The installation and use of DOT specification MC330 or MC331 cargo tanks in stationary service shall be in accordance with NFPA 58, 2008 edition, and this chapter.

**226.8(1)** Containers shall be repaired or altered to prevent moisture or water from collecting in any container well. Repairs or alterations to pressure vessels must meet the requirements of the National Board Inspection Code (NBIC) [5] and must be performed by a repair organization accredited by the NBIC and authorized to utilize the “R” code symbol stamp.

**226.8(2)** Following a repair or alteration and final inspection by a National Board-commissioned inspector, the repair organization will affix a “Repair” nameplate to the pressure vessel which is similar to the ASME nameplate.

**226.8(3)** Alternate methods for preventing moisture or water from collecting in any container well may be considered in accordance with the equivalency requirements set forth in NFPA 58, 2008 edition, Section 1.5, Equivalency.

[ARC 9235B, IAB 11/17/10, effective 1/1/11]

These rules are intended to implement Iowa Code chapter 101.

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CHAPTER 500  
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM—  
ORGANIZATION AND ADMINISTRATION

**661—500.1(103) Establishment of program.** The electrician and electrical contractor licensing program is established in the fire marshal division of the department of public safety. The program is under the direction of the electrical examining board and the daily supervision of the state fire marshal or the state fire marshal's designee.

**500.1(1) Electrical examining board.** The electrical examining board, appointed by the governor, directs the electrician and electrical contractor licensing program, adopts administrative rules governing the program, establishes licensing requirements, and administers discipline related to licensure and to those engaged in activities requiring licensure but who are not licensed.

**500.1(2) Executive secretary.** The electrical examining board shall appoint an executive secretary who shall be responsible for carrying out the policies of the board and for hiring and supervising additional administrative staff.

**500.1(3) Board office.** The board office is located within the fire marshal division of the department of public safety.

*a.* The address of the board office is as follows:

Electrical Examining Board  
Iowa Department of Public Safety  
Wallace State Office Building  
502 East 9th Street  
Des Moines, Iowa 50319

*b.* The board may be contacted by telephone through the fire marshal division at (515)725-6145 or by E-mail at [elecinfo@dps.state.ia.us](mailto:elecinfo@dps.state.ia.us).

[Editorial change: IAC Supplement 6/17/09; ARC 8396B, IAB 12/16/09, effective 2/1/10]

**661—500.2(103) Definitions.** The following definitions apply to all rules adopted by the electrical examining board.

*“Approved by the board”* means the approval of any item, test or procedure by the electrical examining board by adoption of a resolution at a meeting of the board, provided that the approval has not been withdrawn by a later resolution of the board. A list of any such items, tests, or procedures that have been approved by the board is available from the board office or from the board Web site.

*“Board”* means the electrical examining board created under 2007 Iowa Acts, chapter 197, section 12.

*“Department”* means the department of public safety.

*“Division”* means the fire marshal division of the department of public safety.

*“Documented experience”* means experience which an applicant for licensing has completed and which has been documented by the applicant's completion and submission of a sworn affidavit or other evidence required by the board.

*“Emergency installation”* means an electrical installation necessary to restore power to a building or facility when existing equipment has been damaged due to a natural or man-made disaster or other weather-related cause. Emergency installations may be performed by persons properly licensed to perform the work, and may be performed prior to submission of a request for permit or request for inspection. A request for permit and request for inspection, if required by rule 661—552.1(103), shall be made as soon as practicable and, in any event, no more than 72 hours after the installation is completed.

*“Executive secretary”* means the executive secretary appointed by the board.

*“Farm”* means land, buildings and structures used for agricultural purposes including but not limited to the storage, handling, and drying of grain and the care, feeding, and housing of livestock.

*“Final agency action”* means the issuance, denial, suspension, or revocation of a license. If an action is subject to appeal, “final agency action” has occurred when the administrative appeal process provided for in 661—Chapter 503 has been exhausted or when the deadline for filing an appeal has expired.

*“Residential electrical work”* means electrical work in a residence in which there are no more than four living units within the same building and includes work to connect and work within accessory structures, which are structures no greater than 3,000 square feet in floor area, not more than two stories in height, the use of which is incidental to the use of the dwelling unit or units, and located on the same lot as the dwelling unit or units.

*“Routine maintenance”* means the repair or replacement of existing electrical apparatus or equipment of the same size and type for which no changes in wiring are made. The performance of routine maintenance in itself does not require a person to obtain or hold a license as an electrician or electrical contractor.

[ARC 8396B, IAB 12/16/09, effective 2/1/10; ARC 9234B, IAB 11/17/10, effective 1/1/11]

These rules are intended to implement 2007 Iowa Acts, chapter 197.

[Filed emergency 12/17/07—published 1/16/08, effective 1/1/08]

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CHAPTER 502  
ELECTRICIAN AND ELECTRICAL CONTRACTOR LICENSING PROGRAM—LICENSING  
REQUIREMENTS, PROCEDURES, AND FEES

**661—502.1(103) License categories and licenses required.**

**502.1(1)** The following license categories are established:

- a. Electrical contractor.
- b. Residential electrical contractor.
- c. Master electrician, class A.
- d. Master electrician, class B.
- e. Residential master electrician.
- f. Journeyman electrician, class A.
- g. Journeyman electrician, class B.
- h. Residential electrician.
- i. Apprentice electrician.
- j. Special electrician.
- k. Unclassified person.
- l. Inactive master electrician.

**502.1(2)** A person who holds any class of license issued by the board, other than a class B license, a residential electrical contractor license, a residential master electrician license, or a residential electrician license, may perform the work authorized by that license anywhere within the state of Iowa. A person who holds a special electrician license may perform the work which is authorized by that license endorsement. A person who holds a class B license may perform the work authorized by that license except in a political subdivision which, by local ordinance, has, pursuant to Iowa Code section 103.29, subsection 4, restricted or barred such work by a person who holds a class B license. A person who holds a residential electrical contractor license, a residential master electrician license, or a residential electrician license may perform the work authorized by that license anywhere within the state of Iowa except within a political subdivision which has, by local ordinance, restricted the use of such a license.

**502.1(3)** A person who does not have a current valid license shall not perform work as an electrician or as an unclassified person. A person shall not perform work which requires licensing and which is not specifically authorized under the license issued.

EXCEPTION 1: A person who holds a current valid license issued by a political subdivision may perform work as an electrician or unclassified person within the corporate limits of the political subdivision which issued the license.

EXCEPTION 2: A person may work for up to 100 continuous days as an unclassified person prior to obtaining a license. Any documented time during which a person has worked as an unclassified person prior to January 1, 2008, or any time during which a person has worked as a licensed unclassified person shall be credited to any applicable experience requirement. Any time during which a person works as an unclassified person without a license on or after January 1, 2008, shall not be counted toward any such experience requirement, except that a person may receive credit for time worked as an unclassified person on or after January 1, 2008, without a license if the person has applied for a license.

EXCEPTION 3: Electrical installations in buildings, including residences or facilities which are being constructed as part of a course of instruction by an accredited educational institution, may be performed by a person who is not licensed. Such installations are subject to the requirements for permits and inspections pursuant to 661—Chapter 552.

[ARC 8396B, IAB 12/16/09, effective 2/1/10; ARC 9234B, IAB 11/17/10, effective 1/1/11]

**661—502.2(103) License requirements.**

**502.2(1)** An electrical contractor license may be issued to a person who submits to the board the required application with the applicable fee, who holds or employs a person who holds an active master electrician license, who is registered as a contractor with the labor services division of Iowa workforce

development, and who is not disqualified pursuant to rule 661—502.4(103). An electrical contractor license issued to a person who holds a class B master electrician license is subject to the same restriction of use as is the class B master electrician license.

**502.2(2)** A residential electrical contractor license may be issued to a person who is licensed as a class A master electrician, a class B master electrician, or a residential master electrician and who is registered with the state of Iowa as a contractor pursuant to Iowa Code chapter 91C.

**502.2(3)** A class A master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

*a.* Has completed one year of experience as a licensed journeyman electrician, and has passed a supervised written examination for master electrician approved by the board with a score of 75 or higher; or

*b.* As of December 31, 2007, held a current valid license as a master electrician issued by a political subdivision in Iowa, the issuance of which required passing a supervised written examination approved by the board, and one year of experience as a journeyman electrician; or

*c.* Holds a current class B master electrician license and has passed a supervised written examination for master electrician approved by the board with a score of 75 or higher.

**502.2(4)** A class B master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), who presents credible evidence of having worked for a total of eight years (16,000 hours of cumulative experience) as a master electrician since 1989, and whose experience as a master electrician began on or before December 31, 1989.

**502.2(5)** A residential master electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

*a.* Holds a current residential electrician or journeyman electrician license, has 2,000 hours of verified experience as a residential electrician or a journeyman electrician, and has passed a residential master electrician examination approved by the board; or

*b.* Holds a current special electrician license with a residential endorsement, has 4,000 hours of verified experience, and has passed a residential master electrician examination approved by the board.

**502.2(6)** A class A journeyman electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

*a.* Has successfully completed an apprenticeship program registered by the Bureau of Apprenticeship and Training of the United States Department of Labor, has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher, and has completed four years of experience as an apprentice electrician; or

*b.* As of December 31, 2007, held a current valid license as a journeyman electrician issued by a political subdivision in Iowa, the issuance of which required passing a supervised written examination approved by the board, and has completed a registered apprenticeship program and four years of experience as an apprentice electrician; or

*c.* Holds a current class B journeyman electrician license and has passed a supervised written examination for journeyman electrician approved by the board with a score of 75 or higher.

EXCEPTION: An electrician currently licensed in another state may satisfy the sponsorship requirements for testing for a journeyman class A license by providing evidence of all of the following:

1. Current licensure as a journeyman or master electrician from another state which required passing a test sponsored by that state.

2. Completion of 18 hours of continuing education units approved by the board.

3. Completion of 1,000 hours of work in Iowa as an unclassified person.

**502.2(7)** A class B journeyman electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), who presents credible evidence of having worked for a total of eight years

(16,000 hours of cumulative experience) as a journeyman electrician or master electrician since 1989, and whose experience as a journeyman electrician or master electrician began on or before December 31, 1990.

**502.2(8)** A residential electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets one of the following requirements:

*a.* Holds a current residential special electrician license and has held that license for a minimum of one year and has passed a residential electrician examination approved by the board; or

*b.* Has completed 6,000 hours of experience as an apprentice electrician and has passed a residential electrician examination approved by the board. An applicant may take the examination required by this paragraph after completing 5,000 hours of experience as an apprentice electrician, although the license will not be issued until the applicant has completed 6,000 hours of such experience; or

*c.* Has completed 4,000 hours of experience working under the direct supervision of a residential master electrician, a residential electrician, a master electrician, or a journeyman electrician; has successfully completed a minimum of one academic year of an electrical trade school approved by the board; and has passed a residential electrician examination approved by the board; or

*d.* Has completed 8,000 hours of verified experience as a licensed unclassified person including at least 2,000 hours of verified work experience in residential wiring and has passed a residential electrician examination approved by the board; or

*e.* Has successfully completed a residential electrician apprenticeship program approved by the United States Department of Labor and passed a residential electrician examination approved by the board.

**502.2(9)** A special electrician license may be issued to a person who submits to the board a completed application with the applicable fee, who is not disqualified from holding a license pursuant to rule 661—502.4(103), and who meets the qualifications for any endorsement entered on the license. Each special electrician license shall carry one or more endorsements as specified in paragraphs “*a*” through “*d*.”

*a.* Endorsement 1, “Irrigation System Wiring,” shall be included on a special electrician license if the licensee requests it and has passed a supervised examination approved by the board or has completed two years, or 4,000 hours, of documented experience in the wiring of irrigation systems.

*b.* Endorsement 2, “Disconnecting and Reconnecting Existing Air Conditioning and Refrigeration Systems,” shall be included on a special electrician license if the licensee requests it and has passed a supervised examination approved by the board or has completed two years of documented experience in the disconnecting and reconnecting of existing air conditioning and refrigeration systems.

*c.* Endorsement 3, “Sign Installation,” shall be included on a special electrician license if the licensee requests that it be included. This endorsement does not authorize a licensee to connect power to a sign that has a voltage greater than 220V and an ampere rating greater than 20 amps. Initial installation or upgrading of the branch circuits supplying power to the sign shall be completed by a licensed master electrician or by a licensed journeyman electrician under the supervision of a master electrician.

*d.* Endorsement 4, “Residential Electrician,” shall be included on a special electrician license if the licensee requests it and has passed a supervised written examination approved by the board or has completed four years of documented experience performing residential electrical work. A political subdivision may, by enactment of an ordinance filed with the board prior to its effective date, require that a special electrician performing work authorized by this endorsement be supervised by a master electrician. Special electrician licenses with “residential electrician” endorsements shall not be issued after December 31, 2010. Renewals of special electrician licenses with “residential electrician” endorsements shall not be issued after December 31, 2013.

**502.2(10)** An apprentice electrician license may be issued to a person who submits a completed application to the board with the applicable fee, who is not disqualified pursuant to rule 661—502.4(103), and who is participating in an apprenticeship training program that is registered with the Bureau of Apprenticeship and Training of the United States Department of Labor. A person may hold an apprentice

electrician license for no more than six years from the original date on which an apprentice electrician license is granted, except that a person may apply to the board for an exception to this limitation based upon a documented hardship. “Documented hardship” includes, but is not limited to, an interruption in service as an apprentice electrician for active military duty or for an extended illness.

**502.2(11)** A license as an unclassified person may be issued to a person who submits a completed application to the board with the applicable fee, who is not disqualified pursuant to rule 661—502.4(103), and who is employed by a licensed electrical contractor.

**502.2(12)** In lieu of renewal of the active master electrician license, an inactive master electrician license may be issued to a holder of a master electrician license whose license is due for renewal and who requests placement in inactive status. A holder of an inactive license shall maintain all requirements which would apply for an active master electrician license, except for payment of the fee required for an active license, during the term of the inactive license. If the license holder fails to meet any such requirement during the term of the inactive license, the license holder shall not be entitled to reinstatement of an active license. If the license holder continues to meet all such requirements while holding an inactive license, the license holder may obtain an active master electrician license by surrendering the inactive master electrician license, filing an application for reinstatement, and paying the applicable license fee. The holder of an inactive license who seeks reinstatement of an active license shall not receive any refund of the fee paid for the inactive license. A person who holds an inactive license may not perform work which requires the person to be a holder of that license but may perform work authorized by any active license issued by the board which the person holds.

**502.2(13)** Retaking an examination. If passage of an examination is a requirement for issuance of a license:

*a.* An applicant who has taken the examination for a license twice and has failed the examination twice shall wait six months before taking the examination again and shall complete 12 hours of continuing education approved by the board on subjects related to the standards specified in 661—Chapter 504. After satisfying the requirements of this paragraph, the applicant may take the examination two additional times, or a maximum of four times.

*b.* An applicant who has satisfied the conditions of paragraph “*a*” and who has taken the examination two additional times, or a total of four times, and has failed the examination four times shall wait an additional six months and shall complete an additional 12 hours of continuing education approved by the board on subjects related to the standards specified in 661—Chapter 504 before taking the examination again. After satisfying the requirements of this paragraph, the applicant may take the examination two additional times, or a maximum of six times.

*c.* An applicant who has satisfied the conditions of paragraph “*b*” and who has taken the examination two additional times, or a total of six times, and has failed the examination six times shall not be permitted to take the examination an additional time unless approved to do so by the board. An applicant who wishes to take an examination after failing it six times shall wait six months and then may petition the board to allow the applicant to take the examination an additional time. The applicant may be required to appear personally before the board when the board is considering the petition.

[ARC 8396B, IAB 12/16/09, effective 2/1/10; ARC 9234B, IAB 11/17/10, effective 1/1/11]

**661—502.3(103) License terms and fees.** The following table sets out the length of term of each license and the fee for the license.

License Type	Term	Fee
Electrical Contractor	3 years	\$375
Residential Electrical Contractor	3 years	\$375
Master Electrician, Class A	3 years	\$375
Master Electrician, Class B	3 years	\$375
Residential Master Electrician	3 years	\$375
Journeyman Electrician, Class A	3 years	\$75

License Type	Term	Fee
Journeyman Electrician, Class B	3 years	\$75
Residential Electrician	3 years	\$75
Special Electrician	3 years	\$75
Apprentice Electrician	1 year	\$20
Unclassified Person	1 year	\$20
Inactive Master Electrician	3 years	\$75

**502.3(1)** Fees are payable in advance with the application, by check or warrant to the Department of Public Safety. The memo area of the check should read “Electrician License Fees.”

**502.3(2)** Notice of renewal shall be provided to each licensee no less than 30 days prior to the expiration of the current license.

**502.3(3)** If a license is issued for less than the period of time specified in the table above, the fee shall be prorated according to the number of months for which the license is issued.

**502.3(4)** A licensee who is on active military deployment for 91 or more consecutive calendar days during the term of a license may have the license period tolled as follows. “Tolled” means that the expiration date of the license shall be delayed for the period of time during which the license term is tolled.

*a.* A licensee who is on active military deployment for 91 or more consecutive calendar days during a licensing period may have the license terms tolled for one year.

*b.* A licensee who is on active military deployment for 366 or more consecutive calendar days during a licensing period may have the license terms tolled for two years.

*c.* A licensee who is on active military deployment for 91 or more consecutive calendar days but fewer than 366 consecutive calendar days may petition the board to have the license tolled for two years upon a showing of a special hardship which would not be alleviated by tolling the license term for only one year.

*d.* A licensee who requests that the term of a license be tolled pursuant to this subrule shall provide a copy of military orders showing the beginning and ending dates of the deployment or deployments which are the basis for the request.

**502.3(5)** A licensee may obtain a replacement license for a license that has been lost. To order a replacement license, the licensee shall notify the board office in writing that the license has been lost and shall provide any information required by the board office, which may include, but is not limited to, the license number, the name of the licensee, and a description of the circumstances of the loss, if known. The fee for issuance of a replacement license shall be \$15.

EXCEPTION: If a licensee who is located in an area covered by a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6 which is currently in force or has been in force within the previous 90 days certifies to the board that the license was lost as a direct result of conditions which relate to the issuance of the disaster emergency proclamation, the fee for replacement of the license shall be waived.

[ARC 8396B, IAB 12/16/09, effective 2/1/10; ARC 9234B, IAB 11/17/10, effective 1/1/11]

**661—502.4(103) Disqualifications for licensure.** An application for a license shall be denied if any of the following apply:

**502.4(1)** The applicant fails to meet the requirements for the license for which the applicant has applied or the applicant fails to provide adequate documentation of any requirement.

**502.4(2)** The applicant has previously had a license revoked or suspended by the board, and the circumstances which formed the basis of the revocation or suspension have not been corrected. If a license was revoked or suspended and conditions were imposed for the restoration of the license, licensure shall be denied unless those conditions have been met.

**502.4(3)** The applicant has been denied, for cause, a license to work, or a license as an electrician has been revoked, for cause, in any other state or political subdivision and the applicant has not

subsequently received a license from the state or political subdivision which denied or revoked the license. An applicant who has been denied a license pursuant to this provision may apply to the board for a license and, upon a showing of evidence satisfactory to the board that the condition or conditions which led to the denial or revocation no longer apply, the board may grant the license to the applicant.

**502.4(4)** The applicant falsifies or fails to provide any information requested in connection with the application or falsifies any other information provided to the board in support of the application.

**502.4(5)** The applicant may be denied a license if the applicant has previously been convicted of a criminal offense involving, but not limited to, fraud, misrepresentation, arson or theft, or if the applicant is currently delinquent in paying employment taxes to the state of Iowa or the United States. If the denial is based upon conviction of a criminal offense, the board shall examine the specific circumstances of the offense and may grant the license if, in the judgment of the board, sufficient time has passed since the conviction and there is no further evidence of criminal conduct on the part of the applicant.

[ARC 8396B, IAB 12/16/09, effective 2/1/10]

**661—502.5(103) License application.** Any person seeking a license from the board shall submit a completed application to the board accompanied by the applicable fee payable by check, money order, or warrant to the Iowa Department of Public Safety. The memo area of the check should read “Electrician Licensing Fees.” The application shall be submitted on the form prescribed by the board, which may be obtained from the board office.

[ARC 8396B, IAB 12/16/09, effective 2/1/10]

**661—502.6(103) Restriction of use of class B licenses by political subdivisions.** A political subdivision may disallow or restrict the use of a class B license to perform electrical work within the geographic limits of that subdivision through adoption of a local ordinance. A copy of any such ordinance shall be filed with the board office prior to the effective date of the ordinance. If a class B license holder held a license issued or recognized by a political subdivision on December 31, 2007, that political subdivision may not restrict the license holder from performing work which would have been permitted under the terms of the license issued or recognized by the political subdivision.

EXCEPTION 1: An ordinance restricting or disallowing electrical work by holders of class B licenses shall not apply to work which is not subject to the issuance of permits by the political subdivision.

EXCEPTION 2: An ordinance restricting or disallowing electrical work by holders of class B licenses which was passed prior to January 1, 2008, shall be filed with the board as soon as practicable and, in any case, no later than April 1, 2008.

[ARC 8396B, IAB 12/16/09, effective 2/1/10]

**661—502.7(103) Financial responsibility.** Any holder of an electrical contractor license or any holder of an electrician license who is not employed by a licensed electrical contractor and who contracts to provide electrical work which requires a license issued pursuant to 661—Chapters 500 through 503 shall, at all times, maintain insurance coverage as provided in this rule.

**502.7(1)** The licensee shall maintain general and complete operations liability insurance in the amount of at least \$1 million for all work performed which requires licensing pursuant to 661—Chapters 500 through 503.

*a.* The carrier of any insurance coverage maintained by the licensee to meet this requirement shall notify the board 30 days prior to the effective date of cancellation or reduction of the coverage.

*b.* The licensee shall cease operation immediately if the insurance coverage required by this rule is no longer in force and other insurance coverage meeting the requirements of this rule is not in force. A licensee shall not initiate any electrical work which cannot reasonably be expected to be completed prior to the effective date of the cancellation of the insurance coverage required by this rule and of which the licensee has received notice, unless new insurance coverage meeting the requirements of this rule has been obtained and will be in force upon cancellation of the prior coverage.

**502.7(2)** Reserved.

[ARC 8396B, IAB 12/16/09, effective 2/1/10]

These rules are intended to implement 2007 Iowa Acts, chapter 197.

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**LABOR SERVICES DIVISION[875]**

[Prior to 11/19/97, see Labor Services Division[347]]

## CHAPTER 1

DESCRIPTION OF ORGANIZATION AND  
PROCEDURES BEFORE THE DIVISIONDIVISION I  
ADMINISTRATION

1.1(91)	Definitions
1.2(91)	Scope and application
1.3(91)	Department of workforce development, division of labor services
1.4 to 1.10	Reserved

DIVISION II  
OPEN RECORDS AND FAIR INFORMATION PRACTICES

1.11(22,91)	General provisions
1.12(22,91)	Request for access to records
1.13(22,91)	Access to confidential records
1.14(22,91)	Requests for treatment of a record as a confidential record and withholding from examination
1.15(22,91)	Procedure by which additions, dissents, or objections may be entered into certain records
1.16(22,91)	Consent to disclosure by the subject of a confidential record
1.17(22,91)	Disclosure without the consent of the subject
1.18(22,91,77GA,ch1105)	Availability of records
1.19(22,91)	Routine uses
1.20(22,91)	Release to a subject
1.21(22,91)	Notice to suppliers of information
1.22(22,91)	Data processing systems comparison
1.23(22,91)	Personally identifiable information
1.24 to 1.30	Reserved

DIVISION III  
RULE-MAKING PROCEDURES

1.31(17A)	Applicability
1.32(17A)	Advice on possible rules before notice of proposed rule adoption
1.33(17A)	Public rule-making docket
1.34(17A)	Notice of proposed rule making
1.35(17A)	Public participation
1.36(17A)	Regulatory analysis
1.37(17A,25B)	Fiscal impact statement
1.38(17A)	Time and manner of rule adoption
1.39(17A)	Variance between adopted rule and published notice of proposed rule adoption
1.40(17A)	Exemptions from public rule-making procedures
1.41(17A)	Concise statement of reasons
1.42(17A,89)	Contents, style, and form of rule
1.43(17A)	Agency rule-making record
1.44(17A)	Filing of rules
1.45(17A)	Effectiveness of rules prior to publication
1.46(17A)	General statements of policy
1.47(17A)	Review by agency of rules
1.48 and 1.49	Reserved

DIVISION IV  
DECLARATORY ORDERS

1.50(17A)	Petition for declaratory order
1.51(17A)	Notice of petition
1.52(17A)	Intervention
1.53(17A)	Briefs
1.54(17A)	Inquiries
1.55(17A)	Service and filing of petitions and other papers
1.56(17A)	Consideration
1.57(17A)	Action on petition
1.58(17A)	Refusal to issue order
1.59(17A)	Contents of declaratory order—effective date
1.60(17A)	Copies of orders
1.61(17A)	Effect of a declaratory order
1.62 to 1.64	Reserved

DIVISION V  
CONTESTED CASES

1.65(17A)	Scope and applicability
1.66(17A)	Definitions
1.67(17A)	Time requirements
1.68(17A)	Requests for contested case proceeding
1.69(17A)	Notice of hearing
1.70(17A)	Presiding officer
1.71(17A)	Waiver of procedures
1.72(17A)	Disqualification
1.73(17A)	Consolidation—severance
1.74(17A)	Answer
1.75(17A)	Pleadings, service and filing
1.76(17A)	Discovery
1.77(17A)	Subpoenas
1.78(17A)	Motions
1.79(17A)	Prehearing conference
1.80(17A)	Continuances
1.81(17A)	Withdrawals
1.82(17A)	Intervention
1.83(17A)	Hearing procedures
1.84(17A)	Evidence
1.85(17A)	Default
1.86(17A)	Ex parte communication
1.87(17A)	Recording costs
1.88(17A)	Interlocutory appeals
1.89(17A)	Final decision—nonlicense decision
1.90(17A)	Final decision—license decision
1.91(17A)	Appeals and review
1.92(17A)	Applications for rehearing
1.93(17A)	Stays of agency actions
1.94(17A)	No factual dispute contested cases
1.95(17A)	Emergency adjudicative proceedings
1.96 to 1.98	Reserved

DIVISION VI  
INTEREST, FEES AND CHARGES

- 1.99(17A,91) Interest  
1.100 Reserved

DIVISION VII  
WAIVERS AND VARIANCES FROM ADMINISTRATIVE RULES

- 1.101(17A,91) Scope  
1.102(17A,91) Petitions  
1.103(17A,91) Notice and acknowledgment  
1.104(17A,91) Review  
1.105(17A,91) Ruling  
1.106(17A,91) Public availability  
1.107(17A,91) Cancellation  
1.108(17A,91) Violations  
1.109(17A,91) Appeals

*IOWA OCCUPATIONAL  
SAFETY AND HEALTH*

CHAPTER 2  
IOSH ENFORCEMENT, IOSH RESEARCH AND STATISTICS,  
IOSH CONSULTATION AND EDUCATION

- 2.1(88) Scope and application  
2.2(88) IOSH enforcement  
2.3(88) IOSH research and statistics  
2.4(88) IOSH private sector consultative services  
2.5(88) IOSH public sector consultative services  
2.6(88) IOSH education

CHAPTER 3  
INSPECTIONS, CITATIONS AND PROPOSED PENALTIES

- 3.1(88) Posting of notice; availability of the Act, regulations and applicable standards  
3.2(88) Objection to inspection  
3.3(88) Entry not a waiver  
3.4(88) Advance notice of inspections  
3.5(88) Conduct of inspections  
3.6(88) Representatives of employers and employees  
3.7(88) Complaints by employees  
3.8(88) Trade or governmental secrets  
3.9(88) Imminent danger  
3.10(88) Consultation with employees  
3.11(88) Citations  
3.12(88) Informal conferences  
3.13(88) Petitions for modification of abatement date  
3.14 to 3.18 Reserved  
3.19(88) Abatement verification  
3.20(88) Policy regarding employee rescue activities  
3.21 Reserved  
3.22(88,89B) Additional hazard communication training requirements  
3.23(88) Definitions  
3.24(88) Occupational safety and health bureau forms

## CHAPTER 4

## RECORDING AND REPORTING OCCUPATIONAL INJURIES AND ILLNESSES

- 4.1(88) Purpose and scope
- 4.2(88) First reports of injury
- 4.3(88) Record-keeping regulations

## CHAPTER 5

RULES OF PRACTICE FOR VARIANCES, LIMITATIONS, VARIATIONS,  
TOLERANCES AND EXEMPTIONS

- 5.1(88) Purpose and scope
- 5.2(88) Definitions
- 5.3 Reserved
- 5.4(88) Effect of variances
- 5.5(88) Notice of a granted variance
- 5.6(88) Form of documents; subscription; copies
- 5.7(88) Temporary variance
- 5.8(88) Permanent variance
- 5.9(88) Special variance
- 5.10(88) Modification and revocation of rules or orders
- 5.11(88) Action on applications
- 5.12(88) Requests for hearings on applications
- 5.13(88) Consolidation of proceedings
- 5.14(88) Notice of hearing
- 5.15(88) Manner of service
- 5.16(88) Hearing examiner; powers and duties
- 5.17(88) Prehearing conferences
- 5.18(88) Consent findings and rules or orders
- 5.19(88) Discovery
- 5.20(88) Hearings
- 5.21(88) Decisions of hearing examiner
- 5.22(88) Motion for summary decision
- 5.23(88) Summary decision
- 5.24(88) Finality for purposes of judicial review

## CHAPTERS 6 and 7

Reserved

## CHAPTER 8

## CONSULTATIVE SERVICES

- 8.1(88) Purpose and scope
- 8.2(88) Definitions
- 8.3(88) Requesting and scheduling of on-site consultation visit
- 8.4 and 8.5 Reserved
- 8.6(88) Conducting a visit
- 8.7(88) Relationship to enforcement

## CHAPTER 9

## DISCRIMINATION AGAINST EMPLOYEES

- 9.1(88) Introductory statement
- 9.2(88) Purpose of this chapter
- 9.3(88) General requirements of Iowa Code section 88.9(3)
- 9.4(88) Persons prohibited from discriminating
- 9.5(88) Persons protected by Iowa Code section 88.9(3)

9.6(88)	Unprotected activities distinguished
9.7 and 9.8	Reserved
9.9(88)	Complaints under or related to the Act
9.10(88)	Proceedings under or related to the Act
9.11(88)	Testimony
9.12(88)	Exercise of any right afforded by the Act
9.13 and 9.14	Reserved
9.15(88)	Filing of complaint for discrimination
9.16(88)	Notice of determination
9.17(88)	Withdrawal of complaint
9.18(88)	Arbitration or other agency proceedings
9.19 and 9.20	Reserved
9.21(88)	Walkaround pay disputes
9.22(88)	Employee refusal to comply with safety rules

## CHAPTER 10

## GENERAL INDUSTRY SAFETY AND HEALTH RULES

10.1(88)	Definitions
10.2(88)	Applicability of standards
10.3(88)	Incorporation by reference
10.4(88)	Exception for hexavalent chromium exposure in metal and surface finishing job shops
10.5 and 10.6	Reserved
10.7(88)	Definitions and requirements for a nationally recognized testing laboratory
10.8 to 10.11	Reserved
10.12(88)	Construction work
10.13 to 10.18	Reserved
10.19(88)	Special provisions for air contaminants
10.20(88)	Adoption by reference

## CHAPTERS 11 to 25

Reserved

## CHAPTER 26

## CONSTRUCTION SAFETY AND HEALTH RULES

26.1(88)	Adoption by reference
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## CHAPTER 27

Reserved

## CHAPTER 28

## OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR AGRICULTURE

28.1(88)	Adoption by reference
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## CHAPTER 29

## SANITATION AND SHELTER RULES FOR RAILROAD EMPLOYEES

29.1(88)	Definitions
29.2(88)	Water supply
29.3(88)	Toilets
29.4(88)	Eating places and lunchrooms
29.5(88)	Sleeping accommodations
29.6(88)	Cleanliness and maintenance
29.7(88)	Conflicts resolved

## CHAPTER 30

Reserved

*CHILD LABOR*

## CHAPTER 31

Reserved

## CHAPTER 32

## CHILD LABOR

32.1(92)	Definitions
32.2(92)	Permits and certificates of age
32.3 and 32.4	Reserved
32.5(92)	Other work
32.6	Reserved
32.7(92)	Workweek
32.8(92)	Terms
32.9 and 32.10	Reserved
32.11(92)	Civil penalty calculation
32.12(92)	Civil penalty procedures
32.13 to 32.16	Reserved
32.17(92)	Definitions

## CHAPTER 33

Reserved

## CHAPTER 34

## CIVIL PENALTIES

34.1(91A)	Civil penalties for Iowa Code chapter 91A violations
34.2(91A)	Investigation
34.3(91A)	Calculation of penalty
34.4(91A)	Settlement opportunity
34.5(91A)	Notice of penalty assessment; contested case proceedings
34.6(91A)	Judicial review

## CHAPTER 35

## WAGE PAYMENT COLLECTION

35.1(91A)	Definitions
35.2(91A)	Right of private action
35.3(91A)	Filing a claim
35.4(91A)	Investigation
35.5(91A)	Legal action on wage claims

## CHAPTER 36

## DISCRIMINATION AGAINST EMPLOYEES

36.1(91A)	Definitions
36.2(91A)	Employee rights
36.3(91A)	Purposes
36.4(91A)	General requirements
36.5(91A)	Unprotected activities distinguished
36.6(91A)	Complaint under or related to the Act
36.7(91A)	Proceedings under or related to the Act
36.8(91A)	Filing of complaint for discrimination or discharge
36.9(91A)	Withdrawal of complaints

- 36.10(91A) Arbitration or other agency proceedings  
 36.11(91A) Decision of the commissioner

## CHAPTER 37

Reserved

## CHAPTER 38

## EMPLOYMENT AGENCY LICENSING

- 38.1(94A) Definitions  
 38.2(94A) Application and license  
 38.3(94A) Non-employment agency activity  
 38.4(94A) Complaints  
 38.5(17A,94A,252J) Denials, revocations, reprimands and suspensions  
 38.6(94A) Permissible fees charged by agency  
 38.7 Reserved  
 38.8(94A) Contracts and fee schedules

## CHAPTERS 39 to 50

Reserved

*RAILROADS*

## CHAPTERS 51 to 60

Reserved

*AMUSEMENT PARKS AND RIDES*

## CHAPTER 61

## ADMINISTRATION OF IOWA CODE CHAPTER 88A

- 61.1(88A) Purpose, scope and definitions  
 61.2(88A) Administration  
 61.3(88A) Exemptions

## CHAPTER 62

SAFETY RULES FOR AMUSEMENT RIDES, AMUSEMENT DEVICES, AND  
 CONCESSION BOOTHS

- 62.1(88A) Purpose, scope and definitions  
 62.2(88A) Design criteria  
 62.3(88A) Concession booth requirements  
 62.4(88A) Walking surfaces, access and egress  
 62.5 and 62.6 Reserved  
 62.7(88A) Signal systems  
 62.8(88A) Hazardous materials  
 62.9 Reserved  
 62.10(88A) General environment  
 62.11(88A) Medical and first aid  
 62.12(88A) Fire protection  
 62.13(88A) Compressed gas and air equipment  
 62.14 Reserved  
 62.15(88A) Machinery and machine guarding  
 62.16 Reserved  
 62.17(88A) Welding, cutting and brazing  
 62.18(88A) Operations  
 62.19(88A) Electrical

## CHAPTERS 63 and 64

Reserved

*ELEVATORS, ESCALATORS, AND RELATED EQUIPMENT*

## CHAPTER 65

## ELEVATOR SAFETY BOARD ADMINISTRATIVE AND REGULATORY AUTHORITY

- 65.1(89A) Definitions
- 65.2(89A) Purpose and authority of board
- 65.3(21,89A) Organization of board
- 65.4(21,89A) Public meetings
- 65.5(89A) Official communications

## CHAPTER 66

WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES  
BY THE ELEVATOR SAFETY BOARD

- 66.1(17A,89A) Waivers of rules
- 66.2(17A,89A) Applicability of rule
- 66.3(17A,89A) Criteria for waiver or variance
- 66.4(17A,89A) Filing of petition
- 66.5(17A,89A) Content of petition
- 66.6(17A,89A) Additional information
- 66.7(17A,89A) Notice
- 66.8(17A,89A) Board review procedures
- 66.9(17A,89A) Hearing procedures
- 66.10(17A,89A) Ruling
- 66.11(17A,89A) Public availability
- 66.12(17A,89A) Summary reports
- 66.13(17A,89A) Cancellation of a waiver
- 66.14(17A,89A) Violations
- 66.15(17A,89A) Defense
- 66.16(17A,89A) Judicial review

## CHAPTER 67

## ELEVATOR SAFETY BOARD PETITIONS FOR RULE MAKING

- 67.1(17A,89A) Petitions for rule making
- 67.2(17A,89A) Briefs
- 67.3(17A,89A) Inquiries
- 67.4(17A,89A) Board review procedures

## CHAPTER 68

## DECLARATORY ORDERS BY THE ELEVATOR SAFETY BOARD

- 68.1(17A,89A) Petition for declaratory order
- 68.2(17A,89A) Notice of petition
- 68.3(17A,89A) Intervention
- 68.4(17A,89A) Briefs
- 68.5(17A,89A) Inquiries
- 68.6(17A,89A) Service and filing of petitions and other papers
- 68.7(17A,89A) Board review procedures
- 68.8 Reserved
- 68.9(17A,89A) Refusal to issue order
- 68.10(17A,89A) Contents of declaratory order—effective date
- 68.11(17A,89A) Copies of orders
- 68.12(17A,89A) Effect of a declaratory order

## CHAPTER 69

## CONTESTED CASES BEFORE THE ELEVATOR SAFETY BOARD

- 69.1(17A,89A) Reconsideration of inspection report
- 69.2(17A,89A) Appeal to the board
- 69.3(17A,89A) Informal review
- 69.4(17A,89A) Delivery of notice
- 69.5(17A,89A) Contents of notice
- 69.6(17A,89A) Scope of issues
- 69.7(17A,89A) File transmitted to the board
- 69.8(17A,89A) Legal representation
- 69.9(17A,89A) Presiding officer
- 69.10(17A,89A) Service and filing
- 69.11(17A,89A) Time requirements
- 69.12(17A,89A) Waiver of procedures
- 69.13(17A,89A) Telephone and electronic proceedings
- 69.14(17A,89A) Disqualification
- 69.15(17A,89A) Consolidation and severance
- 69.16(17A,89A) Discovery
- 69.17(17A,89A) Subpoenas in a contested case
- 69.18(17A,89A) Motions
- 69.19(17A,89A) Settlements
- 69.20(17A,89A) Prehearing conference
- 69.21(17A,89A) Continuances
- 69.22(17A,89A) Withdrawals
- 69.23(17A,89A) Hearing procedures
- 69.24(17A,89A) Evidence
- 69.25(17A,89A) Ex parte communication
- 69.26(17A,89A) Interlocutory appeals
- 69.27(17A,89A) Decisions
- 69.28(17A,89A) Contested cases with no factual disputes
- 69.29(17A,89A) Applications for rehearing
- 69.30(17A,89A) Stays of board actions
- 69.31(17A,89A) Judicial review

## CHAPTER 70

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES  
OF THE ELEVATOR SAFETY BOARD

- 70.1(22,89A) Definitions
- 70.2(22,89A) Statement of policy
- 70.3(22,89A) Requests for access to records
- 70.4(22,89A) Access to confidential records
- 70.5(22,89A) Requests for treatment of a record as a confidential record and its withholding from examination
- 70.6(22,89A) Procedure by which additions, dissents, or objections may be entered into certain records
- 70.7(22,89A) Consent to disclosure by the subject of a confidential record
- 70.8(22,89A) Disclosures without the consent of the subject
- 70.9(17A,89A) Routine use
- 70.10(22,89A) Consensual disclosure of confidential records
- 70.11(22,89A) Release to subject
- 70.12(21,22,89A) Availability of records
- 70.13(22,89A) Applicability

- 70.14(17A,22,89A) Personally identifiable information
- 70.15(17A,21,22,89A) Other groups of records
- 70.16(22,89A) Data processing system
- 70.17(22,89A) Notice to suppliers of information

## CHAPTER 71

## ADMINISTRATION OF THE CONVEYANCE SAFETY PROGRAM

- 71.1(89A) Definitions
- 71.2(89A) Registration of conveyances
- 71.3(89A) State identification number
- 71.4(89A) Responsibility for obtaining permits
- 71.5(89A) Installation permits
- 71.6(89A) Construction permits
- 71.7(89A) Operating permits
- 71.8(89A) Controller upgrade permits
- 71.9(89A) Alteration permits
- 71.10(89A) Alterations
- 71.11(89A) Inspections
- 71.12(89A,252J,261,272D) Special inspector commissions
- 71.13(89A) State employees
- 71.14(89A) Safety tests
- 71.15(89A) Authorized companies
- 71.16(89A) Fees
- 71.17(89A) Publications available for review
- 71.18(89A) Other regulations affecting elevators
- 71.19(89A) Accidents

## CHAPTER 72

## CONVEYANCES INSTALLED ON OR AFTER JANUARY 1, 1975

- 72.1(89A) Purpose and scope
- 72.2(89A) Definitions
- 72.3(89A) Accommodating the physically disabled
- 72.4(89A) Electric elevators
- 72.5(89A) Hydraulic elevators
- 72.6(89A) Power sidewalk elevators
- 72.7(89A) Performance-based safety code
- 72.8(89A) Hand and power dumbwaiters
- 72.9(89A) Escalators and moving walks
- 72.10(89A) General requirements
- 72.11 Reserved
- 72.12(89A) Wind tower lifts
- 72.13(89A) Alterations, repairs, replacements and maintenance
- 72.14 Reserved
- 72.15(89A) Power-operated special purpose elevators
- 72.16(89A) Inclined and vertical wheelchair lifts
- 72.17(89A) Hand-powered elevators
- 72.18(89A) Accommodating the physically disabled
- 72.19(89A) Limited-use/limited-application elevators
- 72.20(89A) Rack and pinion, screw-column elevators
- 72.21(89A) Inclined elevators
- 72.22(89A) Material lift elevators

- 72.23(89A) Elevators used for construction
- 72.24(89A) Construction personnel hoists

#### CHAPTER 73

#### CONVEYANCES INSTALLED PRIOR TO JANUARY 1, 1975

- 73.1(89A) Scope and definitions
- 73.2(89A) Hoistways
- 73.3(89A) Car enclosure: Passenger
- 73.4(89A) Car enclosure: Freight
- 73.5(89A) Brakes
- 73.6(89A) Machines
- 73.7(89A) Electrical protective devices
- 73.8(89A) Maintenance, repairs and alterations
- 73.9(89A) Machine rooms
- 73.10(89A) Pits
- 73.11(89A) Counterweights
- 73.12(89A) Car platforms and car slings
- 73.13(89A) Means of suspension
- 73.14(89A) Car safeties and speed governors
- 73.15(89A) Guide rails
- 73.16(89A) Existing hydraulic elevators
- 73.17(89A) Existing sidewalk elevators
- 73.18(89A) Existing hand elevators
- 73.19(89A) Power-operated special purpose elevators
- 73.20(89A) Inclined and vertical wheelchair lifts
- 73.21(89A) Handicapped restricted use elevators
- 73.22(89A) Escalators
- 73.23 Reserved
- 73.24(89A) Dumbwaiters

#### CHAPTERS 74 to 79

Reserved

#### *BOILERS AND PRESSURE VESSELS*

#### CHAPTER 80

#### BOILER AND PRESSURE VESSEL BOARD

#### ADMINISTRATIVE AND REGULATORY AUTHORITY

- 80.1(89) Definitions
- 80.2(89) Purpose and authority of board
- 80.3(89) Organization of board
- 80.4(21,89) Public meetings
- 80.5(89) Official communications

#### CHAPTER 81

#### WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

#### BY THE BOILER AND PRESSURE VESSEL BOARD

- 81.1(17A,89) Waivers of rules
- 81.2(17A,89) Applicability of rule
- 81.3(17A,89) Criteria for waiver or variance
- 81.4(17A,89) Filing of petition
- 81.5(17A,89) Content of petition
- 81.6(17A,89) Additional information
- 81.7(17A,89) Notice

81.8(17A,89)	Board review procedures
81.9(17A,89)	Hearing procedures
81.10(17A,89)	Ruling
81.11(17A,89)	Public availability
81.12(17A,89)	Summary reports
81.13(17A,89)	Cancellation of a waiver
81.14(17A,89)	Violations
81.15(17A,89)	Defense
81.16(17A,89)	Judicial review

## CHAPTER 82

### BOILER AND PRESSURE VESSEL BOARD PETITIONS FOR RULE MAKING

82.1(17A,89)	Petitions for rule making
82.2(17A,89)	Briefs
82.3(17A,89)	Inquiries
82.4(17A,89)	Board review procedures

## CHAPTER 83

### DECLARATORY ORDERS BY THE BOILER AND PRESSURE VESSEL BOARD

83.1(17A,89)	Petition for declaratory order
83.2(17A,89)	Notice of petition
83.3(17A,89)	Intervention
83.4(17A,89)	Briefs
83.5(17A,89)	Inquiries
83.6(17A,89)	Service and filing of petitions and other papers
83.7(17A,89)	Board review procedures
83.8	Reserved
83.9(17A,89)	Refusal to issue order
83.10(17A,89)	Contents of declaratory order—effective date
83.11(17A,89)	Copies of orders
83.12(17A,89)	Effect of a declaratory order

## CHAPTER 84

### CONTESTED CASES BEFORE THE BOILER AND PRESSURE VESSEL BOARD

84.1(17A,89)	Reconsideration of inspection report
84.2(17A,89)	Appeal to the board
84.3(17A,89)	Informal review
84.4(17A,89)	Delivery of notice
84.5(17A,89)	Contents of notice
84.6(17A,89)	Scope of issues
84.7(17A,89)	File transmitted to the board
84.8(17A,89)	Legal representation
84.9(17A,89)	Presiding officer
84.10(17A,89)	Service and filing
84.11(17A,89)	Time requirements
84.12(17A,89)	Waiver of procedures
84.13(17A,89)	Telephone and electronic proceedings
84.14(17A,89)	Disqualification
84.15(17A,89)	Consolidation and severance
84.16(17A,89)	Discovery
84.17(17A,89)	Subpoenas in a contested case
84.18(17A,89)	Motions
84.19(17A,89)	Settlements

84.20(17A,89)	Prehearing conference
84.21(17A,89)	Continuances
84.22(17A,89)	Withdrawals
84.23(17A,89)	Hearing procedures
84.24(17A,89)	Evidence
84.25(17A,89)	Ex parte communication
84.26(17A,89)	Interlocutory appeals
84.27(17A,89)	Decisions
84.28(17A,89)	Contested cases with no factual disputes
84.29(17A,89)	Applications for rehearing
84.30(17A,89)	Stays of board actions
84.31(17A,89)	Judicial review

#### CHAPTER 85

#### PUBLIC RECORDS AND FAIR INFORMATION PRACTICES OF THE BOILER AND PRESSURE VESSEL BOARD

85.1(22,89)	Definitions
85.2(22,89)	Statement of policy
85.3(22,89)	Requests for access to records
85.4(22,89)	Access to confidential records
85.5(22,89)	Requests for treatment of a record as a confidential record and its withholding from examination
85.6(22,89)	Procedure by which additions, dissents, or objections may be entered into certain records
85.7(22,89)	Consent to disclosure by the subject of a confidential record
85.8(22,89)	Disclosures without the consent of the subject
85.9(17A,89)	Routine use
85.10(22,89)	Consensual disclosure of confidential records
85.11(22,89)	Release to subject
85.12(21,22,89)	Availability of records
85.13(22,89)	Applicability
85.14(17A,22,89)	Personally identifiable information
85.15(17A,22,89)	Other groups of records
85.16(22,89)	Data processing system
85.17(22,89)	Notice to suppliers of information

#### CHAPTERS 86 to 89

Reserved

#### CHAPTER 90

#### ADMINISTRATION OF THE BOILER AND PRESSURE VESSEL PROGRAM

90.1(89)	Purpose
90.2(89,261,252J,272D)	Definitions
90.3(89)	Iowa identification numbers
90.4	Reserved
90.5(89)	Preinspection owner or user preparation
90.6(89)	Inspections
90.7(89)	Fees
90.8(89)	Certificate
90.9(89,252J,261)	Special inspector commissions
90.10(89)	Quality reviews, surveys and audits
90.11(89)	Notification of explosion
90.12(89)	Publications available for review

- 90.13(89) Notice prior to installation
- 90.14(89) Temporary boilers
- 90.15(89) Conversion of a power boiler to a low-pressure boiler

#### CHAPTER 91

##### GENERAL REQUIREMENTS FOR ALL OBJECTS

- 91.1(89) Codes and code cases adopted by reference
- 91.2(89) Safety appliance
- 91.3(89) Pressure-reducing valves
- 91.4(89) Blowoff equipment
- 91.5(89) Location of discharge piping outlets
- 91.6(89) Pipe, valve, and fitting requirements
- 91.7(89) Electric steam generator
- 91.8(89) Alterations, retrofits and repairs to objects
- 91.9(89) Boiler door latches
- 91.10(89) Clearance
- 91.11(89) Fall protection
- 91.12(89) Exit from rooms containing objects
- 91.13(89) Air and ventilation
- 91.14(89) Condensate return tank
- 91.15(89) Conditions not covered
- 91.16 Reserved
- 91.17(89) English language and U.S. customary units required
- 91.18(89) National Board registration
- 91.19(89) ASME stamp
- 91.20(89) CSD-1 Report

#### CHAPTER 92

##### POWER BOILERS

- 92.1(89) Scope
- 92.2(89) Codes adopted by reference
- 92.3 Reserved
- 92.4(89) Maximum allowable working pressure for steel boilers
- 92.5(89) Maximum allowable working pressure and temperature for cast iron headers and mud drums
- 92.6(89) Rivets
- 92.7(89) Safety valves
- 92.8(89) Boiler feeding
- 92.9(89) Water level indicators
- 92.10(89) Pressure gages
- 92.11(89) Steam stop valves
- 92.12(89) Blowoff connection

#### CHAPTER 93

##### MINIATURE POWER BOILERS INSTALLED PRIOR TO SEPTEMBER 20, 2006

- 93.1(89) Scope
- 93.2(89) Codes adopted by reference
- 93.3(89) Maximum working pressure
- 93.4(89) Safety valves
- 93.5(89) Steam stop valves
- 93.6(89) Water gages
- 93.7(89) Feedwater supply
- 93.8(89) Blowoff

- 93.9(89) Washout openings
- 93.10(89) Fixtures and fittings

## CHAPTER 94

STEAM HEATING BOILERS, HOT WATER HEATING BOILERS AND  
HOT WATER SUPPLY BOILERS

- 94.1(89) Scope
- 94.2(89) Codes adopted by reference
- 94.3(89) General requirements
- 94.4(89) Steam heating boilers installed before July 1, 1960
- 94.5(89) Hot water heating boilers installed before July 1, 1960
- 94.6(89) Hot water supply boilers installed before July 1, 1960

## CHAPTER 95

## WATER HEATERS

- 95.1(89) Scope
- 95.2(89) Recognized standard
- 95.3(89) Installation
- 95.4(89) Temperature and pressure relief valves
- 95.5(89) Shutoff valves prohibited
- 95.6(89) Thermal expansion
- 95.7(89) Stop valves
- 95.8(89) Carbonization
- 95.9(89) Leaks
- 95.10(89) Flues
- 95.11(89) Tanks
- 95.12(89) Galvanized pipes, valves, and fittings

## CHAPTER 96

## UNFIRED STEAM PRESSURE VESSELS

- 96.1(89) Codes adopted by reference
- 96.2(89) Objects installed prior to July 1, 1983

## CHAPTERS 97 to 109

Reserved

*RIGHT TO KNOW*

## CHAPTER 110

HAZARDOUS CHEMICAL RISKS RIGHT TO KNOW—  
GENERAL PROVISIONS

- 110.1(88,89B) Purpose, scope and application
- 110.2(88,89B) Definitions
- 110.3(88,89B) Hazard determination
- 110.4(88,89B) Labels and other forms of warning
- 110.5(88,89B) Material safety data sheets
- 110.6(88,89B) Trade secrets

## CHAPTERS 111 to 129

Reserved

## CHAPTER 130

## COMMUNITY RIGHT TO KNOW

- 130.1(89B) Employer's duty
- 130.2(89B) Records accessibility

130.3(89B)	Application for exemption
130.4(89B)	Burden of proof and criteria
130.5(89B)	Formal ruling
130.6(89B)	Request for information
130.7(89B)	Filing with division
130.8(89B)	Grounds for complaint against the employer
130.9(89B)	Investigation or inspection upon complaint
130.10(89B)	Order to comply
130.11(30,89B)	Relationship to Emergency Planning and Community Right-to-know Act
130.12(30,89B)	Information to county libraries

## CHAPTERS 131 to 139

Reserved

## CHAPTER 140

## PUBLIC SAFETY/EMERGENCY RESPONSE RIGHT TO KNOW

140.1(89B)	Signs required and adoption by reference
140.2(89B)	Employer variance applications
140.3(89B)	Agreement between an employer and fire department
140.4(89B)	Significant amounts
140.5(89B)	Information submitted to local fire department
140.6(89B)	Recommended communications
140.7(89B)	Procedure for noncompliance
140.8(89B)	Notice of noncompliance
140.9(30,89B)	Relationship to Emergency Planning and Community Right-to-know Act

## CHAPTERS 141 to 149

Reserved

*CONSTRUCTION—REGISTRATION AND BONDING*

## CHAPTER 150

## CONSTRUCTION CONTRACTOR REGISTRATION

150.1(91C)	Scope
150.2(91C)	Definitions
150.3(91C)	Registration required
150.4(91C)	Application
150.5(91C)	Amendments to application
150.6(91C)	Fee
150.7(91C)	Registration number issuance
150.8(91C)	Workers' compensation insurance cancellation notifications
150.9(91C)	Investigations and complaints
150.10(91C)	Citations/penalties and appeal hearings
150.11(91C)	Revocation of registrations and appeal hearings
150.12(91C)	Concurrent actions
150.13 to 150.15	Reserved
150.16(91C)	Bond release

## CHAPTERS 151 to 154

Reserved

CHAPTER 155  
ASBESTOS REMOVAL AND ENCAPSULATION

- 155.1(88B) Definitions
- 155.2(88B) Permit application procedures
- 155.3(88B) Other asbestos regulations
- 155.4(88B) Asbestos project records
- 155.5(88B) Ten-day notices
- 155.6(88B) License application procedures
- 155.7(88B) Duplicate permits and licenses
- 155.8(17A,88B,252J,261) Denial, suspension and revocation
- 155.9(17A,88B) Contested cases

CHAPTERS 156 to 159  
Reserved

CHAPTER 160  
EMPLOYER REQUIREMENTS RELATING TO  
NON-ENGLISH SPEAKING EMPLOYEES

- 160.1(91E) Purpose and scope
- 160.2(91E) Definitions
- 160.3(91E) Comprehension of employment
- 160.4(91E) Interpreters
- 160.5(91E) Community services referral agent
- 160.6(91E) Active recruitment of non-English speaking employees
- 160.7(91E) Employee's return to location of recruitment
- 160.8(91E) Inspections and investigations
- 160.9(91E) Exemptions
- 160.10(91E) Enforcement and penalties

CHAPTERS 161 to 169  
Reserved

*WRESTLING AND BOXING*

CHAPTER 170  
OPERATIONS OF ADVISORY BOARD

- 170.1(90A) Scope
- 170.2(90A) Membership
- 170.3(90A) Time of meetings
- 170.4(90A) Notification of meetings
- 170.5(90A) Attendance and participation by the public
- 170.6(90A) Quorum and voting requirements
- 170.7(90A) Minutes, transcripts and recording of meetings

CHAPTER 171  
GRANT APPLICATIONS AND AWARDS

- 171.1(90A) Scope
- 171.2(90A) Application process
- 171.3(90A) Grant process
- 171.4(90A) Evaluation
- 171.5(90A) Termination
- 171.6(90A) Financial management
- 171.7(90A) Adjustments and collections

CHAPTER 172  
PROFESSIONAL WRESTLING

172.1(90A)	Limitation of bouts
172.2(90A)	Fall
172.3(90A)	Out-of-bounds
172.4(90A)	Disqualification
172.5(90A)	Failure to break hold
172.6(90A)	Prohibition against hanging on
172.7(90A)	Abusing referee
172.8(90A)	Prohibited materials in ring
172.9(90A)	Contestants' grooming
172.10(90A)	Time between falls
172.11(90A)	Contestants' arrival
172.12(90A)	Contestants of the opposite sex prohibited
172.13(90A)	Separation of boxing and wrestling
172.14(90A)	Public safety
172.15(90A)	Health of wrestler
172.16(90A)	Wrestling outside of ring
172.17(90A)	Advertising
172.18(90A)	Responsibility of promoter

CHAPTER 173  
PROFESSIONAL BOXING

173.1(90A)	Limitation of rounds
173.2(90A)	Weight restrictions
173.3(90A)	Age restrictions
173.4(90A)	Injury
173.5(90A)	Knockdown
173.6(90A)	Limitation on number of bouts
173.7(90A)	Contestants' arrival
173.8(90A)	Persons allowed in the ring
173.9(90A)	Protection of hands
173.10(90A)	Scoring
173.11(90A)	Gloves
173.12(90A)	Proper attire
173.13(90A)	Use of substances
173.14(90A)	"Down"
173.15(90A)	Foul
173.16(90A)	Penalties
173.17(90A)	Weight classes
173.18(90A)	Attendance of commissioner
173.19(90A)	Weighing of contestants
173.20(90A)	Officials
173.21(90A)	General requirements
173.22(90A)	Public safety
173.23(90A)	Excessive coaching
173.24(90A)	Abusive language
173.25(90A)	Locker rooms
173.26(90A)	Contracts
173.27(90A)	Ring requirements
173.28(90A)	Ring posts
173.29(90A)	Ropes

173.30(90A)	Ring floor
173.31(90A)	Bell
173.32(90A)	Gloves
173.33(90A)	Referee's duties
173.34(90A)	Chief second
173.35(90A)	Naming referee
173.36(90A)	Reasons for stopping bout
173.37(90A)	Forfeit of purse
173.38(90A)	Inspection for foreign substances
173.39(90A)	Shaking hands
173.40(90A)	Assessing fouls
173.41(90A)	Delaying prohibited
173.42(90A)	Count
173.43(90A)	Intentional foul
173.44(90A)	Use of the ropes
173.45(90A)	Attending ring physician
173.46(90A)	Technical knockout
173.47(90A)	Timekeeper
173.48(90A)	Seconds
173.49(90A)	Requirements for seconds
173.50(90A)	Use of water
173.51(90A)	Stopping the fight
173.52(90A)	Removing objects from ring
173.53(90A)	Decision
173.54(90A)	Blood-borne disease testing
173.55(90A)	Boxer registration

CHAPTER 174  
ELIMINATION TOURNAMENTS

174.1(90A)	Purpose and scope
174.2(90A)	Bouts, rounds and rest periods
174.3(90A)	Protective equipment
174.4(90A)	Weight restrictions
174.5(90A)	Down
174.6(90A)	Suspension
174.7(90A)	Training requirements
174.8(90A)	Judges
174.9(90A)	Public safety
174.10(90A)	Impartiality of timekeeper
174.11(90A)	Ringside
174.12(90A)	Physical examination—female contestants
174.13(90A)	Contestants of opposite sex prohibited

CHAPTER 175  
AMATEUR BOXING

175.1(90A)	Purpose
175.2(90A)	Application
175.3(90A)	Verification
175.4(90A)	Forms

CHAPTER 176  
PROFESSIONAL KICKBOXING

- 176.1(90A) Scope and purpose
- 176.2(90A) WKA rules adopted by reference
- 176.3(90A) Professional boxing rules adopted by reference
- 176.4(90A) Additional provisions

CHAPTER 177  
MIXED MARTIAL ARTS

- 177.1(90A) Definitions
- 177.2(90A) Responsibilities of promoter
- 177.3(90A) Equipment specifications
- 177.4(90A) Event
- 177.5(90A) Contestants
- 177.6(90A) Procedural rules
- 177.7(90A) Decision
- 177.8(90A) Forfeit of purse
- 177.9 Reserved
- 177.10(90A) Health and life insurance

CHAPTERS 178 to 214  
Reserved

*MINIMUM WAGE*

CHAPTER 215  
MINIMUM WAGE SCOPE AND COVERAGE

- 215.1(91D) Requirement to pay
- 215.2(91D) Initial employment wage rate
- 215.3(91D) Definitions
- 215.4(91D) Exceptions
- 215.5(91D) Interpretative guidelines

CHAPTER 216  
RECORDS TO BE KEPT BY EMPLOYERS

- 216.1(91D) Form of records—scope of rules
- 216.2(91D) Employees subject to minimum wage
- 216.3(91D) Bona fide executive, administrative, and professional employees (including academic administrative personnel and teachers in elementary or secondary schools), and outside sales employees employed pursuant to 875—subrule 215.4(1)
- 216.4(91D) Posting of notices
- 216.5(91D) Records to be preserved three years
- 216.6(91D) Records to be preserved two years
- 216.7(91D) Place for keeping records and their availability for inspection
- 216.8(91D) Computations and reports
- 216.9(91D) Petitions for exceptions
- 216.10 Reserved

EMPLOYEES SUBJECT TO MISCELLANEOUS EXEMPTIONS

- 216.11 to 216.26 Reserved
- 216.27(91D) Board, lodging, or other facilities
- 216.28(91D) Tipped employees
- 216.29 Reserved

- 216.30(91D) Learners, apprentices, messengers, students, or persons with a disability employed under special certificates as provided in the federal Fair Labor Standards Act, 29 U.S.C. 214
- 216.31(91D) Industrial homeworkers
- 216.32 Reserved
- 216.33(91D) Employees employed in agriculture pursuant to 875—subrule 215.4(6)

CHAPTER 217  
WAGE PAYMENTS

- 217.1 Reserved
- 217.2(91D) Purpose and scope
- 217.3(91D) “Reasonable cost”
- 217.4(91D) Determinations of “reasonable cost”
- 217.5(91D) Determinations of “fair value”
- 217.6(91D) Effects of collective bargaining agreements
- 217.7(91D) Request for review of tip credit
- 217.8 to 217.24 Reserved
- 217.25(91D) Introductory statement
- 217.26 Reserved
- 217.27(91D) Payment in cash or its equivalent required
- 217.28 Reserved
- 217.29(91D) Board, lodging, or other facilities
- 217.30(91D) “Furnished” to the employee
- 217.31(91D) “Customarily” furnished
- 217.32(91D) “Other facilities”
- 217.33 and 217.34 Reserved
- 217.35(91D) “Free and clear” payment; “kickbacks”
- 217.36(91D) Payment where additions or deductions are involved
- 217.37(91D) Offsets
- 217.38(91D) Amounts deducted for taxes
- 217.39(91D) Payments to third persons pursuant to court order
- 217.40(91D) Payments to employee’s assignee
- 217.41 to 217.49 Reserved
- 217.50(91D) Payments to tipped employees
- 217.51(91D) Conditions for taking tip credits in making wage payments
- 217.52(91D) General characteristics of “tips”
- 217.53(91D) Payments which constitute tips
- 217.54(91D) Tip pooling
- 217.55(91D) Examples of amounts not received as tips
- 217.56(91D) “More than \$30 a month in tips”
- 217.57(91D) Receiving the minimum amount “customarily and regularly”
- 217.58(91D) Initial and terminal months
- 217.59(91D) The tip wage credit

CHAPTER 218

EMPLOYEES EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY (INCLUDING ANY EMPLOYEE EMPLOYED IN THE CAPACITY OF ACADEMIC ADMINISTRATIVE PERSONNEL OR TEACHER IN ELEMENTARY OR SECONDARY SCHOOLS), OR IN THE CAPACITY OF OUTSIDE SALESPERSON

- 218.1(91D) Executive
- 218.2(91D) Administrative
- 218.3(91D) Professional

218.4	Reserved
218.5(91D)	Outside salesperson
218.6(91D)	Special provision for motion picture producing industry
218.7 to 218.100	Reserved

## BONA FIDE EXECUTIVE CAPACITY

218.101(91D)	General
218.102(91D)	Management
218.103(91D)	Primary duty
218.104(91D)	Department or subdivision
218.105(91D)	Two or more other employees
218.106(91D)	Authority to hire or fire
218.107(91D)	Discretionary powers
218.108(91D)	Work directly and closely related
218.109(91D)	Emergencies
218.110(91D)	Occasional tasks
218.111(91D)	Nonexempt work generally
218.112(91D)	Percentage limitations on nonexempt work
218.113(91D)	Sole-charge exception
218.114(91D)	Exception for owners of 20 percent interest
218.115(91D)	Working supervisor
218.116(91D)	Trainees, executive
218.117(91D)	Amount of salary required
218.118(91D)	Salary basis
218.119(91D)	Special proviso for high-salaried executives
218.120 to 218.200	Reserved

## BONA FIDE ADMINISTRATIVE CAPACITY

218.201(91D)	Types of administrative employees
218.202	Reserved
218.203(91D)	Nonmanual work
218.204	Reserved
218.205(91D)	Directly related to management policies or general business operations
218.206(91D)	Primary duty
218.207(91D)	Discretion and independent judgment
218.208	Reserved
218.209(91D)	Percentage limitations on nonexempt work
218.210(91D)	Trainees, administrative
218.211(91D)	Amount of salary or fees required
218.212(91D)	Salary basis
218.213(91D)	Fee basis
218.214(91D)	Special proviso for high-salaried administrative employees
218.215(91D)	Elementary or secondary schools and other educational establishments and institutions
218.216 to 218.300	Reserved

## BONA FIDE PROFESSIONAL CAPACITY

218.301(91D)	General
218.302(91D)	Learned professions
218.303(91D)	Artistic professions
218.304(91D)	Primary duty
218.305(91D)	Discretion and judgment
218.306(91D)	Predominantly intellectual and varied
218.307(91D)	Essential part of and necessarily incident to

218.308	Reserved
218.309(91D)	Twenty percent nonexempt work limitation
218.310(91D)	Trainees, professional
218.311(91D)	Amount of salary or fees required
218.312(91D)	Salary basis
218.313(91D)	Fee basis
218.314(91D)	Exception for physicians, lawyers, and teachers
218.315(91D)	Special proviso for high-salaried professional employees
218.316 to 218.499	Reserved

#### OUTSIDE SALESPERSON

218.500(91D)	Definition of “outside salesperson”
218.501(91D)	Making sales or obtaining orders
218.502(91D)	Away from employer’s place of business
218.503(91D)	Incidental to and in conjunction with sales work
218.504(91D)	Promotion work
218.505(91D)	Driver salespersons
218.506(91D)	Nonexempt work generally
218.507(91D)	Twenty percent limitation on nonexempt work
218.508(91D)	Trainees, outside salespersons
218.509 to 218.599	Reserved

#### SPECIAL PROBLEMS

218.600(91D)	Combination exemptions
218.601(91D)	Special provision for motion picture producing industry
218.602(91D)	Special proviso concerning executive and administrative employees in multistore retailing operations

#### CHAPTER 219

#### APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

219.1	Reserved
219.2(91D)	Purpose and scope
219.3(91D)	Domestic service employment
219.4(91D)	Babysitting services
219.5(91D)	Casual basis
219.6(91D)	Companionship services for the aged or infirm
219.7 to 219.99	Reserved
219.100(91D)	Application of minimum wage and overtime provisions
219.101(91D)	Domestic service employment
219.102(91D)	Live-in domestic service employees
219.103(91D)	Babysitting services in general
219.104(91D)	Babysitting services performed on a casual basis
219.105(91D)	Individuals performing babysitting services in their own homes
219.106(91D)	Companionship services for the aged or infirm
219.107(91D)	Yard maintenance workers
219.108	Reserved
219.109(91D)	Third-party employment
219.110(91D)	Record-keeping requirements

CHAPTER 220  
APPLICATION OF THE FAIR LABOR STANDARDS ACT  
TO EMPLOYEES OF STATE AND LOCAL GOVERNMENTS

220.1(91D)	Definitions
220.2(91D)	Purpose and scope
220.3 to 220.10	Reserved
220.11(91D)	Exclusion for elected officials and their appointees
220.12(91D)	Exclusion for employees of legislative branches
220.13 to 220.19	Reserved
220.20(91D)	Introduction
220.21(91D)	Compensatory time and compensatory time off
220.22 to 220.26	Reserved
220.27(91D)	Payments for unused compensatory time
220.28(91D)	Other compensatory time
220.29	Reserved

OTHER EXEMPTIONS

220.30	Reserved
220.31(91D)	Substitution—federal Fair Labor Standards Act, 29 U.S.C. 207(p)(3)
220.32 to 220.49	Reserved

RECORD KEEPING

220.50(91D)	Records to be kept of compensatory time
220.51 to 220.99	Reserved

VOLUNTEERS

220.100(91D)	General
220.101(91D)	“Volunteer” defined
220.102(91D)	Employment by the same public agency
220.103(91D)	“Same type of services” defined
220.104(91D)	Private individuals who volunteer services to public agencies
220.105(91D)	Mutual aid agreements
220.106(91D)	Payment of expenses, benefits, or fees
220.107 to 220.199	Reserved

FIRE PROTECTION AND LAW ENFORCEMENT  
EMPLOYEES OF PUBLIC AGENCIES

220.200 to 220.220	Reserved
220.221(91D)	Compensable hours of work
220.222(91D)	Sleep time
220.223(91D)	Meal time
220.224	Reserved
220.225(91D)	Early relief
220.226(91D)	Training time

CHAPTER 26  
CONSTRUCTION SAFETY AND HEALTH RULES

[Prior to 9/24/86, Labor, Bureau of [530]]

[Prior to 10/7/98, see 347—Ch 26]

**875—26.1(88) Adoption by reference.** Federal Safety and Health Regulations for Construction beginning at 29 CFR 1926.16 and continuing through 29 CFR, Chapter XVII, Part 1926, are hereby adopted by reference for implementation of Iowa Code chapter 88. These federal rules shall apply and be interpreted to apply to the Iowa Occupational Safety and Health Act, Iowa Code chapter 88, not the Contract Work Hours and Safety Standards Act, and shall apply and be interpreted to apply to enforcement by the Iowa commissioner of labor, not the United States Secretary of Labor or the Federal Occupational Safety and Health Administration. The amendments to 29 CFR 1926 are adopted as published at:

38 Fed. Reg. 16856 (June 27, 1973)  
38 Fed. Reg. 27594 (October 5, 1973)  
38 Fed. Reg. 33397 (December 4, 1973)  
39 Fed. Reg. 19470 (June 3, 1974)  
39 Fed. Reg. 24361 (July 2, 1974)  
40 Fed. Reg. 23072 (May 28, 1975)  
41 Fed. Reg. 55703 (December 21, 1976)  
42 Fed. Reg. 2956 (January 14, 1977)  
42 Fed. Reg. 37668 (July 22, 1977)  
43 Fed. Reg. 56894 (December 5, 1978)  
45 Fed. Reg. 75626 (November 14, 1980)  
51 Fed. Reg. 22733 (June 20, 1986)  
51 Fed. Reg. 25318 (July 11, 1986)  
52 Fed. Reg. 17753 (May 12, 1987)  
52 Fed. Reg. 36381 (September 28, 1987)  
52 Fed. Reg. 46291 (December 4, 1987)  
53 Fed. Reg. 22643 (June 16, 1988)  
53 Fed. Reg. 27346 (July 20, 1988)  
53 Fed. Reg. 29139 (August 2, 1988)  
53 Fed. Reg. 35627 (September 14, 1988)  
53 Fed. Reg. 35953 (September 15, 1988)  
53 Fed. Reg. 36009 (September 16, 1988)  
53 Fed. Reg. 37080 (September 23, 1988)  
54 Fed. Reg. 15405 (April 18, 1989)  
54 Fed. Reg. 23850 (June 2, 1989)  
54 Fed. Reg. 30705 (July 21, 1989)  
54 Fed. Reg. 41088 (October 5, 1989)  
54 Fed. Reg. 45894 (October 31, 1989)  
54 Fed. Reg. 49279 (November 30, 1989)  
54 Fed. Reg. 52024 (December 20, 1989)  
54 Fed. Reg. 53055 (December 27, 1989)  
55 Fed. Reg. 3732 (February 5, 1990)  
55 Fed. Reg. 42328 (October 18, 1990)  
55 Fed. Reg. 47687 (November 14, 1990)  
55 Fed. Reg. 50687 (December 10, 1990)  
56 Fed. Reg. 2585 (January 23, 1991)  
56 Fed. Reg. 5061 (February 7, 1991)  
56 Fed. Reg. 41794 (August 23, 1991)  
56 Fed. Reg. 43700 (September 4, 1991)

57 Fed. Reg. 7878 (March 5, 1992)  
57 Fed. Reg. 24330 (June 8, 1992)  
57 Fed. Reg. 29119 (June 30, 1992)  
57 Fed. Reg. 35681 (August 10, 1992)  
57 Fed. Reg. 42452 (September 14, 1992)  
58 Fed. Reg. 21778 (April 23, 1993)  
58 Fed. Reg. 26627 (May 4, 1993)  
58 Fed. Reg. 35077 (June 30, 1993)  
58 Fed. Reg. 35310 (June 30, 1993)  
58 Fed. Reg. 40468 (July 28, 1993)  
59 Fed. Reg. 215 (January 3, 1994)  
59 Fed. Reg. 6170 (February 9, 1994)  
59 Fed. Reg. 36699 (July 19, 1994)  
59 Fed. Reg. 40729 (August 9, 1994)  
59 Fed. Reg. 41131 (August 10, 1994)  
59 Fed. Reg. 43275 (August 22, 1994)  
59 Fed. Reg. 65948 (December 22, 1994)  
60 Fed. Reg. 9625 (February 21, 1995)  
60 Fed. Reg. 11194 (March 1, 1995)  
60 Fed. Reg. 33345 (June 28, 1995)  
60 Fed. Reg. 34001 (June 29, 1995)  
60 Fed. Reg. 36044 (July 13, 1995)  
60 Fed. Reg. 39255 (August 2, 1995)  
60 Fed. Reg. 50412 (September 29, 1995)  
61 Fed. Reg. 5509 (February 13, 1996)  
61 Fed. Reg. 9248 (March 7, 1996)  
61 Fed. Reg. 31431 (June 20, 1996)  
61 Fed. Reg. 41738 (August 12, 1996)  
61 Fed. Reg. 43458 (August 23, 1996)  
61 Fed. Reg. 46104 (August 30, 1996)  
61 Fed. Reg. 56856 (November 4, 1996)  
61 Fed. Reg. 59831 (November 25, 1996)  
62 Fed. Reg. 1619 (January 10, 1997)  
63 Fed. Reg. 1295 (January 8, 1998)  
63 Fed. Reg. 1919 (January 13, 1998)  
63 Fed. Reg. 3814 (January 27, 1998)  
63 Fed. Reg. 13340 (March 19, 1998)  
63 Fed. Reg. 17094 (April 8, 1998)  
63 Fed. Reg. 20099 (April 23, 1998)  
63 Fed. Reg. 33468 (June 18, 1998)  
63 Fed. Reg. 35138 (June 29, 1998)  
63 Fed. Reg. 66274 (December 1, 1998)  
64 Fed. Reg. 22552 (April 27, 1999)  
66 Fed. Reg. 5265 (January 18, 2001)  
66 Fed. Reg. 37137 (July 17, 2001)  
67 Fed. Reg. 57736 (September 12, 2002)  
69 Fed. Reg. 31881 (June 8, 2004)  
70 Fed. Reg. 1143 (January 5, 2005)  
71 Fed. Reg. 2885 (January 18, 2006)  
70 Fed. Reg. 76985 (December 29, 2005)  
71 Fed. Reg. 10381 (February 28, 2006)  
71 Fed. Reg. 36008 (June 23, 2006)

- 71 Fed. Reg. 76985 (August 24, 2006)
- 72 Fed. Reg. 64428 (November 15, 2007)
- 73 Fed. Reg. 75583 (December 12, 2008)
- 75 Fed. Reg. 12685 (March 17, 2010)
- 75 Fed. Reg. 27429 (May 17, 2010)
- 75 Fed. Reg. 48130 (August 9, 2010)

This rule is intended to implement Iowa Code sections 84A.1, 84A.2, 88.2 and 88.5.  
 [ARC 7699B, IAB 4/8/09, effective 5/13/09; ARC 8997B, IAB 8/11/10, effective 9/15/10; ARC 9230B, IAB 11/17/10, effective 12/22/10]

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CHAPTER 71  
ADMINISTRATION OF THE CONVEYANCE SAFETY PROGRAM

**875—71.1(89A) Definitions.** The definitions contained in this rule shall apply to 875—Chapters 71, 72, and 73.

“*AECO*” means an elevator/escalator certification organization accredited pursuant to ASME A17.7.

“*Approved*” means approved by the division.

“*CCD*” means code compliance documentation as described in ASME A17.7, Section 2.10.

“*CEI*” means a person who is a certified elevator inspector or a certified elevator inspector supervisor pursuant to ASME QEI-1-2007.

“*Control*” means the system governing the starting, stopping, direction of motion, acceleration, speed and deceleration of the moving member.

“*Conveyance*” means any elevator, escalator, dumbwaiter, wind tower lift, CPH, or other equipment governed by Iowa Code chapter 89A.

“*CPH*” means a construction personnel hoist.

“*CPH jump*” means the addition or removal of mast or tower allowing a change in the hoist service elevation of a CPH.

“*Division*” means the labor services division of the workforce development department.

“*Elevator*” means a hoisting and lowering mechanism equipped with a car or platform which moves in guides in a substantially vertical direction and which serves two or more floors of a building or structure. “Elevator” does not include a CPH.

“*Elevator mechanic*” means a person who meets the standard for “elevator personnel” found in ASME A17.1.

“*Hoistway-unit system*” means a series of hoistway-door interlocks, hoistway-door electric contacts or hoistway-door combination mechanical locks and electric contacts, or a combination thereof, the function of which is to prevent operation of the driving machine by the normal operating device unless all hoistway doors are in the closed position and, if required, locked.

“*Major alteration*” means an alteration for which rule 875—71.10(89A) requires that the entire conveyance comply with current codes.

“*Wind tower lift*” means a conveyance designed and utilized solely for movement of trained and authorized people and small loads in wind towers built for the production of electricity.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 9221B, IAB 11/17/10, effective 12/22/10]

**875—71.2(89A) Registration of conveyances.** The owner or authorized agent of each operable conveyance not previously registered shall register the conveyance. An application to install a new conveyance shall constitute registration. All registrations shall be submitted to the commissioner on forms available from the division of labor services and shall include all information requested by the labor commissioner.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—71.3(89A) State identification number.** The commissioner shall assign an identification number to each conveyance that shall be stamped on a metal tag permanently attached to the controller, to the electrical disconnecting switch, or in a wind tower lift cage.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—71.4(89A) Responsibility for obtaining permits.** The procuring of all permits and the payment of all fees required by this chapter shall be the responsibility of the owner. Failure to obtain the appropriate permit prior to installation, alteration or operation may, at the discretion of the labor commissioner, result in a referral to the attorney general for prosecution of criminal penalties as described in Iowa Code section 89A.17.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—71.5(89A) Installation permits.**

**71.5(1)** Installation shall not begin until an installation permit has been issued by the division. A separate installation permit shall be issued for each conveyance, except that a single installation permit shall cover all identical wind tower lifts installed as the result of one construction contract in identical wind towers in a single wind farm.

**71.5(2)** Application for an installation permit shall be accompanied by the fee specified in rule 875—71.16(89A), shall be in the format required by the labor commissioner, and shall include the following, as applicable:

- a.* Sectional plan of car and hoistway.
- b.* Sectional plan of machine room.
- c.* Sectional elevation of hoistway and machine room including the pit, bottom and top clearance of car and counterweights.
- d.* Size and weight of rails and guide rail bracket spacing.
- e.* The estimated maximum vertical forces on the guide rails on application of the safety device.
- f.* In the case of freight elevators for class B or class C loading, the horizontal forces on the guide rail faces during loading and unloading and the estimated maximum horizontal forces in a post-wise direction on the guide rail faces on the application of the safety device.
- g.* The size and weight per foot of any rail reinforcements where rail reinforcements are provided.
- h.* Job specifications.
- i.* For a conveyance covered by ASME A17.7, a complete copy of the CCD with attachments and a complete copy of the Certificate of Conformance with attachments as described by ASME A17.7, Appendix I, Section 4.5.
- j.* For a CPH, the number of CPH jumps planned, the planned dates for each CPH jump, and the change in the number of floors anticipated with each CPH jump.

**71.5(3)** A CPH installation permit issued in response to an application submitted in full compliance with this subrule permits each planned CPH jump. Each CPH jump shall be considered an alteration. The fee submitted for a CPH installation permit shall be the total of the CPH installation permit fee as set forth in subrule 71.16(3) and the CPH alteration permit fee as set forth in subrule 71.16(4).

**71.5(4)** Issuance of an installation permit shall not be construed as a waiver or variance of any requirement of law.

**71.5(5)** The installation permit or a copy of the installation permit shall be conspicuously posted at the worksite. All the wind towers covered by a single installation permit shall be considered a single worksite, and posting one copy of the installation permit at the construction project office shall be sufficient compliance with this subrule.

**71.5(6)** Except as described in paragraphs 71.5(6) “a” and “b,” the installation permit shall expire upon the earlier of the completion of the installation as described in the permit application or one year after issuance.

- a.* For a CPH, the installation permit shall expire upon completion of the last CPH jump.
- b.* For any conveyance, during the tenth month after issuance, and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension may be granted at the discretion of the labor commissioner.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 9221B, IAB 11/17/10, effective 12/22/10]

**875—71.6(89A) Construction permits.** A construction permit authorizes the temporary, limited use of an elevator for purposes relating to construction or demolition.

**71.6(1)** Use of the elevator shall not begin until a construction permit has been issued by the division.

**71.6(2)** Application for a construction permit shall be in the format required by the labor commissioner and must include all the information requested by the labor commissioner and the fee specified by this chapter.

**71.6(3)** Upon submission of the completed application and fee, a state inspector shall be scheduled to inspect the elevator. Construction permits shall be issued only if the following criteria are met:

*a.* The elevator has been successfully tested pursuant to the requirements of ASME A17.1, Section 8.11.5.13; and

*b.* The applicable requirements of ASME A17.1, Section 5.10, are met.

**71.6(4)** The construction permit or a copy of the construction permit shall be posted conspicuously in a protective sleeve in the elevator car.

**71.6(5)** The construction permit shall expire 120 days after issuance. However, between 90 and 110 days after issuance and upon submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of up to 90 days may be granted at the discretion of the labor commissioner.

**71.6(6)** Elevators with a construction permit but without an operating permit shall not be accessible to the general public.

**71.6(7)** Failure to comply with these provisions may result in the revocation of the construction permit.

**71.6(8)** An operating permit shall not be issued before construction and an acceptance inspection are complete.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

### **875—71.7(89A) Operating permits.**

**71.7(1)** Operation of equipment covered by this chapter without a current operating permit is prohibited, except as authorized by rules 875—71.6(89A) and 875—71.8(89A).

**71.7(2)** Operating permits shall not be issued prior to successful completion of an inspection pursuant to rule 875—71.11(89A) and payment of all permit and inspection fees owed to the division.

**71.7(3)** Current operating permits or copies of current operating permits shall be conspicuously displayed as follows:

*a.* The operating permit for an elevator or CPH shall be posted in the car.

*b.* The operating permit for an escalator, dumbwaiter, wind tower lift, moving walk, or wheelchair lift shall be posted on or near the subject conveyance.

**71.7(4)** An operating permit shall expire 60 days after the first permit renewal inspection following the issuance of the operating permit, unless an earlier date is dictated by this rule.

**71.7(5)** An operating permit is automatically suspended when construction is initiated to alter less than or equal to 50 percent of an elevator as calculated pursuant to rule 875—71.9(89A). The operating permit automatically resumes when the elevator passes an inspection pursuant to rule 875—71.11(89A).

**71.7(6)** An operating permit is automatically terminated when a major alteration is initiated on the conveyance. A new operating permit shall be issued upon successful completion of the major alteration and acceptance inspection.

**71.7(7)** An operating permit is automatically terminated when an imminent danger notice is posted on the conveyance.

**71.7(8)** Notwithstanding other provisions of this rule, at the discretion of the labor commissioner, a temporary operating permit may be issued for up to 30 days provided the inspection has been completed and no code violations were identified. Issuance of a temporary operating permit does not extend the expiration date of the conveyance's operating permit.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—71.8(89A) Controller upgrade permits.** A controller upgrade permit may be issued to allow operation of an elevator while work to upgrade controls requires deactivation of the Phase I recall initiated by smoke sensing devices. Each elevator to be altered requires a separate controller upgrade permit. The duration of a controller upgrade permit shall not exceed 90 days. Each elevator in the group shall pass inspection pursuant to rule 875—71.11(89A) prior to being placed back into service.

**71.8(1)** A controller upgrade permit shall not be issued unless each of the following conditions is met:

*a.* Two or more elevators share a lobby at the level of the recall floor.

*b.* The project includes the installation of new elevator controllers in all of the elevators in the group.

c. Phase I fire recall initiated by a key-operated switch and all other controls shall be properly functioning for each elevator available for use.

d. There is a current alteration permit for the project.

e. A complete application for the controller upgrade permit and the fee established by this chapter have been submitted and accepted.

**71.8(2)** A controller upgrade permit shall not be construed to waive or excuse compliance with the requirements of any other governmental entity, including the department of public safety.

**71.8(3)** Upon the submission to the labor commissioner of sufficient justification, the fee established by this chapter, and other required information, an extension of the permit for up to 60 days may be granted.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—71.9(89A) Alteration permits.**

**71.9(1)** Alteration shall not begin until an alteration permit has been issued by the division.

**71.9(2)** Application for an alteration permit shall be in the format required by the labor commissioner and shall include drawings and specifications of all planned changes and the fee specified by rule 875—71.16(89A).

**71.9(3)** Issuance of an alteration permit shall not be construed as a waiver or variance of any requirement of law.

**71.9(4)** The alteration permit or a copy of the alteration permit shall be conspicuously posted at the worksite.

**71.9(5)** If a complete installation permit application was submitted for a CPH pursuant to subrule 71.5(3), at least seven days' advance notice of each CPH jump shall be provided to the labor commissioner. For a CPH installed without an installation permit prior to July 1, 2008, a completed alteration permit application shall be submitted to the labor commissioner at least seven days before each CPH jump.

**71.9(6)** The alteration permit shall expire upon the earlier of the completion of the alteration as described in the permit application or 120 days after issuance. However, between 90 and 110 days after issuance and upon submission to the labor commissioner of sufficient justification and other required information, an extension of the alteration permit may be granted at the discretion of the labor commissioner.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 9221B, IAB 11/17/10, effective 12/22/10]

**875—71.10(89A) Alterations.** Alterations or changes shall comply with rule 875—72.13(89A) or rule 875—73.8(89A), as applicable. A conveyance that is relocated shall be brought into compliance with all codes that are applicable at the time of relocation.

**71.10(1) Elevators.** When any combination of alterations or changes is made that constitutes more than 50 percent of the elevator, the entire elevator shall be brought into compliance with ASME A17.1-2007/CSA B44-07, and it shall be deemed a new elevator.

a. Alterations or changes constitute more than 50 percent of the construction if they exceed 50 percent of the total points according to the following table:

Elevator Component	Hydraulic	Traction
Controller	31	26
Floor selector	4	8
Drive-MG-SCR	-	13
Main machine	-	15
Machine motor	5	7
Hoist ropes	4	8
Governor	4	7
Platform	9	9
Car fixtures	9	8

<b>Elevator Component</b>	<b>Hydraulic</b>	<b>Traction</b>
Cab	10	10
Safeties	6	7
Door operator	12	12
Hoistway door panels	11	10
Hoistway door frames	11	10
Hoistway hangers & tracks	11	11
Hoistway door locks	8	9
Traveling cable	6	9
Hoistway wiring	8	6
Hall fixtures	8	10
Buffers	6	6
Counterweight	4	7
Rails & brackets	10	18
Car & counterweight guides	6	6
Pump	9	-
Valve	9	-
Tank	9	-
Plunger	14	-
Cylinder	18	-
<b>Total Points</b>	242	232

*b.* If an elevator does not have one or more of the components in the chart above, and those components will not be added to the elevator during the alteration, the points for the component(s) shall be subtracted from the total points before a determination is made about whether the alteration or change constitutes 50 percent.

**71.10(2) Conveyances other than elevators.** With the exception of replacing brushes on or adding brushes to escalators, all alterations of conveyances other than elevators shall require that the entire conveyance be brought into compliance with the current code.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—71.11(89A) Inspections.** Pursuant to Iowa Code section 89A.12, inspections by the labor commissioner's designee shall be permitted at reasonable times with or without prior notice.

**71.11(1) Scope of inspections.**

*a. Comprehensive.* Periodic inspections shall be comprehensive. Conveyances subjected to major alterations, elevators being transferred from construction permits to operating permits, previously dormant conveyances being returned to service, relocated conveyances, and new conveyances shall be inspected in their entirety prior to operation.

*b. Limited.* The scope of an inspection after an alteration other than a major alteration shall be determined by rule 875—72.13(89A) or 875—73.8(89A), as applicable. However, if the inspector notices a safety hazard in plain view outside the altered components, or if the periodic inspection is due, the entire conveyance shall be inspected.

**71.11(2) When inspections will occur.** When the timing of two different types of inspection on a single conveyance coincide, a state inspector may perform both inspections in one visit.

*a. Periodic inspections.*

(1) Each CPH shall be inspected at intervals not to exceed three months. All other periodic conveyance inspections by state inspectors shall be conducted annually unless the labor commissioner determines resources do not allow annual inspections. If the labor commissioner determines quarterly inspections of CPHs and annual inspections of other state-inspected conveyances are not feasible due to insufficient resources, the labor commissioner shall determine the inspection schedule.

(2) Conveyance inspections by special inspectors shall be conducted at least annually.

*b. Acceptance inspections.* A CPH shall be inspected pursuant to the schedule in ANSI A10.4 – 2007, Chapter 26. For all other conveyances, an acceptance inspection shall occur:

- (1) After each relocation,
- (2) After each alteration,
- (3) After each installation,
- (4) Before an elevator subject to a construction permit receives an operating permit, and
- (5) Before a previously dormant conveyance is returned to service.

*c. Other inspections.* Inspections may be made when the commissioner reasonably believes that a conveyance is not in compliance with the rules. Accidents, complaints, or requests for consultative inspections may result in inspections by the labor commissioner's designee.

**71.11(3) Who may perform inspections.**

*a.* The labor commissioner's designee shall inspect altered conveyances, CPHs, previously dormant conveyances being returned to service, wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A), relocated conveyances, and new conveyances.

*b.* Except as noted in 71.11(3)“c,” annual inspections may be performed by state inspectors or special inspectors authorized by the labor commissioner pursuant to rule 875—71.12(89A).

*c.* An inspection report by a special inspector shall not be accepted as the required, annual inspection if the conveyance is under contract for maintenance, installation or alteration by the special inspector or the special inspector's employer, or if the property is owned or leased by the special inspector or the special inspector's employer.

**71.11(4) Inspection standards.** Inspections shall be performed in accordance with applicable safety codes or documents such as:

- a.* CCD;
- b.* ASME A17.1, Sections 8.10 and 8.11, except Section 8.11.1.1;
- c.* ANSI A10.4-2007;
- d.* Rule 875—72.12(89A) for wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A); or
- e.* ASME A18.1.

**71.11(5) Inspection reports.**

*a.* All inspectors shall file inspection reports on forms approved by the commissioner within 30 days from the date of inspection and shall provide owners of conveyances with copies of completed inspection reports. The inspection report must separately list each unsafe condition and the applicable, specific code citation. Up to 30 days shall be allowed for correction of the unsafe conditions.

*b.* The owner may file a petition for reconsideration of an inspection report pursuant to 875—Chapter 69. The timely and proper filing of a petition for reconsideration extends the deadline for correction of the hazards that are subject to the petition for reconsideration.

**71.11(6) Extension of time.** The owner may petition the commissioner for up to 60 additional days to make the necessary corrections. The time frames set forth in subrule 71.11(7) may be adjusted by the labor commissioner as necessary to accommodate an extension of time.

**71.11(7) Correction of unsafe conditions.** In the absence of a determination on reconsideration or appeal that correction of hazards is not required, all unsafe conditions identified in the inspection report shall be corrected. The labor commissioner shall verify correction of all unsafe conditions identified in the inspection report by sending a state inspector to reinspect the conveyance for the fee set forth in rule 875—71.16(89A), or by reviewing appropriate documentation such as a photograph, invoice, other verifiable document, or subsequent inspection report. The time frames set forth in this subrule may be accelerated at the request of the owner.

*a.* Promptly upon receipt of an inspection report listing unsafe conditions, the labor commissioner will send to the owner and the special inspector, if any, an abatement order. A copy of the inspection report shall be attached to the abatement order. Unless a special inspector conducted the inspection, the order may specify a period that ends no more than 45 days after the inspection during which the owner may submit written evidence that the unsafe conditions have been corrected. The abatement order shall:

- (1) Identify the equipment.

(2) Demand that the unsafe conditions be corrected within the period set forth in the inspection report.

(3) Set forth the consequences of failure to comply.

*b.* After the period specified on the inspection report has passed, the labor commissioner may cause a state inspector to verify correction of all unsafe conditions. If reinspection reveals no significant progress toward correcting the unsafe conditions, or the remaining unsafe conditions create significant safety concerns, the labor commissioner may serve a notice of intent to suspend, deny or revoke the operating permit.

*c.* The labor commissioner may issue an operating permit after receipt of the appropriate fee and verification that each unsafe condition identified in the inspection report has been corrected.

*d.* If written proof of correction was requested in the abatement order, but adequate proof was not received by the deadline set forth in the abatement order, the labor commissioner may send a second abatement order or cause a state inspector to inspect the conveyance. If the labor commissioner elects to send a second abatement order, it shall notify the owner that, if written proof of abatement is not received within 20 days, a state inspector may be sent to the site. Copies of the abatement order and the inspection report shall be attached to the second abatement order.

*e.* If a special inspector conducted the inspection, more than 45 days have passed since the deadline for correction of hazards, and an inspection report indicating the hazards are corrected has not been filed, the labor commissioner may contact the special inspector, send a second abatement order to the owner, or send a state inspector to inspect the conveyance. Copies of the abatement order and the inspection report shall be attached to a second abatement order.

*f.* If an inspection as described in paragraph 71.11(7) “*d*” or “*e*” reveals no significant progress toward correcting the unsafe conditions, and the remaining unsafe conditions create no significant safety concerns, the labor commissioner may extend the time for abatement of the unsafe conditions an additional 10 days or may serve a notice of intent to suspend, deny or revoke the operating permit. The labor commissioner may also post a notice prohibiting use of the conveyance pending abatement of the unsafe conditions listed in the inspection report.

*g.* Procedures for appeal of a notice of intent to suspend, deny or revoke an operating permit are set forth in 875—Chapter 69.

**71.11(8) *Imminent danger.*** If the labor commissioner determines that continued operation of a conveyance pending correction of unsafe conditions creates an imminent danger, the labor commissioner shall post notice on the conveyance that it is not to be used pending repairs. Use of a conveyance contrary to posted notice by the labor commissioner may result in additional legal proceedings pursuant to Iowa Code section 89A.10(3) or 89A.18. The conveyance may be returned to service only after the imminent danger has been corrected and the conveyance has passed a comprehensive inspection.

**71.11(9) *Interference prohibited.*** No person shall interfere with, delay or impede an inspector employed by the state during an inspection.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 9221B, IAB 11/17/10, effective 12/22/10]

**875—71.12(89A,252J,261,272D) Special inspector commissions.**

**71.12(1) *Definition.*** As used in this rule, “certificate of noncompliance” means:

*a.* A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;

*b.* A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or

*c.* A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

**71.12(2) *Qualifications.***

*a.* Each applicant must possess a high school diploma or general equivalency degree.

*b.* Each applicant shall have at least three years of full-time work experience in the construction, installation, repair or inspection of conveyances.

*c.* Each applicant shall be a CEI.

*d.* Each applicant shall satisfactorily pass a division of labor services examination on Iowa procedures, Iowa policies, and all safety standards adopted by reference.

*e.* Each applicant shall submit proof of insurance coverage insuring the applicant against liability for injury or death for any act or omission on the part of the applicant. The insurance policy shall be in an amount of not less than \$1,000,000 for bodily injury to or death of one person in any one accident, and in an amount of not less than \$5,000,000 for bodily injury to or death of two or more persons in any one accident, and in an amount of not less than \$100,000 for damage to or destruction of property in any one accident. The insurance coverage of the special inspector's employer shall be considered to comply with this requirement if the coverage provides equivalent coverage for each special inspector.

**71.12(3) Application.** An applicant for a commission shall complete, sign, and submit to the division the form provided by the division with the required fee. The applicant shall include with the application proof that the applicant is a CEI.

**71.12(4) Expiration.** The commission expires when the commission is suspended or revoked by the labor commissioner or one year from issuance, whichever occurs earlier.

**71.12(5) Changes.** The special inspector shall notify the division at the time any of the information on the form or attachments changes.

**71.12(6) Denials.** The labor commissioner may refuse to issue or renew a special inspector's commission for failure of the applicant to complete an application package, if the applicant is not a CEI, or for any reason listed in subrules 71.12(8) to 71.12(10).

**71.12(7) Investigations.** The labor commissioner may investigate for any reasonable cause related to special inspectors or special inspector applicants. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice at the times and in the places the labor commissioner directs. The labor commissioner may notify the organization that certified the special inspector as a CEI of the findings of an investigation.

**71.12(8) Reasons for probation.** The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

**71.12(9) Reasons for suspension.** The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals any of the following:

- a.* The special inspector failed to submit and report inspections on a timely basis;
- b.* The special inspector abused the special inspector's authority;
- c.* The special inspector misrepresented self as a state inspector or a state employee;
- d.* The special inspector used commission authority for inappropriate personal gain;
- e.* The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;
- f.* The special inspector committed numerous violations as described in subrule 71.12(8);
- g.* The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- h.* The special inspector is no longer a CEI;
- i.* The division received a certificate of noncompliance; or
- j.* The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs 71.12(9) "a" to "h."

**71.12(10) Reasons for revocation.** The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

- a.* The special inspector filed a misleading, false or fraudulent report;
- b.* The special inspector failed to perform a required inspection;
- c.* The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;
- d.* The special inspector committed repeated violations as described in subrule 71.12(9);
- e.* The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- f.* The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs 71.12(10) "a" to "e";

- g. The special inspector is no longer a CEI; or
- h. The division received a certificate of noncompliance.

**71.12(11) Procedures.** The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

a. *Notice of actions.* The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A.

b. *Contested cases.* The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

c. *Hearing procedures.* The hearing procedures in 875—Chapter 1 shall govern.

d. *Emergency suspension.* Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that the public health, safety or welfare imperatively requires emergency action because a special inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

e. *Probation period.* A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

f. *Suspension period.* A special inspector's commission may be suspended up to five years for each incident causing a suspension.

g. *Revocation period.* A special inspector's commission that has been revoked shall not be reinstated for five years.

h. *Concurrent actions.* Multiple actions may proceed at the same time against any special inspector.

i. *Revoked or suspended commissions.* Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall surrender the special inspector's commission card to the labor commissioner. The labor commissioner may notify the special inspector's employer and the organization that certified the special inspector as a CEI of a revocation or suspension.  
[ARC 7841B, IAB 6/17/09, effective 7/22/09]

**875—71.13(89A) State employees.** ASME A17.1, Rule 8.11.1.1, shall not apply to inspectors who were hired before January 2005 and are state employees.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—71.14(89A) Safety tests.** Only safety test reports submitted on approved forms from elevator mechanics who are employed by authorized companies shall be considered to meet the requirements of this rule.

**71.14(1) When safety tests will be performed.**

a. Safety tests shall be performed on new and altered installations before they are placed in service.

b. Safety tests shall be made on all conveyances pursuant to the schedules and procedures set forth in:

(1) The maintenance control plan for wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A);

(2) The CCD for conveyances covered by ASME A17.7-2007/CSA B44-07;

(3) ASME A17.1-2007/CSA B44-07, Part 8, (except for Rule 8.11.1.1);

(4) ASME A18.1(2003), Part 10; or

(5) ANSI A10.4-2007, Section 26.4.

**71.14(2) How safety tests will be reported.** Within 30 days after completion of a safety test, the elevator mechanic shall file with the labor commissioner a report on an approved form and shall provide a copy of the form to the owner and to the witness, if applicable.

**71.14(3) How safety tests will be recorded.** The elevator mechanic shall attach a tag showing the date of the test, the elevator mechanic's name, and the type of test performed.

- a. On electric traction elevators, the elevator mechanic shall attach the tag to the safety-releasing carrier.
- b. On hydraulic elevators, the elevator mechanic shall attach the tag to the disconnecting switch or the controller.
- c. On wheelchair lifts, the elevator mechanic shall attach the tag to the disconnecting switch.
- d. On other conveyances covered by these rules, the commissioner's designee witnessing the acceptance safety test shall indicate the proper location of the tag. Subsequent test tags shall be attached in the same location.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 9221B, IAB 11/17/10, effective 12/22/10]

**875—71.15(89A) Authorized companies.**

**71.15(1)** Each year, authorized companies shall train their elevator mechanics who perform safety tests on safety test procedures.

**71.15(2)** For each conveyance owned by an authorized company, the owner shall obtain the services of a CEI who is not employed by the authorized company or an inspector employed by the state to witness the safety test.

**71.15(3)** To become authorized to perform safety tests, a company shall submit a copy of its procedures for performing safety tests. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

**71.15(4)** Every five years or within six months after the board adopts a new edition of ASME, whichever is earlier, authorized companies shall submit revised safety test procedures for renewal of authorization. The labor commissioner shall review the procedures for adequacy and shall request modifications to the procedures or grant or deny the authorization.

**71.15(5)** Investigations. Investigations shall take place at the times and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

**71.15(6)** Suspension. If the labor commissioner determines that a falsified safety test report was submitted by an elevator mechanic, the labor commissioner shall suspend the authorization of the elevator mechanic's employer for six months. During the suspension, all safety tests performed by any employee of the authorized company shall be witnessed by a state inspector or a CEI who is not employed by the suspended authorized company.

**71.15(7)** Suspension procedures.

a. The labor commissioner shall notify an authorized company of its suspension by certified mail or by other service as permitted by Iowa Code chapter 17A.

b. The authorized company shall have 20 days to file a written notice of contest with the labor commissioner. If the authorized company does not file a written notice of contest in a timely manner, the suspension shall automatically be effective. If the authorized company does file a written notice of contest in a timely manner, the hearing procedures in 875—Chapter 1 shall govern.

c. If the labor commissioner finds, pursuant to Iowa Code section 17A.18A, that public health, safety or welfare imperatively requires emergency action, the authorization may be summarily suspended.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—71.16(89A) Fees.** Except as noted below, all fees are nonrefundable and due in advance.

**71.16(1)** *Operating permits.* The annual operating permit fee shall be \$50 per conveyance.

**71.16(2)** *Periodic inspections.* Fees shall be remitted to the division of labor services within 30 days of the date of inspection. The fees for periodic inspections shall be as follows:

a. Elevators (except wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A), television tower elevators and hand-powered elevators): \$75.

b. Escalators: \$75.

c. Moving walks: \$75.

d. Dumbwaiters: \$60.

- e. Hand-powered elevators: \$60.
- f. Wheelchair lifts: \$60.
- g. Television tower elevators: \$300.
- h. Wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A): \$150.
- i. CPHs.
  - (1) Annual: \$300.
  - (2) Quarterly: \$150.

**71.16(3) Installation permits.** The fees in this subrule cover the initial print review, installation permit, initial inspection and first-year operating permit. Each print revision submitted to the division shall be subject to an additional fee of \$50. The fees for new installations shall be as follows:

- a. Elevators (except wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A)) and CPHs up to and including four landings: \$500.
- b. Elevators (except wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A)) and CPHs with five or more landings: \$600.
- c. Escalators: \$500.
- d. Moving walks: \$500.
- e. Dumbwaiters: \$350.
- f. Wheelchair lifts: \$350.
- g. Wind tower lifts exempted from ASME A17.1 by rule 875—72.12(89A): \$250 per lift.

**71.16(4) Alteration permits.**

a. The fees in paragraph 71.16(4) “b” cover the initial print review, alteration permit, and initial inspection for all objects except CPHs. For major alterations, the new operating permit fee is also included in the fee set forth in this subrule.

b. The table in rule 875—71.10(89A) shall be used to determine the change percentage for elevator alterations. The fees for elevator alterations shall be as follows:

- (1) For alterations up to and including 25 percent: \$200.
- (2) For alterations of 26 percent up to and including 50 percent: \$400.
- (3) For alterations over 50 percent, the fees for new installations shall apply.

c. For all conveyances other than elevators, the fees for new installations shall apply to alterations.

d. For each CPH installed after July 1, 2008, the fee for each CPH extension shall be \$150.

The total fee required for all planned CPH extensions shall be submitted with the installation permit application pursuant to subrule 71.5(3).

e. For CPHs installed prior to July 1, 2008, and extended to additional floors on or after July 1, 2008, the combined fee for the alteration inspection and alteration permit shall be \$150.

**71.16(5) Construction permits.** The construction permit fee shall be \$100 per conveyance. This fee includes the fee for initial inspection.

**71.16(6) Controller upgrade permits.** The controller upgrade permit fee shall be \$200. This fee includes one inspection.

**71.16(7) Consultative inspections.** Consultative inspections may be performed at the discretion of the labor commissioner.

a. The consultative fee for each wind tower lift exempted from ASME A17.1 by rule 875—72.12(89A) shall be \$150.

b. The consultative fee for each CPH shall be \$300.

c. The consultative fee for each tower elevator shall be \$300.

d. The consultative fee for all other conveyances shall be \$100 per hour, including travel time, with a minimum charge of \$200.

**71.16(8) Special inspector commission.** The special inspector commission fee shall be \$60 annually.

**71.16(9) Witnessing safety tests.** The fee for division employees to witness safety tests shall be \$100 per hour, including travel time, with a minimum charge of \$200.

**71.16(10) Permit extensions.** The fee to extend an installation permit, alteration permit, or construction permit shall be \$50.

**71.16(11) *Inspections outside of normal business hours.*** Inspections outside the normal business hours may be performed at the discretion of the labor commissioner. If the owner or contractor requests an inspection outside of normal business hours and the labor commissioner agrees to the schedule, an additional fee will be charged. The additional fee will be calculated at a rate of \$100 per hour, including travel time, with a minimum charge of \$200.

**71.16(12) *Reinspections.*** The fees for reinspections are \$300 for television tower elevators and CPHs, \$150 for wind tower lifts, and \$200 for all other conveyances.

**71.16(13) *Fee waiver.*** When a state inspector combines in one visit two different types of inspection on a single conveyance, the commissioner may waive the lesser of the fees.

[ARC 7840B, IAB 6/17/09, effective 7/22/09; ARC 9221B, IAB 11/17/10, effective 12/22/10]

**875—71.17(89A) Publications available for review.** Standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 E. Grand Avenue, Des Moines, Iowa 50319.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—71.18(89A) Other regulations affecting elevators.** Regulations concerning accessibility of buildings and conveyances available to the public are found at 661—Chapter 302. Regulations governing the safety and health of employees who work in and around elevators are found at 875—Chapters 2 to 26. Iowa Code chapter 91C and 875—Chapter 150 apply to companies that alter and install conveyances. No rule in 875—Chapters 71 to 73 shall be interpreted as creating an exemption, waiver, or variance from any otherwise applicable regulation or statute.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

**875—71.19(89A) Accidents.**

**71.19(1) *Reporting the accident.*** The owner shall immediately notify the commissioner of each personal injury accident requiring the service of a physician or causing disability exceeding one day or causing damage to the conveyance exceeding \$2,000. Notification shall be in writing and shall include the state identification number, owner, and description of accident.

**71.19(2) *Securing the accident site pending investigation.*** The removal of any part of the damaged conveyance or operating mechanism from the premises is forbidden until permission to do so is granted by the commissioner.

**71.19(3) *Putting the conveyance back into operation.*** When an accident involves the failure or destruction of any part of the conveyance or its operating mechanism, the use of the conveyance is forbidden until it has been made safe, until it has been reinspected, and until any repairs or alterations have been approved by the commissioner.

[ARC 7840B, IAB 6/17/09, effective 7/22/09]

These rules are intended to implement Iowa Code chapters 89A, 252J, 261 and 272D.

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CHAPTER 90  
ADMINISTRATION OF THE BOILER AND PRESSURE VESSEL PROGRAM

[Prior to 1/14/98, see 347—Chs 41 to 49]

[Prior to 8/16/06, see 875—Chs 200, 202]

**875—90.1(89) Purpose.** These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89.

**875—90.2(89,261,252J,272D) Definitions.** To the extent they do not conflict with the definitions contained in Iowa Code chapter 89, the definitions in this rule shall be applicable to the rules contained in 875—Chapters 90 to 96.

“*Alteration*” means a change in a boiler or pressure vessel that substantially alters the original design requiring consideration of the effect of the change on the original design. It is not intended that the addition of nozzles smaller than an unreinforced opening size will be considered an alteration.

“*ANSI/ASME CSD-1*” means Control and Safety Devices for Automatically Fired Boilers.

“*ASME*” means the American Society of Mechanical Engineers.

“*Authorized inspector*” means a special inspector or an inspector of boilers and pressure vessels employed by the division.

“*Blowoff valve*” means all blowoff valves, drain valves, and pipe connections.

“*Boiler*” means a vessel in which water or other liquids are heated, steam or other vapors are generated, steam or other vapors are superheated, or any combination thereof, under pressure or vacuum by the direct application of heat. “Boiler” includes all temporary boilers.

“*BSI*” means British Standards Institute.

“*Certificate of noncompliance*” means:

1. A certificate of noncompliance issued by the child support recovery unit, department of human services, pursuant to Iowa Code chapter 252J;
2. A certificate of noncompliance issued by the college student aid commission pursuant to Iowa Code chapter 261; or
3. A certificate of noncompliance issued by the centralized collection unit of the department of revenue pursuant to Iowa Code chapter 272D.

“*CFR*” means Code of Federal Regulations.

“*Construction or installation code*” means the applicable recognized national or international standard for construction or installation in effect at the time of installation such as ASME, DIN, BSI, JIS or CSA.

“*CSA*” means the Canadian Standards Association, CSA B51, Boiler Pressure Vessel, and Pressure Piping Code.

“*DIN*” means German Institute of Standards.

“*Division*” means the division of labor services, unless another meaning is clear from the context.

“*Electric boilers*” means a power boiler, heating boiler, high or low temperature water boiler in which the source of heat is electricity.

“*External inspection*” means as complete an examination as can be reasonably made of the external surfaces and safety devices while the boiler or pressure vessel is in operation.

“*High temperature water boiler*” means a water boiler intended for operations at pressures in excess of 160 psig or temperatures in excess of 250 degrees F.

“*Hot water heating boiler*” means a boiler in which no steam is generated, from which hot water is circulated for heating purposes and then returned to the boiler, and which operates at a pressure not exceeding 160 psig or a temperature of 250 degrees F at the boiler outlet.

“*Hot water supply boiler*” means a boiler completely filled with water that furnishes hot water to be used externally to itself at pressures not exceeding 160 psig or at temperatures not exceeding 250 degrees F.

“*Internal inspection*” means as complete an examination as can be reasonably made of the internal and external surfaces of a boiler or pressure vessel while it is shut down and while manhole plates, handhole plates or other inspection opening closures are removed as required by the inspector.

“*ISO*” means International Standards Organization.

“*JIS*” means Japanese Industrial Standards.

“*Labor commissioner*” means the labor commissioner or the commissioner’s designee.

“*Lap seam crack*” means a crack found in lap seams, extending parallel to the longitudinal joint and located either between or adjacent to rivet holes.

“*National Board*” means the National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229, whose membership is composed of the chief inspectors of jurisdictions who are charged with the enforcement of the provisions of local boiler codes.

“*National Board Inspection Code*” means the Manual for Boiler and Pressure Vessel Inspectors (ANSI/NB 23) published by the National Board. Copies of the code may be obtained from the National Board.

“*Object*” means a boiler or pressure vessel.

“*Power boiler*” means a boiler in which steam or other vapor is generated at a pressure of more than 15 pounds per square inch or a water boiler intended for operation at pressures in excess of 160 pounds per square inch or temperatures in excess of 250 degrees Fahrenheit.

“*Process steam generator*” means a vessel or system of vessels comprised of one or more drums and one or more heat exchange surfaces as used in waste heat or heat recovery type steam boilers.

“*Psig*” means pounds per square inch gage.

“*Reinstalled boiler or pressure vessel*” means an object removed from its original setting and reinstalled at the same location or at a new location.

“*Relief valve*” means an automatic pressure-relieving device actuated by a static pressure upstream of the valve that opens further with the increase in pressure over the opening pressure and that is used primarily for liquid service.

“*Repair*” means work necessary to return a boiler or pressure vessel to a safe operating condition.

“*Rupture disk device*” means a nonreclosing pressure-relief device actuated by inlet static pressure and designed to function by the bursting of a pressure-containing disk.

“*Safety appliance*” shall include, but not be limited to:

1. Rupture disk device;
2. Safety relief valve;
3. Safety valve;
4. Temperature limit control;
5. Pressure limit control;
6. Gas switch;
7. Air switch; or
8. Any major gas train control.

“*Safety relief valve*” means an automatic, pressure-actuated relieving device suitable for use as a safety or relief valve, depending on application.

“*Safety valve*” means an automatic, pressure-relieving device actuated by the static pressure upstream of the valve and characterized by full opening pop action. The safety valve is used for gas or vapor service.

“*Special inspection*” means an inspection which is not required by Iowa Code chapter 89.

“*Temperature and pressure relief valve*” means a valve set to relieve at a designated temperature and pressure.

“*Unfired steam boiler*” means a vessel or system of vessels intended for operation at a pressure in excess of 15 psig for the purpose of producing and controlling an output of thermal energy.

“*Unfired steam pressure vessel*” means a vessel or container used for the containment of steam pressure either internal or external in which the pressure is obtained from an external source.

“*U.S. customary units*” means feet, pounds, inches and degrees Fahrenheit.

“*Water heater supply boiler*” means a closed vessel in which water is heated by combustion of fuels, electricity or any other source and withdrawn for use external to the system at pressure not exceeding 160

psig and shall include all controls and devices necessary to prevent water temperatures from exceeding 210 degrees F.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

**875—90.3(89) Iowa identification numbers.** All objects shall be identified by an Iowa identification number. State inspectors and special inspectors shall assign identification numbers as directed by the division to all jurisdictional objects that lack numbers. Identification numbers shall be attached in plain view to the object using one of the following methods:

1. A yellow sticker 2 inches by 3 inches affixed to the object and bearing the number.
2. A metal tag 1 inch by 2½ inches affixed to the object and bearing the number.
3. Numbers at least 5/16 of an inch high and stamped directly on the object.

**875—90.4(89) National Board registration.** Rescinded IAB 11/18/09, effective 1/1/10.

**875—90.5(89) Preinspection owner or user preparation.**

**90.5(1) Preparation of objects.** Each owner or user shall ensure that each object covered by Iowa Code chapter 89 is prepared for inspection pursuant to this rule.

**90.5(2) Confined space and lockout, tagout procedures.**

*a.* It is the responsibility of the owner or user to assess all objects for compliance with the confined space and lockout, tagout standards pursuant to 29 CFR 1910.146 and 1910.147. If an object is a non-permit-required confined space or a permit-required confined space as defined by 29 CFR 1910.146, the owner or user must comply with all applicable requirements of 29 CFR 1910.146 and 1910.147 in preparing the object for inspection.

*b.* It is the duty of the owner or user to inform any inspector of the owner's or user's confined space entry and lockout, tagout procedures and supply to the inspector all information necessary to assess whether the confined space is safe for entry. It is the right of an inspector to verify any of the information supplied.

*c.* If the requirements of 29 CFR 1910.146 and 1910.147 are not met, the inspector shall not enter the space. If there is a breach of the procedure or the procedure is inconsistent with 29 CFR 1910.146 or 1910.147, the inspection process shall cease until the space is reassessed and determined to be safe or the procedure is rewritten in a manner consistent with the standards. No inspector shall violate the owner's or user's confined space or lockout, tagout procedures in making an inspection.

*d.* The owner or user shall have all objects locked and tagged, as applicable, prior to the inspector's entry for inspection or testing.

*e.* For entry into a permit-required confined space, the owner or user shall provide the necessary equipment such as air monitors and a qualified attendant who has received all the information relevant to the entry.

**90.5(3) Hydrostatic tests.** The owner or user shall prepare for and apply a hydrostatic test, whenever necessary, on the date specified by the inspector, which date shall be not less than seven days after the date of notification.

**90.5(4) Boilers.** A boiler shall be prepared for internal inspection in the following manner:

*a.* Fluid shall be drawn off and the boiler washed thoroughly.

*b.* Manhole and handhole plates, washout plugs and inspection plugs in water columns shall be removed as required by the inspector. The furnace and combustion chambers shall be thoroughly cooled and cleaned.

*c.* All grates of internally fired boilers shall be removed.

*d.* Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

*e.* Low-water fuel cutoff controls shall be opened or removed to allow for visual inspection.

**90.5(5) Pressure vessels.** The extent of inspection preparation for a pressure vessel will vary. If the inspection is to be external only, advance preparation is not required other than to afford reasonable access to the vessel. For combined internal and external inspections of small vessels of simple construction

handling air, steam, nontoxic or nonexplosive gases or vapors, minor preparation is required, including affording reasonable means of access and removing manhole plates and inspection openings. In other cases, preparation shall include removing the internal fittings and appurtenances to permit satisfactory inspection of the interior of the vessel if required by the inspector.

**90.5(6)** *Removal of covering or brickwork to permit inspection.* If the object is jacketed so that the longitudinal seams of shells, drums, or domes cannot be seen, sufficient jacketing, setting wall, or other form of casing or housing shall be removed to permit reasonable inspection of the seams and so that the size of rivets, pitch of the rivets, and other data necessary to determine the safety of the object may be obtained, providing the information cannot be determined by other means. Brickwork shall be removed as required by the inspector in order to determine the condition of the boiler, header, furnace, supports or other parts.

**90.5(7)** *Improper preparation for inspection.* If an object has not been properly prepared for an internal inspection, or if the owner or user fails to comply with the requirements for hydrostatic tests as set forth in this chapter, the inspector may decline to make the inspection or test, and the inspection certificate shall be withheld until the owner or user complies with the requirements.

[ARC 9082B, IAB 9/22/10, effective 10/27/10]

### **875—90.6(89) Inspections.**

**90.6(1)** *General.* All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code (2007 with 2008 addenda), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

**90.6(2)** *Schedule.* Inspections must be performed according to the schedule set forth in Iowa Code section 89.3 and within a 60-day period prior to the expiration date of the operating certificate. Modification of this period will be permitted only upon written application showing just cause for waiver of the 60-day period. Special inspections may be conducted at any time mutually agreed to by the division and the object's owner or user.

**90.6(3)** *Inspections conducted by special inspectors.* Special inspectors shall provide copies of the completed report to the insured and to the division within 30 days of the inspection. The reports shall list all adverse conditions and all requirements, if any. If the special inspector has not notified the division of the inspection results within 30 days of the expiration of an operating certificate, the division may conduct the inspection.

**90.6(4)** *Type of inspection.* The inspection shall be an internal inspection when required; otherwise, it shall be as complete an external inspection as possible. Conditions including, but not limited to, the following may also be the basis for an internal inspection:

- a. Visible metal or insulation discoloration due to excessive heat.
- b. Visible distortion of any part of the pressure vessel.
- c. Visible leakage from any pressure-containing boundary.
- d. Any operating records or verbal reports of a vessel being subjected to pressure above the nameplate rating or to a temperature above or below the nameplate design temperature.
- e. A suspected or known history of internal corrosion or erosion.
- f. Evidence or knowledge of a vessel having been subjected to external heat from a resulting fire.
- g. A welded repair not documented as required.
- h. Personal injury, property damage accident, or malfunction affecting the pressure vessel's integrity.

**90.6(5)** *Internal inspections for unfired steam pressure vessels operating at more than 15 pounds per square inch.* The commissioner may require an internal inspection of an unfired steam pressure vessel operating in excess of 15 psi when an inspector observes any deviation from these rules, Iowa Code chapter 89, the construction code, the installation code, or the National Board Inspection Code.

**90.6(6)** *Inspection of inaccessible parts.* When, in the opinion of the inspector, as a result of conditions disclosed at the time of inspection, it is advisable to remove the interior or exterior lining, covering, or brickwork to expose certain parts of the vessel not normally visible, the owner or user shall

remove such material to permit proper inspection and thickness measurement of any part of the vessel. Nondestructive examination is acceptable.

**90.6(7) *Imminent danger.*** If the labor commissioner determines that continued operation of an object constitutes an imminent danger that could seriously injure or cause death to any person, notice to immediately cease operation of that object shall be posted by the labor commissioner. Upon such notice, the owner shall immediately begin the necessary steps to cease operation of the object. The object shall not be used until the necessary repairs have been completed and the object has passed inspection. Operation of an object in violation of this subrule may result in further legal action pursuant to Iowa Code sections 89.11 and 89.13.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

### **875—90.7(89) Fees.**

**90.7(1) *Special inspector certification fee.*** A \$40 fee shall be paid annually to the commissioner to obtain a special inspector certification pursuant to Iowa Code section 89.7, subsection 1.

**90.7(2) *Certificate fee.*** A \$25 fee shall be paid for each one-year certificate, a \$50 fee shall be paid for each two-year certificate, and a \$100 fee shall be paid for each four-year certificate.

**90.7(3) *Fees for inspection.*** An inspection fee for each object inspected by a division inspector shall be paid by the appropriate party as follows:

- a. A \$40 fee for each water heater supply boiler.
- b. An \$80 fee for each boiler, other than a water heater supply boiler, having a working pressure up to and including 450 pounds per square inch or generating between 20,000 and 100,000 pounds of steam per hour.
- c. A \$200 fee for each boiler, other than a water heater supply boiler, having a working pressure in excess of 450 pounds per square inch and generating in excess of 100,000 pounds of steam per hour.
- d. A \$40 fee for each pressure vessel, such as steam stills, tanks, jacket kettles, sterilizers and all other reservoirs having a working pressure of 15 pounds or more per square inch.
- e. In addition to the applicable object's inspection fee, if the division cannot follow normal practice of scheduling inspections in a cost-effective manner due to a request by an owner or user for a customized schedule, travel expenses may be charged at the discretion of the division.
- f. Inspections and code qualification surveys made by the commissioner at the request of a boiler or tank manufacturer shall be charged at a rate set by the commissioner not to exceed the rate currently charged by the various insurance companies for performing a similar service. This charge shall not void the regular fee for inspection or certification when the boiler or tank is installed.
- g. If a boiler or pressure vessel has to be reinspected through no fault of the division, there shall be another inspection fee as specified above. However, there shall be no fee charged for the first scheduled reinspection to verify that ordered repairs have been made.

**90.7(4) *Fees for attempted inspections.*** A \$20 fee shall be charged for each attempt by a division inspector to conduct an inspection which is not completed through no fault of the division.

[ARC 7863B, IAB 6/17/09, effective 7/1/09; ARC 8081B, IAB 8/26/09, effective 9/30/09]

**875—90.8(89) Certificate.** A certificate to operate shall not be issued until the boiler or pressure vessel is in compliance with the applicable rules and all fees have been paid. The current certificate to operate or a copy of the current certificate to operate shall be conspicuously posted in the room where the object is installed.

### **875—90.9(89,252J,261) Special inspector commissions.**

**90.9(1) *Application.*** A person applying for a commission shall complete, sign, and submit to the division with the required fee the form entitled "Application for Boiler and Pressure Vessel Special Inspector Commission" provided by the division. Additionally, the applicant shall submit a copy of the applicant's current National Board work card with each application.

**90.9(2) *Expiration.*** The commission is for no more than one year and ceases when the special inspector leaves employment with the insurance company, or when the commission is suspended or revoked by the labor commissioner. Each commission shall expire no later than June 30 of each year.

**90.9(3) Changes.** The special inspector shall notify the division at the time any of the information on the form or attachments changes.

**90.9(4) Denials.** The labor commissioner may refuse to issue or renew a special inspector's commission for failure to complete an application package, if the applicant or inspector does not hold a National Board commission, or for any reason listed in subrules 90.9(6) to 90.9(8).

**90.9(5) Investigations.** Investigations shall take place at the time and in the places the labor commissioner directs. The labor commissioner may investigate for any reasonable cause. The labor commissioner may conduct interviews and utilize other reasonable investigatory techniques. Investigations may be conducted without prior notice.

**90.9(6) Reasons for probation.** The labor commissioner may issue a notice of commission probation when an investigation reasonably reveals that the special inspector filed inaccurate reports.

**90.9(7) Reasons for suspension.** The labor commissioner may issue a notice of commission suspension when an investigation reasonably reveals the following:

- a. The special inspector failed to submit and report inspections on a timely basis;
- b. The special inspector abused the special inspector's authority;
- c. The special inspector misrepresented self as a state inspector or a state employee;
- d. The special inspector used commission authority for inappropriate personal gain;
- e. The special inspector failed to follow the division's rules for inspection of object repairs, alterations, construction, installation, or in-service inspection;
- f. The special inspector committed numerous violations as described in subrule 90.9(6);
- g. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- h. The National Board revoked or suspended the special inspector's work card;
- i. The division received a certificate of noncompliance; or
- j. The special inspector failed to take appropriate disciplinary actions against a subordinate special inspector who has committed repeated acts or omissions listed in paragraphs "a" to "h" of this subrule.

**90.9(8) Reasons for revocation.** The labor commissioner may issue a notice of revocation of a special inspector's commission when an investigation reveals any of the following:

- a. The special inspector filed a misleading, false or fraudulent report;
- b. The special inspector failed to perform a required inspection;
- c. The special inspector failed to file a report or filed a report which was not in accordance with the provisions of applicable standards;
- d. The special inspector failed to notify the division in writing of any accident involving an object;
- e. The special inspector committed repeated violations as described in subrule 90.9(7);
- f. The special inspector used fraud or deception to obtain or retain, or to attempt to obtain or retain, a special inspector commission whether for one's self or another;
- g. The special inspector instructed, ordered, or otherwise encouraged a subordinate special inspector to perform the acts or omissions listed in paragraphs "a" to "f" of this subrule;
- h. The National Board revoked or suspended the special inspector's work card; or
- i. The division received a certificate of noncompliance.

**90.9(9) Procedures.** The following procedures shall apply except in the event of revocation or suspension due to receipt of a certificate of noncompliance. In instances involving receipt of a certificate of noncompliance, the applicable procedures of Iowa Code chapter 252J, 261, or 272D shall apply.

a. *Notice of actions.* The labor commissioner shall serve a notice on the special inspector by certified mail to an address listed on the commission application form or by other service as permitted by Iowa Code chapter 17A. A copy shall be sent to the insurance company employing the special inspector.

b. *Contested cases.* The special inspector shall have 20 days to file a written notice of contest with the labor commissioner. If the special inspector does not file a written contest within 20 days of receipt of the notice, the action stated in the notice shall automatically be effective.

c. *Hearing procedures.* The hearing procedures in 875—Chapter 1 shall govern.

d. *Emergency suspension.* Pursuant to Iowa Code section 17A.18A, if the labor commissioner finds that public health, safety or welfare imperatively requires emergency action because a special

inspector failed to comply with applicable laws or rules, the special inspector's commission may be summarily suspended.

*e. Probation period.* A special inspector may be placed on probation for a period not to exceed one year for each incident causing probation.

*f. Suspension period.* A special inspector's commission may be suspended up to five years for each incident causing a suspension.

*g. Revocation period.* A special inspector's commission that has been revoked shall not be reinstated for five years.

*h. Concurrent actions.* Multiple actions may proceed at the same time against any special inspector.

*i. Revoked or suspended commissions.* Within five business days of final agency action revoking or suspending a special inspector commission, the special inspector shall forfeit the special inspector's commission card to the labor commissioner.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

### **875—90.10(89) Quality reviews, surveys and audits.**

**90.10(1)** An entity that manufactures or repairs boilers, pressure vessels or related equipment may request quality reviews, surveys or audits from certifying organizations such as the ASME or the National Board. The division is authorized to conduct the quality reviews, surveys or audits. If the division performs the service, the manufacturer or repairer shall pay all applicable expenses.

**90.10(2)** Quality reviews, surveys and audits for certification to the National Board or ASME standards shall be conducted only by a person or organization designated by the labor commissioner. Any person or organization seeking this designation on behalf of the division shall provide documented evidence of training, examination, experience, and certification for the type of reviews, surveys and audits to be performed. The labor commissioner shall have final authority to determine qualifications and designations.

*a. Assessing quality programs.* The division recognizes the ASME and the National Board as qualified designees for conducting quality reviews, surveys and audits that lead to ASME or National Board program certification.

*b. ISO 9000 assessments.* The division recognizes the ASME and the National Board:

(1) To be acceptable ISO 9000 registrars of quality systems for boilers and pressure vessels and the related pressure-technology equipment industry;

(2) To certify auditors and lead auditors to the requirements of ISO 10011-2 1991(E), Annex A; and

(3) To conduct ISO 9000 assessments for the boiler, pressure vessel, and related pressure-technology equipment industry.

**875—90.11(89) Notification of explosion.** Owners and users of covered objects must report any object explosion by calling (515)281-3647 or (515)281-6533. If the explosion occurs during normal division operating hours, notification shall occur before close of business on that day. If the explosion occurs when the division office is closed, the notification shall occur no later than close of business on the next division business day. Division hours are 8 a.m. to 4:30 p.m., Monday through Friday, except state holidays.

**875—90.12(89) Publications available for review.** Pursuant to Iowa Code section 89.5, subsection 3, the standards, codes, and publications adopted by reference in these rules are available for review in the office of the Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa.

**875—90.13(89) Notice prior to installation.** Written notice of intent to install objects subject to the jurisdiction of Iowa Code chapter 89 shall be provided to the labor commissioner at least ten days before installation. Written notice shall be accomplished by completing and submitting to the labor commissioner either:

1. The form designated by the labor commissioner, or

2. The National Board's Boiler Installation Report, I-1.

**875—90.14(89) Temporary boilers.** A certificate to operate a temporary boiler shall expire one year from the date of issuance or when the temporary boiler is disconnected. Inspections on temporary boilers that remain in one location longer than one year shall be performed according to the inspection schedule of Iowa Code section 89.3. A temporary boiler that is installed at a different location less than a year since the prior internal inspection of the boiler shall be subjected to a hydrostatic test pursuant to the National Board Inspection Code or to an internal inspection, at the discretion of the inspector.

**875—90.15(89) Conversion of a power boiler to a low-pressure boiler.** The following requirements apply to the conversion of a power boiler to a low-pressure boiler. The owner shall comply with the requirements of subrule 90.15(1) for each conversion. In addition, the owner shall comply with the requirements of subrule 90.15(2) if the converted object will be located outside of a place of public assembly or with the requirements of subrule 90.15(3) if the converted object will be located in a place of public assembly.

**90.15(1) General requirements.**

*a.* The owner shall provide to the labor commissioner written notice of intent to convert a power boiler to a low-pressure boiler prior to conversion. The required form for a notice of conversion is available at [http://www.iowaworkforce.org/labor/boiler\\_inspection\\_.htm](http://www.iowaworkforce.org/labor/boiler_inspection_.htm). At a minimum the notice shall contain the following:

- (1) Address, uses, and owner of the building where the boiler is located.
- (2) The Iowa identification number assigned to the boiler.
- (3) Name and contact information for the person completing the notice.
- (4) Name and contact information for the contractor or other person planning to perform the conversion.

*b.* Pressure controls shall not exceed 14 pounds per square inch.

*c.* All boiler controls shall comply with ASME CSD-1.

*d.* Safety valves and safety relief valves shall be manufactured in accordance with a national or international standard.

*e.* One or more spring-pop safety valves meeting the following requirements shall be installed on each steam boiler:

- (1) The valve shall be adjusted and sealed to discharge at a pressure not to exceed 15 psig.
- (2) The valve capacity shall be certified by the National Board.

*f.* The converted boiler shall be subject to post-conversion external inspection to ensure that the requirements of this rule are met.

**90.15(2) Boilers located outside places of public assembly.** A power boiler that was converted to a low-pressure boiler and that is located outside of a place of public assembly shall not be converted back to a power boiler unless the following requirements are met:

*a.* The owner shall notify the labor commissioner at least ten days prior to converting the boiler.

*b.* The owner shall comply with the editions of ASME Section I and CSD-1 in effect at the time of the second conversion.

*c.* The owner shall comply with the version of 875—Chapter 92 in effect at the time of the second conversion.

**90.15(3) Boilers located in places of public assembly.** A power boiler converted to a low-pressure boiler that is located in a place of public assembly shall comply with 875—Chapter 94.

[ARC 9232B, IAB 11/17/10, effective 12/22/10]

These rules are intended to implement Iowa Code chapters 17A, 89, 252J, 261, and 272D.

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[Filed ARC 9232B (Notice ARC 9087B, IAB 9/22/10), IAB 11/17/10, effective 12/22/10]

<sup>◇</sup> Two or more ARCs

<sup>1</sup> Date corrected IAC Supp. 3/26/08



CHAPTER 91  
GENERAL REQUIREMENTS FOR ALL OBJECTS

[Prior to 1/14/98, see 347—Chs 41 to 49]

[Prior to 8/16/06, see 875—Ch 203]

**875—91.1(89) Codes and code cases adopted by reference.**

**91.1(1)** *ASME boiler and pressure vessel codes adopted by reference.* The ASME Boiler and Pressure Vessel Code (2007 with 2008a and 2009b addenda) is adopted by reference. Regulated objects shall be designed and constructed in accordance with the ASME Boiler and Pressure Vessel Code (2007 with 2008a and 2009b addenda) except for objects that meet one of the following criteria:

- a. An object with an ASME stamp and National Board Registration that establish compliance with an earlier version of the ASME Boiler and Pressure Vessel Code;
- b. An object within the scope of 875—Chapter 95;
- c. An object with an ASME stamp and National Board Registration that establish compliance with DIN, BSI, JIS, or CSA;
- d. A miniature boiler installed before March 31, 1967;
- e. A power boiler or unfired steam pressure vessel installed before July 4, 1951; or
- f. A steam heating boiler, hot water heating boiler, or hot water supply boiler installed before July 1, 1960.

**91.1(2)** *ASME code cases.* If the manufacturer of an object listed ASME Code Case 2529, 2568, 2571, or 2571-1 on the manufacturer's data report for the object and the object is otherwise in compliance with all applicable provisions, the object is in compliance with these rules.

**91.1(3)** *Inspection code adopted by reference.* The National Board Inspection Code (2007 with 2008, 2009, and 2010 addenda) is adopted by reference, and reinstallations, installations, alterations, and repairs after December 22, 2010, shall comply with it.

**91.1(4)** *Electric code adopted by reference.* The National Electrical Code (2008) is adopted by reference, and reinstallations and installations after January 1, 2010, shall comply with it.

**91.1(5)** *Piping codes adopted by reference.* The Power Piping Code, ASME B31.1 (2007), ASME B31.1a (2008), and ASME B31.1b (2009), and the Building Services Piping Code, ASME B31.9 (2008), are adopted by reference, and reinstallations and installations after April 14, 2010, shall comply with them up to and including the first valve.

**91.1(6)** *Control and safety device code adopted by reference.* Controls and Safety Devices for Automatically Fired Boilers (CSD-1) (2009) is adopted by reference, and reinstallations and installations after January 1, 2010, shall comply with it.

**91.1(7)** *Mechanical code adopted by reference.* Excluding Section 701.1, Chapters 2 and 7 of the International Mechanical Code (IMC) (2009) are adopted by reference effective January 1, 2010.

**91.1(8)** *Oil burning equipment code adopted by reference.* National Fire Protection Association Standard for the Installation of Oil Burning Equipment, NFPA 31 (2006), is adopted by reference.

**91.1(9)** *Fuel gas code adopted by reference.* National Fire Protection Association National Fuel Gas Code, NFPA 54 (2009), is adopted by reference.

**91.1(10)** *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 (2008), is adopted by reference.

**91.1(11)** *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 (2007), is adopted by reference.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 8590B, IAB 3/10/10, effective 4/14/10; ARC 9232B, IAB 11/17/10, effective 12/22/10]

**875—91.2(89) Safety appliance.** No person shall remove, disable or tamper with a required safety appliance except for the purpose of repair or inspection. An object shall not be operated unless all applicable safety appliances are properly functional and operational.

**875—91.3(89) Pressure-reducing valves.** Where pressure-reducing valves are used, one or more relief or safety valves shall be provided on the low-pressure side of the reducing valve when the piping

equipment on the low-pressure side does not meet the requirements for the full initial pressure. The relief or safety valves shall be located adjoining or as close as possible to the reducing valve. Proper protection shall be provided to prevent injury or damage caused by the escaping fluid from the discharge of relief or safety valves if vented to the atmosphere. The combined discharge capacity of the relief valves or safety valves shall be such that the pressure rating of the lowest pressure piping or equipment shall not be exceeded in case the reducing valve sticks open. If a bypass around the reducing valves is used, a safety valve is required on the low-pressure side and shall be of sufficient capacity to relieve all the fluid that can pass through the bypass without overpressuring the low-pressure side. A pressure gage shall be installed on the low-pressure side of a reducing valve.

**875—91.4(89) Blowoff equipment.** The blowdown from an object that enters a sanitary sewer system or blowdown that is considered a hazard to life or property shall pass through blowoff equipment that will reduce pressure and temperature. The temperature of the water leaving the blowoff equipment shall not exceed 150 degrees Fahrenheit. If the local jurisdiction has a temperature limit of less than 150 degrees Fahrenheit, the temperature of the water leaving the blowoff equipment shall comply with the limit set by the local jurisdiction. The pressure of the water leaving the blowoff equipment shall not exceed 5 psig. The blowoff piping and fittings between the object and the blowoff tank shall comply with the construction or installation code. All materials used in the fabrication of object blowoff equipment shall comply with the construction or installation code. All blowoff equipment shall be equipped with openings to facilitate cleaning and inspection.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

**875—91.5(89) Location of discharge piping outlets.** The discharge from safety valves, safety relief valves, blowoff pipes and other outlets shall be so arranged that there will be no danger of scalding personnel. When the safety valve or temperature and pressure relief valve discharge is piped away from the object to the point of discharge, provision shall be made for properly draining the piping. The size of the discharge piping shall not be reduced from the size of the relief valve.

**875—91.6(89) Pipe, valve, and fitting requirements.**

**91.6(1)** Pipes, valves, and fittings subject to the effects of galvanic action shall not be used on objects covered by these rules except where permitted in 875—Chapter 95. Dielectric fittings shall be used where dissimilar metals are joined.

**91.6(2) and 91.6(3)** Rescinded IAB 11/18/09, effective 1/1/10.  
[ARC 8283B, IAB 11/18/09, effective 1/1/10]

**875—91.7(89) Electric steam generator.**

**91.7(1)** A cable at least as large as one of the incoming power lines to the generator shall be permanently fastened to and provide grounding of the generator shell.

**91.7(2)** A suitable screen or guard shall be provided around high-tension bushings and a sign posted warning of high voltage. This screen or guard shall be so located that it will be impossible for anyone working around the generator to accidentally come in contact with the high-tension circuits.

**91.7(3)** All electrically heated boilers shall meet the applicable standards of the construction or installation code.

**875—91.8(89) Alterations, retrofits and repairs to objects.**

**91.8(1) General.** Alterations, retrofits, and repairs shall be made so that the object shall be at least as safe as the original construction. Alterations, retrofits, and repairs shall be done as though new construction and shall comply with the applicable code or codes as adopted in 875—Chapters 90 through 96. A National Board “R” form shall be filed with the division for each alteration, retrofit, or repair.

**91.8(2) Lap seam cracks.** The shell or drum of an object in which a lap seam crack is discovered along a longitudinal, riveted joint shall be immediately discontinued from use. If the object is not more than 15 years of age, a complete new course of the original thickness may be installed at the discretion of the inspector. Patching is prohibited.

**875—91.9(89) Boiler door latches.** A watertube boiler shall have the firing doors of the inward opening type, unless such doors are provided with substantial and effective latching or fastening devices or are otherwise so constructed as to prevent closed doors from being blown open by pressure on the furnace side. These latches or fastenings shall be of the positive, self-locking type. Friction contacts, latches, and bolts actuated by springs shall not be used. The foregoing requirements for latches or fastenings shall not apply to coal openings on downdraft or similar furnaces.

All other doors, except explosion doors, not used in the firing of the boiler may be provided with bolts or fastenings in lieu of self-locking latching devices. Explosion doors, if used and located in the setting walls within seven feet of the firing floor or operating platform, shall be provided with substantial deflectors to divert the blast.

**875—91.10(89) Clearance.**

**91.10(1)** All objects installed prior to September 20, 2006, shall be so located that adequate space is provided for the proper operation, inspection, and necessary maintenance and repair of the object and its appurtenances.

**91.10(2)** This subrule applies to installations and reinstallations after September 20, 2006. Minimum clearance on all sides of objects shall be 24 inches, or the manufacturer's recommended service clearances if they allow sufficient room for inspection. Where a manufacturer identifies in the installation manual or any other document that the unit requires more than 24 inches of service clearance, those dimensions shall be followed. Manholes shall have five feet of clearance between the manhole opening and any wall, ceiling or piping that would hinder entrance or exit from the object.

**875—91.11(89) Fall protection.** Safe access to all necessary parts of boilers over eight feet tall shall be provided by a runway platform or fall protection system consistent with the requirements below.

**91.11(1) Runway platform.** A steel runway platform in compliance with the criteria of 29 CFR 1910.23 and 1910.27 shall be installed across the tops of objects or at some other convenient level for the purpose of affording safe access. All runways shall have at least two means of exit remotely located from each other.

**91.11(2) Fall protection system.** A fall protection system shall be in compliance with the requirements of 29 CFR 1910.132.

**875—91.12(89) Exit from rooms containing objects.** All rooms exceeding 500 square feet of floor area and containing one or more objects having a fuel-burning capacity of 1 million Btu's shall have two means of exit remotely located from each other on each level.

**875—91.13(89) Air and ventilation.**

**91.13(1) Notice concerning other rules.** The division and the Iowa department of public safety both enforce requirements concerning air and ventilation. Objects that are covered by both sets of rules must comply with both sets of rules.

**91.13(2) Documentation.** Documentation of compliance with any requirement of this rule shall be maintained in the boiler room. However, it is not necessary to maintain documentation of the louvered area.

**91.13(3) National combustion air standards.**

*a. Installations and reinstallations.* Installations and reinstallations shall comply with the edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC currently adopted at rule 875—91.1(89) or with the Iowa combustion air standard in subrule 91.13(4). However, compliance with one of the listed NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA.

*b. Existing objects.* An adequate supply of combustion air shall be maintained for all objects while in operation. Compliance with the current edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC as adopted at rule 875—91.1(89) or with subrule 91.13(4) constitutes compliance with this rule. Compliance with an earlier edition of NFPA 31, NFPA 54, NFPA 58, NFPA 85, or IMC constitutes compliance with this rule. However, compliance with one of the listed

NFPA codes constitutes compliance with this rule only if the object burns the fuel covered by the NFPA. Compliance with an earlier version of Iowa's combustion air rule constitutes compliance with this rule. Earlier versions of Iowa's combustion air rule are available for reference at [http://www.iowaworkforce.org/labor/boiler\\_inspection\\_.htm](http://www.iowaworkforce.org/labor/boiler_inspection_.htm).

**91.13(4) Iowa combustion air standard.** A permanent source of outside air shall be provided for each room to permit satisfactory combustion of fuel and ventilation if necessary under normal operations. The minimum ventilation for coal, gas, or oil burners in rooms containing objects is based on the Btu's per hour, required air, and louvered area. The minimum net louvered area shall not be less than 1 square foot. The following table shall be used to determine the net louvered area in square feet:

INPUT (Btu's per hour)	MINIMUM AIR REQUIRED (cubic feet per minute)	MINIMUM LOUVERED AREA (net square feet)
500,000	125	1.0
1,000,000	250	1.0
2,000,000	500	1.6
3,000,000	750	2.5
4,000,000	1,000	3.3
5,000,000	1,200	4.1
6,000,000	1,500	5.0
7,000,000	1,750	5.8
8,000,000	2,000	6.6
9,000,000	2,250	7.5
10,000,000	2,500	8.3

When mechanical ventilation is used, the supply of combustion and ventilation air to the objects and the firing device shall be interlocked with the fan so the firing device will not operate with the fan off. The velocity of the air through the ventilating fan shall not exceed 500 feet per minute, and the total air delivered shall be equal to or greater than shown above.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

**875—91.14(89) Condensate return tank.** Condensate return tanks shall be equipped with at least two vents or a vent and overflow pipe to protect against a loose float plugging a single connection.

**875—91.15(89) Conditions not covered.** Any condition not governed by these rules shall be governed by the construction or installation code.

**875—91.16(89) Nonstandard objects.** Rescinded IAB 3/12/08, effective 4/16/08.

**875—91.17(89) English language and U.S. customary units required.** All documentation supplied for the unit including but not limited to the manufacturers' data report, drawings, parts lists, installation manuals, and operating manuals shall be in English, and all measurements shall be in U.S. customary units. All pressure gages, thermometers and other controls and safety devices shall also be in U.S. customary units.

**875—91.18(89) National Board registration.** Except for cast iron boilers, cast aluminum boilers, and objects governed by 875—Chapter 95, all objects shall be registered with the National Board.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

**875—91.19(89) ASME stamp.** Except for water heaters regulated by 875—Chapter 95, all objects shall bear the appropriate ASME stamp. Objects shall not be utilized in a manner inconsistent with the stamp.

[ARC 8283B, IAB 11/18/09, effective 1/1/10]

**875—91.20(89) CSD-1 Report.**

**91.20(1)** The installer shall complete a Manufacturer's/Installing Contractor's Report for ASME CSD-1 (CSD-1 Report) for each object except for the following:

- a. An object within the scope of 875—Chapter 95;
- b. An object within the scope of 875—Chapter 96; or
- c. A hot water supply boiler covered by ASME Section IV, Part HLW.
- d. A boiler with a fuel input rating greater than or equal to 12,500,000 Btu per hour, falling within the scope of NFPA 85, Boiler and Combustion Systems Hazards Code.

**91.20(2)** The owner shall make the CSD-1 Report available for inspection.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 9232B, IAB 11/17/10, effective 12/22/10]

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