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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

### **Real Estate Appraiser Examining Board[193F]**

Replace Chapter 10

### **Education Department[281]**

Replace Chapter 97

### **Inspections and Appeals Department[481]**

Replace Analysis

Replace Chapters 30 and 31

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

Replace Chapter 135

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

Replace Analysis

Replace Chapter 5

Replace Reserved Chapter 221 with Chapter 221

Replace Chapter 224

Remove Reserved Chapters 225 to 239

Insert Chapter 225 and Reserved Chapters 226 to 239

### **Dental Board[650]**

Replace Analysis

Replace Chapter 29

### **Medicine Board[653]**

Replace Analysis

Replace Chapters 8 to 10

Replace Chapter 14

### **Revenue Department[701]**

Replace Chapter 71

### **Veterans Affairs, Iowa Department of[801]**

Replace Chapter 10

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

Replace Chapter 90



CHAPTER 10  
RECIPROCITY

[Prior to 2/20/02, see 193F—Chapter 5]

**193F—10.1(543D) Nonresident certification by reciprocity.**

**10.1(1)** A nonresident of Iowa seeking certification in this state shall apply on forms provided by the board and pay the appropriate fee required in rule 193F—12.1(543D).

**10.1(2)** The board may issue a reciprocal certificate to a nonresident individual who is certified and demonstrates good standing in another state. An appraiser who is listed in good standing on the National Registry of the Appraisal Subcommittee satisfies the requirement that good standing be demonstrated and does not need to submit additional documentation. An appraiser who is not listed in good standing on the National Registry of the Appraisal Subcommittee must supply an official letter of good standing issued by the licensing board of the appraiser's resident state and bearing its seal. An appraiser may verify the appraiser's status on the National Registry of the Appraisal Subcommittee by accessing the Web site at [www.asc.gov](http://www.asc.gov).

**10.1(3)** A reciprocal certified appraiser shall comply with all provisions of Iowa law and rules.

**10.1(4)** Reciprocal certified appraisers shall be required to pay the federal registry fee as required in rule 193F—12.3(543D).

[ARC 1197C, IAB 11/27/13, effective 1/1/14]

**193F—10.2(543D) Nonresident temporary practice.**

**10.2(1)** The board will recognize, on a temporary basis and for a maximum of two assignments per year, the certification of an appraiser issued by another state.

**10.2(2)** The appraiser must register with the board and identify the property(ies) to be appraised, the name and address of the client and the estimated length of time the appraiser will be in the state. The appraiser must demonstrate good standing to be considered for a temporary practice permit. An appraiser who is listed in good standing on the National Registry of the Appraisal Subcommittee satisfies the requirement that good standing be demonstrated and does not need to submit additional documentation. An appraiser who is not listed in good standing on the National Registry of the Appraisal Subcommittee must supply an official letter of good standing issued by the licensing board of the appraiser's resident state and bearing its seal. An appraiser may verify the appraiser's status on the National Registry of the Appraisal Subcommittee by accessing the Web site at [www.asc.gov](http://www.asc.gov). Registration shall be on a form provided by the board and submitted to the board office prior to the performance of the appraisal. The appraiser shall pay the appropriate fee as required in 193F—12.1(543D).

**10.2(3)** An appraiser holding an inactive or lapsed certificate as a real estate appraiser in Iowa may apply for a temporary practice permit if the appraiser holds an active, unexpired certificate as a real estate appraiser in good standing in another jurisdiction and is otherwise eligible for a temporary practice permit.

**10.2(4)** An appraiser who was previously a registered associate or certified appraiser in Iowa whose Iowa registration or certificate has been revoked or surrendered in connection with a disciplinary investigation or proceeding is ineligible to apply for a temporary practice permit in Iowa.

**10.2(5)** The board may deny an application for a temporary practice permit if the applicant has been disciplined in Iowa or another jurisdiction, a disciplinary investigation or proceeding is pending in Iowa, the person has been convicted of a crime that is a ground for discipline in Iowa, or it appears the applicant is applying for a temporary permit because the applicant would not qualify to renew or reinstate in active status in Iowa and the application for a temporary permit is made primarily to compromise compliance with Iowa laws and rules.

**10.2(6)** An appraiser holding an inactive or lapsed Iowa certificate who applies to reinstate to active status in Iowa shall not be given credit for any fees paid during the biennial period for one or more temporary practice permits.

**10.2(7)** An appraiser holding a license to practice as a real estate appraiser in another jurisdiction may practice in Iowa without applying for a temporary practice permit or paying any fees as long as

the appraiser does not perform appraisal services in Iowa for which certification is required by state or federal law, rule or policy.

**10.2(8)** The board must receive and approve an application for a temporary practice permit before the applicant is eligible to practice in Iowa under a temporary practice permit. Applicants are encouraged to submit applications by e-mail or facsimile to avoid the possible delays of mail service, because the board will not approve an application with a retroactive start date. The board shall grant or deny all applications for temporary practice permits as quickly as reasonably feasible and no later than five days of receipt of a completed application. Applicants shall use the form prescribed by the board. Applicants disclosing discipline or criminal convictions shall attach documentation from which the board can determine if the discipline or criminal history would be a ground to deny the application. Falsification of information or failure to disclose material information shall be a ground to deny the application and may form the basis to deny any subsequent application or an application to reinstate a lapsed or inactive Iowa certificate.

[ARC 9865B, IAB 11/30/11, effective 1/4/12]

These rules are intended to implement Iowa Code sections 543D.10 and 543D.11.

[Filed 8/1/91, Notice 5/29/91—published 8/21/91, effective 9/25/91]

[Filed 12/12/95, Notice 10/25/95—published 1/3/96, effective 2/7/96]

[Filed 2/1/02, Notice 11/28/01—published 2/20/02, effective 3/27/02]

[Filed 2/22/07, Notice 1/17/07—published 3/14/07, effective 4/18/07]

[Filed 3/27/08, Notice 1/30/08—published 4/23/08, effective 5/28/08]

[Filed ARC 9865B (Notice ARC 9716B, IAB 9/7/11), IAB 11/30/11, effective 1/4/12]

[Filed ARC 1197C (Notice ARC 1035C, IAB 10/2/13), IAB 11/27/13, effective 1/1/14]

CHAPTER 97  
SUPPLEMENTARY WEIGHTING

**281—97.1(257) Definitions.** For the purpose of this chapter, the following definitions apply.

*“Actual enrollment”* shall mean the enrollment determined annually on October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, pursuant to Iowa Code section 257.6.

*“Career academy”* shall mean a program of study as defined in 281—Chapter 47. A course offered by a career academy shall not qualify as a regional academy course. A career academy course may qualify as a concurrent enrollment course if it meets the requirements of Iowa Code section 261E.8.

*“Class”* shall mean a course for academic credit which applies toward a high school or community college diploma.

*“Enrolled”* shall mean that a student has registered with the school district and is taking part in the educational program.

*“Fraction of a school year at the elementary level”* shall mean the product of the minutes per day of class times the number of days per year the class meets divided by the product of the total number of minutes in a school day times the total number of days in a school year.

*“Fraction of a school year at the secondary level”* shall mean the product of the class periods per day of class times the number of days per year the class meets divided by the product of the total number of class periods in a school day times the total number of days in a school year. All class periods available in a normal day shall be used in the calculation.

*“ICN”* shall mean the Iowa Communications Network.

*“Political subdivision”* shall mean a political subdivision in the state of Iowa and shall include a city, a township, a county, a public school district, a community college, an area education agency, or an institution governed by the state board of regents (Malcolm Price Laboratory School, Iowa Braille and Sight Saving School, Iowa School for the Deaf, Iowa State University, University of Iowa, and University of Northern Iowa).

*“Project lead the way”* means the nonprofit organization with 501(c)(3) tax-exempt status that provides rigorous and innovative science, technology, engineering, and mathematics education curriculum founded in fundamental problem-solving and critical-thinking skills while integrating national academic and technical learning standards.

*“Regional academy”* shall mean an educational program established by a school district to which multiple school districts send students in grades 7 through 12. The curriculum shall include advanced-level courses and, in addition, may include career-technical courses, Internet-based courses, and coursework delivered via the ICN. Regional academy courses shall not qualify as concurrent enrollment courses and do not generate any postsecondary credit. School districts participating in regional academies are eligible for supplementary weighting as provided in Iowa Code section 257.11, subsection 2.

*“Superintendent”* shall be defined pursuant to Iowa Code section 272.1.

*“Supplant”* shall mean the community college’s replacing the identical course that was offered by the school district in the preceding year or the second preceding year, or the community college’s offering a course that is required by the school district in order to meet the minimum accreditation standards in Iowa Code section 256.11.

*“Supplementary weighting plan”* shall mean a plan as defined in this chapter to add a weighting for each resident student eligible who is enrolled in an eligible class taught by a teacher employed by another school district or taught by a teacher employed jointly with another school district or sent to and enrolled in an eligible class in another school district or sent to and enrolled in an eligible community college class. The supplementary weighting for each eligible class shall be calculated by multiplying the fraction of a school year that class represents by the number of eligible resident students enrolled in that class and then multiplying that figure by the weighting factor established in Iowa Code chapter 257.

*“Supplementary weighting plan for at-risk students”* shall mean a plan as defined in this chapter to add a weighting for each resident student enrolled in the district and a weighting for each resident student enrolled in grades one through six, as reported by the school district on the basic educational data survey

for the base year, who is eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. Sections 1751-1785, to generate funding to be used to develop or maintain at-risk programs, which may include alternative school programs.

“Teacher” shall be defined pursuant to Iowa Code section 272.1.

[ARC 8188B, IAB 10/7/09, effective 11/11/09; ARC 0014C, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter); ARC 0520C, IAB 12/12/12, effective 1/16/13]

### **281—97.2(257) Supplementary weighting plan.**

**97.2(1) Eligibility.** Except if listed under subrule 97.2(7), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if one of the following conditions is met pursuant to Iowa Code section 257.11:

- a. Resident student attends class in another school district pursuant to subrule 97.2(2), or
- b. Resident student attends class taught by a teacher employed by another school district pursuant to subrule 97.2(3), or
- c. Resident student attends class taught by a teacher jointly employed by two or more school districts pursuant to subrule 97.2(4), or
- d. Resident student attends class in a community college for college credit pursuant to subrule 97.2(5), or
- e. Resident student attends class in a community college for college credit pursuant to subrule 97.2(6).

Other than as listed in paragraphs 97.2(1)“a” to “e” above and in rules 281—97.3(257), 281—97.4(257), and 281—97.7(257), no other sharing arrangement shall be eligible for supplementary weighting.

**97.2(2) Attend class in another school district.** Students attending class in another school district will be eligible for supplementary weighting under paragraph 97.2(1)“a” only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

**97.2(3) Attend class taught by a teacher employed by another school district.** Students attending class taught by a teacher employed by another school district will be eligible for supplementary weighting under paragraph 97.2(1)“b” only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

**97.2(4) Attend class taught by a teacher jointly employed with another school district.** All of the following conditions must be met for any student attending class taught by a teacher jointly employed to be eligible for supplementary weighting under paragraph 97.2(1)“c.” The school districts jointly employing the teacher must have:

- a. A joint teacher evaluation process and instruments.
- b. A joint teacher professional development plan.
- c. One single salary schedule.

Except for joint employment contracts which meet the requirements of paragraphs “a” to “c” above, no two or more school districts shall list each other for the same classes and grade levels.

**97.2(5) Attend class in a community college.** All of the following conditions must be met for any student attending a community college-offered class to be eligible for supplementary weighting under paragraph 97.2(1)“d.”

- a. The course must supplement, not supplant, high school courses.
  - (1) For purposes of these rules, to comply with the “supplement, not supplant” requirement, the content of a course provided to a high school student for postsecondary credit shall not consist of substantially the same concepts and skills as the content of a course provided by the school district.
  - (2) The course must not be used by the school district in order to meet the minimum accreditation standards in Iowa Code section 256.11.
- b. The course must be included in the community college catalog or an amendment or addendum to the catalog.

c. The course must be open to all registered community college students not just high school students.

d. The course must be for college credit and the credit must apply toward an associate of arts or associate of science degree, or toward an associate of applied arts or associate of applied science degree, or toward completion of a college diploma program.

e. The course must be taught by an instructor employed by or under contract with the community college who meets the requirements of Iowa Code section 261E.3.

f. The course must be taught utilizing the community college course syllabus.

g. The course must be taught in such a manner as to result in student work and student assessment which meet college-level expectations.

h. The course must not have been determined as failing to meet the standards established by the postsecondary course audit committee.

**97.2(6)** *Attend a project lead the way class in a community college.* Students attending a science, technology, engineering, or mathematics class that uses an activities-based, project-based, and problem-based learning approach and that is offered collaboratively by the students' school district and a community college in partnership with a nationally recognized provider of rigorous and innovative science, technology, engineering, and mathematics curriculum are eligible for supplementary weighting under paragraph 97.2(1) "e" if the curriculum provider is exempt from taxation under Section 501(c)(3) of the Internal Revenue Code.

**97.2(7)** *Ineligibility.* The following students are ineligible for supplementary weighting:

a. Nonresident students attending the school district under any arrangement except open enrolled in students, nonpublic shared-time students, or dual enrolled competent private instruction students in grades 9 through 12.

b. Students eligible for the special education weighting plan provided in Iowa Code section 256B.9 when being served by special education programs or services that carry additional weighting.

c. Students in whole-grade sharing arrangements except under sharing pursuant to subrule 97.2(5) or subrule 97.2(7).

d. Students open enrolled out except under sharing pursuant to subrule 97.2(5) or subrule 97.6(1), paragraph "c."

e. Students open enrolled in, except under sharing pursuant to subrule 97.2(5) or subrule 97.6(1), paragraph "c," when the students are under competent private instruction and are dual enrolled in grades 9 through 12.

f. Students participating in shared services rather than shared classes except under sharing pursuant to rule 281—97.7(257).

g. Students taking postsecondary enrollment options (PSEO) courses.

h. Students enrolled in courses or programs offered by their resident school districts unless those courses meet the conditions for attending classes in a community college under subrule 97.2(5) or if the teacher is employed by another school district pursuant to subrule 97.2(3) or if a teacher is jointly employed with another school district pursuant to subrule 97.2(4) or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) or if the courses are in-district virtual classes provided via ICN video services to other districts pursuant to subrule 97.6(1).

i. Students enrolled in courses or programs taught by teachers employed by their resident school districts unless the employment meets the criteria of joint employment with another school district under subrule 97.2(4) or if the criteria in subrule 97.2(5) are met for students attending class in a community college or if the courses are included in the curriculum of an in-district regional academy pursuant to subrule 97.4(1) or if the courses are in-district virtual classes provided via ICN video services to other districts pursuant to subrule 97.6(1).

j. Students enrolled in an at-risk program or alternative school program when being served by such program.

k. Students enrolled in summer school courses.

**97.2(8)** *Whole-grade sharing.* If all or a substantial portion of the students in any grade are shared with another one or more school districts for all or a substantial portion of a school day, then no

students in that grade level are eligible for supplementary weighting except as authorized by rule 281—97.5(257). No students in the grade levels who meet the criterion in this subrule are eligible for supplementary weighting even in the absence of an agreement executed pursuant to Iowa Code sections 282.10 through 282.12. A district that discontinues grades pursuant to Iowa Code section 282.7 is deemed to be whole-grade sharing the resident students in those discontinued grades for purposes of these rules.

*a.* In a one-way whole-grade sharing arrangement, the receiving district may count its resident students in the grade levels that are whole-grade shared if the resident students are shared pursuant to subrule 97.2(2), 97.2(3), or 97.2(5).

*b.* In a one-way whole-grade sharing arrangement, the receiving district may not count its resident students in the grade levels that are whole-grade shared pursuant to subrule 97.2(3) if the teacher is employed by the same district that is sending students under the whole-grade sharing arrangement.

**97.2(9) *Due date.*** Supplementary weighting shall be included with the certified enrollment which is due October 15 following the October 1, or the first Monday in October if October 1 falls on a Saturday or Sunday, on which the enrollment was taken.

[ARC 8188B, IAB 10/7/09, effective 11/11/09; ARC 9266B, IAB 12/15/10, effective 1/19/11; ARC 0520C, IAB 12/12/12, effective 1/16/13]

**281—97.3(257) Supplementary weighting plan for at-risk students.**

**97.3(1) *Uses of funds.*** Funding generated by the supplementary weighting plan for at-risk students shall be used to develop or maintain at-risk programs, which may include alternative school programs.

**97.3(2) *Calculation of funding.*** Funding for the supplementary weighting plan for at-risk students is calculated as follows:

*a.* Adding a weighting for each resident student of one hundred fifty-six one-hundred-thousandths, and

*b.* Adding a weighting of forty-eight ten-thousandths for each resident student enrolled in grades one through six, as reported by the school district on the basic educational data survey for the base year, who is eligible for free and reduced price meals under the federal National School Lunch Act and the federal Child Nutrition Act of 1966, 42 U.S.C. Sections 1751-1785.

**97.3(3) *Guarantee.*** Rescinded IAB 8/21/02, effective 9/25/02.

**97.3(4) *Recalculation of funding.*** Rescinded IAB 8/21/02, effective 9/25/02.

**97.3(5) *School-based youth services.*** Rescinded IAB 8/21/02, effective 9/25/02.

**281—97.4(257) Supplementary weighting plan for a regional academy.**

**97.4(1) *Eligibility.*** Except if listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if all of the following criteria are met:

*a.* Two or more Iowa school districts, other than a whole-grade sharing partner district, send students to advanced-level courses that are included in the curriculum of the regional academy, and these students are eligible for supplementary weighting under subrule 97.2(1), paragraph “a” or “c.” In addition, for the host district to qualify for the minimum weighting pursuant to subrule 97.4(4), one or more Iowa school districts, other than a whole-grade sharing partner district, must send students to career-technical classes that are included in the curriculum of the regional academy.

*b.* The regional academy is located in the district.

*c.* The grade levels include one or more grades seven through twelve.

*d.* The curriculum is an organized course of study, adopted by the board, that includes a minimum of two advanced-level courses that are not part of a career-technical program. An advanced-level course is a course that is above the level of the course units required as minimum curriculum in 281—Chapter 12 in the host district.

*e.* The resident students are not eligible for supplementary weighting under another supplementary weighting plan.

*f.* No resident or nonresident students are attending the regional academy under a whole-grade sharing arrangement as defined in subrule 97.2(7).

g. Two or more sending districts that are whole-grade sharing partner districts shall be treated as one sending district for purposes of subrule 97.4(1), paragraph “a.”

h. The school districts participating in a regional academy shall enter into an agreement on how the funding generated by the supplementary weighting received shall be used and shall submit the agreement, as well as a copy of the minutes of meetings of the local school district boards of directors in which the boards approved the agreement, to the department for approval by October 1 of the year in which the districts intend to request supplementary weighting for the regional academy.

**97.4(2) *Weighting.*** Resident students eligible for supplementary weighting pursuant to subrule 97.4(1) shall be eligible for a weighting of one-tenth of the fraction of a school year during which the pupil attends courses at the regional academy in which nonresident students are enrolled pursuant to subrule 97.4(1), paragraph “a.”

**97.4(3) *Maximum weighting.*** The maximum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to 30 full-time-equivalent pupils.

**97.4(4) *Minimum weighting.*** The minimum amount of additional weighting for which a school district establishing a regional academy shall be eligible is an amount corresponding to 15 full-time-equivalent pupils if the academy provides both advanced-level courses and career-technical courses.

**97.4(5) *Additional programs.*** If all of the criteria in subrule 97.4(1) are met, the regional academy may also include in its curriculum career-technical courses, Internet-based courses and ICN courses.

**97.4(6) *Career academy.*** A career academy is not a regional academy for purposes of these rules. [ARC 8188B, IAB 10/7/09, effective 11/11/09; ARC 0014C, IAB 2/22/12, effective 3/28/12 (See Delay note at end of chapter)]

#### **281—97.5(257) Supplementary weighting plan for whole-grade sharing.**

**97.5(1) *Whole-grade sharing.*** A school district which participates in a whole-grade sharing arrangement executed pursuant to Iowa Code sections 282.10 to 282.12 and which has adopted a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization to take effect on or before July 1, 2014, is eligible to assign a weighting of one-tenth of the fraction of the school year during which resident pupils attend classes pursuant to subrule 97.2(1), paragraph “a,” “b,” or “c.” A school district participating in a whole-grade sharing arrangement shall be eligible for supplementary weighting under this subrule for a maximum of three years. Receipt of supplementary weighting for the second year and for the third year shall be conditioned upon submission of information resulting from the study to the school budget review committee indicating progress or continued progress toward the objective of dissolution or reorganization on or before July 1, 2014.

**97.5(2) *Contiguous districts.*** School districts that adopt a board resolution jointly with all other affected boards to study reorganization must be contiguous school districts. If two or more of the affected districts are not contiguous to each other, all districts separating those districts must be a party to the whole-grade sharing arrangement and the board resolution adopted jointly to study reorganization.

**97.5(3) *Consecutive years.*** A school district that is eligible to add a supplementary weighting for resident students attending classes under a whole-grade sharing arrangement pursuant to subrule 97.5(1) is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on October 1 for this purpose shall not be later than the school year that begins July 1, 2013.

**97.5(4) *Change in sharing districts.*** A school district that is eligible to add a supplementary weighting for resident students attending classes under a whole-grade sharing arrangement pursuant to subrule 97.5(1) may enter into a whole-grade sharing arrangement with one or more different districts for its second or third year of eligible weighting by adopting and filing a new joint board resolution pursuant to this subrule. Establishing a new whole-grade sharing arrangement does not extend the maximum number of years for which a school district is eligible.

**97.5(5) *Filing board resolutions.*** Each school district that adopts a board resolution to study dissolution or has adopted a board resolution jointly with all other affected boards to study reorganization

shall file a copy of the board resolution with the department of education not later than October 1 on which date the district intends to request supplementary weighting for whole-grade sharing.

**97.5(6) Filing progress reports.** Each school district that assigned a supplementary weighting to resident students attending class in a whole-grade sharing arrangement and that intends to assign a supplementary weighting to resident students attending class in a whole-grade sharing arrangement in the following year shall file a report of progress toward reorganization with the school budget review committee, on forms developed by the department of education, no later than August 1 preceding October 1 on which date the district intends to request supplementary weighting for whole-grade sharing.

*a.* The progress report shall include, but not be limited to, the following information:

- (1) Names of districts with which the district is studying reorganization.
- (2) Descriptive information on the whole-grade sharing arrangement.
- (3) If the district is studying dissolution, information on whether public hearings have been held, a proposal has been adopted, and an election date has been set.
- (4) If the district is studying reorganization, information on whether public hearings have been held, a plan has been approved by the AEA, and an election date has been set.
- (5) Description of joint activities of the boards such as planning retreats and community meetings.
- (6) Information showing an increase in sharing activities with the whole-grade sharing partners such as curriculum offerings, program administration, personnel, and facilities.

*b.* The report must indicate progress toward a reorganization or dissolution to occur on or before July 1, 2014. Indicators of progress may include, but are not limited to:

- (1) Establishing substantially similar salary schedules or a plan by which the sharing districts will be able to develop a single salary schedule upon reorganization.
- (2) Establishing a joint teacher evaluation process and instruments.
- (3) Developing a substantially similar continuous school improvement plan (CSIP) with aligned goals including a district professional development plan.
- (4) Increasing the number of grades involved in the whole-grade sharing arrangement.
- (5) Increasing the number of shared teaching or educator positions.
- (6) Increasing the number or extent of operational sharing arrangements.
- (7) Increasing the number of shared programs such as career, at risk, gifted and talented, curricular, or cocurricular.
- (8) Increasing the number of joint board meetings or planning retreats.
- (9) Holding regular or frequent public meetings to inform the public of progress toward reorganization and to receive comments from the public regarding the proposed reorganization.
- (10) Adopting a reorganization or dissolution proposal.
- (11) Setting proposed boundaries.
- (12) Setting a date for an election on the reorganization or dissolution proposal.

*c.* The school budget review committee shall consider each progress report at its first regular meeting of the fiscal year and shall accept the progress report or shall reject the progress report with comments. The reports will be evaluated on demonstrated progress within the past year toward reorganization or dissolution.

*d.* A school district whose progress report is not accepted shall be allowed to submit a revised progress report at the second regular meeting of the school budget review committee. The committee shall accept or reject the revised progress report.

*e.* If the school budget review committee rejects the progress report and the district does not submit a revised progress report or if the school budget review committee rejects the revised progress report, the school district shall not be eligible for supplementary weighting for whole-grade sharing.

[ARC 8188B, IAB 10/7/09, effective 11/11/09]

**281—97.6(257) Supplementary weighting plan for ICN video services.**

**97.6(1) Eligibility.** Except for students listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment, is not eligible for supplementary weighting for the same course under another supplementary

weighting plan, and meets any of the criteria in “a,” “b,” or “c” below. For purposes of this subrule, the portion of a course offered via ICN video services shall be considered separately from the portion of the course not offered via ICN video services. Eligible students include:

*a.* Resident students who receive a virtual class provided by another school district via ICN video services.

*b.* Resident students who attend a virtual class that the resident district is providing to students in one or more other school districts via ICN video services.

*c.* Resident students who receive a virtual community college class via ICN video services. The community college class must be a course eligible for supplementary weighting under the criteria listed in subrule 97.2(5).

**97.6(2) *Weighting.*** Resident students eligible for supplementary weighting pursuant to subrule 97.6(1) shall be eligible for a weighting of one-twentieth of the fraction of the school year during which the pupil attends the virtual class.

**97.6(3) *Payment to teachers.*** A school district that includes students in a virtual class for supplementary weighting shall reserve 50 percent of the supplementary weighting funding the district will receive as a result of including the resident students in the virtual class for supplementary weighting as additional pay for the virtual class teacher.

*a.* The employer of the virtual class teacher will make the payment.

*b.* The additional pay includes salary and the employer’s share of FICA and IPERS.

*c.* The employer shall pay the virtual class teacher during the same school year in which the virtual class is provided.

*d.* The employer may pay the virtual class teacher at the conclusion of the virtual class or may pay the teacher periodic payments that represent the portion of the virtual class that has been provided. The employer may not pay the teacher prior to services being rendered.

*e.* The additional pay shall be calculated as 0.5 multiplied by the supplementary weighting for the virtual class multiplied by the district cost per pupil in the subsequent budget year.

*f.* If the teacher’s contract includes additional pay for teaching the virtual class, the teacher shall receive the higher amount of the additional pay in the contract or the amount of the additional pay calculated pursuant to paragraphs “b” and “e” above. For purposes of this comparison, the employer shall compare the salary portions only.

*g.* The contract between the agencies shall provide for the additional pay for the teacher of the virtual class. That 50 percent of the supplementary weighting funding would be paid in addition to the tuition sent to the providing district or community college to be paid as additional pay to its teacher employee.

**281—97.7(257) Supplementary weighting plan for operational services.**

**97.7(1) *Eligibility.*** Except for students listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if all of the following criteria are met:

*a.* The district shares a discrete operational function with one or more other political subdivisions pursuant to a written contract.

*b.* The district shares the operational function for at least 20 percent of the contract time period during the fiscal year that is customary for a full-time employee in the operational function being shared, and at least one of the sharing partners also shares the operational function for at least 20 percent of the contract time period during the fiscal year. The 20 percent is measured each fiscal year and for each discrete operational function.

*c.* Personnel shared as part of the operational function are employees of one of the sharing partners but are not employees of more than one of the sharing partners.

*d.* If the district shares an operational function with more than one political subdivision, the sharing arrangement is listed only once for purposes of supplementary weighting.

*e.* If the district shares more than one individual in the same operational function, that operational function shall be listed only once for the purposes of supplementary weighting.

*f.* No individual personnel shall be included for operational function sharing more than once for supplementary weighting in the same fiscal year.

*g.* If more than one sharing arrangement is implemented in any one operational function area and the services shared are substantially similar as determined by the department of education, only the sharing arrangement implemented first will be eligible for supplementary weighting.

*h.* The operational function areas shared include one or more of the areas listed in subrule 97.7(2).

**97.7(2) Operational function area eligibility.** “Operational function sharing” means sharing of managerial personnel in the discrete operational function areas of superintendent management, business management, human resources management, student transportation management, facility operation or maintenance management, social worker, school nurse, school counselor, or school librarian. “Operational function sharing” does not mean sharing of clerical personnel or school principals. The operational function sharing arrangement does not need to be a newly implemented sharing arrangement in order to be eligible for supplementary weighting.

*a. Superintendent management.*

(1) Shared personnel must perform the services of a superintendent, in the case of a school district, or chief administrator, in the case of an area education agency, or executive administrator, in the case of other political subdivisions, for each of the sharing partners. An individual performing the function of a superintendent or chief administrator must be properly licensed for that position.

(2) If the services of a superintendent are shared in any of the five eligible years, the district may not also share an assistant superintendent in any year for purposes of supplementary weighting.

(3) Clerical or other support services personnel in the superintendent function area or executive administrator function area shall not be considered shared superintendent management under this subrule.

(4) Shared superintendent services or executive administrator services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*b. Business management.*

(1) Shared personnel must perform the services of managing the business operations for each of the sharing partners. Managing business operations would include personnel performing the duties of a business manager or personnel performing the duties listed in the Iowa Code for a board secretary including, but not limited to, board secretary duties listed in Iowa Code chapter 291, or personnel performing the duties listed in the Iowa Code for a board treasurer including, but not limited to, board treasurer duties listed in Iowa Code chapter 291, in each of the sharing partners.

(2) Services of clerical personnel, superintendents, principals, teachers, board officers except those listed in subparagraph (1), or any other nonbusiness administration personnel shall not be considered shared business management under this subrule.

(3) Shared business management shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*c. Human resources management.*

(1) Shared personnel must perform the services of managing human resources for each of the sharing partners.

(2) Services of clerical personnel, superintendents, principals, curriculum directors, teachers, or board officers shall not be considered shared human resources management under this subrule.

(3) Shared human resources management shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*d. Student transportation management.*

(1) Shared personnel shall include transportation directors or supervisors. Shared personnel must perform services related to transportation for each of the sharing partners, but may perform different transportation services for each of the sharing partners.

(2) Services of clerical or paraprofessional personnel, school bus mechanics, and school bus drivers shall not be considered shared student transportation management under this subrule.

(3) Shared transportation shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*e. Facility operations and maintenance.*

(1) Shared personnel shall include facility managers and supervisors of buildings or grounds. Shared personnel must perform services related to facility operations and maintenance for each of the sharing partners, but may perform different facility operations and maintenance services for each of the sharing partners.

(2) Services of clerical personnel or custodians shall not be considered shared facility operations and maintenance management for supplementary weighting under this subrule.

(3) Shared facility operations and maintenance shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*f. Curriculum director.*

(1) Shared personnel must perform the services of a curriculum director for each of the sharing partners. An individual performing the function of a curriculum director must be properly licensed for that position.

(2) Clerical, paraprofessional, or other support services personnel in the improvement of instruction function area shall not be considered a shared curriculum director under this subrule.

(3) Shared curriculum director services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*g. School administration manager.*

(1) Shared personnel must perform the services of a school administration manager for each of the sharing partners. An individual performing the function of a school administration manager must be properly licensed for that position.

(2) Principals, assistant principals, deans of students, or paraprofessional, clerical or other support services personnel in the school administration function area shall not be considered a shared school administration manager under this subrule.

(3) Shared school administration manager services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*h. Social worker.*

(1) Shared personnel must perform the services of a social worker for each of the sharing partners. An individual performing the function of a social worker must be properly licensed for that position by holding a statement of professional recognition from the board of educational examiners.

(2) Assistants in social work or clerical, paraprofessional, or other support services personnel in the attendance and social work services function area shall not be considered a shared social worker under this subrule.

(3) Shared social worker services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*i. School nurse.*

(1) Shared personnel must perform the services of a school nurse for each of the sharing partners. An individual performing the function of a school nurse must be properly licensed for that position by holding a statement of professional recognition from the board of educational examiners.

(2) Assistants, licensed practical nurses, or paraprofessionals, aides, clerical or other support services personnel in the health or psychological services function area shall not be considered a shared school nurse under this subrule.

(3) Shared school nurse services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*j. School counselor.*

(1) Shared personnel must perform the services of a school counselor for each of the sharing partners. An individual performing the function of a school counselor must be properly licensed for that position.

(2) Deans of students or clerical, paraprofessional, or other support services personnel in the guidance services function area shall not be considered a shared school counselor under this subrule.

(3) Shared school counselor services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

*k. School librarian.*

(1) Shared personnel must perform the services of a school librarian for each of the sharing partners. An individual performing the function of a school librarian must be properly licensed for that position.

(2) Technology directors, media specialists, or paraprofessional, aide, clerical or other support services personnel in the library media services function area shall not be considered a shared school librarian under this subrule.

(3) Shared school librarian services shall not include contracting for services from a private provider even if another political subdivision is contracting for services from the same private provider.

**97.7(3) *Years of eligibility.*** A school district participating in an operational function sharing arrangement shall be eligible for supplementary weighting under this rule for a maximum of five years. The five years of eligibility shall include each year in which any shared operational function is included for supplementary weighting. The supplementary weighting for eligible shared operational functions may be included beginning on October 1, 2013.

*a.* Receipt of supplementary weighting after the first year shall be conditioned upon the submission of cost information provided in the format prescribed by the department of education as part of the BEDS fall data collection and certified annual report documenting cost savings directly attributable to the shared operational functions.

*b.* The documentation on the BEDS fall data collection shall be filed no later than the published deadline for that data collection and the documentation on the certified annual report shall be filed no later than September 15 preceding the October 1 on which the operational function sharing is included for supplementary weighting.

**97.7(4) *Contiguous districts.*** School districts that share operational functions with other school districts are not required to be contiguous school districts.

**97.7(5) *Consecutive years.*** A school district that is eligible to add a supplementary weighting for resident students for a shared operational function is not required to utilize consecutive years. However, the final year in which a supplementary weighting may be added on October 1 for this purpose shall not be later than the school year that begins July 1, 2018, and the total of all years in which a supplementary weighting may be added on October 1 for this purpose shall not exceed five years.

**97.7(6) *Change in sharing partners.*** A school district that is eligible to add a supplementary weighting for resident students for a shared operational function may enter into an operational function sharing arrangement with one or more different sharing partners for its second, third, fourth or fifth year of eligible weighting. Establishing a new operational function sharing arrangement in a substantially similar function does not extend the maximum number of years for which a school district is eligible.

**97.7(7) *Change in shared personnel.*** A school district that is eligible to add a supplementary weighting for resident students for a shared operational function may enter into an operational function arrangement for a different individual in a substantially similar position. Implementing a change of the individual or individuals shared does not extend the maximum number of years for which a school district is eligible.

**97.7(8) *Multiple shared operational functions.*** A school district that implements more than one sharing arrangement within any discrete operational function area shall be eligible for supplementary weighting for only one sharing arrangement in that discrete operational function.

**97.7(9) *Multiple shared individuals in an operational function.*** A school district that implements more than one sharing arrangement within any discrete operational function area shall not be eligible for supplementary weighting if more than one shared individual is licensed and qualified for the same position. If the school district had utilized its own employees, the sharing arrangement or arrangements would not have been necessary.

**97.7(10) *Weighting.*** Resident students eligible for supplementary weighting pursuant to rule 281—97.7(257) shall be eligible for a weighting of two-hundredths per pupil included in the actual

enrollment in the district. The supplementary weighting shall be assigned to each discrete operational function shared. The maximum number of years for which a supplementary weighting shall be assigned for all operational functions shared is five years. The department shall reserve the authority to determine if an operational sharing arrangement constitutes a discrete arrangement, new arrangement, or continuing arrangement if the circumstances have not been clearly described in the Iowa Code or the Iowa Administrative Code.

**97.7(11) *Maximum weighting.*** The maximum amount of additional weighting for which a school district participating in operational function sharing shall be eligible is an amount corresponding to 40 full-time equivalent pupils. The maximum additional weighting applies to the total of all operational function sharing rather than to each discrete operational function.

**97.7(12) *Minimum weighting.*** The minimum amount of additional weighting for which a school district participating in operational function sharing shall be eligible is an amount corresponding to ten additional pupils. The minimum additional weighting applies to the total of all operational function sharing rather than each discrete operational function.

**97.7(13) *Filing cost-savings documentation.*** Each school district that receives supplementary weighting for sharing one or more operational functions shall file with the department of education documentation of cost savings directly attributable to the shared operational functions. This documentation shall be submitted in the format prescribed by the department of education as part of the certified annual report and the BEDS fall data collection. The district or AEA shall report the FTE for each discrete operational function area eligible for supplementary weighting on its BEDS fall data collection. The certified annual report shall be filed no later than September 15 preceding the October 1 on which the operational function sharing is included for supplementary weighting and the BEDS fall data collection shall be filed no later than its published deadline. If a district or AEA does not file in a timely manner its certified annual report and its BEDS fall data collection, it will not be eligible to request operational function sharing supplementary weighting.

**97.7(14) *Determining cost savings.*** The criteria considered by the department of education in determining shared operational function cost savings and increased student opportunities shall include, but not be limited to, the following:

*a.* The level of FTE for each discrete operational function area eligible for supplementary weighting as compared to the level of FTE for that same discrete operational function area in the 2012-2013 school year as reported on the BEDS fall data collection.

*b.* If, in the opinion of department staff, the FTE is not sufficient documentation on which to determine eligibility for operational function sharing supplementary weighting, the department may also review the following from the certified annual report:

(1) The percent of costs calculated as the total of general fund expenditures for all operational functions that could be shared, in function codes 2300 and greater, divided by the total of all general fund expenditures, multiplied by 100, in the prior fiscal year compared to the 2012-2013 fiscal year. The prior fiscal year is the fiscal year ending on June 30 as reported on the certified annual report that was due on September 15, prior to October 1 on which the district included any operational function shared for supplementary weighting. The cost savings and increased student opportunities shall be evidenced by the percent which is less than or equal to the percent in the 2012-2013 fiscal year.

(2) The department of education will adjust the total expenditures to exclude distorting financial transactions or interagency financial transactions. Distorting financial transactions shall be determined by the department of education.

*c.* If the district increases the total FTE of personnel in any discrete operational function area eligible for supplementary weighting, the district will not be eligible for supplementary weighting for operational function sharing for that discrete operational function area until the fiscal year in which the FTE is decreased to or below the level reported by the district on its BEDS staff data collection in fiscal year 2012-2013.

*d.* If the district cannot demonstrate cost savings directly attributable to the shared operational function or increased student opportunities, the district will not be eligible for supplementary weighting for operational function sharing for that fiscal year.

**97.7(15) Area education agency maximum funding.** The provisions of rule 281—97.7(257) also apply to an area education agency except for per-pupil weightings, minimum weightings, and maximum weightings.

*a.* In lieu of minimum weightings, an area education agency shall be eligible for a minimum amount of additional funding of \$50,000 for the total of all operational function sharing arrangements.

*b.* In lieu of maximum weightings, an area education agency shall be eligible for a maximum amount of additional funding of \$200,000 for the total of all operational function sharing arrangements.

*c.* In lieu of supplementary weighting of students, the department of management shall annually set a weighting for each area education agency to generate the approved operational function sharing dollars using each area education agency's special education cost-per-pupil amount and foundation level. [ARC 8188B, IAB 10/7/09, effective 11/11/09; ARC 1119C, IAB 10/16/13, effective 11/20/13; see Delay note at end of chapter]

These rules are intended to implement Iowa Code sections 257.6, 257.11, and 257.12, Iowa Code chapter 261E, and 2007 Iowa Acts, Senate File 588, section 6.

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<sup>1</sup> March 28, 2012, effective date of 97.1, “regional academy,” and 97.4(1) “c,” “h” delayed 30 days by the Administrative Rules Review Committee at its meeting held March 12, 2012.

<sup>2</sup> November 20, 2013, effective date of ARC 1119C [97.7] delayed until the adjournment of the 2014 General Assembly by the Administrative Rules Review Committee at its meeting held November 8, 2013.

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INSPECTIONS DIVISION  
CHAPTER 30  
FOOD AND CONSUMER SAFETY

**481—30.1(10A,137C,137D,137F) Food and consumer safety bureau.** The food and consumer safety bureau inspects food establishments and food processing plants including food storage facilities (warehouses), home food establishments, food and beverage vending machines, and hotels and motels. The food and consumer safety bureau is also responsible for targeted small business certification, social and charitable gambling, and amusement devices. Separate chapters have been established for the administration of targeted small business certification (481—Chapter 25), social and charitable gambling (481—Chapters 100 to 103, 106, and 107), and amusement devices (481—Chapters 104 and 105).

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and Iowa Code chapters 137C, 137D and 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14]

**481—30.2(10A,137C,137D,137F) Definitions.** If both the 2009 Food and Drug Administration Food Code with Supplement and rule 481—30.2(10A,137C,137D,137F) define a term, the definition in rule 481—30.2(10A,137C,137D,137F) shall apply.

“*Baked goods*” means breads, cakes, doughnuts, pastries, buns, rolls, cookies, biscuits and pies (except meat pies).

“*Bed and breakfast home*” means a private residence which provides lodging and meals for guests, in which the host or hostess resides, and in which no more than four guest families are lodged at the same time. The facility may advertise as a bed and breakfast home but not as a hotel, motel or restaurant. The facility is exempt from licensing and inspection as a hotel or as a food establishment. A bed and breakfast home may serve food only to overnight guests, unless a food establishment license is secured.

“*Bed and breakfast inn*” means a hotel which has nine or fewer guest rooms.

“*Commissary*” means a food establishment used for preparing, fabricating, packaging and storage of food or food products for distribution and sale through the food establishment’s own outlets.

“*Contractor*” means a municipal corporation, county or other political subdivision that contracts with the department to license and inspect under Iowa Code chapter 137C, 137D or 137F. A list of contractors is maintained on the department’s Web site.

“*Criminal offense*” means a public offense, as defined in Iowa Code section 701.2, that is prohibited by statute and is punishable by fine or imprisonment.

“*Critical violation*” means a foodborne illness risk factor and public health intervention and the violations defined as such by the Food Code adopted in rule 481—31.1(137F) and pursuant to Iowa Code section 137F.2.

“*Department*” means the department of inspections and appeals.

“*Farmers market*” means a marketplace which operates seasonally, principally as a common market for Iowa-produced farm products on a retail basis for consumption elsewhere.

“*Farmers market potentially hazardous food license*” means a license for a temporary food establishment that sells potentially hazardous foods at farmers markets. A separate annual farmers market potentially hazardous food license is required for each county in which the licensee sells potentially hazardous foods at farmers markets. The license is only applicable at farmers markets and is not required in order to sell wholesome, fresh shell eggs to consumer customers.

“*Food establishment*” means an operation that stores, prepares, packages, serves, vends or otherwise provides food for human consumption and includes a salvage or distressed food operation, nutrition program operated pursuant to Title III-C of the Older Americans Act, school, summer camp, residential service substance abuse treatment facility, halfway house substance abuse treatment facility, correctional facility operated by the department of corrections, the state training school and the Iowa juvenile home. Assisted living programs and adult day services are included in the definition of food establishment to

the extent required by 481—subrules 69.28(6) and 70.28(6). “Food establishment” does not include the following:

1. A food processing plant.
  2. An establishment that offers only prepackaged foods that are not potentially hazardous.
  3. A produce stand or facility which sells only whole, uncut fresh fruits and vegetables.
  4. Premises which are a home food establishment pursuant to Iowa Code chapter 137D.
  5. Premises which operate as a farmers market.
  6. Premises of a residence in which food that is not potentially hazardous is sold for consumption off the premises to a consumer customer, if the food is labeled to identify the name and address of the person preparing the food and the common name of the food. This exception does not apply to resale goods. This exception applies only to sales made from the residence in person and does not include mail order or Internet sales.
  7. A kitchen in a private home where food is prepared or stored for family consumption or in a bed and breakfast home.
  8. A private home that receives catered or home-delivered food.
  9. Child day care facilities and other food establishments located in hospitals or health care facilities that serve only patients and staff and are subject to inspection by other state agencies or divisions of the department.
  10. Supply vehicles or vending machine locations.
  11. Establishments exclusively engaged in the processing of meat and poultry which are licensed pursuant to Iowa Code section 189A.3.
  12. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:
    - Premises covered by a current Class “A” beer permit, including a Class “A” native beer permit as provided in Iowa Code chapter 123;
    - Premises covered by a current Class “A” wine permit, including a Class “A” native wine permit as provided in Iowa Code chapter 123; and
    - Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.
  13. Premises covered or regulated by Iowa Code section 192.107 with a milk or milk products permit issued by the department of agriculture and land stewardship.
  14. Premises or operations which are regulated by or subject to Iowa Code section 196.3 and which have an egg handler’s license.
  15. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.
  16. Premises regularly used by a nonprofit organization which engages in the serving of food on the premises as long as the nonprofit organization does not exceed the following restrictions:
    - The nonprofit organization serves food no more than one day per calendar week and not on two or more consecutive days;
    - Twice per year, the nonprofit organization may serve food to the public for up to three consecutive days; and
    - The nonprofit organization may use the premises of another nonprofit organization not more than twice per year for one day to serve food.
- “*Food processing plant*” means a commercial operation that manufactures, packages, labels or stores food for human consumption and does not provide food directly to a consumer. “Food processing plant” does not include any of the following:
1. The following premises, provided they are exclusively engaged in the sale of alcoholic beverages in a prepackaged form:
    - Premises covered by a current Class “A” beer permit, including a Class “A” native beer permit as provided in Iowa Code chapter 123;
    - Premises covered by a current Class “A” wine permit, including a Class “A” native wine permit as provided in Iowa Code chapter 123; and
    - Premises of a manufacturer of distilled spirits under Iowa Code chapter 123.

2. The premises of a residence in which honey is stored; prepared; packaged, including by placement in a container; or labeled or from which honey is distributed.

*“Food service establishment”* means a food establishment where food is prepared or served for individual portion service intended for consumption on the premises or is subject to Iowa sales tax as provided in Iowa Code section 423.3.

*“Home food establishment”* means a business on the premises of a residence that is operating as a home-based bakery where potentially hazardous bakery goods are prepared for consumption elsewhere. Annual gross sales of these products cannot exceed \$20,000. “Home food establishment” does not include a residence where food is prepared to be used or sold by churches, fraternal societies, or charitable, civic or nonprofit organizations. Residences which prepare or distribute honey, shell eggs or nonhazardous baked goods are not required to be licensed as home food establishments.

*“Hotel”* means any building equipped, used or advertised to the public as a place where sleeping accommodations are rented to temporary or transient guests.

*“License holder”* means an individual, corporation, partnership, governmental unit, association or any other entity to whom a license was issued under Iowa Code chapter 137C, 137D or 137F.

*“Mobile food unit”* means a food establishment that is self-contained, with the exception of grills and smokers, and readily movable, which either operates up to three consecutive days at one location or returns to a home base of operation at the end of each day.

*“Pushcart”* means a non-self-propelled vehicle food establishment limited to serving nonpotentially hazardous foods or commissary-wrapped foods maintained at proper temperatures or precooked foods that require limited assembly, such as frankfurters.

*“Retail food establishment”* means a food establishment that sells to consumer customers food or food products intended for preparation or consumption off the premises.

*“Revoke”* means to void or annul by recalling or withdrawing a license issued under Iowa Code chapter 137C, 137D or 137F. The entire application process, including the payment of applicable license fees, must be repeated to regain a valid license following a revocation.

*“Suspend”* means to render a license issued under Iowa Code chapter 137C, 137D, or 137F invalid for a period of time, with the intent of resuming the validity of a license at the end of that period.

*“Temporary food establishment”* means a food establishment that operates for a period of no more than 14 consecutive days in conjunction with a single event or celebration. An “event or celebration” is a significant occurrence or happening sponsored by a civic, business, educational, government, community, or veterans’ organization and may include athletic contests. For example, an event does not include a single store’s grand opening or sale.

*“Transient guest”* means an overnight lodging guest who does not intend to stay for any permanent length of time. Any guest who rents a room for more than 31 consecutive days is not classified as a transient guest.

*“Vending machine”* means a food establishment which is a self-service device that, upon insertion of a coin, paper currency, token, card or key, dispenses unit servings of food in bulk or in packages without the necessity of replenishing the device between each vending operation. Vending machines that dispense only prepackaged, nonpotentially hazardous foods, panned candies, gumballs or nuts are exempt from licensing but may be inspected by the department upon receipt of a written complaint. “Panned candies” are those with a fine, hard coating on the outside and a soft candy filling on the inside. Panned candies are easily dispensed by a gumball-type machine.

This rule is intended to implement Iowa Code sections 10A.104, 137C.8, and 137D.2 and chapter 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14]

**481—30.3(137C,137D,137F) Licensing and postings.** A license to operate any food establishment or food processing plant defined in rule 481—30.2(10A,137C,137D,137F) must be granted by the department of inspections and appeals. Application for a license is made on a form furnished by the department which contains the names of the business, owner, and manager; locations of buildings; and other data relative to the license requested. Applications are available from the Department

of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from contractors. An application for licensure shall be submitted 30 days in advance of the opening of the food establishment or food processing plant. Temporary food establishment license applications shall be submitted a minimum of 3 business days prior to opening.

**30.3(1) *Transferability.*** A license is not transferable to a new owner or location. Any change in business ownership or business location requires a new license. Vending machines, mobile food units and pushcarts may be moved without obtaining a new license. A farmers market potentially hazardous food license may be used in the same county at different individual locations without obtaining a new license. However, if the different individual locations are operated simultaneously, a separate license is required for each location. Nutrition sites for the elderly licensed under Iowa Code chapter 137F may change locations in the same city without obtaining a new license.

**30.3(2) *Refunds.*** License fees are refundable only if the license is surrendered to the department prior to the effective date of the license and only as follows:

- a. License fees of \$67.50 or less are an application processing fee and are not refundable.
- b. If an on-site visit has not occurred, license fees of more than \$67.50 will be refunded less the \$67.50.
- c. If an on-site visit has occurred, the entire license fee is nonrefundable.

**30.3(3) *License expiration.*** A license is renewable and expires after one year, with the exception of a temporary food establishment license, which is event- and location-specific and is valid for a period not to exceed 14 consecutive days.

**30.3(4) *Posting of inspection reports, licenses, and registration tags.*** A valid license and the most recent inspection report, along with any current complaint or reinspection reports, shall be posted no higher than eye level where the public can see them. The report shall not be posted in such a manner that the public cannot reasonably read the report. For example, the posting of a report behind a service area where the report can be seen but not easily read is not allowed. Vending machines shall bear a tag to affirm the license. For the purpose of this subrule, only founded complaint reports shall be considered complaints. Founded complaints shall be posted until either the mail-in recheck form has been submitted to the regulatory authority or a recheck inspection has been conducted to verify that the violations have been corrected.

**30.3(5) *Documentation of gross sales.*** The regulatory authority shall require from a license holder documentation of the annual gross sales of food and drink sold by a licensed food establishment or a licensed food processing plant unless the establishment is paying the highest license fee required by rule 481—30.4(137C,137D,137F). The documentation submitted by the license holder will be kept confidential and will be used to verify that the license holder is paying the appropriate license fee based on annual gross sales of food and drink. For food processing plants that are food storage facilities and food establishments whose sales are included in a single rate with lodging or other services, the value of the food handled should be used. Documentation shall include at least one of the following:

- a. A copy of the firm's business tax return;
- b. Quarterly sales tax data;
- c. A letter from an independent tax preparer;
- d. Other appropriate records.

**30.3(6) *License eligibility for renewal limited to 60 days after expiration.*** A delinquent license shall only be renewed if application for renewal is made within 60 days of expiration of the license. If a delinquent license is not renewed within 60 days, an establishment must apply for a new license and meet all the requirements for licensure. Establishments that have not renewed the license within 60 days of the expiration of the license shall be closed by the department or a contractor. The establishment shall not be reopened until a new license application has been submitted and approved.

This rule is intended to implement Iowa Code sections 10A.104, 137C.8, and 137D.2 and chapter 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14]

**481—30.4(137C,137D,137F) License fees.** The license fee is the same for an initial license and a renewal license. License applications are available from the Department of Inspections and Appeals, Food and Consumer Safety Bureau, Lucas State Office Building, Des Moines, Iowa 50319-0083, or from a contractor. License fees are set by the Iowa Code sections listed below and are charged as follows:

**30.4(1) Retail food establishments.** License fees for retail food establishments are based on annual gross sales of food or food products to consumer customers and intended for preparation or consumption off the premises (Iowa Code section 137F.6) as follows:

- a. For annual gross sales of less than \$10,000—\$40.50.
- b. For annual gross sales of \$10,000 to \$250,000—\$101.25.
- c. For annual gross sales of \$250,000 to \$500,000—\$155.25.
- d. For annual gross sales of \$500,000 to \$750,000—\$202.50.
- e. For annual gross sales of \$750,000 or more—\$303.75.

**30.4(2) Food service establishments.** License fees for food service establishments are based on annual gross sales of food and drink for individual portion service intended for consumption on the premises (Iowa Code section 137F.6) or subject to Iowa sales tax as provided in Iowa Code section 423.3 as follows:

- a. For annual gross sales of less than \$50,000—\$67.50.
- b. For annual gross sales of \$50,000 to \$100,000—\$114.50.
- c. For annual gross sales of \$100,000 to \$250,000—\$236.25.
- d. For annual gross sales of \$250,000 to \$500,000—\$275.00.
- e. For annual gross sales of \$500,000 or more—\$303.75.

**30.4(3) Vending machines.** License fees for food and beverage vending machines are \$20 for the first machine and \$5 for each additional machine (Iowa Code section 137F.6).

**30.4(4) Home food establishments.** The license fee for home food establishments is \$33.75 (Iowa Code section 137D.2(1)).

**30.4(5) Hotels.** License fees for hotels are based on the number of rooms provided to transient guests (Iowa Code section 137C.9) as follows:

- a. For 1 to 15 guest rooms—\$27.00.
- b. For 16 to 30 guest rooms—\$40.50.
- c. For 31 to 75 guest rooms—\$54.00.
- d. For 76 to 149 guest rooms—\$57.50.
- e. For 150 or more guest rooms—\$101.25.

**30.4(6) Mobile food units or pushcarts.** The license fee for a mobile food unit or a pushcart is \$27 (Iowa Code section 137F.6).

**30.4(7) Temporary food service establishments.** The fee for a temporary food service establishment license issued for up to 14 consecutive days in conjunction with a single event or celebration is \$33.50 (Iowa Code section 137F.6).

**30.4(8) Food processing plants including food storage facilities (warehouses).** For food processing plants, the annual license fee is based on the annual gross sales of food and food products handled at that plant or food storage facility (warehouse) (Iowa Code section 137F.6) as follows:

- a. Annual gross sales of less than \$50,000—\$67.50.
- b. Annual gross sales of \$50,000 to \$250,000—\$135.00.
- c. Annual gross sales of \$250,000 to \$500,000—\$202.50.
- d. Annual gross sales of \$500,000 or more—\$337.50.

**30.4(9) Farmers market.** A person selling potentially hazardous food at a farmers market must pay an annual license fee of \$100 for each county of operation. Persons who operate simultaneously at more than one location within a county are required to have a separate license for each location.

**30.4(10) Discount.** If an establishment renews its license as a retail food establishment or food service establishment and has had a person in charge for the entire previous 12-month period who holds an active certified food protection manager certificate from a program approved by the Conference on Food Protection and the establishment has not been issued a critical violation during the previous

12-month period, the establishment's license fee for the current renewal period shall be reduced by \$50 but no more than the establishment's total license fee(s).

**30.4(11) *Voluntary inspection fee.*** The department shall charge a voluntary inspection fee of \$100 when a premises that is not a food establishment requests a voluntary inspection.

This rule is intended to implement Iowa Code sections 137C.9, 137D.2(1), and 137F.6.  
[ARC 1190C, IAB 11/27/13, effective 1/1/14]

**481—30.5(137F) Penalty and delinquent fees.**

**30.5(1) *Late penalty.*** Food establishment licenses and food processing plant licenses that are renewed by the licensee after the license expiration date shall be subject to a penalty of 10 percent of the license fee per month. A license shall be renewed only if the license holder has provided documentation pursuant to subrule 30.3(5).

**30.5(2) *Penalty for opening or operating without a license.*** A person who opens or operates a food establishment or food processing plant without a license is subject to a penalty of up to twice the amount of the annual license fee.

**30.5(3) *Civil penalty for violations.*** A person who violates Iowa Code chapter 137F or these rules shall be subject to a civil penalty of \$100 for each violation. Prior to assessment of the penalty, the license holder shall have an opportunity for a hearing using the process outlined in rule 481—30.11(10A,137C,137D,137F).

This rule is intended to implement Iowa Code sections 137F.4, 137F.9 and 137F.17.  
[ARC 1190C, IAB 11/27/13, effective 1/1/14]

**481—30.6(137C,137D,137F) Returned checks.** If a check intended to pay for any license provided for under Iowa Code chapter 137C, 137D, or 137F is not honored for payment by the bank on which it is drafted, the department will attempt to redeem the check. The department will notify the applicant of the need to provide sufficient payment. An additional fee of \$25 shall be assessed for each dishonored check. If the department does not receive cash to replace the check, the establishment will be operating without a valid license. Furthermore, any late penalties assessed pursuant to rule 481—30.5(137F) will accrue and must be paid.

This rule is intended to implement Iowa Code sections 137C.9, 137D.2(1), and 137F.6.  
[ARC 1190C, IAB 11/27/13, effective 1/1/14]

**481—30.7(137F) Double licenses.**

**30.7(1)** Any establishment which holds a food service establishment license and has gross sales over \$20,000 annually in packaged food items intended for consumption off the premises shall also be required to obtain a retail food establishment license. The license holder shall keep a record of these food sales and make it available to the department upon request.

**30.7(2)** A retail food establishment and a food service establishment which occupy the same premises must be licensed separately, and the applicable fees must be paid for each. The license fee for each is based on only the annual gross sales of food and drink covered under the scope of that particular type of license.

**30.7(3)** A food establishment that is licensed both with a food service establishment license and a retail food establishment license shall pay 75 percent of the license fees required in subrules 30.4(1) and 30.4(2).

**30.7(4)** Licensed retail food establishments serving only coffee, soft drinks, popcorn, prepackaged sandwiches or other food items manufactured and packaged by a licensed establishment need only obtain a retail food establishment license.

**30.7(5)** A temporary food establishment license is not required when the temporary food establishment is owned and operated on the premises of a licensed food establishment.

**30.7(6)** The dominant form of business in annual gross sales shall determine the type of license for establishments which engage in operations covered under the definitions of both a food establishment and a food processing plant. Sale of products at wholesale to outlets not owned by a commissary owner requires a food processing plant license. Food establishments that process low-acid food in hermetically

sealed containers or process acidified foods are required to have a food processing plant license. Regardless of the license, food processing facilities shall be inspected pursuant to food processing inspection standards and food establishments shall be inspected pursuant to the Food Code.

**30.7(7)** A licensed mobile food unit that operates as a licensed mobile food unit at a farmers market is not required to obtain a separate farmers market potentially hazardous food license.

This rule is intended to implement Iowa Code sections 10A.104 and 137F.6.  
[ARC 1190C, IAB 11/27/13, effective 1/1/14]

**481—30.8(137C,137D,137F) Inspection frequency.**

**30.8(1)** *Food establishments.* Food establishments shall be inspected based upon risk assessment and shall have routine inspections at least once every 24 months and no more than once every 3 months.

**30.8(2)** *Food processing plants.* Food processing plants that process foods shall be inspected based upon risk assessment and shall have routine inspections at least once every 24 months and no more than once every 6 months.

**30.8(3)** *Food processing plants that store foods.* Food processing plants that store foods shall be inspected based upon risk assessment and shall be inspected at least once every 36 months.

**30.8(4)** *Hotels.* Hotels shall be inspected at least once biennially.

**30.8(5)** *Home food establishments and vending machines.* Home food establishments and vending machines shall be inspected at least once every 24 months.

**30.8(6)** *Farmers market potentially hazardous food.* Farmers market potentially hazardous food licensees shall be inspected at least once annually.

This rule is intended to implement Iowa Code sections 137C.11, 137D.2, and 137F.10.  
[ARC 1190C, IAB 11/27/13, effective 1/1/14]

**481—30.9(22) Examination of records.**

**30.9(1)** *Public information.* Generally, information collected by the food and consumer safety bureau and contractors is considered public information. Records are stored in computer files and are not matched with any other data system. Information is available for public review and will be provided when requested from the office of the director. Inspection reports are available for public viewing at <http://www.food.dia.iowa.gov>.

**30.9(2)** *Confidential records.* The following are examples of confidential records:

- a. Trade secrets and proprietary information including items such as formulations, processes, policies and procedures, and customer lists;
- b. Health information related to foodborne illness complaints and outbreaks; and
- c. Other state or federal agencies' records.

For records of other federal or state agencies, the department shall refer the requester of such information to the appropriate agency.

This rule is intended to implement Iowa Code chapters 137C, 137D, 137F and 22.  
[ARC 1190C, IAB 11/27/13, effective 1/1/14]

**481—30.10(17A,137C,137D,137F) Denial, suspension, or revocation of a license to operate.** Notice of denial, suspension or revocation of a license will be provided by the department and shall be effective 30 days after mailing or personal service of the notice.

**30.10(1)** *Immediate suspension of license.* To the extent not inconsistent with Iowa Code chapters 17A, 137C, 137D, and 137F and rules adopted pursuant to those chapters, chapter 8 of the Food Code shall be adopted for food establishments and home food establishments. The department or contractor may immediately suspend a license in cases of an imminent health hazard. The procedures of Iowa Code section 17A.18A and Food Code chapter 8 shall be followed in cases of an imminent health hazard. The appeal process in rule 481—30.11(10A,137C,137D,137F) is available following an immediate suspension. The department may immediately suspend the license of a food processing plant or hotel if an imminent health hazard finding is made and the procedures of Iowa Code section 17A.18A are followed.

**30.10(2) Criminal offense—conviction of license holder.**

a. The department may revoke the license of a license holder who:

- (1) Conducts an activity constituting a criminal offense in the licensed food establishment; and
- (2) Is convicted of a felony as a result.

b. The department may suspend or revoke the license of a license holder who:

- (1) Conducts an activity constituting a criminal offense in the licensed food establishment; and
- (2) Is convicted of a serious misdemeanor or aggravated misdemeanor as a result.

c. A certified copy of the final order or judgment of conviction or plea of guilty shall be conclusive evidence of the conviction of the license holder.

d. The department's decision to revoke or suspend a license may be contested by the adversely affected party pursuant to the provisions of rule 481—30.11(10A,137C,137D,137F).

This rule is intended to implement Iowa Code chapters 17A, 137C, 137D and 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14]

**481—30.11(10A,137C,137D,137F) Formal hearing.** All decisions of the food and consumer safety bureau may be contested by an adversely affected party. A request for a hearing must be made in writing to the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319, within 30 days of the mailing or service of a decision. Appeals and hearings are controlled by 481—Chapter 10, “Contested Case Hearings.”

For contractors, license holders shall have the opportunity for a hearing before the local board of health. If the hearing is conducted before the local board of health, the license holder may appeal to the department and shall follow the process for review in rule 481—10.25(10A,17A).

This rule is intended to implement Iowa Code section 10A.104 and Iowa Code chapters 137C, 137D, and 137F.

[ARC 1190C, IAB 11/27/13, effective 1/1/14]

**481—30.12(137F) Primary servicing laboratory.** The primary servicing laboratory for the food and consumer safety bureau is the State Hygienic Laboratory at the University of Iowa created under Iowa Code section 263.7. If the laboratory is unable to perform laboratory services, the laboratory will assist in finding another laboratory with a preference toward laboratories that are in the FERN (Food Emergency Response Network) and have achieved ISO 17025 accreditation.

This rule is intended to implement Iowa Code sections 10A.104 and 22.11 and Iowa Code chapters 137C, 137D, and 137F.

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CHAPTER 31  
FOOD ESTABLISHMENT AND FOOD  
PROCESSING PLANT INSPECTIONS

[Prior to 8/26/87, see Inspections and Appeals Department[481]—Chs 21 and 22]

**481—31.1(137F) Inspection standards for food establishments.** The department adopts, with the following exceptions, the 2009 Food Code with Supplement of the Food and Drug Administration as the state's "food code," which is the inspection standard for food establishments other than food processing plants.

**31.1(1) *Certified food protection manager required.*** For purposes of section 2-102.12 of the 2009 Food Code with Supplement, establishments that sell only prepackaged foods are not required to employ an individual who has completed a certified food protection manager course. Temporary food establishments are not required to employ an individual who has completed a certified food protection manager course. For all other establishments, the following time frames apply for employment of an individual who has completed a certified food protection manager course:

*a.* For establishments newly licensed after January 1, 2014, the requirement of section 2-102.12 must be met within six months of licensure.

*b.* Establishments in existence as of January 1, 2014, that do not receive a foodborne illness risk factor or public health intervention violation on or before July 1, 2017, shall meet the requirement of section 2-102.12 by January 1, 2018.

*c.* Establishments in existence as of January 1, 2014, that receive a foodborne illness risk factor or public health intervention violation on or before July 1, 2017, shall meet the requirement of section 2-102.12 within six months of the violation.

*d.* If the individual meeting the requirement of section 2-102.12 leaves employment with an establishment required to meet section 2-102.12, the establishment shall meet the requirement of section 2-102.12 within six months.

**31.1(2) *Honey prepared in a residence.*** Section 3-201.11 is amended to allow honey which is stored; prepared, including by placement in a container; or labeled at or distributed from the premises of a residence to be sold in a food establishment.

**31.1(3) *Morel mushrooms.*** Section 3-201.16, paragraph (A), is amended by adding the following:  
"A food establishment or farmers market potentially hazardous food licensee may serve or sell morel mushrooms if procured from an individual who has completed a morel mushroom identification expert course. Every morel mushroom shall be identified and found to be safe by a certified morel mushroom identification expert whose competence has been verified and approved by the department through the expert's successful completion of a morel mushroom identification expert course provided by either an accredited college or university or a mycological society. The certified morel mushroom identification expert shall personally inspect each mushroom and determine it to be a morel mushroom. A morel mushroom identification expert course shall be at least three hours in length. To maintain status as a morel mushroom identification expert, the individual shall have successfully completed a morel mushroom identification expert course described above within the past three years. A person who wishes to offer a morel mushroom identification expert course must submit the course curriculum to the department for review and approval. Food establishments or farmers market potentially hazardous food licensees offering morel mushrooms shall maintain the following information for a period of 90 days from the date the morel mushrooms were obtained:

"1. The name, address, and telephone number of the morel mushroom identification expert;

"2. A copy of the morel mushroom identification expert's certificate of successful completion of the course, containing the date of completion; and

"3. The quantity of morel mushrooms purchased and the date(s) purchased.

"Furthermore, a consumer advisory shall inform consumers by brochures, deli case or menu advisories, label statements, table tents, placards, or other effective written means that wild mushrooms should be thoroughly cooked and may cause allergic reactions or other effects."

**31.1(4) *Field-dressed wild game prohibition.*** Subparagraph 3-201.17(A)(4) is amended to state that field-dressed wild game shall not be permitted in food establishments unless:

- a. The food establishment is also licensed and inspected by the Iowa department of agriculture and land stewardship, meat and poultry inspection bureau, pursuant to Iowa Code section 189A.3;
- b. All field-dressed wild game is adequately separated from food, equipment, utensils, clean linens, and single-service and single-use articles; and
- c. Any equipment used in the processing of field-dressed wild game is adequately cleaned and sanitized before use with other foods.

**31.1(5) *Preventing contamination from hands.*** Section 3-301.11, paragraph (D), is amended to incorporate the changes to this section adopted in the 2013 Food Code, which provides as follows:

“(D) Paragraph (B) of this section does not apply to a food employee that contacts exposed, ready-to-eat food with bare hands at the time the ready-to-eat food is being added as an ingredient to a food that:

“(1) Contains a raw animal food and is to be cooked in the food establishment to heat all parts of the food to the minimum temperatures specified in ¶3-401.11(A)-(B) or §3-401.12; or

“(2) Does not contain a raw animal food but is to be cooked in the food establishment to heat all parts of the food to a temperature of at least 63°C (145°F).”

**31.1(6) *Noncontinuous cooking of raw animal foods.*** Section 3-401.14, paragraph (D), is amended as follows to incorporate the changes in this section adopted in the 2013 Food Code:

(D) Prior to sale or service, cooked using a process that heats all parts of the FOOD to a temperature and for a time as specified under ¶¶ 3-401.11(A)-(C); <sup>P</sup>

**31.1(7) *Reduced oxygen packaging in meat and poultry processing plants.*** Meat and poultry processing plants that are licensed and inspected by the Iowa department of agriculture and land stewardship (IDALS) meat and poultry inspection bureau pursuant to Iowa Code section 189A.3 and that are also licensed as a food establishment are exempt from section 3-502.11, paragraphs (A), (B), (D) and (F), and section 3-502.12 if all of the following criteria are met:

- a. Each food product formulation has been approved by the Iowa department of agriculture and land stewardship, meat and poultry inspection bureau;
- b. A copy of the approved formulation (T40/45) is maintained on file at the establishment and made available to the regulatory authority upon request;
- c. Cooked products that do not include a curing agent or an antimicrobial agent that will control *Clostridium botulinum* and *Listeria monocytogenes* that are in a reduced oxygen package are stored and sold frozen and are labeled “Keep Frozen”; and
- d. The food products are properly labeled.

**31.1(8) *Reduced oxygen packaging.*** Section 3-502.12 is amended to incorporate the changes in this section adopted in the 2013 Food Code, which provides as follows:

**3-502.12** Reduced Oxygen Packaging Without a Variance, Criteria.

(A) Except for a FOOD ESTABLISHMENT that obtains a VARIANCE as specified under § 3-502.11, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall control the growth and toxin formation of *Clostridium botulinum* and the growth of *Listeria monocytogenes*. <sup>P</sup>

(B) Except as specified under ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a REDUCED OXYGEN PACKAGING method shall implement a HACCP PLAN that contains the information specified under ¶¶ 8-201.14(B) and (D) and that: <sup>Pf</sup>

- (1) Identifies the FOOD to be PACKAGED; <sup>Pf</sup>
- (2) Except as specified under ¶¶ (C) - (E) of this section, requires that the PACKAGED FOOD shall be maintained at 5°C (41°F) or less and meet at least one of the following criteria: <sup>Pf</sup>
  - (a) Has an  $A_w$  of 0.91 or less, <sup>Pf</sup>
  - (b) Has a pH of 4.6 or less, <sup>Pf</sup>

(c) Is a MEAT or POULTRY product cured at a FOOD PROCESSING PLANT regulated by the USDA using substances specified in 9 CFR 424.21, Use of food ingredients and sources of radiation, and is received in an intact PACKAGE, <sup>Pf</sup> or

(d) Is a FOOD with a high level of competing organisms such as raw MEAT, raw POULTRY, or raw vegetables; <sup>Pf</sup>

(3) Describes how the PACKAGE shall be prominently and conspicuously labeled on the principal display panel in bold type on a contrasting background, with instructions to: <sup>Pf</sup>

(a) Maintain the FOOD at 5°C (41°F) or below, <sup>Pf</sup> and

(b) Discard the FOOD if, within 30 calendar days of its PACKAGING, it is not served for on-PREMISES consumption, or consumed if served or sold for off-PREMISES consumption; <sup>Pf</sup>

(4) Limits the refrigerated shelf life to no more than 30 calendar days from PACKAGING to consumption, except the time the product is maintained frozen, or the original manufacturer's "sell by" or "use by" date, whichever occurs first; <sup>P</sup>

(5) Includes operational procedures that:

(a) Prohibit contacting READY-TO-EAT FOOD with bare hands as specified under ¶ 3-301.11(B), <sup>Pf</sup>

(b) Identify a designated work area and the method by which: <sup>Pf</sup>

(i) Physical barriers or methods of separation of raw FOODS and READY-TO-EAT FOODS minimize cross contamination, <sup>Pf</sup> and

(ii) Access to the processing EQUIPMENT is limited to responsible trained personnel familiar with the potential HAZARDS of the operation, <sup>Pf</sup> and

(c) Delineate cleaning and SANITIZATION procedures for FOOD-CONTACT SURFACES; <sup>Pf</sup> and

(6) Describes the training program that ensures that the individual responsible for the REDUCED OXYGEN PACKAGING operation understands the: <sup>Pf</sup>

(a) Concepts required for a safe operation, <sup>Pf</sup>

(b) EQUIPMENT and facilities, <sup>Pf</sup> and

(c) Procedures specified under Subparagraph (B)(5) of this section and ¶¶ 8-201.14(B) and (D). <sup>Pf</sup>

(7) Is provided to the REGULATORY AUTHORITY prior to implementation as specified under ¶ 8-201.13(B).

(C) Except for FISH that is frozen before, during, and after PACKAGING, a FOOD ESTABLISHMENT may not PACKAGE FISH using a REDUCED OXYGEN PACKAGING method. <sup>P</sup>

(D) Except as specified under ¶ (C) and ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES TIME/TEMPERATURE CONTROL FOR SAFETY FOOD using a cook-chill or sous vide process shall:

(1) Provide to the REGULATORY AUTHORITY prior to implementation, a HACCP PLAN that contains the information as specified under ¶¶ 8-201.14(B) and (D); <sup>Pf</sup>

(2) Ensure the FOOD is:

(a) Prepared and consumed on the PREMISES, or prepared and consumed off the PREMISES but within the same business entity with no distribution or sale of the PACKAGED product to another business entity or the CONSUMER, <sup>Pf</sup>

(b) Cooked to heat all parts of the FOOD to a temperature and for a time as specified under ¶¶ 3-401.11(A), (B), and (C), <sup>P</sup>

(c) Protected from contamination before and after cooking as specified under Parts 3-3 and 3-4, <sup>P</sup>

(d) Placed in a PACKAGE with an oxygen barrier and sealed before cooking, or placed in a PACKAGE and sealed immediately after cooking and before reaching a temperature below 57°C (135°F), <sup>P</sup>

(e) Cooled to 5°C (41°F) in the sealed PACKAGE or bag as specified under § 3-501.14 and: <sup>P</sup>

(i) Cooled to 1°C (34°F) within 48 hours of reaching 5°C (41°F) and held at that temperature until consumed or discarded within 30 days after the date of PACKAGING; <sup>P</sup>

(ii) Held at 5°C (41°F) or less for no more than 7 days, at which time the FOOD must be consumed or discarded; <sup>P</sup> or

(iii) Held frozen with no shelf life restriction while frozen until consumed or used. <sup>P</sup>

(f) Held in a refrigeration unit that is equipped with an electronic system that continuously monitors time and temperature and is visually examined for proper operation twice daily, <sup>Pf</sup>

(g) If transported off-site to a satellite location of the same business entity, equipped with verifiable electronic monitoring devices to ensure that times and temperatures are monitored during transportation, <sup>Pf</sup> and

(h) Labeled with the product name and the date PACKAGED; <sup>Pf</sup> and

(3) Maintain the records required to confirm that cooling and cold holding refrigeration time/temperature parameters are required as part of the HACCP PLAN and:

(a) Make such records available to the REGULATORY AUTHORITY upon request, <sup>Pf</sup> and

(b) Hold such records for at least 6 months; <sup>Pf</sup> and

(4) Implement written operational procedures as specified under subparagraph (B)(5) of this section and a training program as specified under subparagraph (B)(6) of this section. <sup>Pf</sup>

(E) Except as specified under ¶ (F) of this section, a FOOD ESTABLISHMENT that PACKAGES cheese using a REDUCED OXYGEN PACKAGING method shall:

(1) Limit the cheeses PACKAGED to those that are commercially manufactured in a FOOD PROCESSING PLANT with no ingredients added in the FOOD ESTABLISHMENT and that meet the Standards of Identity as specified in 21 CFR 133.150 Hard cheeses, 21 CFR 133.169 Pasteurized process cheese or 21 CFR 133.187 Semisoft cheeses; <sup>P</sup>

(2) Have a HACCP PLAN that contains the information specified under ¶¶ 8-201.14(B) and (D) and as specified under ¶¶ (B)(1), (B)(3)(a), (B)(5) and (B)(6) of this section; <sup>Pf</sup>

(3) Label the PACKAGE on the principal display panel with a “use by” date that does not exceed 30 days from its packaging or the original manufacturer’s “sell by” or “use by” date, whichever occurs first; <sup>Pf</sup> and

(4) Discard the REDUCED OXYGEN PACKAGED cheese if it is not sold for off-PREMISES consumption or consumed within 30 calendar days of its PACKAGING. <sup>Pf</sup>

(F) A HACCP PLAN is not required when a FOOD ESTABLISHMENT uses a REDUCED OXYGEN PACKAGING method to PACKAGE TIME/TEMPERATURE CONTROL FOR SAFETY FOOD that is always:

(1) Labeled with the production time and date,

(2) Held at 5°C (41°F) or less during refrigerated storage, and

(3) Removed from its PACKAGE in the FOOD ESTABLISHMENT within 48 hours after PACKAGING.

**31.1(9) *Warewashing sinks in establishments serving alcoholic beverages.*** Section 4-301.12 is amended by adding the following: “When alcoholic beverages are served in a food service establishment, a sink with not fewer than three compartments shall be used in the bar area for manual washing, rinsing and sanitizing of bar utensils and glasses. When food is served in a bar, a separate three-compartment sink for washing, rinsing and sanitizing food-related dishes shall be used in the kitchen area, unless a dishwasher is used to wash utensils.”

**31.1(10) *Allowance for two-compartment sinks in certain circumstances.*** Paragraph 4-301.12(C) is amended by adding the following: “Establishments need not have a three-compartment sink when each of the following conditions is met:

“1. Three or fewer utensils are used for food preparation;

“2. Utensils are limited to tongs, spatulas, and scoops; and

“3. The department has approved after verification that the establishment can adequately wash and sanitize these utensils.”

**31.1(11) *Chemical treated towelettes.*** Paragraph 5-203.11(C) is deleted.

**31.1(12) *Service sink.*** For existing establishments, if waste water is being appropriately disposed of, section 5-203.13 for existing establishments shall go into effect upon the establishment’s renovation or sale.

**31.1(13) *Toilets and lavatories.*** Section 5-203.12 is amended by adding the following requirement: “Separate toilet facilities for men and women shall be provided in establishments which seat 50 or more people or in establishments which serve beer or alcoholic beverages.”

**31.1(14) Backflow protection.** Section 5-203.14 is amended by adding the following: “Water outlets with hose attachments, except for water heater drains and clothes washer connections, shall be protected by a non-removable hose bibb backflow preventer or by a listed atmospheric vacuum breaker installed at least six inches above the highest point of usage and located on the discharge side of the last valve.”

**31.1(15) Backflow prevention.** Paragraph 5-402.11(D) is amended by adding the following: “A culinary sink or sink used for food preparation shall not have a direct connection between the sewage system and a drain originating from that sink. Culinary sinks or sinks used in food preparation shall be separated by an air break.”

**31.1(16) Inspection standards for elder group homes.** Elder group homes as defined by Iowa Code section 231B.1 shall be inspected by the department, but chapters 4 and 6 of the Food Code shall not apply. Elder group homes shall pay the lowest license fee set forth in 481—subrule 30.4(2).

**31.1(17) Nonprofit exception for temporary events.** Nonprofit organizations that are licensed as temporary food establishments may serve nonpotentially hazardous food from an unapproved source for the duration of the event.

**31.1(18) Variance approval by department and submission of HACCP plans.** Any variances or HACCP plans that require approval by the “regulatory authority” must be approved by the department. HACCP plans pursuant to paragraphs 3-502.12(B) and 8-201.13(B) shall be filed with the department prior to implementation, regardless of whether or not the plan requires approval.

**31.1(19) Trichinae control for pork products prepared at retail.** Pork products prepared at retail shall comply with the Code of Federal Regulations found in 9 CFR, Section 318.10, January 1, 2013, publication, regarding the destruction of possible live trichinae in pork and pork products. Examples of pork products that require trichinae control include raw sausages containing pork and other meat products, raw breaded pork products, bacon used to wrap around steaks and patties, and uncooked mixtures of pork and other meat products contained in meat loaves and similar types of products. The use of “certified pork” as authorized by the Iowa department of agriculture and land stewardship or the United States Department of Agriculture, Food Safety and Inspection Service, shall meet the requirements of this subrule.

This rule is intended to implement Iowa Code section 137F.2.  
[ARC 1191C, IAB 11/27/13, effective 1/1/14]

**481—31.2(137F) Inspection standards for food processing plants.** The following are the inspection standards for food processing plants including food storage facilities.

**31.2(1) Definitions.** For the purposes of this rule, the following definitions shall apply. The definitions of “food,” “label,” “labeling,” and “dietary supplement” are as defined in 21 U.S.C. Section 321 (2012).

**31.2(2) Prohibited acts.** The prohibited acts identified in 21 U.S.C. Section 331(a) to (f), (k), and (v) (2012) shall also be prohibited acts in Iowa.

**31.2(3) Stop sale.** Any article of food that is adulterated or misbranded when introduced into commerce may be embargoed until such a time as the adulteration or misbranding is remedied or the product is destroyed. The action is immediate, but the licensee may appeal the decision following the process outlined in rule 481—30.11(10A,137C,137D,137F).

**31.2(4) Standards for food.** If a standard that has been adopted for a food is adopted pursuant to 21 U.S.C. Section 341 (2012), the standard shall be met.

**31.2(5) Adulterated food.** See rule 481—31.3(137D,137F).

**31.2(6) Misbranded food.** A food shall be misbranded if it is found in violation of 21 U.S.C. Section 343 (2012).

**31.2(7) New dietary ingredients.** New dietary ingredients shall comply with the process in 21 U.S.C. Section 350(b) (2012) or shall be deemed adulterated.

**31.2(8) Records.** Records shall be made available at minimum to the extent required under 21 U.S.C. Section 373 (2012) for all interstate and intrastate food.

**31.2(9) Adoption of Code of Federal Regulations.** The following parts of the Code of Federal Regulations (April 1, 2013) are adopted:

- a. 21 CFR Part 1, Sections 1.20 to 1.24 (labeling).
- b. 21 CFR Part 7, Sections 7.1 to 7.13 and 7.40 to 7.59 (guaranty and recalls).
- c. 21 CFR Part 70, Sections 70.20 to 70.25 (labeling requirements for colors).
- d. 21 CFR Part 73, Sections 73.1 to 73.615 (color additives exempt from certification).
- e. 21 CFR Part 81, general specifications and general restrictions for provisional color additives for use in foods, drugs, and cosmetics.
- f. 21 CFR Part 82, Sections 82.3 to 82.706 (certified provisionally listed colors and specifications).
- g. 21 CFR Part 100, Section 100.155 (specific provisions for salt and iodized salt).
- h. 21 CFR Part 101, except Sections 101.69 and 101.108 (food labeling).
- i. 21 CFR Part 102, except Section 102.19 (common or usual name for nonstandard food).
- j. 21 CFR Part 104, nutritional quality guidelines for foods.
- k. 21 CFR Part 105, food for special dietary use.
- l. 21 CFR Part 106, except Section 106.120 (infant formula quality control procedures).
- m. 21 CFR Part 107, except Sections 107.200 to 107.280 (infant formula labeling).
- n. 21 CFR Part 108, Sections 108.25 to 108.35 (exceptions for when a permit is not required, acidified and thermal processing of low-acid foods packaged in hermetically sealed containers).
- o. 21 CFR Part 109, unavoidable contaminants in food for human consumption and food-packaging material.
- p. 21 CFR Part 110, current good manufacturing practice in manufacturing, packing or holding human food.
- q. 21 CFR Part 111, current good manufacturing practice in manufacturing, packaging, labeling, or holding operations for dietary supplements.
- r. 21 CFR Part 113, thermally processed low-acid food packaged in hermetically sealed containers.
- s. 21 CFR Part 114, acidified foods.
- t. 21 CFR Part 115, shell eggs.
- u. 21 CFR Part 120, hazard analysis and critical control point (HACCP) systems (juice).
- v. 21 CFR Part 123, fish and fisheries products (seafood).
- w. 21 CFR Part 129, processing and bottling of bottled drinking water.
- x. 21 CFR Part 130, except Sections 130.5, 130.6 and 130.17, food standards: general.
- y. 21 CFR Part 131, milk and cream.
- z. 21 CFR Part 133, cheeses and related cheese products.
- aa. 21 CFR Part 135, frozen desserts.
- ab. 21 CFR Part 136, bakery products.
- ac. 21 CFR Part 137, cereal flours and related products.
- ad. 21 CFR Part 139, macaroni and noodle products.
- ae. 21 CFR Part 145, canned fruits.
- af. 21 CFR Part 146, canned fruit juices.
- ag. 21 CFR Part 150, fruit butters, jellies, preserves, and related products.
- ah. 21 CFR Part 152, fruit pies.
- ai. 21 CFR Part 156, vegetable juices.
- aj. 21 CFR Part 158, frozen vegetables.
- ak. 21 CFR Part 160, egg and egg products.
- al. 21 CFR Part 161, fish and shellfish.
- am. 21 CFR Part 163, cacao products.
- an. 21 CFR Part 164, tree nut and peanut products.
- ao. 21 CFR Part 165, beverages.
- ap. 21 CFR Part 166, margarine.
- aq. 21 CFR Part 168, sweeteners and table syrups.
- ar. 21 CFR Part 169, food dressings and flavorings.
- as. 21 CFR Part 170, except Sections 170.6, 170.15, and 170.17, food additives.
- at. 21 CFR Part 172, food additives permitted for direct addition to food for human consumption.

- au.* 21 CFR Part 173, secondary direct food additives permitted in food for human consumption.
- av.* 21 CFR Part 174, indirect food additives: general.
- aw.* 21 CFR Part 175, indirect food additives: adhesives and components of coatings.
- ax.* 21 CFR Part 176, indirect food additives: paper and paperboard components.
- ay.* 21 CFR Part 177, indirect food additives: polymers.
- az.* 21 CFR Part 178, indirect food additives: adjuvants, production aids, and sanitizers.
- ba.* 21 CFR Part 180, food additives permitted in food or in contact with food on an interim basis pending additional study.
- bb.* 21 CFR Part 181, prior-sanctioned food ingredients.
- bc.* 21 CFR Part 182, substances generally recognized as safe.
- bd.* 21 CFR Part 184, direct food substances affirmed as generally recognized as safe.
- be.* 21 CFR Part 186, indirect food substances affirmed as generally recognized as safe.
- bf.* 21 CFR Part 189, substances prohibited from use in human food.
- bg.* 21 CFR Part 190, dietary supplements.

**31.2(10) *Egg products processing plants.*** The department shall generally use the good manufacturing practices adopted in paragraph 31.2(9) “b,” unless such practices are inconsistent with standards set by the United States Department of Agriculture, Food Safety Inspection Service, in 9 CFR Parts 590-592, January 1, 2013. If the standards are inconsistent, the standards adopted in 9 CFR Parts 590-592, January 1, 2013, apply.

**31.2(11) *Specific requirements for the manufacture of packaged ice.*** In addition to compliance with subrules 31.2(1) through 31.2(9), manufacturers of packaged ice must comply with the following:

- a.* Equipment must be cleaned on a schedule of frequency that prevents the accumulation of mold, fungus and bacteria. A formal cleaning program and schedule which include the use of sanitizers to eliminate microorganisms must be developed and used.
- b.* Packaged ice must be tested every 120 days for the presence of bacteria.
- c.* Plants that use a nonpublic water system must sample the water supply monthly for the presence of bacteria and annually for chemical and pesticide contamination as required by law.

This rule is intended to implement Iowa Code section 137F.2.  
[ARC 1191C, IAB 11/27/13, effective 1/1/14]

**481—31.3(137D,137F) Adulterated food and disposal.** No one may produce, distribute, offer for sale or sell adulterated food. “Adulterated” is defined in the federal Food, Drug and Cosmetic Act, Section 402. Adulterated food shall be disposed of in a reasonable manner as determined by the department. The destruction of adulterated food shall be watched by a person approved by the department.

This rule is intended to implement Iowa Code section 137F.2.  
[ARC 1191C, IAB 11/27/13, effective 1/1/14]

**481—31.4(137D,137F) False label or defacement.** No person shall use any label required by Iowa Code chapter 137C or 137F which is deceptive as to the true nature of the article or place of production, or which has been carelessly printed or marked, nor shall any person erase or deface any label required by this chapter.

This rule is intended to implement Iowa Code sections 137D.2 and 137F.2.  
[ARC 1191C, IAB 11/27/13, effective 1/1/14]

**481—31.5(137F) Temporary food establishments and farmers market potentially hazardous food licensees.** While the retail food code adopted in rule 481—31.1(137F) applies to temporary food establishments, the following subrules provide a simplified version of requirements for temporary food establishments. If the two rules are inconsistent, the standards in this rule apply.

- 31.5(1) *Personnel.*** For the purposes of this rule, employees include volunteers.
- a.* Employees shall keep their hands and exposed portions of their arms clean.
  - b.* Employees shall have clean garments and aprons and effective hair restraints. Smoking, eating or drinking in food booths is not allowed. All nonworking, unauthorized persons are to be kept out of the food booth.

c. All employees, including volunteers, shall be under the direction of the person in charge. The person in charge shall ensure that the workers are effectively cleaning their hands, that potentially hazardous food is adequately cooked, held or cooled, and that all multiuse equipment or utensils are adequately washed, rinsed and sanitized.

d. Employees and volunteers shall not work at a temporary food establishment or farmers market potentially hazardous food establishment if the employees and volunteers have open cuts, sores or communicable diseases. The person in charge shall take appropriate action to ensure that employees and volunteers who have a disease or medical condition transmissible by food are excluded from the food operation.

e. Every employee and volunteer must sign a logbook with the employee's or volunteer's name, address, and telephone number and the date and hours worked. The logbook must be maintained for 30 days by the person in charge and be made available to the department upon request.

**31.5(2) Food handling and service.**

a. *Dry storage.* All food, equipment, utensils and single-service items shall be stored off the ground and above the floor on pallets, tables or shelving.

b. *Cold storage.* Refrigeration units shall be provided to keep potentially hazardous foods at 41°F or below. The inspector may approve an effectively insulated, hard-sided container with sufficient coolant for storage of less hazardous food or the use of such a container at events of short duration if the container maintains the temperature at 41°F or below.

c. *Hot storage.* Hot food storage units shall be used to keep potentially hazardous food at 135°F or above. Electrical equipment is required for hot holding, unless the use of propane stoves and grills capable of holding the temperature at 135°F or above is approved by the department. Sterno cans are allowed for hot holding if adequate temperatures can be maintained. Steam tables or other hot holding devices are not allowed to heat foods and are to be used only for hot holding after foods have been adequately cooked.

d. *Cooking temperatures.* As specified in the following chart, the minimum cooking temperatures for food products are:

165°F	<ul style="list-style-type: none"> <li>● Poultry and game animals that are not commercially raised</li> <li>● Products stuffed or in a stuffing that contains fish, meat, pasta, poultry or ratite</li> <li>● All products cooked in a microwave oven</li> </ul>
155°F	<ul style="list-style-type: none"> <li>● Rabbits, ratite and game meats that are commercially raised</li> <li>● Ground or comminuted (such as hamburgers) meat/fish products</li> <li>● Raw shell eggs not prepared for immediate consumption</li> </ul>
145°F	<ul style="list-style-type: none"> <li>● Pork and raw shell eggs prepared for immediate consumption</li> <li>● Fish and other meat products not requiring a 155°F or 165°F cooking temperature as listed above</li> </ul>

e. *Consumer advisory requirement.* If raw or undercooked animal food such as beef, eggs, fish, lamb, poultry or shellfish is offered in ready-to-eat form, the license holder (person in charge) shall post the consumer advisory as required by the food code.

f. *Thermometers.* Each refrigeration unit shall have a numerically scaled thermometer to measure the air temperature of the unit accurately. An appropriate thermometer shall be provided where necessary to check the internal temperature of both hot and cold food. Thermometers must be accurate and have a range from 0°F to 220°F.

g. *Food display.* Foods on display must be covered. The public is not allowed to serve itself from opened containers of food or uncovered food items. Condiments such as ketchup, mustard, coffee creamer and sugar shall be served in individual packets or from squeeze containers or pump bottles. Milk shall be dispensed from the original container or from an approved dispenser. All fruits and vegetables must be washed before being used or sold. Food must be stored at least six inches off the ground. All cooking and serving areas shall be adequately protected from contamination. Barbeque areas shall be roped off or otherwise protected from the public. All food shall be protected from customer handling, coughing or sneezing by wrapping, sneeze guards or other effective means.

*h. Food preparation.* Unless otherwise approved by a variance from the department, no bare-hand contact of ready-to-eat food shall occur.

*i. Approved food source.* All food supplies shall come from a commercial manufacturer or an approved source. The use of food in hermetically sealed containers that is not prepared in an approved food processing plant is prohibited. Transport vehicles used to supply food products are subject to inspection and shall protect food from physical, chemical and microbial contamination.

*j. Leftovers.* Hot-held foods that are not used by the end of the day must be discarded.

**31.5(3) Utensil storage and warewashing.**

*a. Single-service utensils.* The use of single-service plates, cups and tableware is required.

*b. Dishwashing.* If approved, an adequate means to heat the water and a minimum of three basins large enough for complete immersion of the utensils are required to wash, rinse and sanitize utensils or food-contact equipment.

*c. Sanitizers.* Chlorine bleach or another approved sanitizer shall be provided for warewashing sanitization and wiping cloths. An appropriate test kit shall be provided to check the concentration of the sanitizer used. The person in charge shall demonstrate knowledge in the determination of the correct concentration of sanitizer to be used.

*d. Wiping cloths.* Wiping cloths shall be stored in a clean, 100 ppm chlorine sanitizing solution or equivalent. Sanitizing solution shall be changed as needed to maintain the solution in a clean condition.

**31.5(4) Water.**

*a. Water supply.* An adequate supply of clean water shall be provided from an approved source. Water storage units and hoses shall be food grade and approved for use in storage of water. If not permanently attached, hoses used to convey drinking water shall be clearly and indelibly identified as to their use. Water supply systems shall be protected against backflow or contamination of the water supply. Backflow prevention devices, if required, shall be maintained and adequate for their intended purpose.

*b. Wastewater disposal.* Wastewater shall be disposed of in an approved wastewater disposal system sized, constructed, maintained and operated according to law.

**31.5(5) Premises.**

*a. Hand-washing container.* An insulated container with at least a two-gallon capacity with a spigot, basin, soap and dispensed paper towels shall be provided for hand washing. The container shall be filled with hot water.

*b. Floors, walls and ceilings.* If required, walls and ceilings shall be of tight design and weather-resistant materials to protect against the elements and flying insects. If required, floors shall be constructed of tight wood, asphalt, rubber or plastic matting or other cleanable material to control dust or mud.

*c. Lighting.* Adequate lighting shall be provided. Lights above exposed food preparation areas shall be shielded.

*d. Food preparation surfaces.* All food preparation or food contact surfaces shall be of a safe design, smooth, easily cleanable and durable.

*e. Garbage containers.* An adequate number of cleanable containers with tight-fitting covers shall be provided both inside and outside the establishment.

*f. Toilet rooms.* An adequate number of approved toilet and hand-washing facilities shall be provided at each event.

*g. Clothing.* Personal clothing and belongings shall be stored at a designated place in the establishment, adequately separated from food preparation, food service and dishwashing areas.

This rule is intended to implement Iowa Code sections 137D.2 and 137F.2.

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<sup>1</sup> NOTE: Rules 30—33.1(159) to 30—33.4(159) and 30—34.1(159) to 30—34.4(159) transferred to Inspections and Appeals Department[481] and rescinded.

CHAPTER 135  
TECHNICAL STANDARDS AND CORRECTIVE ACTION REQUIREMENTS FOR  
OWNERS AND OPERATORS OF UNDERGROUND STORAGE TANKS

[Prior to 12/3/86, Water, Air and Waste Management[900]]

**567—135.1(455B) Authority, purpose and applicability.**

**135.1(1) Authority.** Iowa Code chapter 455B, division IV, part 8, authorizes the department to regulate underground tanks used for storage of regulated substances, and to adopt rules relating to detection, prevention and correction of releases of regulated substances from such tanks, maintenance of financial responsibility by owners or operators of such tanks, new tank performance standards, notice and reporting requirements, and designation of regulated substances.

**135.1(2) Purpose.** The purpose of these rules is to protect the public health and safety and the natural resources of Iowa by timely and appropriate detection, prevention and correction of releases of regulated substances from underground storage tanks (UST).

**135.1(3) Applicability.**

*a.* The requirements of this chapter apply to all owners and operators of a UST system as defined in 135.2(455B) except as otherwise provided in paragraphs “*b*,” “*c*,” and “*d*” of this subrule. Any UST system listed in paragraph “*c*” of this subrule must meet the requirements of 135.1(4).

*b.* The following UST systems are excluded from the requirements of this chapter:

(1) Any UST system holding hazardous wastes listed or identified under Subtitle C of the Solid Waste Disposal Act, or a mixture of such hazardous waste and other regulated substances.

(2) Any wastewater treatment tank system that is part of a wastewater treatment facility regulated under Section 402 or 307(b) of the federal Clean Water Act.

(3) Equipment or machinery that contains regulated substances for operational purposes such as hydraulic lift tanks and electrical equipment tanks.

(4) Any UST system whose capacity is 110 gallons or less.

(5) Any UST system that contains a de minimus concentration of regulated substances.

(6) Any emergency spill or overflow containment UST system that is expeditiously emptied after use.

*c.* Deferrals. Rules 567—135.3(455B), 567—135.4(455B), 567—135.5(455B), 567—135.6(455B) and 567—135.9(455B) do not apply to any of the following types of UST systems:

(1) Wastewater treatment tank systems;

(2) Any UST systems containing radioactive material that are regulated under the federal Atomic Energy Act of 1954 (42 U.S.C. 2011 and following);

(3) Any UST system that is part of an emergency generator system at nuclear power generation facilities regulated by the Nuclear Regulatory Commission under 10 CFR 50 Appendix A;

(4) Airport hydrant fuel distribution systems; and

(5) UST systems with field-constructed tanks.

*d.* Deferrals. Rule 567—135.5(455B) does not apply to any UST system that stores fuel solely for use by emergency power generators. All new and replacement UST systems for emergency power generators must meet the secondary containment requirements in subrule 135.3(9) and the leak detection and delivery prohibition requirements in subrule 135.3(8).

*e.* Nonpetroleum underground storage tank systems. Rules 567—135.8(455B) to 567—135.12(455B) do not apply to any nonpetroleum underground storage tank system except as otherwise provided for by the department.

**135.1(4) Interim prohibition for deferred UST systems.**

*a.* No person may install a UST system listed in 135.1(3) “*c*” for the purpose of storing regulated substances unless the UST system (whether of single- or double-wall construction):

(1) Will prevent releases due to corrosion or structural failure for the operational life of the UST system;

(2) Is cathodically protected against corrosion, constructed of noncorrodible material, steel clad with a noncorrodible material, or designed in a manner to prevent the release or threatened release of any stored substance; and

(3) Is constructed or lined with material that is compatible with the stored substance.

*b.* Notwithstanding paragraph “*a*” of this subrule, a UST system without corrosion protection may be installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life. Owners and operators must maintain records that demonstrate compliance with the requirements of this paragraph for the remaining life of the tank.

NOTE: The National Association of Corrosion Engineers Standard RP-02-85, “Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems,” may be used as guidance for complying with 135.1(4) “*b.*”

#### **567—135.2(455B) Definitions.**

“*Aboveground release*” means any release to the surface of the land or to surface water. This includes, but is not limited to, releases from the aboveground portion of a UST system and aboveground releases associated with overfills and transfer operations as the regulated substance moves to or from a UST system.

“*Active remediation*” means corrective action undertaken to reduce contaminant concentrations by other than passive remediation or monitoring.

“*Ancillary equipment*” means any devices including, but not limited to, such devices as piping, fittings, flanges, valves, and pumps used to distribute, meter, or control the flow of regulated substances to and from a UST.

“*Appurtenances*” means devices such as piping, fittings, flanges, valves, dispensers and pumps used to distribute, meter, or control the flow of regulated substances to or from an underground storage tank.

“*Asbestos-cement pipe*” (AC refers to asbestos-cement) means a pipe or conduit constructed of asbestos fiber, Portland cement, and water, which can be used to transport water.

“*ASTM*” means the American Society of Testing and Materials.

“*Backflow preventer*” means a check valve used to ensure water flows in one direction and designed to prevent contamination from an end user, such as a home, from getting into the general water supply. An approved backflow preventer shall be a reduced-pressure backflow preventer or an antisiphon device which complies with the standards of the American Water Works Association and has been approved by the Foundation for Cross-Connection Control and Hydraulic Research.

“*Bedrock*” means the rock, usually solid, underlying soil or any other unconsolidated surficial cover.

“*Below-ground release*” means any release to the subsurface of the land and to groundwater. This includes, but is not limited to, releases from the below-ground portions of an underground storage tank system and below-ground releases associated with overfills and transfer operations as the regulated substance moves to or from an underground storage tank.

“*Beneath the surface of the ground*” means beneath the ground surface or otherwise covered with earthen materials.

“*Best available technology*” means those practices which most appropriately remove, treat, or isolate contaminants from groundwater, soil or associated environment, as determined through professional judgment considering actual equipment or techniques currently in use, published technical articles, site hydrogeology and research results, engineering and groundwater professional reference materials, consultation with experts in the field, capital and operating costs, and guidelines or rules of other regulatory agencies.

“*Best management practices*” means maintenance procedures, schedule of activities, prohibition of practices, and other management practices, or a combination thereof, which, after problem assessment, is determined to be the most effective means of monitoring and preventing additional contamination of the groundwater and soil.

“*Carcinogenic risk*” means the incremental risk of a person developing cancer over a lifetime as a result of exposure to a chemical, expressed as a probability such as one in a million (10<sup>-6</sup>). For

carcinogenic chemicals of concern, probability is derived from application of certain designated exposure assumptions and a slope factor.

*“Cast iron pipe”* means a pipe or conduit used as a pressure pipe for transmission of water, gas, or sewage or as a water drainage pipe. It comprises predominantly a gray cast iron tube historically used uncoated, with newer types having various coatings and linings to reduce corrosion and improve hydraulics.

*“Cathodic protection”* is a technique to prevent corrosion of a metal surface by making that surface the cathode of an electrochemical cell. For example, a tank system can be cathodically protected through the application of either galvanic anodes or impressed current.

*“Cathodic protection tester”* means a person who can demonstrate an understanding of the principles and measurements of all common types of cathodic protection systems as applied to buried or submerged metal piping and tank systems. At a minimum, such persons must have education and experience in soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements of buried metal piping and tank systems.

*“CERCLA”* means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980.

*“Certified groundwater professional”* means a person certified pursuant to 1995 Iowa Code section 455G.18 and 567—Chapter 134.

*“Change-in-service”* means changing the use of a tank system from a regulated to a nonregulated use.

*“Chemicals of concern”* means the compounds derived from petroleum-regulated substances which are subject to evaluation for purposes of applying risk-based corrective action decision making. These compounds are benzene, ethylbenzene, toluene, and xylenes (BTEX) and naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. (NOTE: Measurement of these last four constituents may be done by a conversion method from total extractable hydrocarbons, see subrule 135.8(3).)

*“Class A operator”* means a person responsible for managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter. This includes ensuring appropriate individuals are trained in the proper operation and maintenance of the underground storage tank system, the maintenance of all required records, the procedures for response to emergencies caused by releases or spills, and assuring financial responsibility and documentation to the department or its representatives as required.

*“Class B operator”* means a person who implements applicable underground storage tank regulatory requirements and standards. This includes implementing the day-to-day aspects of operating, maintaining, and record keeping for underground storage tanks at one or more facilities. A Class B operator typically monitors, maintains and ensures that release detection methods, record-keeping, and reporting requirements are met; release prevention equipment, record-keeping, and reporting requirements are met; all relevant equipment complies with performance standards; and appropriate individuals are trained to properly respond to emergencies caused by releases and spills.

*“Class C operator”* means an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and who is the first line of response to events indicating emergency conditions.

*“Compatible”* means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the UST.

*“Conduit”* means underground structures which act as pathways and receptors for chemicals of concern, including but not limited to gravity drain lines and sanitary or storm sewers.

*“Connected piping”* means all underground piping including valves, elbows, joints, flanges, and flexible connectors attached to a tank system through which regulated substances flow. For the purpose of determining how much piping is connected to any individual UST system, the piping that joins two UST systems should be allocated equally between them.

*“Consumptive use”* with respect to heating oil means consumed on the premises.

*“Corrective action”* means an action taken to reduce, minimize, eliminate, clean up, control or monitor a release to protect the public health and safety or the environment. Corrective action includes, but is not limited to, excavation of an underground storage tank for the purpose of repairing a leak or removal of a tank, removal of contaminated soil, disposal or processing of contaminated soil, cleansing of groundwaters or surface waters, natural biodegradation, institutional controls, technological controls and site management practices. Corrective action does not include replacement of an underground storage tank. Corrective action specifically excludes third-party liability.

*“Corrective action meeting process”* means a series of meetings organized by department staff with owners or operators and other interested parties such as certified groundwater professionals, funding source representatives, and affected property owners. The purpose of the meeting process is to develop and agree on a corrective action plan and the terms for implementation of the plan.

*“Corrective action plan”* means a plan which specifies the corrective action to be undertaken by the owner or operator in order to comply with requirements in this chapter and which is incorporated into a memorandum of agreement or other written agreement between the department and the owner or operator. The plan may include but is not limited to provisions for additional site assessment, site monitoring, Tier 2 revisions, Tier 3 assessment, excavation, and other soil and groundwater remedial action.

*“Corrosion expert”* means a person who, by reason of thorough knowledge of the physical sciences and the principles of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks. Such a person must be accredited or certified as being qualified by the National Association of Corrosion Engineers or be a registered professional engineer who has certification or licensing that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

*“Department”* means Iowa department of natural resources.

*“Dielectric material”* means a material that does not conduct direct electrical current. Dielectric coatings are used to electrically isolate UST systems from the surrounding soils. Dielectric bushings are used to electrically isolate portions of the UST systems (e.g., tank from piping).

*“Dispenser”* means equipment that is used to transfer a regulated substance from underground piping through a rigid or flexible hose or piping located aboveground to a point of use outside the underground storage tank system, such as a motor vehicle.

*“Drinking water well”* means any groundwater well used as a source for drinking water by humans and groundwater wells used primarily for the final production of food or medicine for human consumption in facilities routinely characterized with the Standard Industrial Codes (SIC) group 283 for drugs and 20 for foods.

*“Ductile iron pipe”* means a pipe or conduit commonly used for potable water distribution and for the pumping of sewage. The predominant wall material is ductile iron, a spheroidized graphite cast iron, and commonly has an internal cement mortar lining to inhibit corrosion from the carried water and various types of external coatings to inhibit corrosion from the environment.

*“Electrical equipment”* means underground equipment that contains dielectric fluid that is necessary for the operation of equipment such as transformers and buried electrical cable.

*“Enclosed space”* means space which can act as a receptor or pathway capable of creating a risk of explosion or inhalation hazard to humans and includes “explosive receptors” and “confined spaces.” Explosive receptors means those receptors designated in these rules which are evaluated for explosive risk. Confined spaces means those receptors designated in these rules for evaluation of vapor inhalation risks.

*“Excavation zone”* means the volume containing the tank system and backfill material bounded by the ground surface, walls, and floor of the pit and trenches into which the UST system is placed at the time of installation.

*“Existing tank system”* means a tank system used to contain an accumulation of regulated substances or for which installation has commenced on or before January 14, 1987. Installation is considered to have commenced if:

The owner or operator has obtained all federal, state, and local approvals or permits necessary to begin physical construction of the site or installation of the tank system; and if,

1. Either a continuous on-site physical construction or installation program has begun; or,
2. The owner or operator has entered into contractual obligations, which cannot be canceled or modified without substantial loss, for physical construction at the site or installation of the tank system to be completed within a reasonable time.

*“Farm tank”* is a tank located on a tract of land devoted to the production of crops or raising animals, including fish, and associated residences and improvements. A farm tank must be located on the farm property. “Farm” includes fish hatcheries, rangeland and nurseries with growing operations.

*“Flow-through process tank”* is a tank that forms an integral part of a production process through which there is a steady, variable, recurring, or intermittent flow of materials during the operation of the process. Flow-through process tanks do not include tanks used for the storage of materials prior to their introduction into the production process or for the storage of finished products or by-products from the production process.

*“Free product”* refers to a regulated substance that is present as a nonaqueous phase liquid (e.g., liquid not dissolved in water).

*“Gasket”* means any type of pipe seals made of a variety of rubbers including but not necessarily limited to styrene-butadiene rubber (SBR), nitrile-butadiene rubber (NBR or nitrile), ethylene propylene diene monomer (EPDM), neoprene (CR), and fluoroelastomer rubber (FKM), which are used to seal pipe connections.

*“Gathering lines”* means any pipeline, equipment, facility, or building used in the transportation of oil or gas during oil or gas production or gathering operations.

*“Groundwater ingestion pathway”* means a pathway through groundwater by which chemicals of concern may result in exposure to a human receptor as specified in rules applicable to Tier 1, Tier 2 and Tier 3.

*“Groundwater plume”* means the extent of groundwater impacted by the release of chemicals of concern.

*“Groundwater to water line pathway”* means a pathway through groundwater which leads to a water line.

*“Groundwater vapor to enclosed space pathway”* means a pathway through groundwater by which vapors from chemicals of concern may lead to a receptor creating an inhalation or explosive risk hazard.

*“Hazardous substance UST system”* means an underground storage tank system that contains a hazardous substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (but not including any substance regulated as a hazardous waste under subtitle C) or any mixture of such substances and petroleum, and which is not a petroleum UST system.

*“Hazard quotient”* means the ratio of the level of exposure of a chemical of concern over a specified time period to a reference dose for that chemical of concern derived for a similar exposure period. Unless otherwise specified, the hazard quotient designated in these rules is one.

*“Heating oil”* means petroleum that is No. 1, No. 2, No. 4-light, No. 4-heavy, No. 5-light, No. 5-heavy, and No. 6 technical grades of fuel oil; other residual fuel oils (including Navy Special Fuel Oil and Bunker C); and other fuels when used as substitutes for one of these fuel oils. Heating oil is typically used in the operation of heating equipment, boilers, or furnaces.

*“Highly permeable soils”* means for the purpose of UST closures: fractured bedrock, any soils with a hydraulic conductivity rate greater than 0.3 meters per day, or any soil material classified by the Unified Soil Classification System as published by the United States Department of the Interior or ASTM designation as (1) GW - well graded gravel, gravel-sand mixtures, little or no fines, (2) GP - poorly graded gravel, gravel-sand mixtures, little or no fines, (3) SW - well graded sands, gravelly sands, little or no fines, or (4) SP - poorly graded sands, gravelly sands, little or no fines.

*“Hydraulic conductivity”* means the rate of water movement through the soil measured in meters per day (m/d) as determined by the following methods. For a saturated soil, the Bouwer-Rice method or its equivalent shall be used. For unsaturated soil, use a Guelph permeameter or an equivalent in situ

constant-head permeameter in a boring finished above the water table. If an in situ method cannot be used for unsaturated soil because of depth, or if the soil is homogeneous and lacks flow-conducting channels, fractures, cavities, etc., laboratory measurement of hydraulic conductivity is acceptable.

If laboratory methods are used, collect undisturbed soil samples using a thin-walled tube sampler in accordance with American Society of Testing and Materials (ASTM) Standard D1587. Samples shall be clearly marked, preserved and transported to the laboratory. The laboratory shall measure hydraulic conductivity using a constant-head permeameter in accordance with ASTM Standard D2434 or a falling-head permeameter in accordance with accepted methodology.

*“Hydraulic lift tank”* means a tank holding hydraulic fluid for a closed-loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

*“Institutional controls”* means the restriction on use or access (for example, fences, deed restrictions, restrictive zoning) to a site or facility to eliminate or minimize potential exposure to a chemical(s) of concern. Institutional controls include any of the following:

1. A law of the United States or the state;
2. A regulation issued pursuant to federal or state laws;
3. An ordinance or regulation of a political subdivision in which real estate subject to the institutional control is located;
4. A restriction on the use of or activities occurring at real estate which are embodied in a covenant running with the land which:
  - Contains a legal description of the real estate in a manner which satisfies Iowa Code section 558.1 et seq.;
  - Is properly executed, in a manner which satisfies Iowa Code section 558.1 et seq.;
  - Is recorded in the appropriate office of the county in which the real estate is located;
  - Adequately and accurately describes the institutional control; and
  - Is in the form of a covenant as set out in Appendix C or in such a manner reasonably acceptable to the department.
5. Any other institutional control the owner or operator can reasonably demonstrate to the department which will reduce the risk from a release throughout the period necessary to ensure that no applicable target risk is likely to be exceeded.

*“Liquid trap”* means sumps, well cellars, and other traps used in association with oil and gas production, gathering, and extraction operations (including gas production plants), for the purpose of collecting oil, water, and other liquids. These liquid traps may temporarily collect liquids for subsequent disposition or reinjection into a production or pipeline stream, or may collect and separate liquids from a gas stream.

*“Maintenance”* means the normal operational upkeep to prevent an underground storage tank system from releasing product.

*“MCLs”* means the drinking water primary maximum contaminant levels set out in 567—41.3(455B).

*“Memorandum of agreement”* means a written agreement between the department and the owner or operator which specifies the corrective action that will be undertaken by the owner or operator in order to comply with requirements in this chapter and the terms for implementation of the plan. The plan may include but is not limited to provisions for additional site assessment, site monitoring, Tier 2 revisions, Tier 3 assessment, excavation, and other soil and groundwater remedial action.

*“Motor fuel”* means petroleum or a petroleum-based substance that is motor gasoline, aviation gasoline, No. 1 or No. 2 diesel fuel, or any grade of gasohol, and is typically used in the operation of a motor engine.

*“New tank system”* means a tank system that will be used to contain an accumulation of regulated substances and for which installation has commenced after January 14, 1987. (See also “Existing Tank System.”)

*“Noncarcinogenic risk”* means the potential for adverse systemic or toxic effects caused by exposure to noncarcinogenic chemicals of concern, expressed as the hazard quotient.

*“Noncommercial purposes”* with respect to motor fuel means not for resale.

*“Non-drinking water well”* means any groundwater well (except an extraction well used as part of a remediation system) not defined as a drinking water well including a groundwater well which is not properly plugged in accordance with department rules in 567—Chapters 39 and 49.

*“Nonresidential area”* means land which is not currently used as a residential area and which is zoned for nonresidential uses.

*“On the premises where stored”* with respect to heating oil means UST systems located on the same property where the stored heating oil is used.

*“Operational life”* refers to the period beginning when installation of the tank system has commenced until the time the tank system is properly closed under rule 567—135.15(455B).

*“Operator”* means any person in control of, or having responsibility for, the daily operation of the UST system.

*“Overfill release”* is a release that occurs when a tank is filled beyond its capacity, resulting in a discharge of the regulated substance to the environment.

*“Owner”* means:

1. In the case of a UST system in use on July 1, 1985, or brought into use after that date, any person who owns a UST system used for storage, use, or dispensing of regulated substances; and

2. In the case of any UST system in use before July 1, 1985, but no longer in use on that date, any person who owned such UST immediately before the discontinuation of its use.

*“Owner”* does not include a person, who, without participating in the management or operation of the underground storage tank or the tank site, holds indicia of ownership primarily to protect that person’s security interest in the underground storage tank or the tank site property, prior to obtaining ownership or control through debt enforcement, debt settlement, or otherwise.

*“Pathway”* means a transport mechanism by which chemicals of concern may reach a receptor(s) or the location(s) of a potential receptor.

*“Permanent closure”* means removing all regulated substances from the tank system, assessing the site for contamination, and permanently removing tank and piping from the ground or filling the tank in place with a solid inert material and plugging all piping. Permanent closure also includes partial closure of a tank system such as removal or replacement of tanks or piping only.

*“Person”* means an individual, trust, firm, joint stock company, federal agency, corporation, state, municipality, commission, political subdivision of a state, or any interstate body. *“Person”* also includes a consortium, a joint venture, a commercial entity, and the United States government.

*“Person who conveys or deposits a regulated substance”* means a person who sells or supplies the owner or operator with the regulated substance and the person who transports or actually deposits the regulated substance in the underground tank.

*“Petroleum UST system”* means an underground storage tank system that contains petroleum or a mixture of petroleum with de minimus quantities of other regulated substances. Such systems include those containing motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

*“Pipe”* or *“piping”* means a hollow cylinder or tubular conduit that is constructed of nonearthen materials and that routinely contains and conveys regulated substances from the underground tank(s) to the dispenser(s) or other end-use equipment. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures that contain and convey regulated substances from the underground tank(s) to the dispenser(s). This definition does not include vent, vapor recovery, or fill lines.

*“Pipeline facilities (including gathering lines)”* are new and existing pipe rights-of-way and any associated equipment, facilities, or buildings.

*“Point of compliance”* means the location(s) at the source(s) of contamination or at the location(s) between the source(s) and the point(s) of exposure where concentrations of chemicals of concern must meet applicable risk-based screening levels at Tier 1 or other target level(s) at Tier 2 or Tier 3.

*“Point of exposure”* means the location(s) at which an actual or potential receptor may be exposed to chemicals of concern via a pathway.

*“Polybutylene pipe”* (PB refers to polybutylene) means a water supply pipe comprised of a form of plastic resin that was used extensively from 1978 until 1995. The piping systems were used for

underground water mains and as interior water distribution piping. Polybutylene mains are usually blue in color, but may be gray, black, or white. The pipe is usually ½ inch or 1 inch in diameter, and it may be found entering a residence through the basement wall or floor, concrete slab or through the crawlspace; frequently it enters the residence near the water heater.

*“Polyethylene pipe”* (PE refers to polyethylene) means a water supply pipe comprised of thermoplastic material produced from the polymerization of ethylene. PE pipe is manufactured by extrusion in sizes ranging from ½ inch to 63 inches. PE pipe is available in rolled coils of various lengths or in straight lengths of up to 40 feet. PE pipe is available in many forms and colors, including single-extrusion colored or black pipe, black pipe with co-extruded color striping, and black or natural pipe with a co-extruded colored layer. PE pipe has been demonstrated to be very permeable to petroleum while still retaining its flexible structure.

*“Polyvinyl chloride pipe”* (PVC refers to polyvinyl chloride) means a pipe made from a plastic and vinyl combination material. The pipes are durable, hard to damage, and long-lasting. A PVC pipe is very resistant and does not rust, nor is it likely to rot or wear over time. PVC piping is most commonly used in water systems, underground wiring, and sewer lines.

*“Portland cement”* means hydraulic cement (cement that not only hardens by reacting with water but also forms a water-resistant product) and is produced by pulverizing clinkers consisting essentially of hydraulic calcium silicates, usually containing one or more forms of calcium sulfate as an inter ground addition.

*“Potential receptor”* means a receptor not in existence at the time a Tier 1, Tier 2 or Tier 3 site assessment is prepared, but which could reasonably be expected to exist within 20 years of the preparation of the Tier 1, Tier 2 or Tier 3 site assessment or as otherwise specified in these rules.

*“Preferential pathway”* means conditions which act as a pathway permitting contamination to migrate through soils and to groundwater at a faster rate than would be expected through naturally occurring undisturbed soils or unfractured bedrock including but not limited to wells, cisterns, tile lines, drainage systems, utility lines and envelopes, and conduits.

*“Protected groundwater source”* means a saturated bed, formation, or group of formations which has a hydraulic conductivity of at least 0.44 meters per day (m/d) and a total dissolved solids of less than 2,500 milligrams per liter (mg/l) or a bedrock aquifer with total dissolved solids of less than 2,500 milligrams per liter (mg/l) if bedrock is encountered before groundwater.

*“Public water supply well”* means a well connected to a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

*“Receptor”* means enclosed spaces, conduits, protected groundwater sources, drinking and non-drinking water wells, surface water bodies, and public water systems which when impacted by chemicals of concern may result in exposure to humans and aquatic life, explosive conditions or other adverse effects on health, safety and the environment as specified in these rules.

*“Reference dose”* means a designated toxicity value established in these rules for evaluating potential noncarcinogenic effects in humans resulting from exposure to a chemical(s) of concern. Reference doses are designated in Appendix A.

*“Regulated substance”* means an element, compound, mixture, solution or substance which, when released into the environment, may present substantial danger to the public health or welfare or the environment. Regulated substance includes:

1. Substances designated in Table 302.4 of 40 CFR Part 302 (September 13, 1988),
2. Substances which exhibit the characteristics identified in 40 CFR 261.20 through 261.24 (May 10, 1984) and which are not excluded from regulation as a hazardous waste under 40 CFR 261.4(b) (May 10, 1984),
3. Any substance defined in Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) of 1980 (but not including any substance regulated as a hazardous waste under subtitle C), and
4. Petroleum, including crude oil or any fraction thereof that is liquid at standard conditions of temperature and pressure (60 degrees Fahrenheit and 14.7 pounds per square inch absolute). The term

“regulated substance” includes but is not limited to petroleum and petroleum-based substances comprised of a complex blend of hydrocarbons derived from crude oil through processes of separation, conversion, upgrading, and finishing, such as motor fuels, jet fuels, distillate fuel oils, residual fuel oils, lubricants, petroleum solvents, and used oils.

“*Release*” means any spilling, leaking, emitting, discharging, escaping, leaching or disposing of a regulated substance, including petroleum, from a UST into groundwater, surface water or subsurface soils.

“*Release detection*” means determining whether a release of a regulated substance has occurred from the UST system into the environment or into the interstitial space between the UST system and its secondary barrier or secondary containment around it.

“*Repair*” means to restore a tank or UST system component that has caused a release of product from the UST system.

“*Replace*” or “*replacement*” means the installation of a new underground tank system or component, including dispensers, in substantially the same location as an existing tank system or component in lieu of that tank system or component.

“*Residential area*” means land used as a permanent residence or domicile, such as a house, apartment, nursing home, school, child care facility or prison, land zoned for such uses, or land where no zoning is in place.

“*Residential tank*” is a tank located on property used primarily for dwelling purposes.

“*Risk-based screening level (RBSL)*” means the risk-based concentration level for chemicals of concern developed for a Tier 1 analysis to be met at the point(s) of compliance and incorporated in the Tier 1 Look-up Table in Appendix A.

“*SARA*” means the federal Superfund Amendments and Reauthorization Act of 1986.

“*Secondary containment tank*” or “*secondary containment piping*” means a tank or piping which is designed with an inner primary shell and a liquid-tight outer secondary shell or jacket which extends around the entire inner shell, and which is designed to contain any leak through the primary shell from any part of the tank or piping that routinely contains product, and which also allows for monitoring of the interstitial space between the shells and the detection of any leak.

“*Septic tank*” is a watertight covered receptacle designed to receive or process, through liquid separation or biological digestion, the sewage discharged from a building sewer. The effluent from such receptacle is distributed for disposal through the soil and settled solids and scum from the tank are pumped out periodically and hauled to a treatment facility.

“*Service line*” means a pipe connected to a business or residence from a water main, typically of a size not exceeding 6 inches in diameter, and including its gaskets and other appurtenances. For purposes of this chapter, service lines refer to pipes specifically used for drinking water transmission.

“*Site assessment investigation*” means an investigation conducted by a registered groundwater professional to determine relevant site historical data, the types, amounts, and sources of petroleum contaminants present, hydrogeological characteristics of the site, full vertical and horizontal extent of the contamination in soils and groundwater, direction and rate of flow of the contamination, ranges of concentration of the contaminants by analysis of soils and groundwater, the vertical and horizontal extent of the contamination exceeding department standards, and the actual or potential threat to public health and safety and the environment.

“*Site cleanup report*” means the report required to be submitted by these rules and in accordance with department guidance which may include the results of Tier 2 or Tier 3 assessment and analysis.

“*Site-specific target level (SSTL)*” means the risk-based target level(s) for chemicals of concern developed as the result of a Tier 2 or Tier 3 assessment which must be achieved at applicable point(s) of compliance at the source to meet the target level(s) at the point(s) of exposure.

“*Soil leaching to groundwater pathway*” means a pathway through soil by which chemicals of concern may leach to groundwater and through a groundwater transport pathway impact an actual or potential receptor.

“*Soil plume*” means the vertical and horizontal extent of soil impacted by the release of chemicals of concern.

“*Soil to water line pathway*” means a pathway which leads from soil to a water line.

“*Soil vapor to enclosed space pathway*” means a pathway through soil by which vapors from chemicals of concern may lead to a receptor creating an inhalation or explosive risk hazard.

“*Storm water or wastewater collection system*” means piping, pumps, conduits, and any other equipment necessary to collect and transport the flow of surface water run-off resulting from precipitation, or domestic, commercial, or industrial wastewater to and from retention areas or any areas where treatment is designated to occur. The collection of storm water and wastewater does not include treatment except where incidental to conveyance.

“*Surface impoundment*” is a natural topographic depression, constructed excavation, or diked area formed primarily of earthen materials (although it may be lined with manufactured materials) that is not an injection well.

“*Surface water body*” means general use segments as provided in 567—paragraph 61.3(1) “a” and designated use segments of water bodies as provided in 567—paragraph 61.3(1) “b” and 567—subrule 61.3(5).

“*Surface water criteria*” means, for chemicals of concern, the Criteria for Chemical Constituents in Table 1 of rule 567—61.3(455B), except that “1,000 ug/L” will be substituted for the chronic levels for toluene for Class B designated use segments.

“*Surface water pathway*” means a pathway which leads to a surface water body.

“*Tank*” is a stationary device designed to contain an accumulation of regulated substances and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

“*Target level*” means the allowable concentrations of chemicals of concern established to achieve an applicable target risk which must be met at the point(s) of compliance as specified in these rules.

“*Target risk*” refers to an applicable carcinogenic and noncarcinogenic risk factor designated in these rules and used in determining target levels (for carcinogenic risk assessment, target risk is a separate factor, different from exposure factors, both of which are used in determining target levels).

“*Technological controls*” means a physical action which does not involve source removal or reduction, but severs or reduces exposure to a receptor, such as caps, containment, carbon filters, point of use water treatment, etc.

“*Tier 1 level*” means the groundwater and soil levels in the Tier 1 Look-up Table set out in rule 135.9(455B) and Appendix A.

“*Tier 1 site assessment*” means the evaluation of limited site-specific data compared to the Tier 1 levels established in these rules for the purpose of determining which pathways do not require assessment and evaluation at Tier 2 and which sites warrant a no further action required classification without further assessment and evaluation.

“*Tier 2 site assessment*” means the process of assessing risk to actual and potential receptors by using site-specific field data and designated Tier 2 exposure and fate and transport models to determine the applicable target level(s).

“*Tier 3 site assessment*” means a site-specific risk assessment utilizing more sophisticated data or analytic techniques than a Tier 2 site assessment.

“*Under-dispenser containment (UDC)*” means containment underneath a dispenser that will prevent leaks from the dispenser from reaching soil or groundwater. Such containment must:

- Be intact and liquid-tight on its sides and bottom and at any penetrations;
- Be compatible with the substance conveyed by the piping; and
- Allow for visual inspection and monitoring and access to the components in the containment system.

“*Underground area*” means an underground room, such as a basement, cellar, shaft or vault, providing enough space for physical inspection of the exterior of the tank situated on or above the surface of the floor.

“*Underground release*” means any below-ground release.

“*Underground storage tank*” or “*UST*” means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances,

and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

- a. Farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes. Iowa Code section 455B.471 requires those tanks existing prior to July 1, 1987, to be registered. Tanks installed on or after July 1, 1987, must comply with all 567—Chapter 135 rules;
- b. Tank used for storing heating oil for consumptive use on the premises where stored;
- c. Septic tank;
- d. Pipeline facility (including gathering lines) regulated under:
  - (1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, et seq.), or
  - (2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, et seq.), or
  - (3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in “d”(1) or “d”(2) of this definition;
- e. Surface impoundment, pit, pond, or lagoon;
- f. Storm-water or wastewater collection system;
- g. Flow-through process tank;
- h. Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or
- i. Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor.

The term “underground storage tank” or “UST” does not include any pipes connected to any tank which is described in paragraphs “a” through “j” of this definition.

“*Underground utility vault*” means any constructed space accessible for inspection and maintenance associated with subsurface utilities.

“*Unreasonable risk to public health and safety or the environment*” means the Tier 1 levels for a Tier 1 site assessment, the applicable target level for a Tier 2 site assessment, and the applicable target level for a Tier 3 site assessment.

“*Upgrade*” means the addition or retrofit of some systems such as cathodic protection, lining, or spill and overflow controls to improve the ability of an underground storage tank system to prevent the release of product.

“*UST system*” or “*tank system*” means an underground storage tank, connected underground piping, underground ancillary equipment, and containment system, if any.

“*Utility envelope*” means the backfill and trench used for any subsurface utility line, drainage system and tile line.

“*Wastewater treatment tank*” means a tank that is designed to receive and treat an influent wastewater through physical, chemical, or biological methods.

“*Water line*” means a hollow cylinder or tubular conduit that routinely contains and conveys potable water and is constructed of nonearthen materials, including but not limited to asbestos-cement, copper, high-density polyethylene (HDPE), polybutylene, polyethylene, and wood. Such piping includes any elbows, couplings, unions, valves, or other in-line fixtures, as well as the gaskets, which contain and convey potable water.

“*Water main pipe*” means a main line to the water distribution system with feeder lines or service lines connected to it and which typically is 6 inches or greater in diameter, and includes its gaskets and other appurtenances.

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### **567—135.3(455B) UST systems—design, construction, installation and notification.**

**135.3(1) Performance standards for new UST systems.** In order to prevent releases due to structural failure, corrosion, or spills and overfills for as long as the UST system is used to store regulated substances, all owners and operators of new UST systems must meet the following requirements.

*a. Tanks.* Each tank must be properly designed and constructed, and any portion underground that routinely contains product must be protected from corrosion, in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

- (1) The tank is constructed of fiberglass-reinforced plastic; or

NOTE: The following industry codes may be used to comply with 135.3(1)“a”(1): Underwriters Laboratories Standard 1316, “Standard for Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products”; Underwriters Laboratories of Canada CAN4-S615-M83, “Standard for Reinforced Plastic Underground Tanks for Petroleum Products”; or American Society of Testing and Materials Standard D4021-86, “Standard Specification for Glass-Fiber-Reinforced Polyester Underground Petroleum Storage Tanks.”

- (2) The tank is constructed of steel and cathodically protected in the following manner:

1. The tank is coated with a suitable dielectric material;
2. Field-installed cathodic protection systems are designed by a corrosion expert;
3. Impressed current systems are designed to allow determination of current operating status as required in 135.4(2)“c”; and

4. Cathodic protection systems are operated and maintained in accordance with 135.4(2) or according to guidelines established by the department; or

NOTE: The following codes and standards may be used to comply with 135.3(1)“a”(2): Steel Tank Institute “Specification for STI-P3 System of External Corrosion Protection of Underground Steel Storage Tanks”; Underwriters Laboratories Standard 1746, “Corrosion Protection Systems for Underground Storage Tanks”; Underwriters Laboratories of Canada CAN4-S603-M85, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids,” and CAN4-GO3.1-M85, “Standard for Galvanic Corrosion Protection Systems for Underground Tanks for Flammable and Combustible Liquids,” and CAN4-S631-M84, “Isolating Bushings for Steel Underground Tanks Protected with Coatings and Galvanic Systems”; or National Association of Corrosion Engineers Standard RP-02-85, “Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems,” and Underwriters Laboratories Standard 58, “Standard for Steel Underground Tanks for Flammable and Combustible Liquids.”

- (3) The tank is constructed of a steel-fiberglass-reinforced plastic composite; or

NOTE: The following industry codes may be used to comply with 135.3(1)“a”(3): Underwriters Laboratories Standard 1746, “Corrosion Protection Systems for Underground Storage Tanks,” or the Association for Composite Tanks ACT-100, “Specification for the Fabrication of FRP Clad Underground Storage Tanks.”

- (4) The tank is constructed of metal without additional corrosion protection measures provided that:

1. The tank is installed at a site that is determined by a corrosion expert not to be corrosive enough to cause it to have a release due to corrosion during its operating life; and

2. Owners and operators maintain records that demonstrate compliance with the requirements of 135.3(1)“a”(4)“1” for the remaining life of the tank; or

- (5) The tank construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than 135.3(1)“a”(1) to (4).

*b. Piping.* The piping that routinely contains regulated substances and is in contact with the ground must be properly designed, constructed, and protected from corrosion in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory as specified below:

- (1) The piping is constructed of fiberglass-reinforced plastic; or

NOTE: The following codes and standards may be used to comply with 135.3(1)“b”(1): Underwriters Laboratories Subject 971, “UL Listed Non-Metal Pipe”; Underwriters Laboratories Standard 567, “Pipe Connectors for Flammable and Combustible and LP Gas”; Underwriters Laboratories of Canada Guide ULC-107, “Glass Fiber Reinforced Plastic Pipe and Fittings for Flammable Liquids”; and Underwriters Laboratories of Canada Standard CAN 4-S633-M81, “Flexible Underground Hose Connectors.”

- (2) The piping is constructed of steel and cathodically protected in the following manner:
1. The piping is coated with a suitable dielectric material;
  2. Field-installed cathodic protection systems are designed by a corrosion expert;
  3. Impressed current systems are designed to allow determination of current operating status as required in 135.4(2)“c”; and
  4. Cathodic protection systems are operated and maintained in accordance with 135.4(2) or guidelines established by the department; or

NOTE: The following codes and standards may be used to comply with 135.3(1)“b”(2): National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”; American Petroleum Institute Publication 1615, “Installation of Underground Petroleum Storage Systems”; American Petroleum Institute Publication 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems”; and National Association of Corrosion Engineers Standard RP-01-69, “Control of External Corrosion on Submerged Metallic Piping Systems.”

- (3) The piping is constructed of metal without additional corrosion protection measures provided that:

1. The piping is installed at a site that is determined by a corrosion expert to not be corrosive enough to cause it to have a release due to corrosion during its operating life; and
2. Owners and operators maintain records that demonstrate compliance with the requirements of 135.3(1)“b”(3)“1” for the remaining life of the piping; or

NOTE: National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”; and National Association of Corrosion Engineers Standard RP-01-69, “Control of External Corrosion on Submerged Metallic Piping Systems,” may be used to comply with 135.3(1)“b”(3).

- (4) The piping construction and corrosion protection are determined by the department to be designed to prevent the release or threatened release of any stored regulated substance in a manner that is no less protective of human health and the environment than the requirements in 135.3(1)“b”(1) to (3).

*c. Spill and overflow prevention equipment.*

- (1) Except as provided in subparagraph (2), to prevent spilling and overflowing associated with product transfer to the UST system, owners and operators must use the following spill and overflow prevention equipment:

1. Spill prevention equipment that will prevent release of product to the environment when the transfer hose is detached from the fill pipe (for example, a spill catchment basin); and
2. Overflow prevention equipment that will:

Automatically shut off flow into the tank when the tank is no more than 95 percent full; or

Alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high-level alarm; or

Restrict flow 30 minutes prior to overflowing, alert the operator with a high-level alarm one minute before overflowing, or automatically shut off the flow into the tank so that none of the fittings located on top of the tank are exposed to product due to overflowing.

- (2) Owners and operators are not required to use the spill and overflow prevention equipment specified in subparagraph (1) if:

1. Alternative equipment is used that is determined by the department to be no less protective of human health and the environment than the equipment specified in subparagraph (1)“1” or “2” of this paragraph; or

2. The UST system is filled by transfers of no more than 25 gallons at one time.

*d. Installation.* All tanks and piping must be properly installed in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and in accordance with the manufacturer’s instructions.

NOTE: Tank and piping system installation practices and procedures described in the following codes may be used to comply with the requirements of 135.3(1)“d”: American Petroleum Institute Publication 1615, “Installation of Underground Petroleum Storage System”; Petroleum Equipment Institute Publication RP100, “Recommended Practices for Installation of Underground Liquid Storage Systems”; or American National Standards Institute Standard 831.3, “Petroleum Refinery Piping.”

and American National Standards Institute Standard 831.4, "Liquid Petroleum Transportation Piping System."

*e. Certification of installation.* All owners and operators must ensure that one or more of the following methods of certification, testing, or inspection is used to demonstrate compliance with paragraph "d" of this subrule by providing a certification of compliance on the UST notification form in accordance with 135.3(3).

- (1) The installer has been certified by the tank and piping manufacturers; or
- (2) The installer has been certified or licensed by the department as provided in 567—Chapter 134, Part C; or
- (3) The installation has been inspected and certified by a registered professional engineer with education and experience in UST system installation; or
- (4) The installation has been inspected and approved by an inspector certified or licensed by the Iowa comprehensive petroleum underground storage tank fund board; or
- (5) All work listed in the manufacturer's installation checklists has been completed; or
- (6) The owner and operator have complied with another method for ensuring compliance with paragraph "d" that is determined by the department to be no less protective of human health and the environment.

**135.3(2) Upgrading of existing UST systems.**

*a. Alternatives allowed.* Not later than December 22, 1998, all existing UST systems must comply with one of the following requirements:

- (1) New UST system performance standards under 135.3(1);
- (2) The upgrading requirements in paragraphs "b" through "d" below; or
- (3) Closure requirements under rule 567—135.15(455B), including applicable requirements for corrective action under rules 567—135.7(455B) to 567—135.12(455B).

Replacement or upgrade of a tank system on a petroleum contaminated site classified as a high or low risk in accordance with subrule 135.12(455B) shall be a double wall tank or a tank equipped with a secondary containment system with monitoring of the space between the primary and secondary containment structures in accordance with 135.5(4)"g" or other approved tank system or methodology approved by the Iowa comprehensive petroleum underground storage tank fund board.

*b. Tank upgrading requirements.* Steel tanks must be upgraded to meet one of the following requirements in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory:

- (1) *Interior lining.* A tank may be upgraded by internal lining if:
  1. The lining is installed in accordance with the requirements of 135.4(4), and
  2. Within ten years after lining, and every five years thereafter, the lined tank is internally inspected and found to be structurally sound with the lining still performing in accordance with original design specifications.

(2) *Cathodic protection.* A tank may be upgraded by cathodic protection if the cathodic protection system meets the requirements of 135.3(1)"a"(2)"2,""3," and "4" and the integrity of the tank is ensured using one of the following methods:

1. The tank is internally inspected and assessed to ensure that the tank is structurally sound and free of corrosion holes prior to installing the cathodic protection system; or
2. The tank has been installed for less than ten years and is monitored monthly for releases in accordance with 135.5(4)"d" through "h"; or
3. The tank has been installed for less than ten years and is assessed for corrosion holes by conducting two tightness tests that meet the requirements of 135.5(4)"c." The first tightness test must be conducted prior to installing the cathodic protection system. The second tightness test must be conducted between three and six months following the first operation of the cathodic protection system; or

4. The tank is assessed for corrosion holes by a method that is determined by the department to prevent releases in a manner that is no less protective of human health and the environment than 135.3(2)"b"(2)"1" to "3."

(3) *Internal lining combined with cathodic protection.* A tank may be upgraded by both internal lining and cathodic protection if:

1. The lining is installed in accordance with the requirements of 135.4(4); and
2. The cathodic protection system meets the requirements of 135.3(1)“a”(2)“2,” “3,” and “4.”

NOTE: The following codes and standards may be used to comply with subrule 135.3(2): American Petroleum Institute Publication 1631, “Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks”; National Leak Prevention Association Standard 631, “Spill Prevention, Minimum 10-Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection”; National Association of Corrosion Engineers Standard RP-02-85, “Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems”; and American Petroleum Institute Publication 1632, “Cathodic Protection of Underground Petroleum Storage Tanks and Piping Systems.”

*c. Piping upgrading requirements.* Metal piping that routinely contains regulated substances and is in contact with the ground must be cathodically protected in accordance with a code of practice developed by a nationally recognized association or independent testing laboratory and must meet the requirements of 135.3(1)“b”(2)“2,” “3,” and “4.”

NOTE: The codes and standards listed in the note following 135.3(1)“b”(2) may be used to comply with this requirement.

*d. Spill and overflow prevention equipment.* To prevent spilling and overflowing associated with product transfer to the UST system, all existing UST systems must comply with new UST system spill and overflow prevention equipment requirements specified in 135.3(1)“c.”

**135.3(3) Notification requirements.**

*a.* Except as provided in 135.3(3)“b,” the owner of an underground storage tank existing on or before July 1, 1985, shall complete and submit to the department a copy of the notification form provided by the department by May 1, 1986.

*b.* The owner of an underground storage tank taken out of operation between January 1, 1974, and July 1, 1985, shall complete and submit to the department a copy of the notification form provided by the department by May 8, 1986, unless the owner knows the tank has been removed from the ground. For purposes of this subrule, “owner” means the person who owned the tank immediately before the discontinuation of the tank’s use.

*c.* An owner or operator who brings into use an underground storage tank after July 1, 1985, shall complete and submit to the department a copy of the notification form provided by the department within 30 days of installing the tank in the ground. The owner or operator shall not allow the deposit of any regulated substance into the tank without prior approval of the department or until the tank has been issued a tank registration tag and is covered by an approved financial responsibility mechanism in accordance with 567—Chapter 136.

*d.* All owners and operators of new UST systems must certify in the notification form compliance with the following requirements:

- (1) Installation of tanks and piping under 135.3(1)“e”;
- (2) Cathodic protection of steel tanks and piping under 135.3(1)“a” and “b”;
- (3) Financial responsibility under 567—Chapter 136, Iowa Administrative Code;
- (4) Release detection under 135.5(2) and 135.5(3).

*e.* All owners and operators of new UST systems must ensure that the installer certifies in the notification form that the methods used to install the tanks and piping comply with the requirements in 135.3(1)“d.”

*f.* Exemption from reporting requirement. Paragraphs “a” to “c” do not apply to an underground storage tank for which notice was given pursuant to Section 103, Subsection c, of the Comprehensive Environmental Response, Compensation and Liabilities Act of 1980. (42 U.S.C. Subsection 9603(c))

*g.* Reporting fee. The notice by the owner to the department under paragraphs “a” to “c” shall be accompanied by a fee of \$10 for each tank included in the notice.

*h.* Notification requirement for installing a tank. A person installing an underground storage tank and the owner or operator of the underground storage tank must notify the department of their intent to install the tank 30 days prior to installation. Notification shall be on a form provided by the department.

*i.* Notification requirements for a person who sells, installs, modifies or repairs a tank. A person who sells, installs, modifies, or repairs a tank used or intended to be used in Iowa shall notify, in writing, the purchaser and the owner or operator of the tank of the obligations specified in paragraphs 135.3(3) “*c*” and “*j*” and the financial assurance requirements in 567—Chapter 136. The notification must include the prohibition on depositing a regulated substance into tanks which have not been registered and issued tags by the department. A standard notification form supplied by the department may be used to satisfy this requirement.

*j.* It is unlawful for a person to deposit or accept a regulated substance in an underground storage tank that has not been registered and issued permanent or annual tank management tags in accordance with rule 567—135.3(455B). It is unlawful for a person to deposit or accept a regulated substance into an underground storage tank if the person has received notice from the department that the underground storage tank is subject to a delivery prohibition or if there is a “red tag” attached to the UST fill pipe or fill pipe cap as provided in subrule 135.3(8).

(1) The department may provide written authorization to receive a regulated substance when there is a delay in receiving tank tags or at new tank installations to allow for testing the tank system.

(2) The department may provide known depositors of regulated substances lists of underground storage tank sites that have been issued tank tags, those that have not been issued tank tags, and those subject to a delivery prohibition pursuant to subrule 135.3(8). These lists do not remove the requirement for depositors to verify that current tank tags are affixed to the fill pipe prior to delivering product. Regulated substances cannot be delivered to underground storage tanks without current tank tags or those displaying a delivery prohibition “red tag” as provided in subrule 135.3(8).

(3) A person shall not deposit a regulated substance in an underground storage tank after receiving written or oral notice from the department that the tank is not covered by an approved form of financial responsibility in accordance with 567—Chapter 136.

*k.* If an owner or operator fails to register an underground storage tank within 30 days after installation or obtain annual renewal tags by April 1, the owner or operator shall pay an additional \$250 upon registration of the tank or application for tank tag renewal. The imposition of this fee does not preclude the department from assessing an additional administrative penalty in accordance with Iowa Code section 455B.476.

**135.3(4) *Farm and residential tanks.***

*a.* The owner or operator of a farm or residential tank of 1100 gallons or less capacity used for storing motor fuel for noncommercial purposes is subject to the requirements of this subrule.

*b.* Farm and residential tanks, installed before July 1, 1987, shall be reported on a notification form by July 1, 1989, but owners or operators are not required to pay a registration fee.

*c.* Farm and residential tanks that were installed on or after July 1, 1987, shall be in compliance with all the underground storage tank regulations.

**135.3(5) *Registration tags and annual management fee.***

*a.* Tanks of 1100 gallons or less capacity that have registered with the department will be issued a permanent registration tag.

*b.* The owner or operator of tanks over 1100-gallon capacity must submit a tank management fee of \$65 per tank by January 15 of each year. The owner or operator must also submit written proof that the tanks are covered by an approved form of financial responsibility in accordance with 567—Chapter 136. Upon proper payment of the fee and acceptable proof of financial responsibility, a one-year registration tag will then be issued for the period from April 1 to March 31. The department shall refund a tank management fee if the tank is permanently closed prior to the effective date of April 1 for that year.

*c.* The owner or operator shall affix the tag to the fill pipe of the underground storage tank where it will be readily visible.

*d.* A person who conveys or deposits a regulated substance shall inspect the underground storage tank to determine the existence or absence of a current registration tag, a current annual tank management

fee tag, or a delivery prohibition “red tag” as provided in subrule 135.3(8). If the tag is not affixed to the fill pipe or fill pipe cap or if a delivery prohibition “red tag” is displayed, the person shall not deposit the substance in the tank.

*e.* The owner or operator must return the tank tags upon request of the department for failure to meet the requirements of rules 567—135.3(455B) to 567—135.5(455B) or the financial responsibility rules in 567—Chapter 136 after permanent tank closure or when tanks are temporarily closed for over 12 months, or when the tank system is suspected to be leaking and the responsible party fails to respond as required in subrule 135.8(1). The department will not return the tags until the tank system is in full compliance with the technical requirements of this chapter and financial responsibility requirements of 567—Chapter 136.

**135.3(6)** *Petroleum underground storage tank registration amnesty program.*

*a.* A petroleum underground storage tank required to be registered under 135.3(3) and 135.3(4), which has not been registered prior to July 1, 1988, may be registered under the following conditions:

(1) The tank registration fee under 135.3(3) “g” shall accompany the registration.

(2) The storage tank management fee under 135.3(5) shall be paid for past years in which the tank should have been registered.

*b.* If a tank is registered under this subrule on or prior to October 1, 1989, penalties under Iowa Code section 455B.477 shall be waived.

**135.3(7)** *Exemption certificates from the environmental charge on petroleum diminution.*

*a.* An owner or operator of a petroleum underground storage tank that is exempt, deferred, or excluded from regulation under Iowa Code sections 455G.1 to 455G.17, can apply for an exemption certificate from the department to exempt a tank from the environmental charge on petroleum diminution. Exempted tanks include those listed in 135.1(3) “b” and “c” and those excluded in the definition of “underground storage tank” in 567—135.2(455B). Application for the exemption certificate shall be made on the form provided by the department.

*b.* An exemption certificate is not required for those classes of tanks that the Iowa comprehensive petroleum underground storage tank fund board has waived from the exemption certificate requirement.

*c.* The department shall revoke and require the return of the exemption certificate if the petroleum underground storage tank becomes subject to Iowa Code sections 455G.1 to 455G.17.

**135.3(8)** *Delivery prohibition process.*

*a. Identifying sites subject to delivery response prohibition action.*

(1) Annual registration tag and tank management fee process. Owners and operators shall certify to the following on a form prepared by the department when applying for annual tank tags pursuant to subrule 135.3(5):

1. Installation and performance of an approved UST and piping release detection method as provided in rule 567—135.5(455B), including an annual line tightness test and a line leak detector test if applicable.

2. Installation of an approved overfill and spill protection system as provided in paragraph 135.3(1) “c.”

3. Installation of an approved corrosion protection system as provided in paragraphs 135.3(1) “a” and “b.”

4. If the UST system has been out of operation for more than three months, that the UST system has been temporarily closed in accordance with rule 567—135.15(455B) and a certification of temporary closure has been submitted to the department.

5. If the UST system has been removed or filled in place within the last 12 months, the date of removal or filling in place and whether a closure report has been submitted as provided in rule 567—135.15(455B).

(2) Sites with provisional status. If the UST system has been classified as operating under provisional status as provided in paragraph 135.3(8) “c,” owners and operators when applying for annual tank tags pursuant to subrule 135.3(5) must certify on a form prepared by the department that the owners and operators are in compliance with an approved provisional status remedial plan as provided in paragraph 135.3(8) “c.”

(3) Compliance inspections. The department may initiate a delivery prohibition response action based on: (1) a finding resulting from a third-party compliance inspection conducted pursuant to rule 567—135.20(455B); (2) a department investigation and inspection conducted pursuant to Iowa Code section 455B.475; or (3) review of a UST system check or other documentation submitted in response to a suspected release under rule 567—135.6(455B) or in response to a confirmed release under rule 567—135.7(455B).

*b. Delivery prohibition eligibility criteria.* A delivery prohibition response action may be initiated upon a finding that the UST system is out of compliance with department rules and meets the eligibility criteria as specified below. Reinstatement criteria define the standards and process for owners and operators to document that they have taken corrective action sufficient to authorize resumption of fuel to the USTs. Prior to initiation of the delivery prohibition, owners and operators are afforded a minimum level of procedural due process such as prior notice and the opportunity to present facts to dispute the finding. Where notice and the opportunity to take corrective action prior to initiation of a delivery prohibition response action are required, notice by the department or by a certified compliance inspector as provided in rule 567—135.20(455B) shall be sufficient.

If the department finds that any one of the following criteria has been satisfied, the department may initiate a delivery prohibition response action following the notice procedures outlined in paragraph “e” of this subrule. After initiation of the delivery prohibition response action, the department will offer the owner or operator an opportunity to establish reinstatement criteria by written documentation and, if requested, an in-person meeting.

(1) An approved release detection method for USTs or UST piping is not installed, such as automatic tank gauging, groundwater monitoring wells and line leak detectors, and there is no record that an approved method such as inventory control, statistical inventory reconciliation, or interstitial space monitoring has been employed during the previous three months. If the owner or operator claims to have documentation that an approved release detection method has been conducted, the owner or operator will be given two business days to produce the documentation.

REINSTATEMENT CRITERIA: The owner or operator must submit results of a passing UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4) “c” and 135.5(5) “b.” The owner or operator must also document installation and operation of an approved release detection system. This may include proof that a contract has been signed with a qualified statistical inventory reconciliation provider or that a qualified inventory control method has been implemented and training has been provided to onsite supervisory personnel.

(2) No documentation of a required annual line tightness test or line leak detector test has been provided, and the owner or operator has failed to conduct the required testing within 14 days of written notice by the department or a certified compliance inspector as provided in rule 567—135.20(455B).

REINSTATEMENT CRITERIA: The owner or operator must provide documentation of a passing line precision tightness test at the 0.1 gallon-per-hour leak rate in paragraph 135.5(5) “b” and a line leak detector test as provided in paragraph 135.5(5) “a.”

(3) Overfill and spill protection is not installed.

REINSTATEMENT CRITERION: The owner or operator must provide documentation that overfill and spill protection equipment has been installed.

(4) A corrosion protection system is not installed or there is no record that an impressed current corrosion protection system has been in operation for the prior six months.

REINSTATEMENT CRITERIA: A manned entry tank integrity inspection must be completed prior to installation of a corrosion protection system, and the owner or operator must submit results of a passing UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4) “c” and 135.5(5) “b.” A corrosion protection analysis must be completed and approved by the department.

(5) The owner or operator has failed to provide proof of financial responsibility in accordance with 567—Chapter 136.

REINSTATEMENT CRITERION: The owner or operator must submit acceptable proof of financial responsibility in accordance with 567—Chapter 136.

(6) A qualified UST system release detection method is installed and is being used but the documentation or the absence of documentation is sufficient to question the reliability of the release detection over the past 12-month period. The owner or operator shall be notified of the deficiencies, shall be given at least two business days to produce documentation of compliance and, if necessary, shall be required to conduct a leak detection system analysis and a system tightness test within 14 days. If the owner or operator fails to produce documentation of compliance or to conduct the system analysis and the UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4)“c” and 135.5(5)“b,” the department may initiate a delivery prohibition response action. Notice by the department or a compliance inspector as provided in rule 567—135.20(455B) shall be sufficient to initiate a delivery prohibition response action.

REINSTATEMENT CRITERIA: The owner or operator must submit documentation that the leak detection method analysis sufficiently documents compliance and explains the reasons for the accuracy and reliability concerns. If necessary, the owner or operator must submit passing results of a UST system precision tightness test at the 0.1 gallon-per-hour leak rate in paragraphs 135.5(4)“c” and 135.5(5)“b.”

(7) The owner or operator has failed to document completion of a three-year corrosion protection test or to repair defective corrosion protection equipment within 30 days after notice of the violation by the department or a certified compliance inspector as provided in rule 567—135.20(455B).

REINSTATEMENT CRITERION: The owner or operator must submit documentation of a three-year corrosion protection test as provided in rule 567—135.3(455B).

(8) The owner or operator has failed to complete a compliance inspection required by rule 567—135.20(455B) within 60 days after written notice of the violation by the department.

REINSTATEMENT CRITERION: The owner or operator must submit a compliance inspection report as provided in rule 567—135.20(455B).

(9) The owner or operator has failed to take necessary abatement action in response to a confirmed release as provided in subrules 135.7(2) and 135.7(3).

REINSTATEMENT CRITERION: The owner or operator must document compliance with the abatement provisions in subrules 135.7(2) and 135.7(3).

(10) The owner or operator has failed to undertake and document release investigation and confirmation steps within seven days in response to a suspected release as provided in paragraph 135.6(3)“a.”

REINSTATEMENT CRITERION: The owner or operator must document release confirmation and system check as provided in paragraph 135.6(3)“a.”

*c. Provisional status.* The department may classify a UST system as operating under a provisional status when the department documents a pattern of UST operation and maintenance violations under rules 567—135.3(455B) through 567—135.5(455B) and suspected release and confirmed release response actions under rules 567—135.6(455B) and 567—135.7(455B). The department shall provide the owner or operator with a notice specifying the basis for the proposed classification and a proposed remedial action plan. The objective of the remedial action plan is to provide the owner and operator an opportunity to undertake certain remedial actions sufficient to establish a reasonable likelihood that future regulatory compliance will be achieved.

The remedial action plan may include but is not limited to provisions for owner/operator training, development of a facility-specific compliance manual, more frequent third-party compliance inspections than otherwise required under rule 567—135.20(455B), monthly reporting, and retention of a third-party compliance manager/consultant. If the owner or operator and the department cannot reach agreement on a remedial action plan, the department may initiate enforcement action by issuance of an administrative order pursuant to 567—Chapter 10. This provision does not grant the owner or operator an entitlement to this procedure, and the department reserves all discretion to undertake an enforcement action and assess penalties as provided in Iowa Code sections 455B.476 and 455B.477.

*d. Administrative orders.* The department may impose a delivery prohibition as a remedy for violations of the operation and maintenance provisions in rules 567—135.3(455B) through 567—135.5(455B) and the suspected and confirmed release response actions in rules 567—135.6(455B)

and 567—135.7(455B). This remedy may be in addition to the assessment of penalties as provided in Iowa Code section 455B.476 and other appropriate injunctive relief necessary to correct violations.

*e. Due process prior to initiation of a delivery prohibition response action.*

(1) Prior to imposing a delivery prohibition response action under paragraph 135.3(8) “b” above, the department will provide notice to the owner or operator or, if notice to the owner or operator cannot be confirmed, to a person in charge at the UST facility of the basis for the finding and the intent to initiate a delivery prohibition response action. Notice may be by verbal contact, by facsimile, or by regular or certified mail to the UST facility address or the owner’s or operator’s last-known address. The owner and operator will be given a minimum of one business day to provide documentation that the finding is inaccurate or that reinstatement criteria in subparagraphs 135.3(8) “b”(1) through (5) have been satisfied. Additional days and the opportunity for a telephone or in-person conference may be provided the owner and operator to contest the factual basis for a finding under subparagraphs 135.3(8) “b”(6) through (10). Additional procedural due process may be afforded the owner and operator on a case-by-case basis sufficient to satisfy Constitutional due process standards.

If insufficient information is submitted to change the finding, the department will notify the owner or operator and a person in charge at the UST facility of the final decision to impose the delivery prohibition response action.

(2) Provisional status. Upon a finding that an owner or operator under provisional status has failed to comply with the terms of a remedial action plan as provided above, the department may initiate a delivery prohibition response action by giving actual notice to the owner or operator of the basis for the finding of noncompliance and the department’s intent to initiate a delivery prohibition response action. The delivery prohibition response action shall not be imposed without providing the owner or operator the opportunity for an evidentiary hearing consistent with the provisions for suspension and revocation of licenses under 567—Chapter 7.

*f. Delivery prohibition procedure.* Upon oral or written notice that the delivery prohibition response action has been imposed, the owner or operator and any person in charge of the UST facility shall be notified that they are not authorized to receive any further delivery of regulated substances until conditions for reinstatement of eligibility are satisfied. Owners and operators are required to immediately remove and return to the department the current annual tank management fee tags or the tank registration tags if there are no tank management fee tags. Owners and operators are required to provide the department with names and contact information for all persons who convey or deposit regulated substances to the USTs. The department will attempt to notify known persons who convey or deposit regulated substances to the USTs that they are not authorized to deliver to the USTs until further notice by the department as provided in paragraph 135.3(3) “j” and subrule 135.3(5).

If the tank tags are not returned within three business days, the department shall visit the site, remove the tags, and affix a “red tag” to the fill pipes or fill pipe caps of all affected USTs. It is unlawful for any person to deposit or accept a regulated substance into a UST that has a “red tag” affixed to the fill pipe or fill pipe cap. The department may allow the owner and operator to dispense and sell the remainder of existing fuel unless the department determines there is an immediate risk of a release or other risk to human health, safety or the environment. The department shall confirm in writing the basis for the delivery prohibition response action, contacts made prior to the action, and steps the owner or operator must take to reinstate fuel delivery.

**135.3(9) Secondary containment requirements for new and replacement UST system installations.** All new and replacement underground storage tank systems and appurtenances used for the storage and dispensing of petroleum products installed after November 28, 2007, shall have secondary containment in accordance with this subrule. The secondary containment provision includes the installation of turbine sumps, transition or intermediate sumps and under-dispenser containment (UDC).

*a.* The secondary containment may be manufactured as an integral part of the primary containment or constructed as a separate containment system.

*b.* Installation of any new or replacement turbine pumps involving the direct connection to the tank shall have secondary containment.

*c.* Any replacement of ten feet or more of piping shall have secondary containment.  
*d.* All piping replacements requiring secondary containment shall be constructed with transition or intermediate containment sumps.

*e.* The design and construction of all primary and secondary containment shall meet the performance standards in subrule 135.3(1) and paragraphs 135.5(3)“*b*” and 135.5(4)“*g*.” At a minimum, the secondary containment must:

- (1) Contain regulated substances released from the tank system until detected and removed;
- (2) Prevent the release of regulated substances into the environment at any time during the operational life of the underground storage tank system; and
- (3) Be checked for evidence of a release at least every 30 days as provided in paragraph 135.5(2)“*a*.”

*f.* Secondary containment with interstitial monitoring in accordance with paragraphs 135.5(3)“*b*,”135.5(4)“*g*” and 135.5(5)“*d*” shall become the primary method of leak detection for all new and replacement tanks and piping installed after November 28, 2007.

*g.* Testing and inspection. Secondary containment systems shall be liquid-tight and must be inspected and tested every two years. The sensing devices must be tested every two years.

(1) Inspections for secondary containment sumps (spill catchment basins, turbine sumps, transition or intermediate sumps, and under-dispenser containment) shall:

1. Consist of a visual inspection by an Iowa-licensed installer or Iowa-certified inspector every two years. Sumps must be intact (no cracks or perforations) and liquid-tight, including sides and bottom.
2. Sumps must be maintained and kept free of debris, liquid and ice at all times.
3. Regulated substances spilled into any spill catchment basin, turbine sump, transition/intermediate sump or under-dispenser containment shall be immediately removed.

(2) Sensing devices used to monitor the interstitial space shall be tested at least every two years for proper function.

*h.* Under-dispenser containment. When installing a new motor fuel dispenser or replacing a motor fuel dispenser, a UDC shall be installed whenever:

(1) A motor fuel dispenser is installed at a location where there previously was no dispenser (new UST system or new dispenser location at an existing UST system); or

(2) An existing motor fuel dispenser is removed and replaced with another dispenser and the equipment used to connect the dispenser to the underground storage tank system is replaced. This equipment includes flexible connectors or risers or other transitional components that are beneath the dispenser and connect the dispenser to the piping. A UDC is not required when only the emergency shutoff or shear valves or check valves are replaced.

(3) A UDC shall also be installed beneath the motor fuel dispenser whenever ten feet or more of piping is repaired or replaced within ten feet of a motor fuel dispenser.

*i.* Exceptions from secondary containment standards. A tank owner or operator may request an exception from the secondary containment standard if the location of the UST system is greater than 1,000 feet from a community water system or potable drinking water well. A community water system includes the distribution piping.

(1) “Community water system (CWS)” means a public water system which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents. “Public water supply system” means a system for the provision to the public of water for human consumption through pipes or other constructed conveyances, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year. Such term includes: any collection, treatment, storage, and distribution facilities under control of the operator of such system and used primarily in connection with such system; and any collection or pretreatment storage facilities not under such control which are used primarily in connection with such system. Such term does not include any “special irrigation district.” A “public water supply system” is either a “community water system” or a “noncommunity water system.”

(2) “Potable drinking water well” means any hole (dug, driven, drilled, or bored) that extends into the earth until it meets groundwater and that supplies water for a noncommunity public water

system or supplies water for household use (consisting of drinking, bathing, and cooking or other similar uses). Such wells may provide water to entities such as a single-family residence, a group of residences, businesses, schools, parks, campgrounds, and other permanent or seasonal communities. A “noncommunity water system” is defined in rule 567—40.2(455B) as a public water system that is not a community water system. A “noncommunity water system” is either a “transient noncommunity water system (TNC)” or a “nontransient noncommunity water system (NTNC).”

(3) To determine if a new or replacement underground storage tank, piping, or motor fuel dispenser system is within 1,000 feet of an existing community water system or an existing potable drinking water well, at a minimum the distance must be measured from the closest part of the new or replacement underground storage tank or piping or the motor fuel dispenser system to:

1. The closest part of the nearest existing community water system, including:

- The location of the wellhead(s) for groundwater and the location of the intake point(s) for surface water;

- Water lines, processing tanks, and water storage tanks; and

- Water distribution/service lines under the control of the community water system operator.

2. The wellhead of the nearest existing potable drinking water well.

(4) If a new or replacement underground storage tank, piping, or motor fuel dispenser that is not within 1,000 feet of an existing community water system will be installed, and a community water system that will be within 1,000 feet of the UST system is planned or a permit application has been submitted to the department under 567—Chapter 40, secondary containment and under-dispenser containment are required unless the permit is denied.

(5) If a new or replacement underground storage tank, piping, or motor fuel dispenser that is not within 1,000 feet of an existing potable drinking water well will be installed and the owner will be installing a potable drinking water well at the new facility, or a private water well permit has been submitted pursuant to 567—Chapter 38 and pursuant to applicable county and municipal ordinances for a potable drinking water well that will be within 1,000 feet of the UST system, secondary containment and under-dispenser containment are required unless the permit is denied.

*j.* Documentation for exception from secondary containment. The following documentation must be provided by the tank owner or operator when requesting an exception from the UST system secondary containment requirement.

(1) A statement from the manager of the local community water system that the community water system is not located or planned within 1,000 feet of the UST system location. This would include rural water systems.

(2) A map showing homes and businesses within 1,000 feet of the UST system location.

(3) Identification of the source of water for the business at the UST system location.

(4) The results of an on-foot search around businesses and homes within a 1,000-foot radius for possible potable drinking water wells. Documentation that there are no pending nonpublic water well permit applications within 1,000 feet of the UST system from any applicable municipal permitting authority, county department of health with department-delegated authority, or the department if there is not delegated permitting authority.

(5) Search results from the Geographic Information System (GIS) well mapping for well locations available from the Iowa Geological Survey.

(6) Documentation that the department’s water supply section has no pending applications for a public water supply construction permit within 1,000 feet of a proposed UST system installation or replacement or motor fuel dispenser installation or replacement.

#### **567—135.4(455B) General operating requirements.**

##### **135.4(1) *Spill and overflow control.***

*a.* Owners and operators must ensure that releases due to spilling or overflowing do not occur. The owner and operator must ensure that the volume available in the tank is greater than the volume of product to be transferred to the tank before the transfer is made and that the transfer operation is monitored constantly to prevent overflowing and spilling.

NOTE: The transfer procedures described in National Fire Protection Association Publication 385 may be used to comply with 135.4(1)“a.” Further guidance on spill and overfill prevention appears in American Petroleum Institute Publication 1621, “Recommended Practice for Bulk Liquid Stock Control at Retail Outlets,” and National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code.”

b. The owner and operator must report, investigate, and clean up any spills and overfills in accordance with 135.6(4).

**135.4(2) Operation and maintenance of corrosion protection.** All owners and operators of steel UST systems with corrosion protection must comply with the following requirements to ensure that releases due to corrosion are prevented for as long as the UST system is used to store regulated substances:

a. All corrosion protection systems must be operated and maintained to continuously provide corrosion protection to the metal components of that portion of the tank and piping that routinely contain regulated substances and are in contact with the ground.

b. All UST systems equipped with cathodic protection systems must be inspected for proper operation by a qualified cathodic protection tester in accordance with the following requirements:

(1) *Frequency.* All cathodic protection systems must be tested within six months of installation and at least every three years thereafter or according to another reasonable time frame established by the department; and

(2) *Inspection criteria.* The criteria that are used to determine that cathodic protection is adequate as required by this subrule must be in accordance with a code of practice developed by a nationally recognized association.

NOTE: National Association of Corrosion Engineers Standard RP-02-85, “Control of External Corrosion on Metallic Buried, Partially Buried, or Submerged Liquid Storage Systems,” may be used to comply with 135.4(2)“b”(2).

c. UST systems with impressed current cathodic protection systems must also be inspected every 60 days to ensure the equipment is running properly.

d. For UST systems using cathodic protection, records of the operation of the cathodic protection must be maintained (in accordance with 135.4(5)) to demonstrate compliance with the performance standards in this subrule. These records must provide the following:

(1) The results of the last three inspections required in paragraph “c”; and

(2) The results of testing from the last two inspections required in paragraph “b.”

**135.4(3) Compatibility.** Owners and operators must use a UST system made of or lined with materials that are compatible with the substance stored in the UST system.

NOTE: Owners and operators storing alcohol blends may use the following codes to comply with the requirements of subrule 135.4(3): American Petroleum Institute Publication 1626, “Storing and Handling Ethanol and Gasoline-Ethanol Blends at Distribution Terminals and Service Stations”; and American Petroleum Institute Publication 1627, “Storage and Handling of Gasoline-Methanol/Cosolvent Blends at Distribution Terminals and Service Stations.”

**135.4(4) Repairs allowed.** Owners and operators of UST systems must ensure that repairs will prevent releases due to structural failure or corrosion as long as the UST system is used to store regulated substances. The repairs must meet the following requirements:

a. Repairs to UST systems must be properly conducted in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

NOTE: The following codes and standards may be used to comply with 135.4(4)“a”’: National Fire Protection Association Standard 30, “Flammable and Combustible Liquids Code”; American Petroleum Institute Publication 2200, “Repairing Crude Oil, Liquefied Petroleum Gas, and Product Pipelines”; American Petroleum Institute Publication 1631, “Recommended Practice for the Interior Lining of Existing Steel Underground Storage Tanks”; and National Leak Prevention Association Standard 631, “Spill Prevention, Minimum 10 Year Life Extension of Existing Steel Underground Tanks by Lining Without the Addition of Cathodic Protection.”

b. Repairs to fiberglass-reinforced plastic tanks may be made by the manufacturer's authorized representatives or in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory.

c. Metal pipe sections and fittings that have released product as a result of corrosion or other damage must be replaced. Fiberglass pipes and fittings may be repaired in accordance with the manufacturer's specifications.

d. Repaired tanks and piping must be tightness tested in accordance with 135.5(4) "c" and 135.5(5) "b" within 30 days following the date of the completion of the repair except as provided in subparagraphs (1) to (3) below:

(1) The repaired tank is internally inspected in accordance with a code of practice developed by a nationally recognized association or an independent testing laboratory; or

(2) The repaired portion of the UST system is monitored monthly for releases in accordance with a method specified in 135.5(4) "d" through "h"; or

(3) Another test method is used that is determined by the department to be no less protective of human health and the environment than those listed above.

e. Within six months following the repair of any cathodically protected UST system, the cathodic protection system must be tested in accordance with 135.4(2) "b" and "c" to ensure that it is operating properly.

f. UST system owners and operators must maintain records of each repair for the remaining operating life of the UST system that demonstrate compliance with the requirements of this subrule.

**135.4(5) Reporting and record keeping.** Owners and operators of UST systems must cooperate fully with inspections, monitoring and testing conducted by the department, as well as requests for document submission, testing, and monitoring by the owner or operator pursuant to Section 9005 of Subtitle I of the Resource Conservation and Recovery Act, as amended.

a. *Reporting.* Owners and operators must submit the following information to the department:

(1) Notification for all UST systems (135.3(3)), which includes certification of installation for new UST systems (135.3(1) "e");

(2) Reports of all releases including suspected releases (135.6(1)), spills and overfills (135.6(4)), and confirmed releases (135.7(2));

(3) Corrective actions planned or taken including initial abatement measures (135.7(3)), initial site characterization (567—135.9(455B)), free product removal (135.7(5)), investigation of soil and groundwater cleanup and corrective action plan (567—135.8(455B) to 567—135.12(455B)); and

(4) A notification before permanent closure or change-in-service (135.15(2)).

b. *Record keeping.* Owners and operators must maintain the following information:

(1) A corrosion expert's analysis of site corrosion potential if corrosion protection equipment is not used (135.3(1) "a"(4); (135.3(1) "b"(3)).

(2) Documentation of operation of corrosion protection equipment (135.4(2));

(3) Documentation of UST system repairs (135.4(4) "f");

(4) Recent compliance with release detection requirements (135.5(6)); and

(5) Results of the site investigation conducted at permanent closure (135.15(5)).

c. *Availability and maintenance of records.* Owners and operators must keep the records required either:

(1) At the UST site and immediately available for inspection by the department; or

(2) At a readily available alternative site and be provided for inspection to the department upon request.

NOTE: In the case of permanent closure records required under 135.15(5), owners and operators are also provided with the additional alternative of mailing closure records to the department if they cannot be kept at the site or an alternative site as indicated above.

**135.4(6) Training required for UST operators.**

a. An owner or operator shall designate Class A, Class B, and Class C operators for each underground storage tank system or facility that has underground storage tanks regulated by the department, except for unstaffed facilities, which may designate only Class A and Class B operators.

b. A facility may not operate after December 31, 2011, unless operators have been designated and trained as required in this rule, or unless otherwise agreed upon by the department based on a finding of good cause for failure to meet this requirement and a plan for designation and training at the earliest practicable date.

c. Trained operators must be readily available to respond to suspected or confirmed releases, equipment shut-offs or failures, and other unusual operating conditions.

d. A Class A or Class B operator should be immediately available for telephone consultation with the Class C operator when a facility is in operation. Class A or Class B operators should be able to be on site at the storage tank facility within four hours.

e. For staffed facilities, a Class C operator must be on site whenever the UST facility is in operation.

f. For unstaffed facilities, a Class B operator must be geographically located such that the person can be on site within two hours of being contacted by the public, the owner or operator of the facility, or the department. Emergency contact information and emergency procedures must be prominently displayed at the site. An unstaffed facility shall have an emergency shutoff device as provided in 135.5(1) and a sign posted in a conspicuous place that includes the name and telephone number of the facility owner, an emergency response telephone number to contact the Class B operator, and information on local emergency responders.

g. Designated operators must successfully complete required training under subrule 135.4(9) no later than December 31, 2011.

h. A person may be designated for more than one class of operator.

i. When a facility is found to be out of compliance, the department may require the owner and operator to retrain the designated UST system Class A, B, or C operator under a plan approved by the department. The retraining must occur within 60 days from departmental notice for Class A and Class B operators and within 15 days for Class C operators.

**135.4(7) UST operator responsibilities.**

*a. Class A operator.*

(1) Class A operators have the primary responsibility to operate and maintain the underground storage tank system and facility. The Class A operator's responsibilities include managing resources and personnel to achieve and maintain compliance with regulatory requirements under this chapter in the following ways:

1. Class A operators assist the owner by ensuring that underground storage tank systems are properly installed and expeditiously repaired and inspected; financial responsibility is maintained; and records of system installation, modification, inspection and repair are retained and made available to the department and licensed compliance inspectors. The Class A operator shall properly respond to and report emergencies caused by releases or spills from UST systems, ensure that the annual tank management fees are paid, and ensure that Class B and Class C operators are properly trained.

2. Class A operators shall be familiar with training requirements for each class of operator and may provide required training for Class C operators.

3. Class A operators shall provide site drawings that indicate equipment locations for Class B and Class C operators.

(2) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class A operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class A operators pursuant to subrules 135.4(9) through 135.4(11). Class A operators who are also licensed compliance inspectors under 567—Chapter 134, Part C, may perform in-house facility inspections of the UST system, but shall not perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility required by rule 567—135.20(455B) must be completed by a third-party compliance inspector licensed under 567—Chapter 134, Part B.

(3) When there is a change in ownership or operator status, the new owner or operator is responsible for designating a Class A operator prior to bringing the UST system into operation. The Class A operator is responsible for ensuring that all necessary documentation for change of ownership is completed and

submitted to the department and that all compliance requirements of this chapter are satisfied prior to bringing the UST system into operation. The compliance requirements may be provided to the owner or operator using the department's checklist.

If the UST system was temporarily closed, the designated Class A operator must ensure the department's checklist for returning a UST into service is followed, all compliance requirements of this chapter have been met, and the necessary documentation is submitted to the department.

(4) When there is a change in UST ownership, property ownership or operator status, the designated Class A operator for the current owner and operator is responsible for notifying the department when the change is final and, if possible, prior to the new owner or operator taking possession of the site.

*b. Class B operator.*

(1) A Class B operator implements applicable underground storage tank regulatory requirements and standards in the field or at the tank facility. A Class B operator oversees and implements the day-to-day aspects of operation, maintenance, and record keeping for the underground storage tanks at facilities within four hours of travel time from the Class B operator's principal place of business. A Class B operator's responsibilities include, but are not limited to:

1. Performing mandated system tests at required intervals and making sure spill prevention, overfill control equipment, and corrosion protection equipment are properly functioning.

2. Assisting the owner by ensuring that release detection equipment is operational, release detection monitoring and tests are performed at the proper intervals, and release detection records are retained and made available to the department and compliance inspectors.

3. Making sure record-keeping and reporting requirements are met and that relevant equipment manufacturers' or third-party performance standards are available and followed.

4. Properly responding to, investigating, and reporting emergencies caused by releases or spills from USTs.

5. Performing UST release detection in accordance with rule 567—135.5(455B).

6. Monitoring the status of UST release detection.

7. Meeting spill prevention, overfill prevention, and corrosion protection requirements.

8. Reporting suspected and confirmed releases and taking release prevention and response actions according to the requirements of rule 567—135.6(455B).

9. Training and documenting Class C operators to make sure at least one Class C operator is on site during operating hours. Class B operators shall be familiar with Class C operator responsibilities and may provide required training for Class C operators.

(2) Department-licensed installers, installation inspectors, and compliance inspectors may perform Class B operator duties when employed or contracted by the tank owner to perform these functions so long as they are properly trained and designated as Class B operators under subrules 135.4(9) through 135.4(11). Class B operators who are also licensed compliance inspectors under 567—Chapter 134, Part C, may perform in-house facility inspections of the UST system, but cannot perform department-mandated compliance inspections pursuant to rule 567—135.20(455B). Compliance inspections of a UST facility pursuant to rule 567—135.20(455B) must be completed by a third-party compliance inspector licensed under 567—Chapter 134, Part B.

(3) The owner or operator of a site undergoing a change in ownership shall designate a Class B operator prior to bringing the UST system into operation. The Class B operator must conduct an inspection using the department's inspection checklist and submit the completed checklist along with the change of ownership form prior to operation. If a UST system was temporarily closed, the Class B operator shall ensure that the department's checklist for returning a UST to service is followed and that the necessary documentation is submitted to the department prior to operation of the UST system.

*c. Class C operator.* A Class C operator is an on-site employee who typically controls or monitors the dispensing or sale of regulated substances and is the first to respond to events indicating emergency conditions. A Class C operator must be present at the facility at all times during normal operating hours. A Class C operator monitors product transfer operations to ensure that spills and overfills do not occur. The Class C operator must know how to properly respond to spills, overfills and alarms when they do

occur. In the event of a spill, overfill or alarm, a Class C operator shall notify the Class A and Class B operators, as well as the department and appropriate local emergency authorities as required by rule.

(1) Within six months after October 14, 2009, written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site.

(2) There may be more than one Class C operator at a storage tank facility, but not all employees of a facility need be Class C operators.

**135.4(8) UST operator training course requirements.** Individuals must attend a department-approved training course covering material designated for each operator class. Individuals must attend every session of the training, take the examination, and attend examination review.

*a. Class A operators.* To be certified as a Class A operator, the applicant must successfully complete a department-approved training course that covers underground storage tank system requirements as outlined in 567—Chapters 134 to 136. The course must also provide a general overview of the department's UST program, purpose, groundwater protection goals, public safety and administrative requirements. The training must include, but is not limited to, the following:

(1) Components and materials of underground storage tank systems.

(2) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems, and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.

(3) Spill and overfill prevention, to include the American Petroleum Institute (API) Publication RP1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," and National Fire Protection Association Standard 30, "Flammable and Combustible Liquids Code."

(4) Ensuring product delivery to the correct tank by using color-symbol codes in the API Standard RP1637, "Using the API Color-Symbol System to Mark Equipment and Vehicles for Product Identification at Service Stations and Distribution Terminals."

(5) Proper fuel ordering and delivery, including procedures in API RP1007, "Loading and Unloading of MC/DOT 406 Cargo Tank Motor Vehicles."

(6) Release detection methods and related reporting requirements.

(7) Corrosion protection and inspection requirements, including the requirement to have a department-licensed cathodic protection tester.

(8) Discussion of the benefits of monthly or frequent inspections and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

(9) Requirement and content of third-party compliance inspections.

(10) How to properly respond to an emergency, including hazardous conditions.

(11) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(13) Notification of installation and storage tank registration requirements.

(14) Requirement to use department-licensed companies and individuals for UST installation, testing, lining, and removal.

(15) Temporary and permanent closure procedures and requirements.

(16) NESHAP vapor recovery requirements.

(17) Conditions under which the department may stop fuel delivery and take enforcement action.

(18) Ensuring that annual tank management fees are paid.

(19) Ensuring that suspected and confirmed releases are investigated and reported according to subrule 135.6(1).

*b. Class B operators.* To be certified as a Class B operator, the individual must successfully complete a department-approved training course that provides in-depth understanding of UST system regulations applicable to this class. Training must also provide a general overview of the department's

UST program, purpose, groundwater protection goals, public safety and administrative requirements. Training shall cover the operation and maintenance requirements set forth in this chapter, including, but not limited to, the following:

(1) A general discussion of the content of PEI/RP900-08, Recommended Practices for the Inspection and Maintenance of UST Systems, and PEI/RP500, Recommended Practices for Inspection and Maintenance of Motor Fuel Dispensing Equipment.

(2) Components and materials of underground storage tank systems.

(3) Spill and overfill prevention.

(4) Ensuring product delivery to the correct tank by using color-symbol codes in the API Standard RP1637.

(5) Proper fuel ordering and delivery, including procedures from API RP1007.

(6) Methods of release detection and related reporting requirements.

(7) Corrosion protection and related testing.

(8) Discussion of the benefits of monthly or frequent inspections and content and use of inspection checklists. Training materials for operators shall include the department's "Iowa UST Operator Inspection Checklist" or a checklist template similar to the department's document.

(9) Requirement and content of third-party compliance inspections.

(10) Emergency response, reporting and investigating releases.

(11) Product and equipment compatibility, including the department's ethanol compatibility guidance and certification.

(12) Financial responsibility, including detailed explanation of liability, notice and claim procedures, and the six-month window to check for and report a release prior to insurance termination to maintain coverage for corrective action.

(13) Notification of installation and storage tank registration requirements.

(14) Requirement to use department-licensed companies and individuals for UST installation, testing, lining, and removal.

(15) Reporting and record-keeping requirements.

(16) Overview of Class C operator training requirements.

(17) NESHAP vapor recovery requirements.

(18) Conditions under which the department may stop fuel delivery and take enforcement action.

*c. Class C operators.* To be certified as a Class C operator, an individual must complete a department-approved training course that covers, at a minimum, a general overview of the department's UST program and purpose; groundwater protection goals; public safety and administrative requirements; and action to be taken in response to an emergency condition due to a spill or release from a UST system. Training must include written procedures for the Class C operator, including notification instructions necessary in the event of emergency conditions. The written instructions and procedures must be readily available on site. A Class A or Class B operator may provide Class C training.

**135.4(9) Examination and review requirement.** Class A and Class B operators must complete the department-approved training course and take an examination to verify their understanding and knowledge. The examination may include both written and practical (hands-on) testing activities. The trainer must follow up the examination with a review of missed test questions with the class or individual to ensure understanding of problem areas. Upon successful completion of the training course, the applicant will receive a certificate verifying the applicant's status as a Class A, Class B, or Class C operator.

*a. Reciprocity.* The department may waive the training course for operators upon a showing of successful completion of a training course and examination approved by another state or regulatory agency that the department determines are substantially equivalent to the UST requirements contained in this chapter.

*b. Transferability to another UST site.* Class A and Class B operators may transfer to other UST facilities in Iowa provided the operator is properly designated by the facility owner as a Class A or Class B operator according to 567—subrule 134.4(13). Class A and Class B operators transferring from other

states shall seek prior approval of training qualifications, unless the department has preapproved the out-of-state program as substantially equivalent to the requirements of this chapter.

**135.4(10) *Timing of UST operator training.***

*a.* An owner shall ensure that Class A, Class B, and Class C operators are trained as soon as practicable after October 14, 2009, contingent upon availability of approved training providers, but not later than December 31, 2011, except as provided in paragraph 135.4(6) “*b.*”

*b.* When a Class A or Class B operator is replaced, a new operator must be trained prior to assuming duties for that class of operator.

*c.* Class C operators must be trained before assuming the duties of a Class C operator. Within six months after October 14, 2009, written basic operating instructions, emergency contact names and telephone numbers, and basic procedures specific to the facility shall be provided to all Class C operators and readily available on site. A Class C operator may be briefed on these procedures concurrent with annual safety training required under Occupational Safety and Health Administration regulations, 29 CFR, Part 1910.

**135.4(11) *Documentation of operator training.***

*a.* The owner of an underground storage tank facility shall maintain a list of designated operators. The list shall be made available to the department in accordance with subrule 135.4(5). The list shall represent the current Class A, Class B and Class C operators for the UST facility and must include:

(1) The name of each operator and the operator’s class(es); contact information for Class A and Class B operators; the date each operator successfully completed initial training and refresher training, if any; the name of the company providing the training; and the name of the trainer.

(2) For all classes of operators, the site(s) for which an operator is responsible if more than one site.

*b.* A copy of the certificates of training for Class A and Class B operators shall be on file and readily available for inspection in accordance with subrule 135.4(5).

*c.* A copy of the certificates of training for Class B and Class C operators shall be available at each facility for which the operator is responsible.

*d.* Class A and Class B operator contact information, including names and telephone numbers and any emergency information, shall be conspicuously posted at unstaffed facilities near the dispensers and the station building.

[ARC 8124B, IAB 9/9/09, effective 10/14/09]

**567—135.5(455B) Release detection.**

**135.5(1) *General requirements for all UST systems.***

*a.* Owners and operators of new and existing UST systems must provide a method, or combination of methods, of release detection that:

(1) Can detect a release from any portion of the tank and the connected underground piping that routinely contains product;

(2) Is installed, calibrated, operated, and maintained in accordance with the manufacturer’s instructions, including routine maintenance and service checks for operability or running condition; and

(3) Meets the performance requirements in 135.5(4) or 135.5(5), with any performance claims and their manner of determination described in writing by the equipment manufacturer or installer. In addition, methods conducted in accordance with 135.5(4) “*b,*” “*c,*” and “*d*” and 135.5(5) “*b*” after December 22, 1990, and 135.5(5) “*a*” after September 22, 1991, except for methods permanently installed prior to those dates, must be capable of detecting the leak rate or quantity specified for that method with a probability of detection of 0.95 and a probability of false alarm of 0.05.

*b.* When a release detection method operated in accordance with the performance standards in 135.5(4) and 135.5(5) indicates a release may have occurred, owners and operators must notify the department in accordance with rule 567—135.6(455B).

*c.* Owners and operators of all UST systems must comply with the release detection requirements of this rule by December 22 of the year listed in the following table:

Year System Was Installed	Scheduled for Phase-in of Release Detection				
	Year When Release Detection is Required (by December 22 of the Year Indicated)				
	<u>1989</u>	<u>1990</u>	<u>1991</u>	<u>1992</u>	<u>1993</u>
Before 1965 or Date Unknown	RD	P			
1965-1969		P/RD			
1970-1974		P	RD		
1975-1979		P		RD	
1980-1988		P			RD
New Tanks	Immediately upon installation				

P = Must begin release detection for all pressurized piping in accordance with 135.5(2)“b”(1).  
RD = Must begin release detection for tanks and suction piping in accordance with 135.5(2)“a,” 135.5(2)“b”(2), and 135.5(3).

*d.* Any existing UST system that cannot apply a method of release detection that complies with the requirements of this rule must complete the closure procedures in rule 567—135.15(455B) by the date on which release detection is required for that UST system under paragraph “c.”

*e.* Any UST facility that uses pressurized piping and dispenses product in the absence of a Class A, B, or C operator shall comply with the following requirements:

(1) Employ automatic line leak detectors that do one or more of the following:

1. Shut down the submersible pump when a leak is detected.
2. Restrict the flow of product when a leak is detected.
3. Trigger an audible or visual alarm when a leak is detected.

(2) At facilities implementing 135.5(1)“e”(1)“2” or “3,” the facility’s operator shall be notified or shall conduct a visit through one of the following methods:

1. Notification of the Class B operator by immediate electronic communication.
2. Signage directing the customer to contact the Class B operator or a designated contact person.

The sign must be immediately visible to the customer and state that slow flow or an audible or visual alarm is an indication of a possible release. The sign must provide a 24-hour telephone number of the Class B operator or designee and direct the customer to stop dispensing product.

3. Daily visit to the site by a Class A, B, or C operator or designee. Visits shall include observation of every automatic line leak detector for shutdown, alarm, or restricted flow conditions. Methods of observing for restricted flow conditions may include dispensing product into a proper container or personal vehicle, observing a customer dispense product into a vehicle, or another method approved by the department. Owners and operators shall maintain an onsite log of site visits to demonstrate compliance with this provision. The log shall include the name of the observer and method used to observe the status of the automatic line leak detectors.

(3) All UST facilities subject to 135.5(1)“e” must comply with its provisions by July 1, 2014.

**135.5(2) Requirements for petroleum UST systems.** Owners and operators of petroleum UST systems must provide release detection for tanks and piping as follows:

*a. Tanks.* Tanks must be monitored at least every 30 days for releases using one of the methods listed in 135.5(4)“d” to “h” except that:

(1) UST systems that meet the performance standards in 135.3(1) or 135.3(2), and the monthly inventory control requirements in 135.5(4)“a” or “b,” may use tank tightness testing (conducted in accordance with 135.5(4)“c”) at least every five years until December 22, 1998, or until ten years after the tank is installed or upgraded under 135.3(2)“b,” whichever is later;

(2) UST systems that do not meet the performance standards in 135.3(1) or 135.3(2) may use monthly inventory controls (conducted in accordance with 135.5(4)“a” or “b”) and annual tank tightness testing (conducted in accordance with 135.5(4)“c”) until December 22, 1998, when the tank must be upgraded under 135.3(2) or permanently closed under 135.15(2); and

(3) Tanks with capacity of 550 gallons or less may use weekly tank gauging (conducted in accordance with 135.5(4)“b”).

*b. Piping.* Underground piping that routinely contains regulated substances must be monitored for releases in a manner that meets one of the following requirements:

(1) *Pressurized piping.* Underground piping that conveys regulated substances under pressure must:

1. Be equipped with an automatic line leak detector conducted in accordance with 135.5(5)“a”; and

2. Have an annual line tightness test conducted in accordance with 135.5(5)“b” or have monthly monitoring conducted in accordance with 135.5(5)“c.”

(2) *Suction piping.* Underground piping that conveys regulated substances under suction must either have a line tightness test conducted at least every three years and in accordance with 135.5(5)“b,” or use a monthly monitoring method conducted in accordance with 135.5(5)“c.” No release detection is required for suction piping that is designed and constructed to meet the following standards:

1. The below-grade piping operates at less than atmospheric pressure;

2. The below-grade piping is sloped so that the contents of the pipe will drain back into the storage tank if the suction is released;

3. Only one check valve is included in each suction line;

4. The check valve is located directly below and as close as practical to the suction pump; and

5. A method is provided that allows compliance with “2” through “4” to be readily determined.

**135.5(3) Requirements for hazardous substance UST systems.** Owners and operators of hazardous substance UST systems must provide release detection that meets the following requirements:

*a.* Release detection at existing UST systems must meet the requirements for petroleum UST systems in 135.5(2). By December 22, 1998, all existing hazardous substance UST systems must meet the release detection requirements for new systems in paragraph “b” below.

*b.* Release detection at new hazardous substance UST systems must meet the following requirements:

(1) Secondary containment systems must be designed, constructed and installed to:

1. Contain regulated substances released from the tank system until they are detected and removed;

2. Prevent the release of regulated substances to the environment at any time during the operational life of the UST system; and

3. Be checked for evidence of a release at least every 30 days.

NOTE: The provisions of 40 CFR 265.193, Containment and Detection of Releases, as of September 13, 1988, may be used to comply with these requirements.

(2) Double-walled tanks must be designed, constructed, and installed to:

1. Contain a release from any portion of the inner tank within the outer wall; and

2. Detect the failure of the inner wall.

(3) External liners (including vaults) must be designed, constructed, and installed to:

1. Contain 100 percent of the capacity of the largest tank within its boundary;

2. Prevent the interference of precipitation or groundwater intrusion with the ability to contain or detect a release of regulated substances; and

3. Surround the tank completely (i.e., it is capable of preventing lateral as well as vertical migration of regulated substances).

(4) Underground piping must be equipped with secondary containment that satisfies the requirements of 135.5(3)“b”(1) above (e.g., trench liners, jacketing of double-walled pipe). In addition, underground piping that conveys regulated substances under pressure must be equipped with an automatic line leak detector in accordance with 135.5(5)“a”;

(5) Other methods of release detection may be used if owners and operators:

1. Demonstrate to the department that an alternate method can detect a release of the stored substance as effectively as any of the methods allowed in 135.5(4)“b” to “h” can detect a release of petroleum;

2. Provide information to the department on effective corrective action technologies, health risks, and chemical and physical properties of the stored substance, and the characteristics of the UST site; and

3. Obtain approval from the department to use the alternate release detection method before the installation and operation of the new UST system.

**135.5(4) Methods of release detection for tanks.** Each method of release detection for tanks used to meet the requirements of 135.5(2) must be conducted in accordance with the following:

*a. Inventory control.* Product inventory control (or another test of equivalent performance) must be conducted monthly to detect a release of at least 1.0 percent of flow-through plus 130 gallons on a monthly basis in the following manner:

(1) Inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank are recorded each operating day;

(2) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch;

(3) The regulated substance inputs are reconciled with delivery receipts by measurement of the tank inventory volume before and after delivery;

(4) Deliveries are made through a drop tube that extends to within 1 foot of the tank bottom;

(5) Product dispensing is metered and recorded within the local standards for meter calibration or an accuracy of 6 cubic inches for every 5 gallons of product withdrawn; and

(6) The measurement of any water level in the bottom of the tank is made to the nearest 1/8 of an inch at least once a month.

NOTE: Practices described in the American Petroleum Institute Publication 1621, "Recommended Practice for Bulk Liquid Stock Control at Retail Outlets," may be used, where applicable, as guidance in meeting the requirements of subrule 135.5(4), paragraph "a," subparagraphs (1) to (6).

*b. Manual tank gauging.* Manual tank gauging must meet the following requirements:

(1) Tank liquid level measurements are taken at the beginning and ending of a period of at least 36 hours during which no liquid is added to or removed from the tank;

(2) Level measurements are based on an average of two consecutive stick readings at both the beginning and ending of the period;

(3) The equipment used is capable of measuring the level of product over the full range of the tank's height to the nearest 1/8 of an inch;

(4) A leak is suspected and subject to the requirements of rule 567—135.6(455B) if the variation between beginning and ending measurements exceeds the weekly or monthly standards in the following table:

Nominal Tank Capacity	Weekly Standard (one test)	Monthly Standard (average of four tests)
550 gallons or less	10 gallons	5 gallons
551-1,000 gallons	13 gallons	7 gallons
1,001-2,000 gallons	26 gallons	13 gallons

(5) Only tanks of 550 gallons or less nominal capacity may use this as the sole method of release detection. Tanks of 551 to 2000 gallons may use the method in place of manual inventory control in 135.5(4) "a." Tanks of greater than 2000 gallons nominal capacity may not use this method to meet the requirements of this rule.

*c. Tank tightness testing.* Tank tightness testing (or another test of equivalent performance) must be capable of detecting a 0.1 gallon-per-hour leak rate from any portion of the tank that routinely contains product while accounting for the effects of thermal expansion or contraction of the product, vapor pockets, tank deformation, evaporation or condensation, and the location of the water table.

*d. Automatic tank gauging.* Equipment for automatic tank gauging that tests for the loss of product and conducts inventory control must meet the following requirements:

(1) The automatic product level monitor test can detect a 0.2 gallon-per-hour leak rate from any portion of the tank that routinely contains product; and

(2) Inventory control (or another test of equivalent performance) is conducted in accordance with the requirements of 135.5(4) "a."

*e. Vapor monitoring.* Testing or monitoring for vapors within the soil gas of the excavation zone must meet the following requirements:

(1) The materials used as backfill are sufficiently porous (e.g., gravel, sand, crushed rock) to readily allow diffusion of vapors from releases into the excavation area;

(2) The stored regulated substance, or a tracer compound placed in the tank system, is sufficiently volatile (e.g., gasoline) to result in a vapor level that is detectable by the monitoring devices located in the excavation zone in the event of a release from the tank;

(3) The measurement of vapors by the monitoring device is not rendered inoperative by the groundwater, rainfall, or soil moisture or other known interferences so that a release could go undetected for more than 30 days;

(4) The level of background contamination in the excavation zone will not interfere with the method used to detect releases from the tank;

(5) The vapor monitors are designed and operated to detect any significant increase in concentration above background of the regulated substance stored in the tank system, a component or components of that substance, or a tracer compound placed in the tank system;

(6) In the UST excavation zone, the site is assessed to ensure compliance with the requirements in 135.5(4) "e"(1) to (4) and to establish the number and positioning of monitoring wells that will detect releases within the excavation zone from any portion of the tank that routinely contains product; and

(7) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

*f. Groundwater monitoring.* Testing or monitoring for liquids on the groundwater must meet the following requirements:

(1) The regulated substance stored is immiscible in water and has a specific gravity of less than 1;

(2) Groundwater is never more than 20 feet from the ground surface and the hydraulic conductivity of the soil(s) between the UST system and the monitoring wells or devices is not less than 0.01 cm/sec (e.g., the soil should consist of gravels, coarse to medium sands, coarse silts or other permeable materials);

(3) The slotted portion of the monitoring well casing must be designed to prevent migration of natural soils or filter pack into the well and to allow entry of regulated substance on the water table into the well under both high and low groundwater conditions;

(4) Monitoring wells shall be sealed from the ground surface to the top of the filter pack;

(5) Monitoring wells or devices intercept the excavation zone or are as close to it as is technically feasible;

(6) The continuous monitoring devices or manual methods used can detect the presence of at least 1/8 of an inch of free product on top of the groundwater in the monitoring wells;

(7) Within and immediately below the UST system excavation zone, the site is assessed to ensure compliance with the requirements in 135.5(4) "f"(1) to (5) and to establish the number and positioning of monitoring wells or devices that will detect releases from any portion of the tank that routinely contains product; and

(8) Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

*g. Interstitial monitoring.* Interstitial monitoring between the UST system and a secondary barrier immediately around or beneath it may be used, but only if the system is designed, constructed and installed to detect a leak from any portion of the tank that routinely contains product and also meets one of the following requirements:

(1) For secondary containment systems, the sampling or testing method must be able to detect a release through the inner wall in any portion of the tank that routinely contains product:

1. Continuously, by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space; or

2. Monthly, by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space.

3. The interstitial space shall be maintained and kept free of liquid, debris or anything that could interfere with leak detection capabilities.

NOTE: The provisions outlined in the Steel Tank Institute's "Standard for Dual Wall Underground Storage Tanks" may be used as guidance for aspects of the design and construction of underground steel double-walled tanks.

(2) For UST systems with a secondary barrier within the excavation zone, the sampling or testing method used can detect a release between the UST system and the secondary barrier:

1. The secondary barrier around or beneath the UST system consists of artificially constructed material that is sufficiently thick and impermeable (at least  $10^{-6}$  cm/sec for the regulated substance stored) to direct a release to the monitoring point and permit its detection;

2. The barrier is compatible with the regulated substance stored so that a release from the UST system will not cause a deterioration of the barrier allowing a release to pass through undetected;

3. For cathodically protected tanks, the secondary barrier must be installed so that it does not interfere with the proper operation of the cathodic protection system;

4. The groundwater, soil moisture, or rainfall will not render the testing or sampling method used inoperative so that a release could go undetected for more than 30 days;

5. The site is assessed to ensure that the secondary barrier is always above the groundwater and not in a 25-year flood plain, unless the barrier and monitoring designs are for use under such conditions; and

6. Monitoring wells are clearly marked and secured to avoid unauthorized access and tampering.

(3) For tanks with an internally fitted liner, an automated device can detect a release between the inner wall of the tank and the liner, and the liner is compatible with the substance stored.

*h. Other methods.* Any other type of release detection method, or combination of methods, can be used if:

(1) It can detect a 0.2 gallon-per-hour leak rate or a release of 150 gallons within a month with a probability of detection of 0.95 and a probability of false alarm of 0.05; or

(2) The department may approve another method if the owner and operator can demonstrate that the method can detect a release as effectively as any of the methods allowed in paragraphs "c" to "h." In comparing methods, the department shall consider the size of release that the method can detect and the frequency and reliability with which it can be detected. If the method is approved, the owner and operator must comply with any conditions imposed by the department on its use to ensure the protection of human health and the environment.

**135.5(5) Methods of release detection for piping.** Each method of release detection for piping used to meet the requirements of 135.5(2) must be conducted in accordance with the following:

*a. Automatic line leak detectors.* Methods which alert the operator to the presence of a leak by restricting or shutting off the flow of regulated substances through piping or triggering an audible or visual alarm may be used only if they detect leaks of 3 gallons per hour at 10 pounds per square inch line pressure within one hour. An annual test of the operation of the leak detector must be conducted in accordance with the manufacturer's requirements.

*b. Line tightness testing.* A periodic test of piping may be conducted only if it can detect a 0.1 gallon-per-hour leak rate at one and one-half times the operating pressure.

*c. Applicable tank methods.* Any of the methods in 135.5(4) "e" through "h" may be used if they are designed to detect a release from any portion of the underground piping that routinely contains regulated substances.

*d. Interstitial monitoring of secondary containment.* Interstitial monitoring may be used for any piping with secondary containment designed for and capable of interstitial monitoring.

(1) Leak detection shall be conducted:

1. Continuously, by means of an automatic leak sensing device that signals to the operator the presence of any regulated substance in the interstitial space or containment sump; or

2. Monthly, by means of a procedure capable of detecting the presence of any regulated substance in the interstitial space or containment sump, such as visual inspection.

(2) The interstitial space or sump shall be maintained and kept free of water, debris or anything that could interfere with leak detection capabilities.

(3) At least every two years, any sump shall be visually inspected for integrity of sides and floor and tightness of piping penetration seals. Any automatic sensing device shall be tested for proper function.

**135.5(6) Release detection record keeping.** All UST system owners and operators must maintain records in accordance with 135.4(5) demonstrating compliance with all applicable requirements of this rule. These records must include the following:

*a.* All written performance claims pertaining to any release detection system used, and the manner in which these claims have been justified or tested by the equipment manufacturer or installer, must be maintained for five years, or for another reasonable period of time determined by the department, from the date of installation;

*b.* The results of any sampling, testing, or monitoring must be maintained for at least one year, or for another reasonable period of time determined by the department, except that the results of tank tightness testing conducted in accordance with 135.5(4) “c” must be retained until the next test is conducted; and

*c.* Written documentation of all calibration, maintenance, and repair of release detection equipment permanently located on-site must be maintained for at least one year after the servicing work is completed, or for another reasonable time period determined by the department. Any schedules of required calibration and maintenance provided by the release detection equipment manufacturer must be retained for five years from the date of installation.

[ARC 8469B, IAB 1/13/10, effective 2/17/10 (See Delay note at end of chapter); ARC 0559C, IAB 1/9/13, effective 12/19/12; ARC 1100C, IAB 10/16/13, effective 11/20/13]

#### **567—135.6(455B) Release reporting, investigation, and confirmation.**

**135.6(1) Reporting of suspected releases.** Owners and operators of UST systems must report to the department within 24 hours, or within 6 hours in accordance with 567—Chapter 131 if a hazardous condition exists as defined in 567—131.1(455B), or another reasonable time period specified by the department, and follow the procedures in 135.8(1) for any of the following conditions:

*a.* The discovery by owners and operators or others of released regulated substances at the UST site or in the surrounding area (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface water);

*b.* Unusual operating conditions observed by owners and operators (such as the erratic behavior of product dispensing equipment, the sudden loss of product from the UST system, or an unexplained presence of water in the tank), unless system equipment is found to be defective but not leaking, and is immediately repaired or replaced; and

*c.* Monitoring results from a release detection method required under 135.5(2) and 135.5(3) that indicate a release may have occurred unless:

(1) The monitoring device is found to be defective, and is immediately repaired, recalibrated or replaced, and additional monitoring does not confirm the initial result; or

(2) In the case of inventory control, a second month of data does not confirm the initial result.

**135.6(2) Investigation due to off-site impacts.** When required by the department, owners and operators of UST systems must follow the procedures in 135.6(3) to determine if the UST system is the source of off-site impacts. These impacts include the discovery of regulated substances (such as the presence of free product or vapors in soils, basements, sewer and utility lines, and nearby surface and drinking waters) that has been observed by the department or brought to its attention by another party.

**135.6(3) Release investigation and confirmation steps.** Owners and operators must immediately investigate and confirm all suspected releases of regulated substances requiring reporting under 135.6(1) within seven days, or another reasonable time period specified by the department, using either the following steps or another procedure approved by the department:

*a.* System test. Owners and operators must conduct tests (according to the requirements for tightness testing in 135.5(4) “c” and 135.5(5) “b”) that determine whether a leak exists in that portion of the tank that routinely contains product, or the attached delivery piping or both.

(1) Owners and operators must repair, replace or upgrade the UST system and begin corrective action in accordance with rule 567—135.9(455B) if the test results for the system, tank, or delivery piping indicate a leak exists.

(2) Further investigation is not required if the test results for the system, tank, and delivery piping do not indicate a leak exists and if environmental contamination is not the basis for suspecting a release.

(3) Owners and operators must conduct a site check as described in paragraph “b” of this subrule if the test results for the system, tank, and delivery piping do not indicate a leak exists but environmental contamination is the basis for suspecting a release.

*b. Site check.* A certified groundwater professional must conduct a site check in accordance with the tank closure in place procedures as provided in 135.15(3) or they may conduct a Tier 1 assessment in accordance with subrule 135.9(3). Under either procedure, the certified groundwater professional must follow the policies and procedures applicable to sites where bedrock is encountered before groundwater as provided in 135.8(5) to avoid creating a preferential pathway for soil or groundwater contamination to reach a bedrock aquifer. The certified groundwater professional must measure for the presence of a release where contamination is most likely to be present at the UST site. In selecting sample types, sample locations, and measurement methods, the certified groundwater professional must consider the nature of the stored substance, the type of initial alarm or cause for suspicion, the type of backfill, the depth of groundwater, and other factors appropriate for identifying the presence and source of the release.

(1) If the test results of the site check indicate action levels in 567—135.14(455B) have been exceeded, owners and operators must begin corrective action in accordance with rules 567—135.7(455B) to 567—135.12(455B).

(2) If the test results for the excavation zone or the UST site do not indicate a release has occurred, further investigation is not required.

**135.6(4) Reporting and cleanup of spills and overfills.**

*a. Reportable releases.* Owners and operators of UST systems must contain and immediately clean up a spill, overfill or any aboveground release, and report to the department within 24 hours, or within 6 hours in accordance with 567—Chapter 131 if a hazardous condition exists as defined in rule 567—131.1(455B) and begin corrective action in accordance with rules 567—135.7(455B) to 567—135.12(455B) in the following cases:

(1) Spill, overfill or any aboveground release of petroleum that results in a release to the environment that exceeds 25 gallons, causes a sheen on nearby surface water, impacts adjacent property, or contaminates groundwater; and

(2) Spill, overfill or any aboveground release of a hazardous substance that results in a release to the environment that equals or exceeds its reportable quantity under CERCLA (40 CFR 302) as of September 13, 1988.

*b. Nonreportable releases.* Owners and operators of UST systems must contain and immediately clean up a spill, overfill or any aboveground release of petroleum that is less than 25 gallons and a spill, overfill or any aboveground release of a hazardous substance that is less than the reportable quantity. If cleanup cannot be accomplished within 24 hours, owners and operators must immediately notify the department.

NOTE: Any spill or overfill that results in a hazardous condition as defined in rule 567—131.1(455B) must be reported within 6 hours. This includes the transporter of the product. A release of a hazardous substance equal to or in excess of its reportable quantity must also be reported immediately (rather than within 24 hours) to the National Response Center under Sections 102 and 103 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 and to appropriate state and local authorities under Title III of the Superfund Amendments and Reauthorization Act of 1986.

**567—135.7(455B) Release response and corrective action for UST systems containing petroleum or hazardous substances.**

**135.7(1) General.** Owners and operators of petroleum or hazardous substance UST systems must, in response to a confirmed release from the UST system, comply with the requirements of this rule except

for USTs excluded under 135.1(3) “b” and UST systems subject to RCRA Subtitle C corrective action requirements under Section 3004(u) of the Resource Conservation and Recovery Act, as amended.

**135.7(2) Initial response.** Upon confirmation of a release in accordance with 135.6(3) or after a release from the UST system is identified in any other manner, owners and operators must perform the following initial response actions within 24 hours of a release or within another reasonable period of time specified by the department:

- a. Report the release to the department (e.g., by telephone or electronic mail);
- b. Take immediate action to prevent any further release of the regulated substance into the environment; and
- c. Identify and mitigate fire, explosion, and vapor hazards.

**135.7(3) Initial abatement measures and site check.**

a. Unless directed to do otherwise by the department, owners and operators must perform the following abatement measures:

(1) Remove as much of the regulated substance from the UST system as is necessary to prevent further release to the environment;

(2) Visually inspect any aboveground releases or exposed below-ground releases and prevent further migration of the released substance into surrounding soils and groundwater;

(3) Continue to monitor and mitigate any additional fire and safety hazards posed by vapors or free product that have migrated from the UST excavation zone and entered into subsurface structures (such as sewers or basements);

(4) Remedy hazards posed by contaminated soils that are excavated or exposed as a result of release confirmation, site investigation, abatement, or corrective action activities. If these remedies include treatment or disposal of soils, the owner and operator must comply with applicable state and local requirements;

(5) Rescinded IAB 7/17/96, effective 8/15/96.

(6) Investigate to determine the possible presence of free product, and begin free product removal as soon as practicable and in accordance with 135.7(5).

b. Within 20 days after release confirmation, or within another reasonable period of time determined by the department, owners and operators must submit a report to the department summarizing the initial abatement steps taken under paragraph “a” and any resulting information or data.

**135.7(4) Initial site characterization.** Rescinded IAB 7/17/96, effective 8/15/96.

**135.7(5) Free product assessment and removal.** At sites where investigations under 135.7(3) “a”(6) indicate 0.01 ft. or more of free product, owners and operators must immediately initiate a free product recovery assessment and submit a report in accordance with paragraph “d” and initiate interim free product removal while continuing, as necessary, any actions initiated under 135.7(2) to 135.7(4), or preparing for actions required under 567—135.8(455B) to 567—135.12(455B). Owners and operators must immediately begin interim free product removal by bailing or by installation and maintenance of passive skimming equipment until an alternative removal method is required by or approved by the department. A certified groundwater professional must initially determine the frequency of bailing and proper installation and maintenance of the skimming equipment based on a determination of the recharge rate of the free product. The department may approve implementation of this interim removal process by persons not certified as groundwater professionals. For approval a certified groundwater professional must submit (1) sufficient documentation establishing that the bailing or skimming system has been adequately designed and tested, and (2) a written plan for regular maintenance, reporting and supervision by a certified groundwater professional. Interim free product recovery reports must be submitted to the department on a monthly basis and on forms provided by the department. In meeting the requirements of this subrule, owners and operators must:

a. Conduct free product removal at a frequency determined by the recharge rate of the product and in a manner that minimizes the spread of contamination into previously uncontaminated zones by using recovery and disposal techniques appropriate to the hydrogeologic conditions at the site, and that properly treats, discharges or disposes of recovery by-products in compliance with applicable local,

state and federal regulations. Unless approved by the department, free product assessment and recovery activities must be conducted by a certified groundwater professional. Owners and operators must report the results of free product removal activities on forms designated by the department;

*b.* Use abatement of free product migration as a minimum objective for the design of the free product removal system. Free product recovery systems must be designed to remove free product to the maximum extent practicable;

*c.* Handle any flammable products in a safe and competent manner to prevent fires or explosions; and

*d.* Free product recovery assessment and report. Unless directed to do otherwise by the department, prepare and submit to the department, within 45 days after confirming a release, a free product recovery assessment report and a proposal for subsequent free product removal activities. The free product recovery assessment report and removal proposal must contain at least the following information:

(1) The name of the person(s) responsible for implementing the free product removal measures;

(2) The estimated quantity, type and thickness of free product observed or measured in monitoring wells, boreholes, and excavations, the recharge rate in all affected monitoring wells and a detailed description of the procedures used to determine the recharge rate;

(3) A detailed justification for the free product removal technology proposed for the site. Base the justification narrative on professional judgment considering the characteristics of the free product plume (i.e., estimated volume, type of product, thickness, extent), an assessment of cost effectiveness based on recovery costs compared to alternative methods, site hydrology and geology, when the release event occurred, testing conducted to verify design assumptions and the potential for petroleum vapors or explosive conditions to occur in enclosed spaces. Proposals for removal systems other than hand bailing or passive skimming systems must be completed and submitted on a format consistent with the department's corrective action design report.

(4) A schematic and narrative description of the free product recovery system used;

(5) Whether any discharge will take place on site or off site during the recovery operation and where this discharge will be located;

(6) A schematic and narrative description of the treatment system, and the effluent quality expected from any discharge;

(7) The steps that have been or are being taken to obtain necessary permits for any discharge;

(8) The disposition of the recovered free product;

(9) Free product plume definition and map. The extent of free product in groundwater must be assessed. The number and location of wells and separation distance between the wells used to define the free product plume must be based on the receptors present and the site hydrology and geology. A minimum of five monitoring wells are required to construct the plume map. If the groundwater professional can adequately define the plume using other technology as specified in department guidance, fewer than five wells may be used. The boundary of the plume may be determined by linear interpolation consistent with the methods described in 135.10(2)“f”(3); and

(10) The estimated volume of free product present, how the volume was calculated, recoverable volume and estimated recovery time.

*e.* The department will review the free product assessment report; and, if approved, the owner or operator must implement the installation of the approved recovery system within 60 days or other time period approved by the department.

*f.* Termination of free product recovery activities. Owners and operators may propose to the department to terminate free product recovery activities when significant amounts of hydrocarbons are not being recovered. The department will consider proposals to terminate free product recovery when the amount of product collected from a monitoring well is equal to or less than 0.1 gallon each month for a year unless another plan is approved by the department. When free product activities have been terminated, owners and operators must inspect the monitoring wells monthly for at least a year. The department must be notified and free product recovery activities reinitiated if during the monthly well

inspections it is determined the product thickness in a monitoring well exceeds 0.02 foot. The monthly well inspection records must be kept available for review by the department.

g. Unless directed to do otherwise by the department, prepare and submit to the department within 180 days after confirming a release, a Tier 2 site cleanup report.

**567—135.8(455B) Risk-based corrective action.**

**135.8(1) General.** The objective of risk-based corrective action is to effectively evaluate the risks posed by contamination to human health, safety and the environment using a progressively more site-specific, three-tiered approach to site assessment and data analysis. Based on the tiered assessment, a corrective action response is determined sufficient to remove or minimize risks to acceptable levels. Corrective action response includes a broad range of options including reduction of contaminant concentrations through active or passive methods, monitoring of contamination, use of technological controls or institutional controls.

a. *Tier 1.* The purpose of a Tier 1 assessment is to identify sites which do not pose an unreasonable risk to public health and safety or the environment based on limited site data. The objective is to determine maximum concentrations of chemicals of concern at the source of a release(s) in soil and groundwater. The Tier 1 assessment assumes worst-case scenarios in which actual or potential receptors could be exposed to these chemicals at maximum concentrations through certain soil and groundwater pathways. The point of exposure is assumed to be the source showing maximum concentrations. Risk-based screening levels (Tier 1 levels) contained in the Tier 1 Look-Up Table have been derived from models which use conservative assumptions to predict exposure to actual and potential receptors. (These models and default assumptions are contained in Appendix A.) If Tier 1 levels are not exceeded for a pathway, that pathway may not require further assessment. If the maximum concentrations exceed a Tier 1 level, the options are to conduct a more extensive Tier 2 assessment, apply an institutional control, or in limited circumstances excavate contaminated soil to below Tier 1 levels. If all pathways clear the Tier 1 levels, it is possible for the site to obtain a no action required classification.

b. *Tier 2.* The purpose of a Tier 2 assessment is to use site-specific data to assess the risk from chemicals of concern to existing receptors and potential receptors using fate and transport models in accordance with 567—135.10(455B). See 135.10(2)“a.”

c. *Tier 3.* Where site conditions may not be adequately addressed by Tier 2 procedures, a Tier 3 assessment may provide more accurate risk assessment. The purpose of Tier 3 is to identify reasonable exposure levels of chemicals of concern and to assess the risk of exposure to existing and potential receptors based on additional site assessment information, probabilistic evaluations, or sophisticated chemical fate and transport models in accordance with 567—135.11(455B).

d. *Notification.* Whenever the department requires a tiered site assessment and a public water supply well is within 2,500 feet of a leaking underground storage tank site, the department will notify the public water supply operator.

e. *Pathway reevaluation.* Prior to issuance of a no further action certificate in accordance with 135.12(10) and Iowa Code section 455B.474(1)“h”(3), if it is determined that the conditions for an individual pathway that has been classified as “no action required” no longer exist, or the site presents an unreasonable risk to a public water supply well and the model used to obtain the pathway clearance underpredicts the actual contaminant plume, the individual pathway shall be further assessed consistent with the risk-based corrective action provisions in rules 567—135.8(455B) through 567—135.12(455B).

**135.8(2) Certified groundwater professional.** All assessment, corrective action, data analysis and report development required under rules 567—135.6(455B) to 567—135.12(455B) must be conducted by or under the supervision of a certified groundwater professional in accordance with these rules and department guidance as specified.

**135.8(3) Chemicals of concern.** Soil and groundwater samples from releases of petroleum regulated substances must always be analyzed for the presence of benzene, ethylbenzene, toluene, and xylenes. In addition, if the release is suspected to include any petroleum regulated substance other than gasoline or gasoline blends, or if the source of the release is unknown, the samples must be tested for the presence of Total Extractable Hydrocarbons (TEH). Appendices A and B and department Tier 2 guidance define

a method for converting TEH values to a default concentration for naphthalene, benzo(a)pyrene, benz(a)anthracene and chrysene and conversion back to a representative TEH value. These default values must be used in order to apply Tier 2 modeling to these constituents in the absence of accurate laboratory analysis. At Tier 2 and Tier 3, owners and operators have the option of analyzing for these specific constituents and applying them to the specific target levels in Appendices A and B instead of using the TEH conversion method if an approved laboratory and laboratory technique are used.

**135.8(4) Boring depth for sampling.** When drilling for the placement of groundwater monitoring wells, if groundwater is encountered, drilling must continue to the maximum of 10 feet below the first encountered groundwater or to the bottom of soil contamination as estimated by field screening. If groundwater is not encountered, drilling must continue to the deeper of 10 feet below the soil contamination as estimated by field screening or 75 feet from the ground surface.

**135.8(5) Bedrock aquifer assessment.** Prior to conducting any groundwater drilling, a groundwater professional must determine if there is a potential to encounter bedrock before groundwater. These potential areas include (1) areas where karst features or outcrops exist in the vicinity and (2) areas with bedrock less than 50 feet from the surface as illustrated in Tier 1 and Tier 2 guidance. The purpose of this determination is to prevent drilling through contaminated subsurface areas thereby creating a preferential pathway to a bedrock aquifer. If the first encountered groundwater is above bedrock but near the bedrock surface or fluctuates above and below bedrock, the groundwater professional should evaluate the subsurface geology and aquifer characteristics to determine the potential for creating a preferential pathway. If it is determined that the aquifer acts like a nongranular aquifer as provided in 135.10(3) "a" or bedrock is encountered before groundwater, the groundwater professional must conduct a Tier 2 assessment for all pathways under 567—135.10(455B), including the specified bedrock procedures under 135.10(3).

If the first encountered groundwater is above bedrock with sufficient separation and aquifer characteristics to establish that it acts as a granular aquifer, site assessment may proceed under the site check procedure in 567—135.6(455B), the Tier 1 procedure in 567—135.9(455B) or the Tier 2 procedure in 567—135.10(455B) as would be customary regardless of the bedrock designation. However, even under this condition, drilling through bedrock should be avoided in contaminated areas. [ARC 7621B, IAB 3/11/09, effective 4/15/09]

### **567—135.9(455B) Tier 1 site assessment policy and procedure.**

**135.9(1) General.** The main objective of a Tier 1 site assessment is to reasonably determine the highest concentrations of chemicals of concern which would be associated with any suspected or confirmed release and an accurate identification of applicable receptors. In addition, the placement and depth of borings and the construction of monitoring wells must be sufficient to determine the sources of all releases, the vertical extent of contamination, an accurate description of site stratigraphy, and a reliable determination of groundwater flow direction.

*a. Pathway assessment.* The pathways to be evaluated at Tier 1 are the groundwater ingestion pathway, soil leaching to groundwater pathway, groundwater vapor to enclosed space pathway, soil vapor to enclosed space pathway, soil to water line pathway, groundwater to water line pathway and the surface water pathway. Assessment requires a determination of whether a pathway is complete, an evaluation of actual and potential receptors, and a determination of whether conditions are satisfied for obtaining no further action clearance for individual pathways or for obtaining a complete site classification of "no action required." A pathway is considered complete if a chemical of concern has a route which could be followed to reach an actual or potential receptor.

*b. Pathway clearance.* If field data for an individual pathway does not exceed the applicable Tier 1 levels or if a pathway is incomplete, no further action is required to evaluate the pathway unless otherwise specified in these rules. If the field data for a pathway exceeds the applicable Tier 1 level(s) in the "Iowa Tier 1 Look-up Table," the response is to conduct further assessment under Tier 2 or Tier 3 unless an effective institutional control is approved. In limited circumstances excavation of contaminated soils may be used as an option to obtain pathway clearance. If further site assessment indicates site data exceeds an applicable Tier 1 level(s) for a previously cleared pathway or the conditions justifying a

determination of pathway incompleteness change, that pathway must be reevaluated as part of a Tier 2 or Tier 3 assessment.

*c. Chemical group clearance.* If field data for all chemicals of concern within a designated group of chemicals is below the Tier 1 levels, no further action is required as to the group of chemicals unless otherwise specified in these rules. Group one consists of benzene, ethylbenzene, toluene, and xylenes (BTEX). Group two consists of naphthalene, benzo(a)pyrene, benz(a)anthracene and chrysene; TEH default values are incorporated into the Iowa Tier 1 Look-Up Table and Appendix A for group two chemicals.

*d. Site classification.* A site can be classified as no action required only after all pathways have met the conditions for pathway clearance as provided in this rule.

*e. Groundwater sampling procedure.* Groundwater sampling and field screening must be conducted in accordance with department Tier 1 guidance. A minimum of three properly constructed groundwater monitoring wells must be installed, subject to the limitations on maximum drilling depths, for the purpose of identifying maximum concentrations of groundwater contamination, suspected sources of releases, and groundwater flow direction.

(1) Field screening must be used to locate suspected releases and to determine locations with the greatest concentrations of contamination. Field screening is required as per department guidance at each former and current tank basin, each former and current pump island, along the piping, and at any other areas of actual or suspected releases. In placing monitoring wells, the following must be considered: field screening data, available current and historical information regarding the releases, tank and piping layout, site conditions, and drilling data available from sites in the vicinity. At least one well must be placed at each suspected source of release which shall include at a minimum: the pump island with the greatest field screening level, each current and former underground storage tank basin, and if field screening shows greater levels than at the pump islands or tank basins, at other suspected sources of releases. As a general rule, wells should be installed outside of the tank basin through native soils but as close to the tank basin as feasible. A well must be installed in a presumed downgradient direction and within 30 feet of the sample with the greatest field screening level. Three of the wells must be placed in a triangular arrangement to determine groundwater flow direction.

(2) Where the circumstances which prompt a Tier 1 assessment identify a discrete source and cause of a release, and the groundwater professional is able to rule out other suspected sources or contributing sources such as pump islands, piping runs and tank basins, the application of field screening and groundwater well placement may be limited to the known source.

*f. Soil sampling procedure.* The objective of soil sampling is to identify the maximum concentrations of soil contamination in the vadose and saturated zones and to identify sources of releases. The same principles stated above apply to soil sampling. Soil samples must be taken from borings with the greatest field screening levels even if the boring will not be converted to a monitoring well. At a minimum, soil and groundwater samples must be collected for analysis from all borings which are converted to monitoring wells.

Iowa Tier 1 Look-Up Table

Media	Exposure Pathway	Receptor	Group 1				Group 2: TEH	
			Benzene	Toluene	Ethylbenzene	Xylenes	Diesel*	Waste Oil
Groundwater (µg/L)	Groundwater Ingestion	Actual	5	1,000	700	10,000	1,200	400
		Potential	290	7,300	3,700	73,000	75,000	40,000
	Groundwater Vapor to Enclosed Space	All	1,540	20,190	46,000	NA	2,200,000	NA
	Groundwater to Water Line	PVC or Gasketed Mains	7,500	6,250	40,000	48,000	75,000	40,000
		PVC or Gasketed Service Lines	3,750	3,120	20,000	24,000	75,000	40,000
		PE/PB/AC Mains or Service Lines	200	3,120	3,400	19,000	75,000	40,000
	Surface Water	All	290	1,000	3,700	73,000	75,000	40,000
Soil (mg/kg)	Soil Leaching to Groundwater	All	0.54	42	15	NA	3,800	NA
	Soil Vapor to Enclosed Space	All	1.16	48	79	NA	47,500	NA
	Soil to Water Line	All	2.0	3.2	45	52	10,500	NA

NA: Not applicable. There are no limits for the chemical for the pathway, because for groundwater pathways the concentration for the designated risk would be greater than the solubility of the pure chemical in water, and for soil pathways the concentration for the designated risk would be greater than the soil concentration if pure chemical were present in the soil.

TEH: Total Extractable Hydrocarbons. The TEH value is based on risks from naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. Refer to Appendix B for further details.

Diesel\*: Standards in the Diesel column apply to all low volatile petroleum hydrocarbons except waste oil.

**135.9(2) Conditions requiring Tier 1 site assessment.** Unless owners and operators choose to conduct a Tier 2 assessment, the presence of bedrock requires a Tier 2 assessment as provided in 135.8(5), or these rules otherwise require preparation of a Tier 2 site assessment, a Tier 1 site assessment must be completed in response to release confirmation as provided in rule 567—135.6(455B), or tank closure investigation under 567—135.15(455B), or other reliable laboratory analysis which confirms the presence of contamination above the action levels in 567—135.14(455B).

**135.9(3) Tier 1 assessment report.** Unless directed to do otherwise by the department or the owners or operators choose to prepare a Tier 2 site cleanup report, owners and operators must assemble information about the site and the nature of the release in accordance with the department Tier 1 guidance, including information gained while confirming the release under 567—135.6(455B), tank closure under 567—135.15(455B) or completing the initial abatement measures in 135.7(1) and 135.7(2). This information must include, but is not necessarily limited to, the following:

- a. Data on the nature and estimated quantity of release.
- b. Results of any release investigation and confirmation actions required by subrule 135.6(3).
- c. Results of the free product investigations required under 135.7(3) "a"(6), to be used by owners and operators to determine whether free product must be recovered under 135.7(5).
- d. Chronology of property ownership and underground storage tank ownership, identification of the person(s) having control of, or having responsibility for the daily operation of the underground storage tanks and the operational history of the underground storage tank system. The operational history shall include, but is not limited to, a description of or suspected known subsurface or aboveground releases, past remediation or other corrective action, type of petroleum product stored, recent tank and

pipng tightness test results, any underground storage tank system repairs, upgrades or replacements and the underground storage tank and piping leak detection method being utilized. The operational history shall confirm that current release detection methods and record keeping comply with the requirements of 567—135.5(455B), that all release detection records have been reviewed and report any evidence that a release detection standard has been exceeded as provided in 135.5(4) and 135.5(5).

*e.* Appropriate diagrams of the site and the underground storage tank system and surrounding land use, identifying site boundaries and existing structures and uses such as residential properties, schools, hospitals, child care facilities and a general description of relevant land use restrictions and known future land use.

*f.* Current proof of financial responsibility as required by 567—136.19(455B) and 567—136.20(455B) and the status of coverage for corrective action under any applicable financial assurance mechanism or other financial assistance program.

*g.* A receptor survey including but not limited to the following: existing buildings, enclosed spaces (basements, crawl spaces, utility vaults, etc.), conduits (gravity drain lines, sanitary and storm sewer mains and service lines), water lines and other utilities within 500 feet of the source. For conduits and enclosed spaces, there must be a description of construction material, conduit backfill material, slope of conduit and trenches (include flow direction of sewers), burial depth of utilities or subsurface enclosed spaces, and the relationship to groundwater elevations.

*h.* An explosive vapor survey of enclosed spaces where there may be the potential for buildup of explosive vapors. The groundwater professional must provide a specific justification for not conducting an explosive vapor survey.

*i.* A survey of all surface water bodies within 200 feet of the source.

*j.* A survey of all active, abandoned and plugged groundwater wells within 1,000 feet of the source with a description of construction and present or future use.

*k.* Accurate and legible site maps showing the location of all groundwater monitoring wells, soil borings, field screening locations and screening values, and monitoring well and soil boring construction logs.

*l.* A tabulation of all laboratory analytical results for chemicals of concern and copies of the laboratory analytical reports.

*m.* Results of hydraulic conductivity testing and description of the procedures utilized.

*n.* A Tier 1 site assessment in accordance with the department's Tier 1 guidance. The Tier 1 report shall be submitted on forms and in a format prescribed by this guidance. The Tier 1 data analysis shall be performed by using computer software developed by the department or by using the computer software's hard-copy version.

**135.9(4)** *Groundwater ingestion pathway assessment.* The groundwater ingestion pathway addresses the potential for human ingestion of petroleum-regulated substances from existing groundwater wells or potential drinking water wells.

*a. Pathway completeness.* This pathway is considered complete if: (1) there is a drinking or non-drinking water well within 1,000 feet of the source(s) exhibiting the maximum concentrations of the chemicals of concern; or (2) the first encountered groundwater is a protected groundwater source.

*b. Receptor evaluation.* A drinking or non-drinking water well within 1,000 feet of the source(s) is an actual receptor. The Tier 1 levels for actual receptors apply to drinking water wells and the Tier 1 levels for potential receptors apply to non-drinking water wells. Potential receptor points of exposure exist if the first encountered groundwater is a protected groundwater source but no actual receptors presently exist within 1,000 feet of the source.

*c. Pathway clearance.* If the pathway is incomplete, no further action is required for this pathway. If the Tier 1 level for actual or potential receptors is not exceeded, no further action is required for this pathway. Groundwater wells that are actual or potential receptors may be plugged in accordance with 567—Chapter 39 and 567—Chapter 49 and may result in no further action clearance if the groundwater is not a protected groundwater source and the pathway is thereby incomplete.

*d. Corrective action response.* If maximum concentrations exceed the applicable Tier 1 levels for either actual or potential receptors, a Tier 2 assessment must be conducted unless effective institutional

controls are implemented as provided below. Technological controls are not acceptable at Tier 1 for this pathway. Abandonment and plugging of drinking and non-drinking water wells in accordance with 567—Chapters 39 and 49 is an acceptable corrective action response.

*e. Use of institutional controls.* To apply an effective institutional control, if drinking or non-drinking water wells are present within 1,000 feet of the source, and the applicable Tier 1 level is exceeded, the well(s) for which there is an exceedence must be properly plugged. If the groundwater is a protected groundwater source and the maximum concentrations do not exceed the Tier 1 level for potential receptors but do exceed the Tier 1 level for actual receptors, the owner or operator must provide notification of site conditions on a department form to the department water supply section, or if a county has delegated authority, then the designated county authority responsible for issuing private water supply construction permits or regulating non-public water well construction as provided in 567—Chapters 38 and 49.

If the groundwater is a protected source and the maximum concentrations exceed the Tier 1 level for potential receptors, the owner or operator must (1) implement an institutional control prohibiting the use of the groundwater for installation of drinking and non-drinking water wells within 1,000 feet of the source; and (2) provide notification as provided above. If an effective institutional control is not feasible, a Tier 2 assessment must be performed for this pathway in accordance with rule 567—135.10(455B).

*f. Receptor evaluation for public water supply wells.* Rescinded IAB 3/11/09, effective 4/15/09.

**135.9(5) Soil leaching to groundwater pathway assessment.** This pathway addresses the potential for soil contamination to leach to groundwater creating a risk of human exposure through the groundwater ingestion pathway.

*a. Pathway completeness.* If the groundwater ingestion pathway is complete, the soil leaching to groundwater pathway is considered complete.

*b. Receptor evaluation.* There is a single receptor type for this pathway and one applicable Tier 1 level.

*c. Pathway clearance.* If the pathway is incomplete or the pathway is complete and the maximum concentrations of chemicals of concern do not exceed the Tier 1 levels, no further action is required for assessment of this pathway.

*d. Corrective action response.* If the Tier 1 levels are exceeded for this pathway, a Tier 2 assessment must be conducted or alternatively, institutional controls or soil excavation may be undertaken in accordance with 135.9(7)“h.”

*e. Use of institutional controls.* Institutional controls must satisfy the conditions applicable to the groundwater ingestion pathway as provided in 135.9(4)“e.”

**135.9(6) Groundwater vapor to enclosed space pathway assessment.** This pathway addresses the potential for vapors from contaminated groundwater to migrate to enclosed spaces where humans could inhale chemicals of concern at unacceptable levels. This pathway assessment assumes the health-based Tier 1 levels will adequately protect against any associated short- and long-term explosive risks.

*a. Pathway completeness.* This pathway is always considered complete for purposes of Tier 1 and must be evaluated.

*b. Explosive vapor survey.* An explosive vapor survey must be conducted in accordance with procedures outlined in the department Tier 1 guidance. If potentially explosive levels are detected, the groundwater professional must notify the owner or operator with instructions to report the condition in accordance with 567—Chapter 131. The owner or operator must begin immediate response and abatement procedures in accordance with 567—135.7(455B) and 567—Chapter 133.

*c. Receptor evaluation.* For purposes of Tier 1, there is one receptor type for this pathway and the Tier 1 level applies regardless of the existence of actual or potential receptors.

*d. Pathway clearance.* No further action is required for this pathway, if the maximum groundwater concentrations do not exceed the Tier 1 levels for this pathway.

*e. Corrective action response.* If the maximum concentrations exceed the Tier 1 levels for this pathway, a Tier 2 assessment of this pathway must be conducted unless institutional controls are implemented. Technological controls are not acceptable at Tier 1 for this pathway.

*f. Use of institutional controls.* An institutional control must be effective to prohibit the placement of enclosed space receptors within 500 feet of the source.

**135.9(7) Soil vapor to enclosed space pathway assessment.** This pathway addresses the potential for vapors from contaminated soils to migrate to enclosed spaces where humans could inhale chemicals of concern at unacceptable levels. This pathway assessment assumes health-based screening levels at Tier 1 will adequately protect against short- and long-term explosive risks.

*a. Pathway completeness.* This pathway is always considered complete for purposes of Tier 1 and must be evaluated.

*b. Explosive vapor survey.* An explosive vapor survey must be conducted in accordance with procedures outlined in the department Tier 1 guidance. If potentially explosive levels are detected, the groundwater professional must notify the owner or operator with instructions to report the condition in accordance with 567—Chapter 131. The owner or operator must begin immediate response and abatement procedures in accordance with 567—135.7(455B) and 567—Chapter 133.

*c. Receptor evaluation.* For purposes of Tier 1, there is one receptor type for this pathway, and the Tier 1 level applies regardless of existing or potential receptors.

*d. Pathway clearance.* No further action is required for this pathway, if the maximum soil concentrations do not exceed the Tier 1 levels for this pathway. If the Tier 1 levels are exceeded, soil gas measurements may be taken in accordance with the Tier 2 guidance at the area(s) of maximum concentration. Subject to confirmation sampling, if the soil gas measurements do not exceed the target levels in 135.10(7)“f,” no further action is required for this pathway. If the Tier 1 level is not exceeded but the soil gas measurement exceeds the target level, further action is required for the pathway.

*e. Soil gas samples.* To establish that the soil gas measurement is representative of the highest expected levels, a groundwater professional must obtain two soil gas samples taken at least two weeks apart. One of the samples must be taken below the typical frostline depth during a seasonal period of lowest groundwater elevation.

*f. Corrective action response.* If the maximum concentrations exceed the Tier 1 levels and the soil gas measurements exceed target levels for this pathway, or if no soil gas measurement was taken, a Tier 2 assessment of this pathway must be conducted unless institutional controls are implemented or soil excavation is conducted as provided below. Technological controls are not acceptable at Tier 1 for this pathway.

*g. Use of institutional controls.* An institutional control must be effective to eliminate the placement of enclosed space receptors within 500 feet of the source.

*h. Soil excavation.* Excavation of contaminated soils for the purpose of removing soils contaminated above the Tier 1 levels is permissible as an alternative to conducting a Tier 2 assessment. Adequate field screening methods must be used to identify maximum concentrations during excavation. At a minimum, one soil sample must be taken for field screening every 100 square feet of the base and each sidewall. Soil samples must be taken for laboratory analysis at least every 400 square feet of the base and each sidewall of the excavated area to confirm that remaining concentrations are below Tier 1 levels. If the excavation is less than 400 square feet, a minimum of one sample must be analyzed for each sidewall and the base.

**135.9(8) Groundwater to water line pathway assessment.** This pathway addresses the potential for creating a drinking water ingestion risk due to contact with water lines and causing infusion to the drinking water.

*a. Pathway completeness and receptor evaluation.*

(1) Actual receptors. This pathway is considered complete for an actual receptor if there is an existing water line within 200 feet of the source and the first encountered groundwater is less than 20 feet below ground surface.

(2) Potential receptors. This pathway is considered complete for a potential receptor if the first encountered groundwater is less than 20 feet below ground surface.

*b. Pathway clearance.* If the pathway is not complete, no further action is required for this pathway. If the pathway is complete and the maximum concentrations of all chemicals of concern do not exceed the Tier 1 levels for this pathway, no further action is required for this pathway.

*c. Utility company notification.* The utility company which supplies water service to the area must be notified of all actual and potential water line impacts as soon as knowledge of a potential risk is determined.

*d. Corrective action response.*

(1) For actual receptors, if the Tier 1 levels are exceeded for this pathway, all water lines within 200 feet must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards set forth in 567—Chapter 43 and with no less than nitrile or FKM gaskets or as otherwise approved by the department, or the water lines must be relocated beyond the 200-foot distance from the source. A Tier 2 assessment must be conducted for this pathway if lines are not replaced or relocated.

(2) For potential receptors, upon utility company notification, no further action will be required for this pathway.

**135.9(9)** *Soil to water line pathway assessment.* This pathway addresses the potential for creating a drinking water ingestion risk due to contact with water lines and infusion into the drinking water.

*a. Pathway completeness and receptor evaluation.*

(1) Actual receptors. This pathway is considered complete for an actual receptor if a water line exists within 200 feet of the source.

(2) Potential receptors. This pathway is always considered complete for potential receptors.

*b. Pathway clearance.* If the pathway is not complete for actual receptors, no further action is required for this pathway. If the pathway is complete for actual receptors and the maximum concentrations of all chemicals of concern do not exceed Tier 1 levels for this pathway, no further action is required. For potential receptors, upon utility company notification, no further action will be required for this pathway for potential receptors.

*c. Utility company notification.* The utility company which supplies water service to the area must be notified of all actual and potential water line impacts as soon as knowledge of a potential risk is determined.

*d. Corrective action response.* For actual receptors, if the Tier 1 levels are exceeded for this pathway, all water lines within 200 feet must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards set forth in 567—Chapter 43 and with no less than nitrile or FKM gaskets or as otherwise approved by the department, or the water lines must be relocated beyond the 200-foot distance from the source. Excavation of soils to below Tier 1 levels may be undertaken in accordance with 135.9(7) “h.” If none of these options is implemented, a Tier 2 assessment must be conducted for this pathway.

**135.9(10)** *Surface water pathway assessment.* This pathway addresses the potential for contaminated groundwater to impact surface water bodies creating risks to human health and aquatic life.

*a. Pathway completeness.* This pathway is considered complete if a surface water body is present within 200 feet of the source. For purposes of Tier 1, surface water bodies include both general use segments and designated use segments as provided in 567—subrule 61.3(1).

*b. Receptor evaluation.* The Tier 1 levels for this pathway only apply to designated use segments of surface water bodies as provided in 567—subrules 61.3(1) and 61.3(5). The point of compliance is the source with the highest concentrations of chemicals of concern. General use segments of surface water bodies as provided in 567—paragraph 61.3(1) “a” are only subject to the visual inspection criteria.

*c. Visual inspection requirements.* A visual inspection of all surface water bodies within 200 feet of the source must be conducted to determine if there is evidence of a sheen on the water or there is evidence of petroleum residue along the bank. If a sheen or residue is evident or has been reported to be present, the groundwater professional must make a sufficient investigation to reasonably determine its source. If in the opinion of the groundwater professional, the sheen is not associated with the underground storage tank site, the professional must report and reasonably justify this opinion. If in the opinion of the groundwater professional the sheen is not a petroleum-regulated substance, a sample must be laboratory tested in accordance with 567—135.16(455B) to confirm it is not a petroleum-regulated substance.

*d. Pathway clearance.* If the pathway is not complete or it is complete and the maximum concentrations of all chemicals of concern at the point of compliance do not exceed the Tier 1 levels and there is no petroleum sheen or residue attributable to the site, no further action is required for assessment of this pathway.

*e. Corrective action response.* If a Tier 1 level is exceeded for any chemical of concern for a designated use segment within 200 feet of the source, or the groundwater professional determines the presence of a petroleum-regulated substance sheen or residue, a Tier 2 assessment of this pathway must be conducted.

**135.9(11) Tier 1 submission and review procedures.**

*a.* Within 90 calendar days of release confirmation or another reasonable period of time determined by the department, owners and operators must submit to the department a Tier 1 report in a format prescribed by the department and in accordance with these rules and the department Tier 1 guidance.

*b.* If the owner or operator elects to prepare a Tier 2 site cleanup report instead of a Tier 1 assessment, the department must be notified in writing prior to the expiration of the Tier 1 submission deadline. The Tier 2 site cleanup report must be submitted to the department in accordance with rule 567—135.10(455B) within 180 calendar days of release confirmation or another reasonable period of time determined by the department.

*c.* Tier 1 report completeness and accuracy. A Tier 1 report is considered to be complete if it contains all the information and data required by this rule and the department Tier 1 guidance. The report is accurate if the information and data is reasonably reliable based first on application of the standards in these rules and department guidance and second, generally accepted industry standards.

*d.* The certified groundwater professional shall include the following certification with the Tier 1 site assessment report:

I, \_\_\_\_\_, Groundwater Professional Certification No. \_\_\_\_\_, am familiar with all applicable requirements of Iowa Code section 455B.474 and all rules and procedures adopted thereunder including, but not limited to, 567—Chapter 135 and the Department of Natural Resources Tier 1 guidance. Based on my knowledge of those documents and information I have prepared and reviewed regarding this site, UST Registration No. \_\_\_\_\_, LUST No. \_\_\_\_\_ I certify that this document is complete and accurate as provided in 567 IAC 135.9(11) “c” and meets the applicable requirements of the Tier 1 site assessment.

Signature:

Date:

*e.* Upon receipt of the groundwater professional’s certified Tier 1 report, the groundwater professional’s proposed site classification for the site shall be determinative unless, within 90 days of receipt, the department identifies material information in the report that is inaccurate or incomplete. Material information may be data found to be inaccurate or incomplete or a report that lacks information which, if correct and complete, would result in a different site classification than proposed by the certified groundwater professional. If the department determines that the site cleanup report is inaccurate or incomplete, the department shall notify the groundwater professional of the inaccurate or incomplete information within 90 days of receipt of the report and shall work with the groundwater professional and the party responsible for cleanup to obtain correct information or additional information necessary to appropriately classify the site. If the groundwater professional recommends proceeding to Tier 2, or a Tier 2 site cleanup report is required pursuant to 135.7(5) “g,” 135.8(5), or 567—135.9(455B), the groundwater professional’s site classification and pathway classification recommendations shall not be considered determinative until the Tier 2 report is submitted for review as provided in 135.10(11).

*f.* If a “no action required” site classification is proposed, the department shall review the report in accordance with 135.12(6) and the review standards in paragraph 135.9(11) “e.”

*g.* From July 1, 2010, through June 30, 2011, the department shall have 120 days rather than 90 days as provided in paragraphs 135.9(11) “e” and “f” to review and respond to the report.

**135.9(12) Tier 1 site classification and corrective action response.**

*a.* No action required site classification. At Tier 1, a site is only eligible for a “no action required” classification. To be classified as no action required, each pathway must meet the requirements for

pathway clearance as specified in this rule. If the department determines a no action required site classification is appropriate, a no further action certificate will be issued as provided in 135.12(10).

*b.* Where an individual pathway or a chemical group meets the requirements for clearance but the site is not entitled to a no action required classification, only those pathways and chemical groups which do not meet the no further action requirements must be evaluated as part of a Tier 2 assessment as provided in rule 567—135.10(455B).

*c.* Compliance monitoring and confirmation sampling. Compliance monitoring is not an acceptable corrective action at Tier 1. Except for soil gas sampling under 135.9(7), confirmation sampling to verify a sample does not exceed a Tier 1 level is not required. However, the department retains the authority to require confirmation sampling from existing groundwater monitoring wells if a no action required classification is being proposed at Tier 1 and the department has a reasonable basis to question the representative validity of the samples based on, for example, the seasonal bias of the sampling, evidence of multiple sources of releases, marginal groundwater monitoring well locations and analytical variability.

*d.* *Expedited corrective action.* Expedited corrective action is permissible in accordance with 135.12(11).

[ARC 7621B, IAB 3/11/09, effective 4/15/09; ARC 9011B, IAB 8/25/10, effective 9/29/10; ARC 9331B, IAB 1/12/11, effective 2/16/11]

### **567—135.10(455B) Tier 2 site assessment policy and procedure.**

**135.10(1) General conditions.** A Tier 2 site assessment must be conducted and a site cleanup report submitted for all sites which have not obtained a no action required site classification and for all pathways and chemicals of concern groups that have not obtained no further action clearance as provided in 567—135.9(455B). If in the course of conducting a Tier 2 assessment, data indicates the conditions for pathway clearance under Tier 1 no longer exist, the pathway shall be further assessed under this rule. The Tier 2 assessment and report must be completed whenever free product is discovered as provided in 567—135.7(455B). If the owner or operator elects to complete the Tier 2 site assessment without doing a Tier 1 assessment, all the Tier 1 requirements as provided in 135.9(455B) must be met in addition to requirements under this rule.

*a.* *Guidance.* The Tier 2 site assessment shall be conducted in accordance with the department's "Tier 2 Site Assessment Guidance" and these rules. The site cleanup report shall be submitted on forms and in a format prescribed by this guidance. The Tier 2 data analysis shall be performed by using computer software developed by the department or by using the computer software's hard-copy version.

*b.* *Classification.* At Tier 2, individual pathways may be classified as high risk or low risk or no action required and separate classification criteria may apply to actual and potential receptors for any pathway. A single pathway may have multiple classifications based on actual or potential receptor evaluations. A pathway must meet both the criteria for actual and potential receptors for the pathway to obtain a classification of no action required. Sites may have multiple pathway classifications. For a site to obtain a no action required classification, all pathways must meet the individual pathway criteria for no action required classification.

*c.* *Public right-of-way.* As a general rule, public right-of-way will not be considered an area of potential receptor exposure except for potential sanitary sewer evaluation under the soil and groundwater vapor pathways, subrules 135.10(6) and 135.10(7).

#### **135.10(2) General Tier 2 assessment procedures.**

*a.* *Objectives.* The objective of a Tier 2 assessment is to collect site-specific data and with the use of Tier 2 modeling determine what actual or potential receptors could be impacted by chemicals of concern and what concentrations at the source are predicted to achieve protection of these receptors. Both Tier 1 and Tier 2 are based on achieving similar levels of protection of human health, safety and the environment.

*b.* *Groundwater modeling.* Tier 2 uses fate and transport models to predict the maximum distance groundwater contamination is expected to move and the distribution of concentrations of chemicals of concern within this area. The model is used for two basic purposes. One, it is used to predict at what

levels of concentration contamination would be expected to impact actual and potential receptors. Two, it is used to determine a concentration at the source which if achieved, and after dispersion and degradation, would protect actual and potential receptors at the point of exposure. In predicting the transport of contaminants, the models assume the contaminant plume is at "steady state" such that concentrations throughout the plume have reached a maximum level and are steady or decreasing. The Tier 2 models are only designed to predict transport in a direct line between the source and downgradient to a receptor. In order to more reasonably define a modeled plume in all directions, paragraph "i" defines a method of decreasing modeled concentrations as a percentage of their distance in degrees from the downgradient direction.

*c. Soil vapor models.* The soil vapor models are vertical transport models and do not use modeling to predict soil contaminant transport horizontally to receptors.

*d. Soil leaching to groundwater modeling.* The soil leaching to groundwater model is a model that predicts the maximum concentrations of chemicals of concern that would be expected in groundwater due to vertical leaching from the area of maximum soil concentrations and then incorporates the groundwater transport models to predict contaminant transport through groundwater pathways.

*e. Modeling default parameters.* The Tier 2 model formulas and applicable parameters are designated in Appendix B and must be followed unless otherwise specified in these rules. Unless otherwise specified, target levels at a point of exposure may be the Tier 1 level(s) or may be determined using site-specific parameters. The target level at a point of exposure is calculated using the Tier 1 formulas in Appendix A and either site-specific measurements or the default values for those parameters identified as "optional" and "site-specific" in Appendix B.

*f. Source width.* The source width and source length are variables used in modeling and must be determined by the following criteria and as specified in the department's Tier 2 guidance. The following are not to be used as criteria for defining the extent of the contaminant plumes.

(1) Source width (equals  $S_w$  in models) for groundwater transport modeling. The sum of group one chemical (benzene, toluene, ethylbenzene, xylenes or "BTEX") concentrations for each groundwater sample is determined and the location of the sample with the maximum total BTEX is identified. Linear interpolation is used to estimate the area where groundwater concentrations would be expected to exceed 50 percent of the maximum BTEX value, and this area is considered for the source width measurement. The same procedure is used to determine source width for group two chemicals, using TEH in groundwater. The width of the groundwater contamination perpendicular to estimated groundwater flow direction ( $S_w$ ) is determined, and the larger of either group one or group two chemicals is used in the groundwater transport model.

(2) Source width ( $S_w$ ) and source length (equals  $W$  in models) for soil leaching to groundwater transport modeling. Both the source width perpendicular to the estimated groundwater flow direction ( $S_w$ ) and the source length parallel to the estimated groundwater flow direction ( $W$ ) are used in the soil leaching to groundwater model. The sum of BTEX concentrations for each soil sample is determined and the location of the sample with the maximum total BTEX is identified. Concentrations from both the vadose zone and the saturated zone must be considered when determining the maximum. Linear interpolation is used to estimate the area where soil concentrations would be expected to exceed 50 percent of the maximum BTEX value, and this area is considered for the source width and source length measurements. The same procedure is used to determine source width for group 2 chemicals, using TEH in soil. Source width and source length measurements for BTEX in groundwater are also taken following the same linear interpolation criteria in "f"(1) above. The source width value used in the model is the greatest of either the soil source width measurements or the groundwater source width measurement. The source length value used in the model is the greatest of either of the soil source length measurements or the groundwater length measurement.

(3) Estimating source width when free product is present. Groundwater from wells with free product must be analyzed for BTEX and the source width and source length are estimated using the criteria in 135.10(2)"f"(1) and 135.10(2)"f"(2) above. For those sites with approved site cleanup reports and free product present in wells but actual BTEX values are not available, source width and source length may be estimated in accordance with 135.10(2)"f"(1) and 135.10(2)"f"(2) using the

default BTEX values for groundwater in 135.18(4) or estimated by using the area representing half the distance between wells with free product and wells without free product, whichever method is greater.

*g. Modeled simulation line.* The simulation line represents the predicted maximum extent of groundwater contamination and distribution of contaminant concentrations between the source(s) and actual or potential receptor locations. The model calculates the simulation line using maximum concentrations at the source(s) and predicting the amount of dispersion and degradation. Modeled data in the simulation line are compared with actual field data to verify the predictive validity of the model and to make risk classification decisions.

*h. Modeled site-specific target level (SSTL) line.* The modeled SSTL line represents acceptable levels of contaminant concentrations at points between and including the source(s) and an applicable point(s) of exposure or other point(s) of compliance (ex. a potential receptor point of exposure). The SSTL line is calculated by assuming an applicable target level concentration at the point(s) of exposure or point(s) of compliance and modeling back to the source to determine the maximum concentrations at the source (SSTL) that must be achieved to meet the target level at the point of exposure or compliance. Comparison of field data to this SSTL line is used to determine a risk classification and determine appropriate corrective action response.

*i. Crossgradient and upgradient modeling.* In determining the SSTL line and the simulation line in directions other than downgradient, the modeled contaminant concentrations are applied to reduced distances, as specified in the "Tier 2 Guidance." The modeled results are applied to 100 percent of the distance within an angle of 30 degrees on either side of the range of downgradient directions, as specified in Tier 2 guidance. The modeled results are applied to 20 percent of the distance in the upgradient direction and directly proportional distances between these two outer limits. If the groundwater gradient is less than 0.005 or the groundwater contaminant plume shows no definitive direction or shows directional reversals, the modeled concentrations are applied to 100 percent of the distance in all directions from the source. As the downgradient velocity increases, the upgradient modeled distance is reduced to less than 20 percent of the downgradient modeled distance.

*j. Plume definition.* The purpose of plume definition at Tier 2 is to obtain sufficient data to determine the impact on actual and potential receptors, to determine and confirm the highest levels of contamination, to verify the validity of the models, and to determine groundwater flow direction. The number and location of borings and monitoring wells and the specificity of plume definition will depend on the pathway or pathways being assessed and the actual or potential receptors of concern. Unless otherwise specified, groundwater and soil contamination shall be defined to Tier 1 levels for the applicable pathways. Linear interpolation between two known concentrations must be used to delineate plume extent. Samples with no concentrations detected shall be considered one-half the detection limit for interpolation purposes.

*k. Pathway completeness.* Unless a pathway has obtained clearance under Tier 1, each pathway must be evaluated at Tier 2. Pathways are generally considered complete (unless otherwise specified) and receptors affected if actual receptors or potential receptor points of exposure exist within the modeled contaminant plume using the modeled simulation line calculated to the applicable target level at a point of exposure. If the actual contaminant plume exceeds the modeled plume, the pathway is complete and must be evaluated if actual or potential points of exposure exist within a distance extending 10 percent beyond the edge of the defined plume.

*l. Points of exposure and compliance.* For actual receptors, the point(s) of exposure is the receptor. For potential receptors, the potential receptor point(s) of exposure is determined by using actual plume definition or the modeled simulation line to determine all points which exceed the target level(s) for potential receptors. The potential receptor point(s) of exposure is the location(s) closest to the source where a receptor could reasonably exist and which is not subject to an institutional control; for example, the source is the potential receptor point of exposure if not subject to an institutional control or an adjoining property boundary line if that property is not subject to an institutional control. At Tier 2, the point(s) of exposure or potential receptor point(s) of exposure is a point of compliance unless otherwise specified. Other points of compliance are specified by rules and will generally include all points along the SSTL line for purposes of pathway and site classification and corrective action response.

*m. Group two chemicals.* At Tier 2, chemical-specific values for the four chemicals may be used or the largest of the four TEH default values. (Refer to Appendix B and department Tier 2 guidance for using the TEH conversion method for modeling.) If chemical-specific values are used, the analytical method must be approved by the department prior to its use.

**135.10(3) Bedrock assessment.**

*a. General.* As provided in 135.8(5), if bedrock is encountered before groundwater, special assessment procedures under this subrule apply. The Tier 2 assessment procedures apply to the extent they are not inconsistent with this subrule. The objectives of these special procedures are to avoid creating a preferential pathway for contamination through a confining layer to a bedrock aquifer; to avoid creating a preferential pathway to a fractured system, and to determine whether groundwater transport modeling can be used and, if not, what alternative procedures are required. The owner or operator may choose to conduct a Tier 3 assessment under 567—135.11(455B) as an alternative to proceeding under this subrule. For sites where bedrock is encountered before groundwater, there are three general categories of site conditions which determine the assessment procedures that apply:

(1) Nongranular bedrock. Nongranular bedrock is bedrock which is determined to not act as a granular aquifer as provided in subparagraph (2). Nongranular bedrock generally has some type of fractured system where groundwater transport modeling cannot be applied and which makes it difficult to define the extent of contamination.

(2) Granular bedrock. Granular bedrock is bedrock which is determined to act as a granular aquifer and for which monitoring wells do not exist at the source as of August 15, 1996. For purposes of this rule, a granular aquifer is one that shows no extraordinary variations or inconsistencies in groundwater elevations across the site, groundwater flow, hydraulic conductivities, or total dissolved solid concentrations among monitoring wells. Although the extent of contamination can be defined in granular bedrock, groundwater transport modeling cannot be used because there are no monitoring wells at the source.

(3) Exempt granular bedrock. Exempt granular bedrock is bedrock which is determined to act as a granular aquifer as provided in subparagraph (2) and for which monitoring wells exist at the source as of August 15, 1996. Sites in exempt granular bedrock shall be evaluated using the normal Tier 1 or Tier 2 procedures in this rule. Nongranular bedrock is not exempt from this subrule even if groundwater monitoring wells exist at the source.

*b. Exempt soil pathways.* The soil vapor to enclosed space pathway and the soil to plastic water lines pathway shall be assessed under the normal Tier 2 procedures in subrules 135.10(7) and 135.10(9) respectively. In all cases, the normal assessment must comply with the policy of avoiding a preferential pathway to groundwater consistent with 135.8(5) and this subrule.

*c. Soil and groundwater assessment.* The vertical and horizontal extent of soil contamination shall first be defined to Tier 1 levels for the soil leaching to groundwater pathway without drilling into bedrock. A minimum of three groundwater monitoring wells shall be located and installed between 50 to 100 feet beyond the soil contamination Tier 1 levels to avoid creating a preferential pathway. Analytical data as normally required by these rules and guidance must be obtained.

*d. Soil contamination remediation.* For all sites where soil contamination exceeds the soil leaching to groundwater Tier 1 levels, soil excavation or other active soil remediation technology must be conducted in accordance with department guidance to reduce concentrations to below this Tier 1 level. Soil remediation monitoring must be conducted in accordance with 567—135.12(455B).

*e. Groundwater plume definition.* If it is determined the groundwater acts in a manner consistent with a granular aquifer as provided in subparagraph “a”(2) and guidance but does not meet the criteria for exemption under subparagraph “a”(3), the plume must be defined. The policy of avoiding the creation of a preferential pathway to the bedrock aquifer in accordance with 135.8(5) must be followed.

*f. Soil leaching to groundwater ingestion pathway.* Under this subrule, the soil leaching to groundwater pathway only need be evaluated in combination with the groundwater ingestion pathway. Because of the policies requiring soil remediation to the soil leaching to groundwater Tier 1 levels under paragraphs “d” and “k,” the soil leaching pathway target levels applicable to other groundwater

transport pathways and other soil pathways would not be exceeded. If a soil leaching to groundwater Tier 1 level is exceeded, the pathway is high risk.

*g. Special procedures for the groundwater ingestion pathway.*

(1) A protected groundwater source is assumed without measurements of hydraulic conductivity for all sites designated as granular or nongranular bedrock.

(2) Groundwater well receptor evaluation for granular and nongranular bedrock designations. All drinking and non-drinking water wells within 1,000 feet of the source must be identified and tested for chemicals of concern. All public water supply systems within one mile of the source must be identified and raw water tested for chemicals of concern. If no drinking water wells are located within 1,000 feet of the source, all the area within 1,000 feet is considered a potential receptor point of exposure.

(3) Target levels. The following target levels apply regardless of granular aquifer designation. If drinking water wells are within 1,000 feet of the source, the applicable target level is the groundwater ingestion pathway Tier 1 level for actual receptors. If non-drinking water wells are within 1,000 feet of the source, the applicable target level is the groundwater ingestion pathway Tier 1 level for potential receptors. For potential wells, the applicable target level is the groundwater ingestion pathway Tier 1 level for potential receptors.

(4) Sentry well. If the Tier 1 level for actual receptors is exceeded at sites designated as granular bedrock and the receptor has not yet been impacted, a monitoring well shall be placed between the source and an actual receptor, outside the defined plume and approximately 200 feet from the actual receptor. For alternative well placement, the certified groundwater professional must provide justification and obtain department approval. This monitoring well is to be used for monitoring potential groundwater contamination of the receptor.

(5) High risk classification. A site where bedrock is encountered before groundwater shall be classified high risk for this pathway if any of the following conditions exist regardless of granular aquifer determination: The target level at any actual receptor is exceeded; drinking water well receptors are present within 1,000 feet and groundwater concentrations in any monitoring well exceed the groundwater ingestion Tier 1 level for actual receptors; non-drinking water wells are within 1,000 feet and groundwater concentrations in any monitoring well exceed the groundwater ingestion pathway Tier 1 level for potential receptors; or for sites designated nongranular bedrock, if groundwater concentrations for chemicals of concern from any public water system well within one mile of the source exceed 40 percent of the Tier 1 level for actual receptors, and groundwater concentrations in any monitoring well exceed the groundwater ingestion Tier 1 level for actual receptors. Corrective action shall be undertaken as provided in paragraph "k."

(6) Low risk classification. Sites without an actual receptor within 1,000 feet shall be classified as low risk for this pathway if no high risk conditions exist, and the Tier 1 level for potential receptors is exceeded. The site is subject to monitoring as provided in paragraph "l." If an actual receptor exists within 1,000 feet, a site designated as granular or nongranular bedrock shall be classified low risk for this pathway when soil contamination has been removed or remediated to below the soil leaching to groundwater Tier 1 levels, and all groundwater monitoring wells are non-detect or below the applicable target level for actual and potential receptors. A site may be reclassified to no action required for this pathway after all monitoring wells meet the exit monitoring criteria as specified in paragraph "l." (NOTE: Exit monitoring is required because groundwater monitoring wells are not located at the source or if they are, the data is highly unreliable given the nature of bedrock.) If actual receptors do not exist or have been properly plugged and concentrations exceed the Tier 1 level for potential receptors, institutional controls and notification to permitting authorities may be employed in accordance with 135.10(4) "i." The institutional control must prohibit use of groundwater for 1,000 feet.

*h. Special procedures for the groundwater vapor to enclosed space pathway.*

(1) Soil gas plume. Soil gas measurements must be taken regardless of granular aquifer determination and in accordance with Tier 2 guidance to determine a soil gas plume. Soil gas where practical should be measured at the soil-bedrock interface. At a minimum, soil gas must be measured at the suspected area of maximum contamination and near the three monitoring wells with the highest concentrations that exceed the Tier 1 level for the groundwater to enclosed space pathway. Where the

plume has been defined, soil gas measurements should be taken near wells exceeding the Tier 1 level. Other soil gas measurements must be taken as needed to define the extent of contamination where soil gas measurements exceed the soil gas vapor target levels.

(2) The soil gas target levels are those defined in 135.10(7) "f."

(3) High risk classification. A site designated as granular or nongranular bedrock shall be classified high risk for this pathway if an actual confined space receptor exists within 50 feet of the soil gas plume based on the soil gas target level as defined in 135.10(6).

(4) Low risk classification. A site designated as granular or nongranular bedrock shall be classified as low risk for this pathway if the soil gas exceeds the vapor target level at any point and no actual confined space receptors exist within 50 feet of the soil gas contaminant plume.

*i. Special procedure for the groundwater to water line pathway.*

(1) Target level. The applicable target level is the Tier 1 level for the specific type of water line.

(2) High risk classification. A site designated as granular or nongranular bedrock shall be classified high risk for this pathway if the highest groundwater elevation is higher than three feet below the bottom of a water line as provided in 135.10(8) "a"(1), risk classification cannot be determined as provided in 567—135.12(455B) due to limitations on placement of monitoring wells, and water lines exist within 200 feet of a monitoring well which exceeds the Tier 1 level.

*j. Special procedures for the surface water pathway.* Any surface water body within 200 feet of the source must be evaluated under the following for sites designated as granular or nongranular bedrock. The provisions of 135.10(10) apply to the extent they are not inconsistent with the following, including the visual inspection requirements.

(1) Point of compliance. The monitoring well closest to the surface water body must be used as the point of compliance to evaluate impacts to designated use segments as described in 135.10(10) and for general use segments that fail the visual inspection criteria of 135.10(10) "b." If the surface water criteria is exceeded for a designated use segment, an allowable discharge concentration must be calculated and met at the point of compliance. For general use segments failing the visual inspection criteria, the acutely toxic target level must be met at the point of compliance.

(2) High risk classification. A site designated as granular or nongranular bedrock shall be classified high risk for this pathway if the surface water body is within 200 feet of the source, risk classification cannot be determined as per 567—135.12(455B) due to limitations on placement of monitoring wells, and the monitoring well closest to the designated use segment exceeds the allowable discharge concentration. A general use segment failing the visual inspection criteria is high risk if, after the sheen is removed, the monitoring well closest to the general use segment exceeds the acutely toxic target level.

(3) Low risk classification. If the allowable discharge concentration is not exceeded at the point of compliance, the site shall be classified as low risk for this pathway and subject to monitoring under paragraph "l." The monitoring well closest to the receptor shall serve as the sentry well for monitoring purposes.

*k. High risk corrective action response.* Owners and operators have the option to conduct a Tier 3 assessment in accordance with 567—135.11(455B).

(1) Groundwater ingestion pathway. For high risk sites, where soil exceeds the soil leaching to groundwater Tier 1 level for actual receptors, soil excavation or other active remediation of soils must be conducted in accordance with department guidance to reduce soil concentrations below the soil leaching Tier 1 level. Corrective action other than monitoring of groundwater is required at sites designated as nongranular bedrock if the actual receptor has been or is likely to be impacted. Corrective action other than monitoring of groundwater is required at sites designated as granular bedrock if the actual receptor has been impacted or the sentry well required by 135.10(3) "g"(4) has been impacted above Tier 1 levels. Acceptable corrective action for impacted or vulnerable groundwater wells may include active remediation, technological controls, institutional controls, well plugging, relocation, and well reinstallation with construction measures sufficient to prevent contaminant infiltration to the well and to prevent formation of a preferential pathway.

(2) Groundwater ingestion pathway high risk monitoring. For high risk sites designated as nongranular or granular bedrock, if the soil concentrations do not exceed the soil leaching to groundwater Tier 1 levels or have been reduced to this level by corrective action, and corrective action of groundwater is not required as in subparagraph (1), these sites shall be subject to groundwater monitoring as provided in paragraph “l.” Corrective action other than monitoring of groundwater is required at sites designated as granular bedrock if groundwater concentrations exceed the applicable target level less than 200 feet from an actual receptor. Reevaluation of the potential for impact to actual receptors is required at sites designated as nongranular bedrock if concentrations from monitoring wells increases more than 20 percent of the previous samples.

(3) For water line pathways. For high risk sites, active remediation must be conducted to reduce concentrations below the applicable target levels, or water lines and gaskets must be replaced or relocated, including the use of institutional and technological controls. If lines are polybutylene, polyethylene, or asbestos-cement, the lines must be removed or relocated. All water lines that are replaced must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards set forth in 567—Chapter 43 and with no less than nitrile or FKM gaskets or as otherwise approved by the department.

(4) Other pathways. For high risk sites other than groundwater ingestion and water lines, active remediation must be conducted to reduce concentrations below the applicable target levels including the use of institutional and technological controls.

*l. Monitoring.* For high and low risk sites, annual monitoring at a minimum is required as specified below, and potential receptor status for low risk sites must be confirmed. Annual monitoring may be used to meet the exit requirements for no action required classification in accordance with paragraph “m.”

(1) Groundwater in nongranular bedrock designations. All groundwater monitoring wells must be monitored at least annually.

(2) Groundwater in granular bedrock designations. The following monitoring wells must be monitored at least annually: a well with detected levels of contamination closest to the leading edge of the groundwater plume between the source and the receptor, and a sentry well with concentrations below the applicable target level consistent with subparagraph “g”(4) and paragraph “j.”

(3) Soil gas. For sites where the soil gas target level is exceeded, annual monitoring of soil gas is required at the suspected area of maximum contamination and between the soil gas plume and any actual receptors within 100 feet of the soil gas plume.

*m. No action required classification.* A site may be given a no action required classification after conducting a Tier 2 assessment as provided in this subrule if maximum soil concentrations do not exceed the Tier 1 levels for the soil leaching pathway, and if groundwater exit monitoring criteria and soil gas confirmation sampling are met as specified below.

(1) Groundwater in nongranular bedrock designations. Exit monitoring requires that samples from all groundwater monitoring wells must not exceed the applicable target levels for annual sampling for three consecutive years.

(2) Groundwater in granular bedrock designations. Exit monitoring must be met in two ways: A monitoring well between the source and the receptor must not exceed applicable target levels for three sampling events, and samples must be separated by at least six months; and the three most recent consecutive groundwater samples from a monitoring well between the source and the receptor with detected levels of contamination must show a steady or declining trend and meet the following criteria: The first of the three samples must be more than detection limits, concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent of the previous sample; and samples must be separated by at least six months.

(3) Soil gas. Confirmation sampling for soil gas must be conducted as specified in 135.12(6) “c.”

*n.* After receiving a no action required classification, all monitoring wells must be properly plugged in accordance with 567—Chapters 39 and 49.

**135.10(4)** *Groundwater ingestion pathway assessment.*

*a. Pathway completeness.* Unless cleared at Tier 1, this pathway is complete and must be evaluated under any of the following conditions: (1) the first encountered groundwater is a protected groundwater source; or (2) there is a drinking water well or a non-drinking water well within the modeled groundwater plume or the actual plume as provided in 135.10(2)“j” and 135.10(2)“k.”

*b. Receptor evaluation.* All drinking and non-drinking water wells located within 100 feet of the largest actual plume (defined to the appropriate target level for the receptor type) must be tested, at a minimum, for chemicals of concern as part of the receptor evaluation. Actual plumes refer to groundwater plumes for all chemicals of concern. Untreated or raw water must be collected for analysis unless it is determined to be infeasible or impracticable.

All existing drinking water wells and non-drinking water wells within the modeled plume or the actual plume as provided in paragraph “a” must be evaluated as actual receptors. Potential receptors only exist if the groundwater is a protected groundwater source. Potential receptor points of exposure are those points within the modeled plume or actual plume that exceed the potential point of exposure target level. The point(s) of compliance for actual receptor(s) is the receptor. The point(s) of compliance for potential receptor(s) is the potential receptor point of exposure as provided in 135.10(2)“j” and 135.10(2)“k.”

*c. Target levels.* For drinking water wells, the target level at the point(s) of exposure is the Tier 1 level for actual receptors. For non-drinking water wells, the target level at the point(s) of exposure is the Tier 1 levels for potential receptors. For potential receptors, the target level at the potential receptor point(s) of exposure is the Tier 1 level for potential receptors.

*d.* The soil leaching to groundwater pathway must be evaluated in accordance with 135.9(5) if this pathway is complete.

*e. Modeling.* At Tier 2, the groundwater well located within the modeled plume is assumed to be drawing from the contaminated aquifer, and the groundwater transport model is designed to predict horizontal movement to the well. If the groundwater professional determines that assessment of the vertical movement of contamination is advisable to determine the potential or actual impact to the well source, a Tier 3 assessment of this vertical pathway may be conducted. The groundwater professional shall submit a work plan to the department specifying the assessment methods and objectives for approval in accordance with 135.11(455B). Factors which should be addressed include, but are not limited to, well depth and construction, radius of influence, hydrogeologic separation of aquifer, preferential pathways, and differing water quality characteristics.

*f. Public water supply well assessment.* Rescinded IAB 3/11/09, effective 4/15/09.

*g. Plume definition.* The groundwater plume shall be defined to the applicable Tier 1 level for actual receptors except, where there are no actual receptors and the groundwater is a protected groundwater source, the plume shall be defined to the Tier 1 level for potential receptors.

*h. Pathway classification.* This pathway shall be classified as high risk, low risk or no action required in accordance with 567—135.12(455B).

*i. Corrective action response.* Corrective action must be conducted in accordance with 567—135.12(455B). Abandonment and plugging of wells in accordance with 567—Chapters 39 and 49 is an acceptable corrective action response.

*j. Use of institutional controls.* The use of institutional controls may be used to obtain no action required pathway classification. If the pathway is complete and the concentrations exceed the applicable Tier 1 level(s) for actual receptors, the drinking or non-drinking water well must be properly plugged in accordance with 567—Chapters 39 and 49 and the institutional control must prohibit the use of a protected groundwater source (if one exists) within the actual or modeled plume as provided in 135.10(2)“j” and 135.10(2)“k.” If the Tier 1 level is exceeded for potential receptors, the institutional control must prohibit the use of a protected groundwater source within the actual or modeled plume, whichever is greater. If concentrations exceed the Tier 1 level for drinking water wells and the groundwater is a protected groundwater source, the owner or operator must provide notification of the site conditions on a department form to the department water supply section, or if a county has delegated

authority, then the designated county authority responsible for issuing private water supply construction permits or regulating non-public water well construction as provided in 567—Chapters 38 and 49.

*k. Notification of well owners.* Upon receipt of a Tier 2 site cleanup report and as soon as practicable, the department shall notify the owner of any public water supply well identified within the Tier 2 site cleanup report that a leaking underground storage tank site is within 2,500 feet and an assessment has been performed.

**135.10(5) Soil leaching to groundwater pathway assessment.**

*a. General.* The soil leaching to groundwater pathway is evaluated using a one-dimensional model which predicts vertical movement of contamination through soil to groundwater and transported by the groundwater to a receptor. The model is used to predict the maximum concentrations of chemicals of concern that would be present in groundwater beneath a source which is representative of residual soil contamination and maximum soil concentrations. The predicted groundwater concentrations then must be used as a groundwater source concentration to evaluate its impact on other groundwater transport pathways, including the groundwater ingestion pathway, the groundwater vapor pathway, the groundwater water line pathway and the surface water pathway.

*b. Pathway completeness.* This pathway is complete whenever a groundwater transport pathway is complete as provided in this rule.

*c. Plume definition.* The soil plume shall be defined to the Tier 1 levels for the soil leaching to groundwater pathway.

*d. Receptor evaluation.* Receptors for this pathway are the same as the receptors for each complete groundwater transport pathway.

*e. Modeling and target levels.* The soil and groundwater parameters shall be measured as provided in 135.10(2).

The soil leaching to groundwater model shall be used to calculate the predicted groundwater source concentration. Each applicable groundwater transport pathway model shall then be used in accordance with the rules for that pathway to predict potential impact to actual receptors, the location of potential receptor points of exposure and the site-specific target level (SSTL) in groundwater at the source. This SSTL then is used to calculate a SSTL for soil at the source. If the soil concentrations exceed the SSTL for soil, corrective action response shall be evaluated.

*f. Corrective action response.* If the maximum soil concentration at the source exceeds the SSTL for soil for actual or potential receptors, corrective action must be taken in accordance with 567—135.12(455B).

**135.10(6) Groundwater vapor to enclosed space pathway assessment.**

*a. Pathway completeness.* Unless cleared at Tier 1, this pathway is always considered complete for purposes of Tier 2.

*b. Explosive vapor survey.* If an explosive vapor survey has not been conducted as part of a Tier 1 assessment, an explosive vapor survey of enclosed spaces must be conducted during the Tier 2 assessment in accordance with 135.9(6)“b” and procedures outlined in the department’s Tier 1 guidance.

*c. Confined space receptor evaluation.* Actual and potential receptors are evaluated at Tier 2 for this pathway.

(1) Actual receptors. An existing confined space within the modeled groundwater plume or the actual groundwater plume as provided in 135.10(2)“j” and 135.10(2)“k” is an actual receptor. For the purpose of Tier 2, a confined space is a basement in a building occupied by humans. Buildings constructed with a concrete slab on grade or buildings constructed without a concrete slab, but with a crawl space are not considered confined spaces. Sanitary sewers are considered confined space receptors and preferential pathways if an occupied building exists within 200 feet of where the sewer line crosses over or through actual or modeled groundwater contamination which exceeds the target levels calculated for sewers. The sanitary sewer includes its utility envelope. The point of exposure is the receptor and points of compliance include the locations where target level measurements may be taken as provided in paragraphs “f” and “g.”

(2) Potential receptors. Potential receptors are confined spaces that do not presently exist but could exist in the future. Areas within the actual groundwater plume perimeter or modeled groundwater plume

perimeter are considered potential receptor points of exposure. Potential receptors are evaluated and target levels established based on the current zoning as provided in paragraph “f.” The potential receptor point of exposure is a point of compliance.

*d.* Owners and operators may be required to address vapor inhalation hazards in occupied spaces other than confined spaces as defined in these rules when evidence arises which would give the department a reasonable basis to believe vapor hazards are present or may occur.

*e. Plume definition.*

(1) The soil plume must be defined in accordance with 135.10(2) “f” for the purposes of estimating source width and source length used in soil leaching to groundwater and groundwater transport models.

(2) The groundwater plume must be defined to the target levels derived from site-specific data as provided in paragraph “f.”

*f. Target levels.* Target levels can be based on groundwater concentrations, soil gas measurements, and indoor vapor measurements as provided below.

(1) For actual receptors and potential receptors, groundwater modeling as provided in 135.10(2) is used to calculate the groundwater concentration target level at the point of exposure. Default residential exposure factors, default residential building parameters, and a target risk of  $10^{-4}$  are used to determine target levels for actual receptors and potential receptor points of exposure in residential areas and areas with no zoning. Default nonresidential exposure factors, default nonresidential building parameters, and a target risk of  $10^{-4}$  are used to determine target levels for actual receptors and potential receptor points of exposure in nonresidential areas. Default values are provided in Appendices A and B.

(2) For actual receptors, the indoor vapor target levels are designated in 135.10(7) “f.” For actual and potential receptors, the soil gas target levels are designated in 135.10(7) “f.”

(3) Sanitary sewers are treated as human health receptors, and groundwater concentration target levels at the point of exposure are based on the application of a target risk of  $2 \times 10^{-4}$  for carcinogens and a hazard quotient of 2 for noncarcinogens.

*g. Pathway evaluation and classification.* Upon completion of analysis of field data and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B).

(1) Actual receptors. If it can be demonstrated that the groundwater plume has reached steady state concentrations under a confined space, indoor vapor measurements at the point(s) of exposure and soil gas measurements at an alternative point(s) of compliance may be used for the pathway evaluation. When assessing sanitary sewers for pathway clearance, soil gas measurements may be evaluated against the soil gas target levels; however, indoor vapor cannot be used as criteria for pathway clearance. Soil gas measurements shall be taken and analyzed in accordance with 135.16(5) and the department’s Tier 2 guidance, and at locations in the plume where measured groundwater concentrations exceed the levels which are projected by modeling to exist beneath the actual receptor. If measured groundwater concentrations beneath the actual receptor exceed the levels projected from modeling, then the soil gas measurements may be taken either adjacent to the actual receptor in areas expected to exhibit the greatest soil gas measurements or at an alternative point of compliance between the source and receptor where the actual groundwater concentrations exceed the groundwater concentrations which exist beneath the confined space. If the soil gas measurements and confirmation samples taken in accordance with 135.12(6) “c” do not exceed the soil gas target levels, the pathway as to actual receptors shall be classified no action required. If the soil gas target levels are exceeded, either the pathway shall be classified high risk, or indoor vapor measurements may be taken in accordance with the department’s Tier 2 guidance. If indoor vapor measurements and confirmation samples do not exceed the indoor vapor target levels, the pathway as to actual confined space receptors shall be classified no action required. If the Tier 1 indoor vapor target levels are exceeded, the pathway shall be classified high risk.

(2) Potential receptors. If the potential receptor groundwater concentration target level(s) is exceeded at any potential receptor point of exposure based on actual data or modeling, the pathway shall be classified low risk. However, if soil gas measurements taken at the potential receptor point(s) of exposure and alternate point(s) of compliance and confirmation samples do not exceed the target levels in 135.10(7) “f,” the pathway, as to potential receptors, shall be classified no action required. If

the target level(s) for potential sanitary sewer receptors is exceeded, the pathway shall be classified as low risk. Where the area of potential receptor exposure includes public right-of-way, the pathway may be classified as no action required if the owner or operator provides sufficient documentation to establish that there are no foreseeable plans for construction of sanitary sewers through the area of potential receptor exposure. The municipal authority must acknowledge consent to the no action required classification whenever target levels are exceeded. If the municipal authority reports that it has confirmed plans for construction of sanitary sewers through the area of potential receptor exposure, the pathway shall be reevaluated as an actual receptor.

*h. Corrective action response.* Unless the pathway is classified as no action required, corrective action for this pathway must be conducted as provided in 567—135.12(455B). Actual receptors are subject to corrective actions which: (1) reduce groundwater concentrations beneath the enclosed space to below the target level; (2) reduce the measured soil gas levels to below the soil gas target levels; (3) reduce the indoor vapor concentrations to below the indoor vapor target level; or (4) reduce the vapor level to below 10 percent of the lower explosive limit (LEL), if applicable. Potential receptors are subject to the monitoring requirements in 135.12(5). Soil vapor monitoring may be conducted in lieu of groundwater monitoring for this pathway. Institutional or technological controls as provided in 567—135.12(455B) may be used.

*i. Municipal authority notification for potential sewer receptors.* The municipal authority responsible for sewer construction must be notified of the environmental conditions whenever target level(s) is exceeded for potential sanitary sewers. The notification must show the area where groundwater concentrations and soil gas samples exceed target levels. The owner or operator must acknowledge what plans, if any, exist for construction of sanitary sewers through the area of potential receptor exposure.

**135.10(7) Soil vapor to enclosed space pathway assessment.**

*a. Pathway completeness.* Unless cleared at Tier 1, this pathway is always considered complete for purposes of Tier 2.

*b. Explosive vapor survey.* If an explosive vapor survey has not been conducted as part of a Tier 1 assessment, an explosive vapor survey of enclosed spaces must be conducted during the Tier 2 assessment in accordance with 135.9(6)“b” and procedures outlined in the department’s Tier 1 guidance.

*c. Confined space receptor evaluation.* Actual and potential receptors are evaluated at Tier 2 for this pathway.

(1) Actual receptors. An existing confined space within 50 feet of the edge of the plume is an actual receptor. For the purpose of Tier 2, a confined space is a basement in a building occupied by humans. Buildings constructed with a concrete slab on grade or buildings constructed without a concrete slab, but with a crawl space are not considered receptors. Sanitary sewers are considered confined space receptors and preferential pathways if an occupied building exists within 200 feet of where the sewer line crosses over or through soil contamination which exceeds the target levels calculated for sewers. The sanitary sewer includes its utility envelope. The point of exposure is the receptor and points of compliance include the locations where target level measurements may be taken as provided in paragraphs “f” and “g.”

(2) Potential receptors. Potential receptors are confined spaces that do not presently exist but could exist in the future. Areas where soil concentrations are greater than the Tier 1 level applicable to residential areas or alternative target levels for nonresidential areas as specified in paragraph “f” are considered potential receptor points of exposure. Potential receptors are evaluated and target levels established based on the current zoning. An area with no zoning is considered residential. The potential receptor point of exposure is a point of compliance.

*d. Owners and operators may be required to address vapor inhalation hazards in occupied spaces other than confined spaces as defined in these rules when evidence arises which would give the department a reasonable basis to believe vapor hazards are present or may occur.*

*e. Plume definition.* The soil plume must be defined to the Tier 1 level for this pathway unless vapor measurements taken at the area(s) with the maximum levels of soil contamination do not exceed the soil gas target level in 135.10(7)“f.” If soil gas measurements taken from the area(s) of maximum

soil concentration do not exceed target levels, confirmation sampling must be conducted in accordance with 135.12(6) “c” prior to proposing a no action pathway classification.

*f. Target levels.* Target levels can be based on soil concentrations, soil gas measurements, and indoor vapor measurements as provided below:

(1) For actual receptors, the soil concentration target level is the Tier 1 level. For potential receptors, the soil concentration target level for residential areas and areas with no zoning is the Tier 1 level. For areas zoned nonresidential, the target level is calculated using the default nonresidential exposure factors and building parameters from Appendix A and a target risk of  $10^{-4}$ .

(2) The following indoor vapor target levels apply to actual receptors other than sanitary sewers and the soil gas target levels apply to all actual and potential receptors. These levels were derived from the ASTM indoor air inhalation and the soil vapor to enclosed space models designated in Appendix A.

	<b>Indoor Vapor (<math>\mu\text{g}/\text{m}^3_{\text{air}}</math>)</b>	<b>Soil Gas (<math>\mu\text{g}/\text{m}^3</math>)</b>
Benzene	39.2	600,000
Toluene	555	9,250,000

(3) Sanitary sewers are treated as human health receptors, and soil concentration target levels at the point of exposure are based on application of a target risk of  $2 \times 10^{-4}$  for carcinogens and hazard quotient of 2 for noncarcinogens.

*g. Pathway evaluation and classification.*

(1) Actual receptors. Confined space receptors may be evaluated using soil gas measurements and indoor vapor measurements. When assessing sanitary sewers for pathway clearance, soil gas measurements may be evaluated against the soil gas target levels, however, indoor vapor cannot be used as criteria for pathway clearance. Soil gas measurements shall be taken adjacent to the actual receptor or at an alternative point of compliance between the source and receptor such as the property boundary, and in accordance with 135.16(5) and the department’s Tier 2 guidance. If the soil gas measurements and confirmation samples taken in accordance with 135.12(6) “c” do not exceed the soil gas target levels, the pathway as to actual receptors shall be classified no action required. If the soil gas target levels are exceeded, either the pathway shall be classified high risk, or indoor vapor measurements may be taken in accordance with the department’s Tier 2 guidance. If indoor vapor measurements and confirmation samples do not exceed the indoor vapor target levels, the pathway as to actual receptors shall be classified no action required. If the indoor vapor target levels are exceeded, the pathway shall be classified high risk.

(2) Potential receptors. If the potential receptor target level(s) based on soil concentrations is exceeded at any potential receptor point of exposure, the pathway shall be classified low risk. However, if soil gas measurements taken at the potential receptor point(s) of exposure and alternate point(s) of compliance and confirmation samples do not exceed the target levels in paragraph “f,” the pathway shall be classified no action required as to potential receptors. If the target level(s) for potential sanitary sewer receptors is exceeded, the pathway shall be classified as low risk. Where the area of potential receptor exposure includes public right-of-way, the pathway may be classified as no action required if the owner or operator provides sufficient documentation to establish that there are no foreseeable plans for construction of sanitary sewers through the area of potential receptor exposure. The municipal authority must acknowledge consent to the no action required classification whenever target levels are exceeded. If the municipal authority reports that it has confirmed plans for construction of sanitary sewers through the area of potential receptor exposure, the pathway shall be reevaluated as an actual receptor.

*h. Corrective action response.* Unless the pathway is classified as no action required, corrective action for this pathway must be conducted as provided in 567—135.12(455B) and in accordance with department Tier 2 guidance. Actual receptors are subject to corrective actions which: (1) reduce the indoor vapor concentrations to below the target level; (2) reduce measured soil gas levels to below the soil gas target levels; and (3) if applicable, reduce the vapor level to below 10 percent of the

lower explosive limit (LEL). Potential receptors are subject to monitoring requirements as provided in 135.12(5). Soil vapor monitoring may be conducted in lieu of soil monitoring for this pathway. Institutional or technological controls as provided in 567—135.12(455B) may be used.

*i. Municipal authority notification for potential sewer receptors.* The municipal authority responsible for sewer construction must be notified of the environmental conditions whenever target level(s) is exceeded for potential sanitary sewers. The notification must show the area where soil concentrations and soil gas samples exceed target levels. The owner or operator must acknowledge what plans, if any, exist for construction of sanitary sewers through the area of potential receptor exposure.

**135.10(8) Groundwater to water line pathway assessment.**

*a. Pathway completeness and receptor evaluation.*

(1) Actual receptors include all water lines where the highest groundwater elevation is higher than three feet below the bottom of the water line at the measured or predicted points of exposure. The highest groundwater elevation is the estimated average of the highest measured groundwater elevations for each year. All water lines must be evaluated for this pathway regardless of distance from the source and regardless of the Tier 1 evaluation, if the lines are in areas with actual data above the applicable Tier 1 level and modeled data above the SSTL line. If actual data exceeds modeled data, then all water lines are considered actual receptors if they are within a distance extending 10 percent beyond the edge of the contaminant plume defined by the actual data.

(2) Potential receptors include all areas where the first encountered groundwater is less than 20 feet deep and where actual data or modeled data are above Tier 1 levels.

(3) The point(s) of exposure is the water line, and the points of compliance are monitoring wells between the source and the water line which would be effective in monitoring whether the line has been or may be impacted by chemicals of concern.

*b. Plume definition.* If this pathway is complete for an actual receptor, the groundwater plume must be defined to the Tier 1 levels, with an emphasis between the source and any actual water lines. The water inside the water lines shall be analyzed for all chemicals of concern.

*c. Target levels.* Groundwater modeling as provided in 135.10(2) must be used to calculate the projected concentrations of chemicals of concern and site-specific target levels. The soil leaching to groundwater pathway must be evaluated to ensure contaminated soil will not cause future groundwater concentrations to exceed site-specific target levels. The target level at the point(s) of exposure is the Tier 1 level.

*d. Pathway classification.* Upon completion of analysis of field data and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B). The water quality inside the water lines is not a criterion for clearance of this pathway.

*e. Utility company notification.* The utility company which supplies water service to the area must be notified of all actual and potential water line impacts as soon as knowledge of a potential risk is determined. If the extent of contamination has been defined, this information must be included in utility company notification, and any previous notification made at Tier 1 must be amended to include this information.

*f. Corrective action response.*

(1) For actual receptors, unless the pathway is classified as no further action, corrective action for this pathway must be conducted as provided in 567—135.12(455B). If the concentrations of chemicals of concern in a water line exceed the Tier 1 levels for actual receptors for the groundwater ingestion pathway, immediate corrective action must be conducted to eliminate exposure to the water, including but not limited to replacement of the line with an approved material.

(2) For potential receptors, upon utility company notification, no further action will be required for this pathway for potential receptors.

**135.10(9) Soil to water line pathway assessment.**

*a. Pathway completeness and receptor evaluation.*

(1) Actual receptors include all water lines within ten feet of the soil plume defined to the Tier 1 level. All water lines must be evaluated for this pathway regardless of distance from the source if the lines are in areas where Tier 1 levels are exceeded.

(2) Potential receptors include all areas where Tier 1 levels are exceeded.

*b. Plume definition.* The extent of soil contamination must be defined to Tier 1 levels for the chemicals of concern.

*c. Target level.* The point(s) of exposure includes all areas within ten feet of the water line. The target level at the point(s) of exposure is the Tier 1 level.

*d. Pathway classification.* Upon completion of analysis of field data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B). Measurements of water quality inside the water lines may be required, but are not allowed as criteria to clear this pathway.

*e. Utility company notification.* The utility company which supplies water service to the area must be notified of all actual and potential water line impacts as soon as knowledge of the potential risk is determined. If the extent of contamination has been defined, this information must be included in utility company notification, and any previous notification made at Tier 1 must be amended to include this information.

*f. Corrective action response.*

(1) For actual receptors, unless the pathway is classified as no further action, corrective action for this pathway must be conducted as provided in 567—135.12(455B).

(2) For potential receptors, upon utility company notification, no further action will be required for this pathway for potential receptors.

**135.10(10) Surface water pathway assessment.**

*a. Pathway completeness.* Unless maximum concentrations are less than the applicable Tier 1 levels, this pathway is complete and must be evaluated under any of the following conditions: (1) there is a designated use surface water within the modeled groundwater plume or the actual plume as provided in 135.10(2)“*f*” and 135.10(2)“*g*”; or (2) any surface water body which failed the Tier 1 visual inspection as provided in 135.9(10).

*b. Visual inspection.* A visual inspection must be conducted according to 135.9(10)“*c*.” If a sheen or residue from a petroleum-regulated substance is present, soil and groundwater sampling must be conducted to identify the source of the release and to define the extent of the contaminant plume to the levels acutely toxic to aquatic life as provided in 567—subrule 61.3(2).

*c. Receptor evaluation.*

(1) Surface water criteria apply only to designated use segments of surface water bodies as provided in 567—subrules 61.3(1) and 61.3(5). If the surface water body is a designated use segment and if maximum groundwater concentrations exceed applicable surface water criteria, the extent of contamination must be defined as provided in paragraph “*d*.” The point of compliance for measuring chemicals of concern at the point of exposure is the groundwater adjacent to the surface water body because surface water must be protected for low flow conditions. In-stream measurements of concentrations are not allowed as a basis for no further action.

(2) If the visual inspection indicates the presence of a petroleum sheen in a general use segment within 200 feet of the source, as defined in 567—paragraph 61.3(1)“*a*,” the segment must be evaluated as an actual receptor. The point of compliance for measuring chemicals of concern at the point of exposure is the groundwater adjacent to the general use segment.

*d. Plume definition.* The groundwater plume must be defined to the surface water criteria levels for designated use segment receptors and to the acutely toxic levels for general use segment receptors, with an emphasis between the source and the surface water body.

*e. Target levels.* Determining target levels for this pathway involves a two-step process.

(1) Groundwater modeling as provided in 135.10(2) must be used to calculate the projected concentrations of chemicals of concern at the point of compliance. If the modeled concentrations or field data at the point of compliance exceed surface water criteria for designated use segments, an allowable discharge concentration must be calculated. If the projected concentrations and field data at the point of compliance do not exceed surface water criteria, no further action is required to assess this pathway.

(2) The department water quality section will calculate the allowable discharge concentration using information provided by the certified groundwater professional on a department form. Required information includes, at a minimum, the site location and a discharge flow rate calculated according to

the department's Tier 2 guidance. The allowable discharge concentration is the target level which must be met adjacent to the surface water body which is the point of compliance.

(3) The target level at the point of exposure/compliance for general use segments subject to evaluation is the acutely toxic levels established by the department under 567—Chapter 61 and 567—subrule 62.8(2). If the modeled concentrations of field data at the point of exposure/compliance exceed the acutely toxic levels, modeling must be used to determine site classifications and corrective action in accordance with 567—135.12(455B).

*f. Pathway classification.* Upon completion of analysis of field data and modeled data, the pathway must be classified high risk, low risk or no further action as provided in 567—135.12(455B).

(1) For general use segments, as defined in 567—subrule 61.3(1), if the groundwater professional determines there is no sheen or residue present or if the site is not the source of the sheen or residue or if the sheen does not consist of petroleum-regulated substances, no further action is required for assessment of this pathway. If a petroleum-regulated substance sheen is present, the pathway is high risk and subject to classification in accordance with 567—135.12(455B).

(2) For designated use segments, as provided in 567—subrules 61.3(1) and 61.3(5), if projected concentrations of chemicals of concern and field data at the point of compliance do not exceed the target level adjacent to the surface water, and the groundwater professional determines there is no sheen or residue present, no further action is required for assessment of this pathway.

*g. Corrective action response.* Unless the pathway is classified as no further action, corrective action for this pathway must be conducted as provided in 567—135.12(455B). For surface water bodies failing the visual inspection criteria, corrective action must eliminate the sheen and reduce concentrations to below the site specific target level in accordance with 567—135.12(455B).

**135.10(11) Tier 2 submission and review procedures.**

*a.* Owners and operators must submit a Tier 2 site cleanup report within 180 days of the date the department approves or is deemed to approve a Tier 1 assessment report under 135.9(12). If the owner or operator has elected to conduct a Tier 2 assessment instead of a Tier 1, or a Tier 2 assessment is required due to the presence of free product under 135.7(5), the Tier 2 site cleanup report must be submitted within 180 days of the date the release was confirmed. The department may establish an alternative schedule for submittal.

*b.* Site cleanup report completeness and accuracy. A Tier 2 site cleanup report is considered to be complete if it contains all the information and data required by this rule and the department's Tier 2 guidance. The report is considered accurate if the information and data are reasonably reliable based first on the standards in these rules and department guidance, and second, on generally accepted industry standards.

*c.* The certified groundwater professional responsible for completion of the Tier 2 site assessment and preparation of the report must accompany each Tier 2 site cleanup report with a certification as set out below:

I, \_\_\_\_\_, groundwater professional certification number \_\_\_\_\_, am familiar with all applicable requirements of Iowa Code section 455B.474 and all rules and procedures adopted thereunder including, but not limited to, the Department of Natural Resources' Tier 2 guidance. Based on my knowledge of those documents and the information I have prepared and reviewed regarding this site, UST registration number \_\_\_\_\_, LUST No. \_\_\_\_\_, I certify that this document is complete and accurate as provided in 135.10(11) and meets the applicable requirements of the Tier 2 site cleanup report.

Signature

Date

*d.* Upon receipt of the groundwater professional's certified Tier 2 report, the groundwater professional's proposed site classification for the site shall be determinative unless, within 90 days of receipt, the department identifies material information in the report that is inaccurate or incomplete. Material information may be data found to be inaccurate or incomplete or a report that lacks information which, if accurate and complete, would result in a different site or pathway classification than proposed by the certified groundwater professional. If the department determines that the site cleanup

report is inaccurate or incomplete, the department shall notify the groundwater professional of the inaccurate or incomplete information within 90 days of receipt of the report and shall work with the groundwater professional and the party responsible for cleanup to obtain correct information or additional information necessary to appropriately classify the site. If the groundwater professional recommends proceeding to Tier 3, the groundwater professional's site classification and any pathway classification recommendations subject to or influenced by a Tier 3 assessment shall not be considered determinative until the Tier 3 report is submitted for review as provided in 567—135.11(455B).

*e.* If a “no action required” site classification is proposed, the department shall review the report in accordance with 135.12(6) and the review standards in paragraph 135.10(11)“d.”

*f.* From July 1, 2010, through June 30, 2011, the department shall have 120 days rather than 90 days as provided in paragraph 135.10(11)“d” to review and respond to the report.

*g.* The department may, in the interest of minimizing environmental or public health risks and promoting a more effective cleanup, require owners and operators to begin cleanup of soil and groundwater before the Tier 2 site cleanup report is approved.

*h.* *Review of the public water supply receptor risk assessment.* Rescinded IAB 3/11/09, effective 4/15/09.

[ARC 7621B, IAB 3/11/09, effective 4/15/09; ARC 9011B, IAB 8/25/10, effective 9/29/10; ARC 9331B, IAB 1/12/11, effective 2/16/11]

### **567—135.11(455B) Tier 3 site assessment policy and procedure.**

**135.11(1) General.** Tier 3 site assessment. Unless specifically limited by rule or an imminent hazard exists, an owner or operator may choose to prepare a Tier 3 site assessment as an alternative to completion of a Tier 2 assessment under 567—135.10(455B) or as an alternative to completion of a corrective action design report under 567—135.12(455B). Prior to conducting a Tier 3 site assessment, a groundwater professional must submit a work plan to the department for approval. The work plan must contain an evaluation of the specific site conditions which justify the use of a Tier 3 assessment, an outline of the proposed Tier 3 assessment procedures and reporting format and a method for determining a risk classification consistent with the policies underlying the risk classification system in 567—135.12(455B). Upon approval, the groundwater professional may implement the assessment plan and submit a report within a reasonable time designated by the department.

**135.11(2) Tier 3 site assessment.** A Tier 3 assessment may include but is not limited to the use of more site-specific or multidimensional models and assessment data, methods for calibrating Tier 2 models to make them more predictive of actual site conditions, and more extensive assessment of receptor construction and vulnerability to contaminant impacts. If use of Tier 2 models is proposed with substitution of other site-specific data (as opposed to the Tier 2 default parameters), the groundwater professional must adequately justify how site-specific data is to be measured and why it is necessary. The groundwater professional must demonstrate that the proposal has a proven applicability to underground storage tank sites or similar conditions or has a strong theoretical basis for applicability and is not biased toward underestimating assessment results. The Tier 3 assessment report shall make a recommendation for site classification as high risk, low risk or no action required, at least two corrective action response technologies and provide justification consistent with the standards and policies underlying risk classification and corrective action response under 567—135.12(455B) and Iowa Code chapter 455B, Division 4, Part 8.

**135.11(3) Review and submittal.** The department will review the Tier 3 assessment for compliance with the terms of the approved work plan and based on principles consistent with these rules and Iowa Code chapter 455B, Division IV, Part 8. Upon approval of the Tier 3 assessment, the department may require corrective action in accordance with 567—135.12(455B).

### **567—135.12(455B) Tier 2 and 3 site classification and corrective action response.**

**135.12(1) General.** 1995 Iowa Code section 455B.474(1)“d”(2) provides that sites shall be classified as high risk, low risk and no action required. Risk classification is accomplished by comparing actual field data to the concentrations that are predicted by the use of models. Field data must be compared to the simulation model which uses the maximum concentrations at a source and predicts

at what levels actual or potential receptors could be impacted in the future. Field data must also be compared to the site-specific target level line which assumes a target level concentration at the point of exposure and is used to predict the reduction in concentration that must be achieved at the source in order to meet the applicable target level at the point of exposure. These models not only predict concentrations at points of exposure or a point of compliance at a source but also predict a distribution of concentrations between the source and the point of exposure which may also be points of compliance. The comparison of field data with these distribution curves primarily is considered for purposes of judging whether the modeled data is reasonably predictive and what measures such as monitoring are prudent to determine the reliability of modeled data and actual field data.

For the soil vapor to enclosed space and soil to water line pathways, there are no horizontal transport models to use for predicting future impacts. Therefore, for these pathways, sites are classified as high risk, low risk or no action required based on specified criteria below and in 567—135.10(455B).

**135.12(2) High risk classification.** Except as provided below, sites shall be classified as high risk if, for any pathway, any actual field data exceeds the site-specific target level line at any point for an actual receptor.

*a.* For the soil vapor to enclosed space and soil to water line pathways, sites shall be classified as high risk if the target levels for actual receptors are exceeded as provided in 135.10(7) and 135.10(9).

*b.* For the soil vapor or groundwater vapor to enclosed space pathways, sites shall be classified as high risk if the explosivity levels at applicable points of compliance are exceeded as provided in 135.10(6) and 135.10(7).

*c.* Generally, sites are classified as low risk if only potential receptor points of compliance are exceeded. The following is an exception. For the soil leaching to groundwater ingestion pathway for potential receptor conditions, the site shall be classified as high risk if the groundwater concentration(s) exceeds the groundwater Tier 1 level for potential receptor and the soil concentration exceeds the soil leaching site-specific target level at the source.

**135.12(3) High risk corrective action response.**

*a.* Objectives. The primary objectives of corrective action in response to a high risk classification are both short- term and long-term. The short-term goal is to eliminate or reduce the risk of exposure at actual receptors which have been or are imminently threatened with exposure above target levels. The longer term goal is to prevent exposure to actual receptors which are not currently impacted or are not imminently threatened with exposure. To achieve these objectives, it is the intent of these rules that concentrations of applicable chemicals of concern be reduced by active remediation to levels below the site-specific target level line at all points between the source(s) and the point(s) of exposure as well as to undertake such interim corrective action as necessary to eliminate or prevent exposure until concentrations below the SSTL line are achieved. If it is shown that concentrations at all applicable points have been reduced to below the SSTL line, the secondary objective is to establish that the field data can be reasonably relied upon to predict future conditions at points of exposure rather than reliance on the modeled data. Reliance on field data is achieved by establishing through monitoring that concentrations within the contaminant plume are steady or declining. Use of institutional control and technological controls may be used to sever pathways or control the risk of receptor impacts.

*b.* For the groundwater to water line and soil to water line receptors, these objectives are achieved by active remediation, replacement or relocation of water line receptors from areas within the actual plume plus some added site-specific distance to provide a safety factor to areas outside the site-specific target level line. In areas of free product, all water lines regardless of construction material must be relocated unless there is no other option and the department has approved an alternate plan of construction. If water lines and gaskets are replaced in an area of contamination, they must be replaced with water line materials and gasket materials of appropriate construction in accordance with current department standards set forth in 567—Chapter 43 and with no less than nitrile or FKM gaskets or as otherwise approved by the department. If a service line is replaced and remains in a contaminated area, a backflow preventer shall be installed to prevent impacts to the larger water distribution system.

*c.* For the soil vapor pathway, these objectives are achieved by active remediation of soil contamination below the target level at the point(s) of exposure or other designated point(s) of

compliance using the same measurement methods for receptor evaluation under 135.10(7) and 135.10(9).

*d.* For a site classified as high risk or reclassified as high risk for the soil leaching to groundwater ingestion pathway, these objectives are achieved by active remediation of soil contamination to reduce the soil concentration to below the site-specific target level at the source.

*e.* A corrective action design report (CADR) must be submitted by a certified groundwater professional for all high risk sites unless the terms of a corrective action plan are formalized in a memorandum of agreement within a reasonable time frame specified by the department. The CADR must be submitted on a form provided by the department and in accordance with department CADR guidance within 60 days of site classification approval as provided in 135.10(11). The CADR must identify at least two principally applicable corrective action options designed to meet the objectives in 135.12(3), an outline of the projected timetable and critical performance benchmarks, and a specific monitoring proposal designed to verify its effectiveness and must provide sufficient supporting documentation consistent with industry standards that the technology is effective to accomplish site-specific objectives. The CADR must contain an analysis of its cost-effectiveness in relation to other options. The department will review the CADR in accordance with 135.12(9).

*f. Interim monitoring.* From the time a Tier 2 site cleanup report is submitted and until the department determines a site is classified as no action required, interim monitoring is required at least annually for all sites classified as high risk. Groundwater samples must be taken: (1) from a monitoring well at the maximum source concentration; (2) from a transition well, meaning a monitoring well with detected levels of contamination closest to the leading edge of the groundwater plume as defined to the pathway-specific target level, and between the source(s) and the point(s) of exposure; and (3) from a guard well, meaning a monitoring well between the source(s) and the point(s) of exposure with concentrations below the SSTL line. If a receptor is located within an actual plume contoured to the applicable target level for that receptor, the point of exposure must be monitored. If concentrations at the receptor already exceed the applicable target level for that receptor, corrective actions must be implemented as soon as practicable. Monitoring conducted as part of remediation or as a condition of establishing a no action required classification may be used to the extent it meets these criteria. Soil monitoring is required at least annually for all applicable pathways in accordance with 135.12(5) "d." All drinking water wells and non-drinking water wells within 100 feet of the largest actual plume (defined to the appropriate target level for the receptor type) must be tested annually for chemicals of concern. Actual plumes refer to groundwater plumes for all chemicals of concern.

*g.* Remediation monitoring. Remediation monitoring during operation of a remediation system is required at least four times each year to evaluate effectiveness of the system. A remediation monitoring schedule and plan must be specified in the corrective action design report and approved by the department.

*h.* Technological controls. The purpose of a technological control is to effectively sever a pathway by use of technologies such that an applicable receptor could not be exposed to chemicals of concern above an applicable target risk level. Technological controls are an acceptable corrective action response either alone or in combination with other remediation systems. The purpose of technological controls may be to control plume migration through use of containment technologies, barriers, etc., both as an interim or permanent corrective action response or to permanently sever a pathway to a receptor. Controls may also be appropriate to treat or control contamination at the point of exposure. Any technological control proposed as a permanent corrective action option without meeting the reduction in contaminant concentrations objectives must establish that the pathway to a receptor will be permanently severed or controlled. The effectiveness of a technological control must be monitored under a department approved plan until concentrations fall below the site-specific target level line or its effectiveness as a permanent response is established, and no adverse effects are created.

*i.* Following completion of corrective action, the site must meet exit monitoring criteria to be reclassified as no action required as specified in 135.12(6) "c." At any point where an institutional or technological control is implemented and approved by the department, the site may be reclassified as no action required consistent with 135.12(6).

**135.12(4) *Low risk classification.*** A site shall be classified as low risk if none of the pathways are high risk and if any of the pathways are low risk. A pathway shall be classified low risk if it meets one of the following conditions:

*a.* For actual and potential receptors, if the modeled data and the actual field data are less than the site-specific target level line, and any of the field data is greater than the simulation line.

*b.* For potential receptors, if any actual field data exceeds the site-specific target level line at any point.

*c.* For the soil leaching to groundwater ingestion pathway where modeling predicts that the Tier 1 levels for potential receptors would be exceeded in groundwater at applicable potential receptor points of compliance and the soil concentration exceeds the soil leaching to groundwater site-specific target level but groundwater concentrations are currently below the Tier 1 level for potential receptors, the site shall be initially classified as low risk and subject to monitoring under 135.12(5) "d"(2). If at any time during the three-year monitoring period, groundwater concentrations exceed the Tier 1 level for potential receptors, the site shall be classified as high risk requiring soil remediation in accordance with 135.12(3) "c."

**135.12(5) *Low risk corrective action response.***

*a.* Purpose. For sites or pathways classified as low risk, the purpose of monitoring is to determine if concentrations are decreasing such that reclassification to no action required may be appropriate or if the contaminant plume is stable such that reclassification to no action required can be achieved with implementation of an institutional control in accordance with 135.12(8), or if concentrations are increasing above the site-specific target level line such that reclassification to high risk is appropriate. Monitoring is necessary to evaluate impacts to actual receptors and assess the continued status of potential receptor conditions. Low risk monitoring shall be conducted and reported by a certified groundwater professional.

*b.* For sites or pathways classified as low risk, provide a best management practices plan. The plan must include maintenance procedures, schedule of activities, prohibition of practices, and other management practices, or a combination thereof, which, after problem assessment, are determined to be the most effective means of monitoring and preventing additional contamination of the groundwater and soil. The plan will also contain a contamination monitoring proposal containing sufficient sampling points to ensure the detection of any significant movement of or increase in contaminant concentration.

*c.* Groundwater monitoring. For groundwater pathways, samples must be taken at a minimum of once per year: (1) from a monitoring well at the maximum source concentration; (2) a transitional well meaning a well with detected levels of contamination closest to the leading edge of the groundwater plume as defined to the pathway-specific target level and between the source and the receptor; and (3) a guard well meaning a monitoring well between the source and the point of exposure with concentrations below the SSTL line. (NOTE: Monitoring under this provision may be used to satisfy exit monitoring if it otherwise meets the criteria in 135.12(6).)

*d.* Soil monitoring.

(1) For the soil vapor to enclosed space pathway potential receptors, soil gas samples must be taken at a minimum of once per year in the area(s) of expected maximum vapor concentrations where an institutional control is not in place.

(2) For the soil leaching to groundwater pathway potential receptors, annual groundwater monitoring is required for a minimum of three years as provided in "c" above. If groundwater concentrations are below the applicable SSTL line for all three years, no further action is required. If groundwater concentrations exceed the applicable SSTL line in any of the three years, corrective action is required to reduce soil concentrations to below the Tier 1 levels for soil leaching to groundwater. Therefore, annual monitoring of soil is not applicable.

(3) For the soil to water line pathway potential receptors, notification of the utility company is required. Notification will result in reclassification to no action required. Therefore, annual monitoring of soil is not applicable.

*e.* Receptors must be evaluated at least annually to ensure no actual or modeled data are above the site-specific target level line for any actual receptors. Potential receptor areas of concern must be

evaluated at least annually and the presence of no actual receptors confirmed. If actual receptors are present or reasonably expected to be brought into existence, the owner or operator must report this fact to the department as soon as practicable. Annual monitoring which also meets the exit criteria under 135.12(6) may be used for that purpose.

*f.* The site or pathway must meet exit monitoring criteria to be reclassified as no action required as specified in 135.12(6) “*b.*” If concentrations for actual receptors increase above the site-specific target level line or potential receptor status changes to actual receptor status, the site must be reclassified as high risk and further corrective action required in accordance with 135.12(3).

**135.12(6) *No action required classification.*** A site shall be classified as no action required if all of the pathways are classified as no action required as provided below:

*a.* Soil pathways shall be classified as no action required if samples are less than the applicable target levels as defined for each pathway and confirmational sampling requirements have been met.

*b.* For initial classification, groundwater pathways shall be classified as no action required if the field data is below the site-specific target level line and all field data is at or less than the simulation line, and confirmation monitoring has been completed successfully. Confirmation sampling for groundwater is a second sample which confirms the no action required criteria.

*c.* A groundwater pathway shall be reclassified from high risk to no action required if all field data is below the site-specific target level and if exit monitoring criteria have been met. Exit monitoring criteria means that the three most recent consecutive groundwater samples from all monitoring wells must show a steady or declining trend and the most recent samples are below the site-specific target level. Other criteria include the following: The first of the three samples for the source well and transition well must be more than detection limits; concentrations cannot increase more than 20 percent from the first of the three samples to the third sample; concentrations cannot increase more than 20 percent of the previous sample; and samples must be separated by at least six months.

*d.* A low risk site shall be reclassified as “no action required” if field data is below the site-specific target level and if exit monitoring criteria have been met pursuant to 135.12(6) “*c.*” or if the site has maintained less than the applicable target level for four consecutive sampling events separated by at least six months as defined in the monitoring plan regardless of exit monitoring criteria and guidance.

*e.* Confirmation sampling for soil gas and indoor vapor. For the enclosed space pathways, confirmation sampling is required to reasonably establish that the soil gas and indoor vapor samples represent the highest expected levels. A groundwater professional must obtain two samples taken at least two weeks apart. One of the samples must be taken during a seasonal period of lowest groundwater elevation and soil gas samples must be taken below the frost line.

*f.* As a condition of obtaining site classification as no action required, all groundwater monitoring wells must be properly plugged in accordance with 567—Chapters 39 and 49 unless the department requires selected wells to be maintained or a written request with justification and a plan for properly maintaining the wells are submitted to the department for approval. Approval to maintain wells shall be deemed granted if not disapproved with reason within 30 days of request.

*g.* Prior to acceptance of a request to classify the site as no action required, and in the event there is a question of validity of the data or sampling methods, laboratory analysis procedures, indication of plume movement, or the department obtains information about new conditions at the site, the department may conduct or require the owner to conduct confirmation sampling of the soil, groundwater, soil gas, or indoor vapor to confirm that the no action required criteria have been met.

*h.* The department may waive, at its discretion, the exit monitoring criteria based on a certified groundwater professional’s written justification to support a no action required classification for the site based on a reasoned assessment of data, trends, receptor status, and corrective actions performed. One example is when steady and declining criteria have not been met due solely to variations among a laboratory’s lowest achievable detection limits.

**135.12(7) *Reclassification.*** Any site or pathway which is classified as high risk may be reclassified to low risk if in the course of corrective action the criteria for low risk classification are established. Any site or pathway which is classified as low risk may be reclassified to high risk if in the course of monitoring the conditions for high risk classification are established. Sites subject to department-approved institutional

or technological controls are classified as no action required if all other criteria for no action required classification are satisfied.

**135.12(8)** *Use of institutional and technological controls.*

*a.* Purpose. The purpose of an institutional control is to restrict access to or use of property such that an applicable receptor could not be exposed to chemicals of concern for as long as the target level is exceeded at applicable points of exposure and compliance. Institutional controls include:

1. A law of the United States or the state;
2. A regulation issued pursuant to federal or state laws;
3. An ordinance or regulation of a political subdivision in which real estate subject to the institutional control is located;
4. An environmental covenant as provided in 2005 Iowa Code Supplement section 455B.474(1)“f”(4)(f) and in accordance with the provisions of 2005 Iowa Code Supplement chapter 455I and 567—Chapter 14;

5. Any other institutional control the owner or operator can reasonably demonstrate to the department will reduce the risk from a release throughout the period necessary to ensure that no applicable target level is likely to be exceeded.

*b.* Modification or termination of institutional and technological controls. At a point when the department determines that an institutional or technological control has been removed or is no longer effective for the purpose intended, regardless of the issuance of a no further action certification or previous site classification, it may require owners and operators to undertake such reevaluation of the site conditions as necessary to determine an appropriate site classification and corrective action response. If the owner or operator is in control of the affected property, the department may require reimplementing of the institutional or technological control or may require a Tier 2 assessment of the affected pathway(s) be conducted to reevaluate the site conditions and determine alternative corrective action response. An owner or operator subject to an institutional or technological control may request modification or termination of the control by conducting a Tier 2 assessment of the affected pathway or conduct such other assessment as required by the department to establish that the control is no longer required given current site conditions.

*c.* If the owner or operator is not in control of the affected property or cannot obtain control and the party in control refuses to continue implementation of an institutional control, the department may require the owner or operator to take such legal action as available to enforce institution of the control or may require the owner or operator to undertake a Tier 2 assessment to determine site classification and an alternative corrective action response. If a person in control of the affected property appears to be contractually obligated to maintain an institutional or technological control, the department may, but is not required to, attempt enforcement of the contractual obligation as an alternative to requiring corrective action by the owner or operator.

*d.* If a site is classified no action required, subject to the existence of an institutional control or technological control, the holder of the fee interest in the real estate subject to the institutional control or technological control may request, at any time, that the department terminate the institutional control or technological control requirement. The department shall terminate the requirement for an institutional control if the holder demonstrates by completion of a Tier 2 assessment of the applicable pathway or other assessment as required by the department that the site conditions warranting the control no longer exist and that the site or pathway has met exit criteria for no action required classification under 135.12(6).

**135.12(9)** *Corrective action design report submission and review procedures.*

*a.* Owners and operators must submit a corrective action design report (CADR) within 60 days of the date the department approves or is deemed to approve a Tier 2 assessment report under 135.10(11) or a Tier 3 assessment is to be conducted. The department may establish an alternative schedule for submittal. As an alternative to submitting a CADR, owners or operators may participate in a corrective action meeting process to develop a corrective action plan which would be incorporated into a memorandum of agreement or other written agreement approved by the department. Owners or operators shall implement the terms of an approved CADR, memorandum of agreement or other corrective action plan agreement.

b. Corrective action design report completeness and accuracy. A CADR is considered to be complete if it contains all the information and data required by this rule and the department's guidance. The report is considered accurate if the information and data are reasonably reliable based first on the standards in these rules and department guidance, and second, on generally accepted industry standards.

c. The certified groundwater professional responsible for completion of the CADR must provide the following certification with the CADR:

I, \_\_\_\_\_, groundwater professional certification number \_\_\_\_\_, am familiar with all applicable requirements of Iowa Code section 455B.474 and all rules and procedures adopted thereunder including, but not limited to, the Department of Natural Resources' guidance and specifications for corrective action design reports. Based on my knowledge of those documents and the information I have prepared and reviewed regarding this site, UST registration number \_\_\_\_\_, LUST No. \_\_\_\_\_, I certify that this document is complete and accurate as provided in 135.12(9) and meets the applicable requirements of the corrective action design report, and that the recommended corrective action can reasonably be expected to meet its stated objectives.

Signature

Date

d. Review. A CADR submitted by a groundwater professional shall be accepted by the department and shall be primarily relied upon by the department to determine the corrective action response requirements of the site. However, if within 90 days of receipt of a CADR, the department identifies material information in the CADR that is inaccurate or incomplete, and if based upon information in the report the appropriate corrective action response cannot be reasonably determined by the department based on industry standards, the department may reject the report and require modifications. If the department does not reject the report within 90 days of receipt, the report shall be deemed approved as submitted unless changes to the report are requested by the groundwater professional. The department shall work with the groundwater professional and the owner or operator to correct any materially inaccurate information or to obtain the additional information necessary to determine the appropriate corrective action response as soon as practicable. However, from July 1, 2010, through June 30, 2011, the department shall have 120 days to notify the certified groundwater professional when a report is not accepted based on material information that is found to be inaccurate or incomplete.

e. Memorandums of agreement. Owners or operators that fail to implement the actions or meet the activity schedule in a memorandum of agreement resulting from a corrective action meeting or other written corrective action plan agreement or that fail to implement the actions or meet the schedule outlined in an approved CADR are subject to legal action.

**135.12(10) Monitoring certificates and no further action certificates.**

a. Monitoring certificate. The department of natural resources will issue a monitoring certificate to the owner or operator of an underground storage tank from which a release has occurred, the current property owner, or other responsible party who has undertaken the corrective action warranting issuance of the certificate. Sites classified as low risk or sites classified as high risk/monitoring shall be eligible for a monitoring certificate. The monitoring certificate will be valid until the site is reclassified to a high risk requiring active remediation or no action required site. A site which has been issued a monitoring certificate shall not be eligible to receive a certificate evidencing completion of remediation until the site is reclassified as no action required. The monitoring certificate will be invalidated and the site reclassified to high risk if it is determined by the department that the owner of the site is not in compliance with the requirements specified in the monitoring certificate.

b. No further action certificate. When the no action required site classification has been determined based on a recommendation of the certified groundwater professional as provided in 135.9(11), 135.10(11) and 135.12(12) (see also 2009 Iowa Code Supplement section 455B.474(1) "h"(1) and (3) as amended by 2010 Iowa Acts, House File 2531, section 174), the department shall issue a no further action certificate.

The department will issue a no further action certificate to an owner or operator of an underground storage tank from which a release has occurred, the current property owner, or other responsible party who has undertaken the corrective action warranting classification of the site as no action required. Prior to the issuance of a no further action certificate, an accurate legal description of the property on which the underground storage tanks are or were formerly located shall be submitted to the department. The following conditions apply:

(1) If free product is present, the department shall not issue a no further action certificate until the department has approved termination of all free product assessment and recovery in accordance with 135.7(5).

(2) The site has been determined by a certified groundwater professional not to present an unreasonable risk to the public health and safety or the environment.

(3) A person issued the certificate or a subsequent purchaser of the site cannot be required to perform further corrective action because action standards are changed at a later date. Action standards refer to applicable standards under this rule.

(4) The certified groundwater professional has certified that all groundwater monitoring wells have been permanently closed in accordance with 135.12(6) "f" with the exception of wells that are allowed to be maintained pursuant to 135.12(6) "f." Wells not properly maintained shall be referred to the water supply section of the department that enforces 567—Chapter 39 and 567—Chapter 49.

(5) The certificate shall not prevent the department from ordering remediation of a release identified subsequent to the release for which the no further action certificate was issued. The certificate shall not prevent the department from requiring corrective action of a release of a regulated substance from an unregulated tank.

(6) The certificate will not constitute a warranty of any kind to any person as to the condition, marketability or value of the described property.

(7) The certificate shall reflect any institutional control utilized to ensure compliance with any applicable Tier 2 level; and may include a notation that the classification is based on the fact that designated potential receptors are not in existence.

(8) The certificate shall be in a form which is recordable in accordance with Iowa Code section 558.1 et seq., and substantially in the form as provided in Appendix C.

(9) The owner or operator or other persons conducting corrective action shall be responsible for recording the no further action certificate with the county recorder and return a file-stamped copy to the department within 30 days of the issue date. At its discretion, the department may record the no further action certificate with the appropriate county recorder as authorized in 2009 Iowa Code Supplement section 455B.474(1) "h"(3) as amended by 2010 Iowa Acts, House File 2531, section 174.

c. The department shall modify any issued no further action certificates containing institutional controls once the owner, operator or their successor or assign has demonstrated that the institutional control is no longer necessary to meet the applicable Tier 2 level as provided in 135.12(10).

**135.12(11) Expedited corrective action.** An owner, operator or responsible party of a site at which a release of regulated substance is suspected to have occurred may carry out corrective actions at the site so long as the department receives notice of the expedited cleanup activities within 30 calendar days of their commencement; the owner, operator, or responsible party complies with the provisions of these rules; and the corrective action does not include active treatment of groundwater other than:

a. As previously approved by the department; or

b. Free product recovery pursuant to subrule 135.7(5).

c. Soil excavation. When undertaking excavation of contaminated soils, adequate field screening methods must be used to identify maximum concentrations during excavation. At a minimum one soil sample must be taken for field screening every 100 square feet of the base and each sidewall. Soil samples must be taken for laboratory analysis at least every 400 square feet of the base and each sidewall of the excavated area to confirm remaining concentrations are below Tier 1 levels. If the excavation is less than 400 square feet, a minimum of one sample must be analyzed for each sidewall and the base. The

owner or operator must maintain adequate records of the excavation area to document compliance with this procedure unless submitted to the department and must provide it to the department upon request. [ARC 9011B, IAB 8/25/10, effective 9/29/10; ARC 9331B, IAB 1/12/11, effective 2/16/11]

**567—135.13(455B) Public participation.**

**135.13(1)** For each confirmed release that is classified as high or low risk, the department must provide notice to the public by means designated to reach those members of the public directly affected by the release and the recommended corrective action response. This notice may include, but is not limited to, public notice in local newspapers, block advertisements, public service announcements, publication in a state register, letters to individual households, or personal contacts by the staff.

**135.13(2)** The department must ensure site release information and decisions concerning the Tier 1 assessment report, Tier 2 and Tier 3 site cleanup reports are made available to the public for inspection upon request.

**135.13(3)** Before approving the Tier 2 or Tier 3 site cleanup report, the department may hold a public meeting to consider comments on the proposed corrective action response if there is sufficient public interest, or for any other reason.

**135.13(4)** The department must give a public notice that complies with subrule 135.13(1) above if the implementation of the approved Tier 2 or Tier 3 site cleanup report does not achieve the established cleanup levels in the report and the termination of that report is under consideration by the department.

**567—135.14(455B) Action levels.** The following corrective action levels apply to petroleum-regulated substances as regulated by this chapter. These action levels shall be used to determine if further corrective action under 567—135.6(455B) through 567—135.12(455B) or 567—135.15(455B) is required as the result of tank closure sampling under 135.15(3) or other analytical results submitted to the department. The contaminant concentrations must be determined by laboratory analysis as stated in 567—135.16(455B). Final cleanup determination is not limited to these contaminants. The contamination corrective action levels are:

	<b>Soil (mg/kg)</b>	<b>Groundwater (ug/L)</b>
Benzene	0.54	5
Toluene	3.2	1,000
Ethylbenzene	15	700
Xylenes	52	10,000
Total Extractable Hydrocarbons	3,800	1,200

[ARC 9011B, IAB 8/25/10, effective 9/29/10]

**567—135.15(455B) Out-of-service UST systems and closure.**

**135.15(1) Temporary closure.**

*a.* When a UST system is temporarily closed, owners and operators must continue operation and maintenance of corrosion protection in accordance with 135.4(2), any release detection in accordance with rule 567—135.5(455B), and financial responsibility in accordance with 567—Chapter 136. Rules 567—135.6(455B) to 567—135.12(455B) must be complied with if a release is suspected or confirmed. However, release detection is not required as long as the UST system is empty. The UST system is empty when all materials have been removed using commonly employed practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3 percent by weight of the total capacity of the UST system, remain in the system.

*b.* When a UST system is temporarily closed for three months or more, owners and operators must notify the department in writing of the temporary closure and comply with the following requirements:

- (1) Leave vent lines open and functioning; and
- (2) Cap and secure all other lines, pumps, accesses, and ancillary equipment.

c. When a UST system is temporarily closed for more than 12 months, owners and operators must return the tank tags and permanently close the UST system if it does not meet either the performance standards in 135.3(1) for new UST systems or the upgrading requirements in 135.3(2), except that the spill and overfill equipment requirements do not have to be met. Owners and operators must permanently close the substandard UST systems at the end of this 12-month period in accordance with 135.15(2) to 135.15(5), unless the department provides an extension of the 12-month temporary closure period. Owners and operators must complete a site assessment in accordance with 135.15(3) before such an extension can be applied for.

**135.15(2) *Permanent closure and changes-in-service.***

a. At least 30 days before beginning either permanent closure or a change-in-service under paragraphs “b” and “c” below, owners and operators must notify the department of their intent to permanently close or make the change-in-service. An owner or operator must seek prior approval to permanently close a tank in a time frame shorter than the 30-day notice. The required assessment of the excavation zone under 135.15(3) must be performed after notifying the department but before completion of the permanent closure or a change-in-service.

b. To permanently close a tank or piping, owners and operators must empty and clean them by removing all liquids and accumulated sludge. All tanks taken out of service permanently must also be either removed from the ground or filled with an inert solid material. Piping must either be removed from the ground or have the ends plugged with an inert solid material.

When permanently closing a tank by filling with inert solid material, the tank may not be filled until a closure report is approved by the department. The tank must be filled within 30 days after department approval. The owner and operator must notify the department within 15 days after filling the tank with inert solid material.

c. Continued use of a UST system to store a nonregulated substance is considered a change-in-service. Before a change-in-service, owners and operators must empty and clean the tank by removing all liquid and accumulated sludge and conduct a site assessment in accordance with 135.15(3).

d. Permanent closure procedures must be followed in the replacement of tanks or piping. Notification must be made using DNR Form 542-1308, “Notification of Tank Closure or Change-in-Service.” The form must include the date scheduled for the closure. Oral confirmation of the closure date must be given to the DNR field office 24 hours prior to the actual closure. The required assessment of the excavation zone under 139.15(3) must be performed after notifying the department but before completion of the permanent closure or change-in-service.

NOTE: The following cleaning and closure procedures may be used to comply with subrule 135.15(2): American Petroleum Institute Recommended Practice 1604, “Removal and Disposal of Used Underground Petroleum Storage Tanks”; American Petroleum Institute Publication 2015, “Cleaning Petroleum Storage Tanks”; American Petroleum Institute Recommended Practice 1631, “Interior Lining of Underground Storage Tanks,” may be used as guidance for compliance with this subrule; and the National Institute for Occupational Safety and Health “Criteria for a Recommended Standard . . . Working in Confined Space” may be used as guidance for conducting safe closure procedures at some hazardous substance tanks.

**135.15(3) *Assessing the site at closure or change-in-service.***

a. Before permanent closure or a change-in-service is completed, owners or operators must measure for the presence of a release where contamination is most likely to be present at the UST site. This soil and groundwater closure investigation must be conducted or supervised by a groundwater professional certified under 567—Chapter 134, Part A, unless the department in its discretion grants an exemption and provides direct supervision of the closure investigation. In selecting the sample types, sample locations, and measurement methods, owners and operators must consider the method of closure, the nature of the stored substance, the type of backfill, the depth to groundwater, and other factors appropriate for identifying the presence of a release.

At UST sites with a history of petroleum storage, soil and groundwater samples shall in every case be analyzed for benzene, toluene, ethylbenzene, and xylenes (BTEX) with each compound reported separately in accordance with 567—135.16(455B). If there has been a history or suspected history of

petroleum storage other than gasoline or gasoline blends (i.e., all grades of diesel fuels, fuel oil, kerosene, oil and mineral spirits), or such storage history is unknown or uncertain, soil and groundwater samples shall also be analyzed for total extractable hydrocarbons in accordance with 567—135.16(455B).

All such samples shall be collected separately and shipped to a laboratory certified under 567—Chapter 42, Part C, within 72 hours of collection. Samples shall be refrigerated and protected from freezing during shipment to the laboratory.

When a UST is removed from an area of confirmed contamination, the department may waive closure sampling if written documentation is submitted with the closure notification. Documentation should include laboratory analytical reports and a site map showing tank and piping locations along with contamination plume and sampling locations.

*b.* For all permanent tank and piping closures or changes-in-service, at least one water sample must be taken from the first saturated groundwater zone via a monitoring well or borehole except as provided in paragraph “g.” The well or borehole must be located downgradient from and as close as possible to the excavation but no farther away than 20 feet.

If, however, the first saturated groundwater zone is not encountered within 10 feet below the lowest elevation of the tank excavation, the requirement for groundwater sampling shall not apply unless:

(1) Sands or highly permeable soils are encountered within 10 feet below the lowest level of the tank excavation which together with the underlying geology would, in the judgment of the department, pose the reasonable possibility that contamination may have reached groundwaters deeper than 10 feet below the lowest level of the tank excavation. The method of determining highly permeable soil is found in the departmental guidance documents entitled “Underground Storage Tank Closure Procedures for Tank and Piping Removal” and “Underground Storage Tank Closure for Filling in Place.”

(2) Indications of potential groundwater contamination, including petroleum products in utility lines, petroleum products in private wells, petroleum product vapors in basements or other structures, occur in the area of the tank installation undergoing closure or change-in-service.

*c.* For permanent closure by tank removal, the departmental guidance document entitled “Underground Storage Tank Closure Procedures for Tank and Piping Removal” must be followed. The minimum number of soil samples that must be taken depends on the tank size and length of product piping. Samples must be taken at a depth of 1 to 2 feet beneath the tank fill area below the base of the tank along the tank’s centerline. Soil samples must also be taken at least every 10 feet along the product piping at a depth of 1 to 2 feet beneath the piping fill area below the piping.

If sands or other highly permeable soils are encountered, alternative sampling methods may be required.

If contamination is suspected or found in any area within the excavation (i.e., sidewall or bottom), a soil sample must be taken at that location.

The numbers of samples required for tanks are as follows:

Nominal Tank Capacity (gallons)	Number of Samples	Location on Centerline
1,000 or less	1	center of tank
1,001 - 8,000	2	1/3 from ends
8,001 - 30,000	3	5 feet from ends and at center of tank
30,001 - 40,000	4	5 and 15 feet from ends
40,001 and more	5	5 and 15 feet from ends and at center of tank

*d.* For closing a tank in place by filling with an inert solid material or for a change-in-service, the departmental guidance document entitled “Underground Storage Tank Closure for Filling in Place” must be followed. The minimum number of soil borings required for sampling depends on the size of the tank and the length of the product piping. Soil samples must be taken within 5 feet of the sides and ends of the tank at a depth of 2 to 4 feet below the base of the tank, but outside the backfill material, at equal intervals around the tank. Soil samples must also be taken at least every 10 feet along the product piping

at a depth of 1 to 2 feet beneath the piping fill area below the piping. If sands or other highly permeable soils are encountered, alternative sampling methods may be required.

The minimum numbers of soil borings and samples required are as follows:

Nominal Tank Capacity (gallons)	Number of Samples	Location of Samples
6,000 or less	4	1 each end and each side
6,001 - 12,000	6	1 each end and 2 each side
12,001 or more	8	1 each end and 3 each side

*e.* A closure report must be submitted to the department within 45 days of the tank removal or sampling for a closure in place. The report must include all laboratory analytical reports, soil boring and well or borehole construction details and stratigraphic logs, and a dimensional drawing showing location and depth of all tanks, piping, sampling, and wells or boreholes, and contaminated soil encountered. The tank tags must be returned with the closure report.

*f.* The requirements of this subrule are satisfied if one of the external release detection methods allowed in 135.5(4) “*e*” and “*f*” is operating in accordance with the requirements in 135.5(4) at the time of closure and indicates no release has occurred.

*g.* If contaminated soils, contaminated groundwater, or free product as a liquid or vapor is discovered during the site assessment or by any other manner, contact the department in accordance with 135.6(1). Normal closure procedures no longer apply. Owners and operators must begin corrective action in accordance with rules 567—135.7(455B) to 567—135.12(455B).

Identification of free product requires immediate response in accordance with 135.7(5). If contamination appears extensive or the groundwater is known to be contaminated, a full assessment of the contamination will be required. When a full assessment is required or anticipated, collection of the required closure samples is not required. If contamination appears limited to soils, overexcavation of the contaminated soils in accordance with 135.15(4) may be allowed at the time of closure.

**135.15(4) *Overexcavation of contaminated soils at closure.***

*a.* If contaminated soils are discovered while assessing a site at closure in accordance with 135.15(3), owners and operators may overexcavate up to one foot of the contaminated soils surrounding the tank pit. The contamination and overexcavation must be reported to the department in accordance with the requirements of 135.6(4) “*a*” prior to backfilling the excavation. If excavation is limited to one foot of contaminated soils, a soil sample shall be taken and laboratory analyzed in accordance with 567—135.16(455B) from the area showing the greatest contamination. Any overexcavation of contaminated soils beyond one foot of contaminated soils is considered expedited corrective action and must be conducted by a certified groundwater professional in accordance with the procedures in 135.12(11).

*b.* Excavated contaminated soils must be properly disposed in accordance with 567—Chapters 100, 101, 102, 120, and 121, Iowa Administrative Code.

*c.* A report must be submitted to the department within 30 days of completion of the laboratory analysis. The report must include the requirements of 135.15(3) “*e*” and a dimensional drawing showing the depth and area of the excavation prior to and after overexcavation. The area of contamination must be shown.

**135.15(5) *Applicability to previously closed UST systems.*** When directed by the department, the owner and operator of a UST system permanently closed before October 24, 1988, must assess the excavation zone and close the UST system in accordance with this rule if releases from the UST may, in the judgment of the department, pose a current or potential threat to human health and the environment.

**135.15(6) *Closure records.*** Owners and operators must maintain records in accordance with 135.4(5) that are capable of demonstrating compliance with closure requirements under this rule. The results of the excavation zone assessment required in 135.15(3) must be maintained for at least three years after completion of permanent closure or change-in-service in one of the following ways:

*a.* By the owners and operators who took the UST system out of service;

- b. By the current owners and operators of the UST system site; or
- c. By mailing these records to the department if they cannot be maintained at the closed facility.

**135.15(7) Applicability to pre-1974 USTs.** The closure provisions of rule 567—135.15(455B) are not applicable to USTs which have been out of operation as of January 1, 1974. For purposes of this subrule, out of operation means that no regulated substance has been deposited into or dispensed from the tanks and that the tanks do not currently contain an accumulation of regulated substances other than a de minimus amount as provided in 135.15(1) “a.”

Owners and operators or other interested parties are not required to submit documentation that USTs meet the exemption conditions and may rely on this subrule as guidance. However, should a question arise as to whether USTs meet the exemption, or owners and operators or other interested parties request acknowledgment by the department that USTs are exempt, they must submit an affidavit on a form provided by the department. The affiant must certify that based on a reasonable investigation and to the best of the affiant’s knowledge, the USTs were taken out of operation prior to January 1, 1974, the USTs have not contained a regulated substance since January 1, 1974, and the USTs do not currently contain an accumulation of regulated substances.

If the department has a reasonable basis to suspect a release has occurred, the release investigation and confirmation steps of subrule 135.8(1) and the corrective action requirements as provided in 567—135.7(455B) to 567—135.8(455B) shall apply.

[ARC 8124B, IAB 9/9/09, effective 10/14/09]

**567—135.16(455B) Laboratory analytical methods for petroleum contamination of soil and water.**

**135.16(1) General.** When having soil or water analyzed for petroleum or hazardous substances, owners and operators of UST systems must use a laboratory certified under 567—Chapter 83. In addition they must ensure that all soil and groundwater samples are properly preserved and shipped within 72 hours of collection to a laboratory certified under 567—Chapter 83, for UST petroleum analyses. This rule provides acceptable analytical procedures for petroleum substances and required information that must be provided in all laboratory reports.

**135.16(2) Laboratory report.** All laboratory reports must contain the following information:

a. Laboratory name, address, telephone number and Iowa laboratory certification number. If analytical work is subcontracted to another laboratory, the analytical report from the certified lab which analyzed the sample must be submitted and include the information required in this subrule.

b. Medium sampled (soil, water).

c. Client submitting sample (name, address, telephone number).

d. Sample collector (name, telephone number).

e. UST site address.

f. Client’s sample location identifier.

g. Date sample was collected.

h. Date sample was received at laboratory.

i. Date sample was analyzed.

j. Results of analyses and units of measure.

k. Detection limits.

l. Methods used in sample analyses (preparation method, sample detection method, and quantitative method).

m. Laboratory sample number.

n. Analyst name.

o. Signature of analyst’s supervisor.

p. Condition in which the sample was received at the laboratory and whether it was properly sealed and preserved.

q. Note that analytical results are questionable if a sample exceeded an established holding time or was improperly preserved. (The recommended holding time for properly cooled and sealed petroleum contaminated samples is 14 days, except for water samples containing volatile organic compounds which have a 7-day holding time unless acid-preserved.)

*r.* Laboratory reports required by this chapter for tank closure investigations under 567—135.15(455B) and site checks under 135.6(3) or Tier 1 or Tier 2 assessments under 567—135.9(455B) to 567—135.11(455B) must include a copy of the chromatograms and associated quantitation reports for the waste oil, diesel and gasoline standard used by the laboratory in analyzing submitted samples. The laboratory analytical report for each sample must state whether the sample tested matches the laboratory standard for waste oil, diesel or gasoline or that the sample cannot be reliably matched with any of these standards. A copy of the chromatograms and associated quantitation reports for only the soil and groundwater samples with the maximum concentrations of BTEX and TEH must be included.

**135.16(3)** *Analysis of soil and water for high volatile petroleum compounds (i.e., gasoline, benzene, ethylbenzene, toluene, xylene).* Sample preparation and analysis shall be by Method OA-1, “Method for Determination of Volatile Petroleum Hydrocarbons (gasoline),” revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa. This method is based on U.S. EPA methods 5030, 8000, and 8015, SW-846, “Test Methods for Evaluating Solid Waste,” 3rd Edition. Copies of Method OA-1 are available from the department.

**135.16(4)** *Analysis of soil and water for low volatile petroleum hydrocarbon contamination (i.e., all grades of diesel fuel, fuel oil, kerosene, oil, and mineral spirits).* Sample preparation and analysis shall be by Method OA-2, “Determination of Extractable Petroleum Products (and Related Low Volatility Organic Compounds),” revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa. This method is based on U.S. EPA methods 3500, 3510, 3520, 3540, 3550, 8000, and 8100, SW-846, “Test Methods for Evaluating Solid Waste,” 3rd Edition. Copies of Method OA-2 are available from the department.

**135.16(5)** *Analysis of soil gas for volatile petroleum hydrocarbons.* Analysis of soil gas for volatile petroleum hydrocarbons shall be conducted in accordance with the National Institute for Occupational Safety and Health (NIOSH) Method 1501, or a department-approved equivalent method.

#### **567—135.17(455B) Evaluation of ability to pay.**

**135.17(1)** General. The ability to pay guidance procedures referenced in this rule will be used by the department when an owner or operator of an underground storage tank (UST) claims to be financially unable to comply with corrective action requirements under 567—135.7(455B) to 567—135.12(455B) or closure investigation requirements under 567—135.15(455B). If an owner or operator of a regulated UST claims to be financially unable to meet these departmental requirements, that responsible party must provide documentation of the party’s finances on forms provided by the department in order for the department to act on the claim of financial inability. The department may request additional financial documentation to verify or supplement reported information.

**135.17(2)** Individual claims. The financial ability of individual owners and operators of USTs, with or without an active business (including but not limited to sole proprietorships and general partnerships), shall be evaluated using the “Individual Ability to Pay Guidance” document dated June 19, 1992, and generally accepted principles of financial analysis. This guidance is only one tool the department may use in evaluating claims of financial inability.

**135.17(3)** Corporate claims. The financial ability of corporate owners and operators of USTs shall be evaluated using the June 1992 version of “ABEL” developed by the U.S. Environmental Protection Agency and generally accepted principles of financial analysis. This guidance is only one tool the department may use in evaluating claims of financial inability.

**135.17(4)** Federal LUST Trust Fund. The financial ability of owners and operators of USTs shall be evaluated for the purpose of determining if the department is authorized to use Federal LUST Trust Fund moneys as provided in the current cooperative agreement with the U.S. Environmental Protection Agency, Region VII. A determination of financial inability does not create an entitlement or any expectation interest on behalf of an owner or operator that Federal LUST Trust Fund moneys will be used for corrective action at any individual site.

**135.17(5)** The evaluation of financial ability will also be used by the department in making other administrative planning decisions including but not limited to decisions as to whether to pursue and when to pursue administrative or judicial enforcement of regulatory and statutory duties and

the assessment of penalties. A determination of financial inability does not create an entitlement or expectation interest that enforcement actions will be deferred or suspended. The evaluation of this factor is only one of many affecting the department's fully discretionary decisions regarding enforcement options and program planning.

**135.17(6)** An evaluation of financial inability as provided in this rule does not relieve any owner or operator of legal liability to comply with department rules or Iowa Code chapter 455B or provide a defense to any legal actions to establish liability or enforce compliance.

**567—135.18(455B) Transitional rules.**

**135.18(1)** *Transitional rules.* Guidance for implementing these transitional rules is contained in the department's guidance entitled "Transition Policy Statement" dated June 6, 1996.

**135.18(2)** *Site cleanup reports and corrective action design reports accepted before August 15, 1996.* Any owner or operator who had a site cleanup report or corrective action design report approved by the department before August 15, 1996, may elect to submit a Tier 1 Site Assessment or Tier 2 Site Cleanup Report to the department. If the owner, operator, or responsible party so elects, the site shall be assessed, classified, and, if necessary, remediated, in accordance with the rules of the department as of August 15, 1996. To the extent that data collected for the site cleanup report does not include all information necessary for the Tier 1 Site Assessment or Tier 2 Site Cleanup Report, the owner or operator shall utilize the default parameters set out in subrule 135.18(4) or provide site-specific parameters.

**135.18(3)** *Site cleanup reports in the process of preparation or review prior to August 15, 1996.* The department will complete a Tier 1 or a Tier 2 risk analysis for any site cleanup report received but not approved by the department by November 15, 1996. To the extent that data collected for the site cleanup report does not include all information necessary for the Tier 2 site cleanup report and the owner or operator elects to not complete a Tier 2 site cleanup report the department shall utilize the default parameters set out in subrule 135.18(4). If the owner or operator wishes that site-specific data, rather than any default parameter, be used, the owner or operator shall notify the department by October 15, 1996, or in accordance with a schedule specified by the department. Following notification, the owner or operator shall be responsible for preparation of the Tier 1 site assessment or Tier 2 site cleanup report.

**135.18(4)** *Default parameters for use in converting a site cleanup report to a Tier 2 site cleanup report.*

*a.* As to sites for which the owner or operator has collected and submitted only TPH ("total petroleum hydrocarbons") data regarding soil contamination, TPH levels shall be converted to a risk associated factor by using: (1) previously acquired data regarding benzene, toluene, ethyl benzene, and xylenes data for the samples; (2) newly collected benzene, toluene, ethylbenzene, and xylenes data for the site; or (3) the assumptions that 1 percent of the total petroleum hydrocarbon (TPH) is benzene, 7 percent of the TPH is toluene, 2 percent of the TPH is ethylbenzene, and 8 percent of the TPH is xylenes.

*b.* As to sites for which the owner or operator has, to date, submitted only TEH ("total extractable hydrocarbons") data regarding soil contamination, TEH levels should be converted to a risk-associated factor by using: (1) previously acquired benzene, toluene, ethylbenzene and xylenes data for the samples; (2) newly collected benzene, toluene, ethylbenzene and xylenes data for the site; or (3) the assumption that 0.004 percent of the TEH is benzene, 0.05 percent of the TEH is toluene, 0.03 percent of the TEH is ethylbenzene and 0.3 percent of the TEH is xylenes. In addition, TEH levels should be compared to the TEH default levels in the Tier 1 Table. If, as of August 15, 1996, only TEH data for soil is available, and it does not exceed Tier 1 levels, additional sampling for TEH in groundwater is not required. Otherwise, groundwater samples must be collected and analyzed for TEH in accordance with 135.8(3).

*c.* Data required for preparing a Tier 2 site cleanup report shall be taken from the site cleanup report. If the site cleanup report lacks any of the data, site-specific data subsequently obtained may be used. The following assumptions shall be used if no site cleanup report or site-specific data is provided:

- (1) If the site cleanup report is unclear as to neighboring land use, assume the land residential land use;
- (2) Use the larger resulting default if both TPH and TEH data are available.

(3) For sites with free product gasoline range constituents, the default values in groundwater are 17,500 ug/l for benzene, 3,040 ug/l for ethylbenzene, 37,450 ug/l for toluene and 15,840 ug/l for xylenes. For sites with free product consisting of diesel range constituents, the default values are 370 ug/l benzene, 640 ug/l toluene, 140 ug/l ethylbenzene, 580 ug/l xylenes, and 260 ug/l naphthalene or 130,000 ug/l TEH.

**135.18(5)** *Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports accepted before August 6, 2008.* Any owner or operator who had a Tier 2 site cleanup report, Tier 3 report, or corrective action design report approved by the department before August 6, 2008, may elect to submit a Tier 2 site cleanup report using the Appendix B revised model, department-developed software and rules in effect as of August 6, 2008. The owner or operator shall notify the department that the owner or operator wishes to evaluate the leaking underground storage tank site with the Appendix B revised model, software and rules. If the owner or operator so elects, the site shall be assessed, classified, and, if necessary, remediated, in accordance with the rules of the department as of August 6, 2008. If the leaking underground storage tank site is undergoing active remediation, the remediation system shall remain operating until the reevaluation is completed and accepted or as otherwise approved by the department. Once a site has been evaluated using the Appendix B revised model, software and rules in effect as of August 6, 2008, it can no longer be evaluated with the Appendix B-1 old model and software and rules in effect prior to August 6, 2008.

**135.18(6)** *Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports in the process of preparation with a submittal schedule established prior to August 6, 2008.* The owner or operator shall notify the department that the owner or operator wishes to use the Appendix B revised model and department software and rules in effect as of August 6, 2008, to evaluate the leaking underground storage tank site before submitting the next report, and prior to expiration of the previously established submittal schedule. Once a site has been evaluated using the Appendix B revised model, software and rules in effect as of August 6, 2008, it can no longer be evaluated with the Appendix B-1 old model, software and rules existing just prior to August 6, 2008.

**135.18(7)** *Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports received by the department but not yet reviewed.* The owner or operator will notify the department within 60 days of August 6, 2008, whether the owner or operator is electing to complete a risk-based corrective action assessment using Appendix B revised model, department software and rules effective as of August 6, 2008, or proceeding with the risk-based corrective action assessment using Appendix B-1 old model and department software and rules existing prior to August 6, 2008. Once a site has been evaluated using the Appendix B revised model, software and rules it can no longer be evaluated with the previous Appendix B-1 old model, software and rules.

**567—135.19(455B) Analyzing for methyl tertiary-butyl ether (MTBE) in soil and groundwater samples.**

**135.19(1)** *General.* The objective of analyzing for MTBE is to determine its presence in soil and water samples collected as part of investigation and remediation of contamination at underground storage tank facilities.

**135.19(2)** *Required MTBE testing.* Soil and water samples must be analyzed for MTBE when collected for risk-based corrective action as required in rules 567—135.8(455B) through 567—135.12(455B). These sampling requirements include but are not limited to:

a. Risk-based corrective action (RBCA) evaluations required for Tier 1, Tier 2, and Tier 3 assessments and corrective action design reports.

b. Site monitoring.

c. Site remediation monitoring.

**135.19(3)** *MTBE testing not required.* Soil and water samples for the following actions are not required to be analyzed for MTBE:

a. Closure sampling under rule 567—135.15(455B) unless Tier 1 or Tier 2 sampling is being performed.

b. Site checks under subrule 135.7(3) unless Tier 1 or Tier 2 sampling is being performed.

c. If prior analysis at a site under 135.19(2) has not shown MTBE present in soil or groundwater.

*d.* If the department determines MTBE analysis is no longer needed at a site.

**135.19(4) Reporting.** The analytical data must be submitted in a format prescribed by the department.

**135.19(5) Analytical methods for methyl tertiary-butyl ether (MTBE).** When having soil or water analyzed for MTBE from contamination caused by petroleum or hazardous substances, owners and operators of UST systems must use a laboratory certified under 567—Chapter 83 for petroleum analyses. In addition, the owners and operators must ensure all soil and water samples are properly preserved and shipped within 72 hours of collection to a laboratory certified under 567—Chapter 83 for petroleum analyses.

*a.* Sample preparation and analysis shall be by:

(1) GC/MS version of OA-1, “Method for Determination of Volatile Petroleum Hydrocarbons (gasoline),” revision 7/27/93, University Hygienic Laboratory, Iowa City, Iowa; or

(2) U.S. Environmental Protection Agency Method 8260B, SW-846, “Test Methods for Evaluating Solid Waste,” Third Edition.

*b.* Laboratories performing the analyses must run standards for MTBE on a routine basis, and standards for other possible compounds like ethyl tertiary-butyl ether (ETBE), tertiary-amyl methyl ether (TAME), diisopropyl ether (DIPE), and tertiary-butyl alcohol (TBA) to be certain of their identification should they be detected.

*c.* Laboratories must run a method detection limit study and an initial demonstration of capability for MTBE. These records must be kept on file.

*d.* The minimum detection level for MTBE in soil is 15 ug/kg. The minimum detection level for MTBE in water is 15 ug/l.

**567—135.20(455B) Compliance inspection of UST system.**

**135.20(1)** The owner or operator must have the UST system inspected and an inspection report submitted to the department by a UST compliance inspector certified by the department under 567—Chapter 134. An initial compliance site inspection shall be conducted no later than December 31, 2007. All subsequent compliance site inspections conducted after the compliance site inspection for the 2008-2009 biennial period shall be conducted within 24 months of the prior compliance site inspection. Compliance site inspections must be separated by at least six months.

**135.20(2)** Compliance inspection requirements. The owner or operator is responsible to ensure the department receives ten days’ prior notice by the compliance inspector of the date of a site inspection and the name of the inspector as provided in 567—134.14(455B). The owner and operator must comply with the following as part of the inspection process.

*a.* Review and respond to the inspection report provided by the certified compliance inspector and complete the corrective actions specified in the compliance inspection report within the specified time frames.

*b.* Provide all records and documentation required by the certified compliance inspector and this chapter.

*c.* Upon notification of a suspected release by the certified compliance inspector pursuant to 567—subrule 134.14(1), report the condition to the department and undertake steps to investigate and confirm the suspected release as provided in 567—135.6(455B).

*d.* Ensure that the compliance inspector completes and submits an electronic inspection form in accordance with 567—134.14(455B).

**135.20(3)** The owner and operator shall do the following upon receipt of a compliance inspection report as provided in 567—subrule 134.14(1) which finds violations of the department’s rules:

*a.* Take all actions necessary to correct any compliance violations or deficiencies in accordance with this chapter. Corrective action must be taken within the time frame established by rule or, if no time frames are established by rule, within 60 days of receipt of the inspector’s report or another reasonable time period approved by the department. The granting of time to remedy a violation does not preclude the department from exercising its discretion to assess penalties for the violation.

*b.* Within 60 days of receipt of the inspector's report, provide documentation to the compliance inspector that the violation or deficiencies have been corrected.

*c.* Conduct a follow-up inspection in instances where there are serious problems or a history of repeated violations when required by the department.

**135.20(4)** Conflict of interest. A compliance site inspection must be conducted by a certified compliance inspector who is not the owner or operator of the UST system being inspected, an employee of the owner or operator of the UST system being inspected, or a person having daily on-site responsibility for the operation and maintenance of the UST system.  
[ARC 8124B, IAB 9/9/09, effective 10/14/09]

## Appendix A - Tier 1 Table, Assumptions, Equations and Parameter Values

### Iowa Tier 1 Look-Up Table

Media	Exposure Pathway	Receptor	Group 1				Group 2: TEH	
			Benzene	Toluene	Ethylbenzene	Xylenes	Diesel*	Waste Oil
Groundwater (µg/L)	Groundwater Ingestion	Actual	5	1,000	700	10,000	1,200	400
		Potential	290	7,300	3,700	73,000	75,000	40,000
	Groundwater Vapor to Enclosed Space	All	1,540	20,190	46,000	NA	2,200,000	NA
	Groundwater to Water Line	PVC or Gasketed Mains	7,500	6,250	40,000	48,000	75,000	40,000
		PVC or Gasketed Service Lines	3,750	3,120	20,000	24,000	75,000	40,000
		PE/PB/AC Mains or Service Lines	200	3,120	3,400	19,000	75,000	40,000
	Surface Water	All	290	1,000	3,700	73,000	75,000	40,000
Soil (mg/kg)	Soil Leaching to Groundwater	All	0.54	42	15	NA	3,800	NA
	Soil Vapor to Enclosed Space	All	1.16	48	79	NA	47,500	NA
	Soil to Water Line	All	2.0	3.2	45	52	10,500	NA

NA: Not applicable. There are no limits for the chemical for the pathway, because for groundwater pathways the concentration for the designated risk would be greater than the solubility of the pure chemical in water, and for soil pathways the concentration for the designated risk would be greater than the soil concentration if pure chemical were present in the soil.

TEH: Total Extractable Hydrocarbons. The TEH value is based on risks from naphthalene, benzo(a)pyrene, benz(a)anthracene, and chrysene. Refer to Appendix B for further details.

Diesel\*: Standards in the Diesel column apply to all low volatile petroleum hydrocarbons except waste oil.

#### Assumptions Used for Iowa Tier 1 Look-Up Table Generation

1. Groundwater ingestion pathway. The maximum contaminant levels (MCLs) were used for Group 1 chemicals. The target risk for carcinogens for actual receptors is  $10^{-6}$  and for potential receptors is  $10^{-4}$ . A hazard quotient of one, and residential exposure and building parameters are assumed.

2. Groundwater vapor to enclosed space pathway. Residential exposure and residential building parameters are assumed; no inhalation reference dose is used for benzene; the capillary fringe is assumed to be the source of groundwater vapor; and the hazard quotient is 1 and target risk for carcinogens is  $1 \times 10^{-4}$ .

3. Groundwater to water line. This pathway uses the same assumptions as the groundwater ingestion pathway for potential receptors, including a target risk for carcinogens of  $10^{-4}$ .

4. Surface water. This pathway uses the same assumptions as the groundwater ingestion pathway for potential receptors, including a target risk for carcinogens of  $10^{-4}$ , except for toluene which has a chronic level for aquatic life of 1,000 as in the definition for surface water criteria in 567—135.2(455B).

5. Soil leaching to groundwater. This pathway assumes the groundwater will be protected to the same levels as the groundwater ingestion pathway for potential receptors, using residential exposure and a target risk for carcinogens of  $10^{-4}$ .

6. Soil vapor to enclosed space pathway. The target risk for carcinogens is  $1 \times 10^{-4}$ ; the hazard quotient is 1; no inhalation reference dose is used for benzene; residential exposure factors are assumed; and the average of the residential and nonresidential building parameters is assumed.

7. Soil to water line pathway. This pathway uses the soil leaching to groundwater model with nonresidential exposure and a target risk for carcinogens of  $10^{-4}$ .

In addition to these assumptions, the equations and parameter values used to generate the Iowa Tier 1 Look-Up Table are described below.

Groundwater Ingestion Equations

Carcinogens:

$$\text{RBSL}_w \left[ \frac{\text{mg}}{\text{L} - \text{H}_2\text{O}} \right] = \frac{\text{TR} \times \text{BW} \times \text{AT}_c \times \frac{365 \text{ days}}{\text{year}}}{\text{SF}_o \times \text{IR}_w \times \text{EF} \times \text{ED}}$$

Noncarcinogens:

$$\text{RBSL}_w \left[ \frac{\text{mg}}{\text{L} - \text{H}_2\text{O}} \right] = \frac{\text{THQ} \times \text{RfD}_o \times \text{BW} \times \text{AT}_n \times \frac{365 \text{ days}}{\text{year}}}{\text{IR}_w \times \text{EF} \times \text{ED}}$$

Soil Leaching to Groundwater Equations

$$\text{RBSL}_{sl} \left[ \frac{\text{mg}}{\text{kg} - \text{soil}} \right] = \frac{\text{RBSL}_w \left[ \frac{\text{mg}}{\text{L} - \text{H}_2\text{O}} \right]}{\text{LF}}$$

$$\text{LF} \left[ \frac{\text{mg/L} - \text{H}_2\text{O}}{\text{mg/kg} - \text{soil}} \right] = \frac{\rho_s}{(\theta_{ws} + k_s \rho_s + H \theta_{as}) \left( 1 + \frac{U \delta}{IW} \right)}$$

Soil Vapor to Enclosed Space Equations

$$\text{RBSL}_{\text{sv}} \left[ \frac{\text{mg}}{\text{kg} - \text{soil}} \right] = \frac{\text{RBSL}_{\text{air}} \left[ \frac{\mu\text{g}}{\text{m}^3 - \text{air}} \right]}{\text{VF}_{\text{sv}}} \left( \frac{\text{mg}}{1000 \mu\text{g}} \right)$$

$$\text{VF}_{\text{sv}} \left[ \frac{(\text{mg}/\text{m}^3 - \text{air})}{(\text{mg}/\text{kg} - \text{soil})} \right] = \frac{\frac{H\rho_s}{(\theta_{\text{ws}} + K_s\rho_s + H\theta_{\text{as}})} \left[ \frac{D_s^{\text{eff}}/L_s}{ER L_B} \right]}{1 + \left[ \frac{D_s^{\text{eff}}/L_s}{ER L_B} \right] + \left[ \frac{D_{\text{crack}}^{\text{eff}}/L_{\text{crack}}}{\eta} \right]} \left( 10^3 \frac{\text{cm}^3 - \text{kg}}{\text{m}^3 - \text{g}} \right)$$

$$D_{\text{crack}}^{\text{eff}} \left[ \frac{\text{cm}^2}{\text{s}} \right] = D_{\text{air}} \frac{\theta_{\text{acrack}}^{3.33}}{\theta_{\text{T}}^2} + D_{\text{wat}} \frac{1}{H} \frac{\theta_{\text{wcrack}}^{3.33}}{\theta_{\text{T}}^2}$$

$$D_s^{\text{eff}} \left[ \frac{\text{cm}^2}{\text{s}} \right] = D_{\text{air}} \frac{\theta_{\text{as}}^{3.33}}{\theta_{\text{T}}^2} + D_{\text{wat}} \frac{1}{H} \frac{\theta_{\text{ws}}^{3.33}}{\theta_{\text{T}}^2}$$

Indoor Air Inhalation Equations

Carcinogens:

$$\text{RBSL}_{\text{air}} \left[ \frac{\mu\text{g}}{\text{m}^3 - \text{air}} \right] = \frac{\text{TR} \times \text{BW} \times \text{AT}_c \times \frac{365 \text{ days}}{\text{year}} \times \frac{1000 \mu\text{g}}{\text{mg}}}{\text{SF}_i \times \text{IR}_{\text{air}} \times \text{EF} \times \text{ED}}$$

Noncarcinogens:

$$\text{RBSL}_{\text{air}} \left[ \frac{\mu\text{g}}{\text{m}^3 - \text{air}} \right] = \frac{\text{THQ} \times \text{RfD}_i \times \text{BW} \times \text{AT}_n \times \frac{365 \text{ kdays}}{\text{year}} \times \frac{1000 \mu\text{g}}{\text{mg}}}{\text{IR}_{\text{air}} \times \text{EF} \times \text{ED}}$$

Groundwater Vapor to Enclosed Space Equations

$$\text{RBSL}_{\text{gw}} \left[ \frac{\text{mg}}{\text{L} - \text{H}_2\text{O}} \right] = \frac{\text{RBSL}_{\text{air}} \left[ \frac{\mu\text{g}}{\text{m}^3 - \text{air}} \right]}{\text{VF}_{\text{gw}}} \left( \frac{\text{mg}}{1000 \mu\text{g}} \right)$$

$$\text{VF}_{\text{gw}} \left[ \frac{(\text{mg}/\text{m}^3 - \text{air})}{(\text{mg}/\text{L} - \text{H}_2\text{O})} \right] = \frac{H \left[ \frac{D_s^{\text{eff}}/L_{\text{gw}}}{\text{ER} L_B} \right]}{1 + \left[ \frac{D_s^{\text{eff}}/L_{\text{gw}}}{\text{ER} L_B} \right] + \left[ \frac{D_s^{\text{eff}}/L_{\text{gw}}}{(D_{\text{crack}}^{\text{eff}}/L_{\text{crack}}) \eta} \right]} \left( \frac{10^3 \text{L}}{\text{m}^3} \right)$$

Variable Definitions

$\delta$	groundwater mixing zone thickness (cm)
$\eta$	areal fraction of cracks in foundation/wall (cm <sup>2</sup> -cracks/cm <sup>2</sup> -area)
$\rho_s$	soil bulk density (g/cm <sup>3</sup> )
$\theta_{\text{crack}}$	volumetric air content in foundation/wall cracks (cm <sup>3</sup> -air/cm <sup>3</sup> -soil)
$\theta_{\text{as}}$	volumetric air content in vadose zone (cm <sup>3</sup> -air/cm <sup>3</sup> -soil)
$\theta_T$	total soil porosity (cm <sup>3</sup> -voids/cm <sup>3</sup> -soil)
$\theta_{\text{wcrack}}$	volumetric water content in foundation/wall cracks (cm <sup>3</sup> -H <sub>2</sub> O/cm <sup>3</sup> -soil)
$\theta_{\text{ws}}$	volumetric water content in vadose zone (cm <sup>3</sup> -H <sub>2</sub> O/cm <sup>3</sup> -soil)
$AT_c$	averaging time for carcinogens (years)
$AT_n$	averaging time for noncarcinogens (years)
BW	body weight (kg)
$D_{\text{air}}$	chemical diffusion coefficient in air (cm <sup>2</sup> /s)
$D_{\text{wat}}$	chemical diffusion coefficient in water (cm <sup>2</sup> /s)
$D_{\text{crack}}^{\text{eff}}$	effective diffusion coefficient through foundation cracks (cm <sup>2</sup> /s)
$D_s^{\text{eff}}$	effective diffusion coefficient in soil based on vapor-phase concentration (cm <sup>2</sup> /s)
ED	exposure duration (years)
EF	exposure frequency (days/year)
ER	enclosed space air exchange rate (s <sup>-1</sup> )
$f_{\text{oc}}$	fraction organic carbon in the soil (kg-C/kg-soil)
H	henry's law constant (L-H <sub>2</sub> O)/(L-air)
i	groundwater head gradient (cm/cm)
I	infiltration rate of water through soil (cm/year)
$IR_{\text{air}}$	daily indoor inhalation rate (m <sup>3</sup> /day)
$IR_w$	daily water ingestion rate (L/day)
K	hydraulic conductivity (cm/year)
$K_{\text{oc}}$	carbon-water sorption coefficient (L-H <sub>2</sub> O/kg-C)
$k_s$	soil-water sorption coefficient (L-H <sub>2</sub> O/kg-soil), $f_{\text{oc}} \times K_{\text{oc}}$
$L_B$	enclosed space volume/infiltration area ratio (cm)
$L_{\text{crack}}$	enclosed space foundation or wall thickness (cm)
LF	leaching factor from soil to groundwater ((mg/L-H <sub>2</sub> O)/(mg/kg-soil))
$L_{\text{gw}}$	depth to groundwater from the enclosed space foundation (cm)
$L_s$	depth to subsurface soil sources from the enclosed space foundation (cm)
$RBSL_{\text{air}}$	Risk-Based Screening Level for indoor air ( $\mu\text{g}/\text{m}^3\text{-air}$ )
$RBSL_{\text{gw}}$	Risk-Based Screening Level for vapor from groundwater to enclosed space air inhalation (mg/L-H <sub>2</sub> O)
$RBSL_{\text{sl}}$	Risk-Based Screening Level for soil leaching to groundwater (mg/kg-soil)
$RBSL_{\text{sv}}$	Risk-Based Screening Level for vapors from soil to enclosed space air inhalation (mg/kg-soil)
$RBSL_w$	Risk-Based Screening Level for groundwater ingestion (mg/L-H <sub>2</sub> O)
$RfD_i$	inhalation chronic reference dose ((mg)/(kg-day))
$RfD_o$	oral chronic reference dose ((mg)/(kg-day))
$SF_i$	inhalation cancer slope factor ((kg-day)/mg)
$SF_o$	oral cancer slope factor ((kg-day)/mg)
THQ	target hazard quotient for individual constituents (unitless)
TR	target excess individual lifetime cancer risk (unitless)
U	groundwater Darcy velocity (cm/year), $U=Ki$
$VF_{\text{gw}}$	volatilization factor for vapors from groundwater to enclosed space ((mg/m <sup>3</sup> -air)/(mg/L-H <sub>2</sub> O))
$VF_{\text{sv}}$	volatilization factor for vapors from soil to enclosed space ((mg/m <sup>3</sup> -air)/(mg/kg-soil))
W	width of soil source area parallel to groundwater flow direction (cm)

## Soil and Groundwater Parameter Values Used for Iowa Tier 1 Table Generation

Parameter		Iowa Tier 1 Table Value
K	hydraulic conductivity	16060 cm/year
i	groundwater head gradient	0.01 cm/cm
W	width of soil source area parallel to groundwater flow direction	1500 cm
I	infiltration rate of water through soil	7 cm/year
$\delta$	groundwater mixing zone thickness	200 cm
$\rho_s$	soil bulk density	1.86 g/cm <sup>3</sup>
$\theta_{as}$	volumetric air content in vadose zone	0.2 cm <sup>3</sup> -air/cm <sup>3</sup> -soil
$\theta_{ws}$	volumetric water content in vadose zone	0.1 cm <sup>3</sup> -H <sub>2</sub> O/cm <sup>3</sup> -soil
$\theta_{acrack}$	volumetric air content in foundation/wall cracks	0.2 cm <sup>3</sup> -air/cm <sup>3</sup> -soil
$\theta_{wcrack}$	volumetric water content in foundation/wall cracks	0.1 cm <sup>3</sup> -H <sub>2</sub> O/cm <sup>3</sup> -soil
$\theta_T$	total soil porosity	0.3 cm <sup>3</sup> -voids/cm <sup>3</sup> -soil
$f_{oc}$	fraction organic carbon in the soil	0.01 kg-C/kg-soil
$L_s$	depth to subsurface soil sources from the enclosed space foundation	1 cm
$L_{gw}$	depth to groundwater from the enclosed space foundation	1 cm

## Exposure Factors Used in Iowa Tier 1 Table Generation

Parameter		Residential	Nonresidential
AT <sub>c</sub> (years)	averaging time for carcinogens	70	70
AT <sub>n</sub> (years)	averaging time for noncarcinogens	30	25
BW (kg)	body weight	70	70
ED (years)	exposure duration	30	25
EF (days/year)	exposure frequency	350	250
IR <sub>air</sub> (m <sup>3</sup> /day)	daily indoor inhalation rate	15	20
IR <sub>w</sub> (L/day)	daily water ingestion rate	2	1
THQ (unitless)	target hazard quotient for individual constituents	1.0	1.0

## Building Parameters Used in Iowa Tier 1 Table Generation

Parameter		Residential	Nonresidential
ER (s <sup>-1</sup> )	enclosed space air exchange rate	0.00014	0.00023
L <sub>B</sub> (cm)	enclosed space volume/infiltration area ratio	200	300
L <sub>crack</sub> (cm)	enclosed space foundation or wall thickness	15	15
$\eta$	areal fraction of cracks in foundation/wall	0.01	0.01

## Chemical-Specific Parameter Values Used for Iowa Tier 1 Table Generation

Chemical	D <sup>air</sup> (cm <sup>2</sup> /s)	D <sup>wat</sup> (cm <sup>2</sup> /s)	H (L-air/L-water)	log(K <sub>oc</sub> ), L/kg
Benzene	0.093	1.1e-5	0.22	1.58
Toluene	0.085	9.4e-6	0.26	2.13
Ethylbenzene	0.076	8.5e-6	0.32	1.98
Xylenes	0.072	8.5e-6	0.29	2.38
Naphthalene	0.072	9.4e-6	0.049	3.11
Benzo(a)pyrene	0.050	5.8e-6	5.8e-8	5.59
Benz(a)anthracene	0.05	9.0e-6	5.74e-7	6.14
Chrysene	0.025	6.2e-6	4.9e-7	5.30

## Saturation Values Used to Determine “NA” for the Iowa Tier 1 Table

Chemical	Solubility in Water (mg/L) S	Saturation in Soil (mg/kg) C <sub>s</sub> <sup>sat</sup>
Benzene	1,750	801
Toluene	535	765
Ethylbenzene	152	159
Xylenes	198	492
Naphthalene	31	401
Benzo(a)pyrene	0.0012	4.69
Benz(a)anthracene	0.014	193.3
Chrysene	0.0028	5.59

The maximum solubility of the pure chemical in water is listed in the table above. The equation below is used to calculate the soil concentration (C<sub>s</sub><sup>sat</sup>) at which dissolved pore-water and vapor phases become saturated. Tier 1 default values are used in the equation. “NA” (for not applicable) is used in the Tier 1 table when the risk-based value exceeds maximum solubility for water (S) or maximum saturation for soil (C<sub>s</sub><sup>sat</sup>).

$$C_s^{\text{sat}}(\text{mg/kg-soil}) = S/\rho_s \times (H\theta_{\text{as}} + \theta_{\text{ws}} + k_s \rho_s)$$

## Slope Factors and Reference Doses Used for Iowa Tier 1 Table Generation

Chemical	SF <sub>i</sub> ((kg-day)/mg)	SF <sub>o</sub> ((kg-day)/mg)	RfD <sub>i</sub> (mg/(kg-day))	RfD <sub>o</sub> (mg/(kg-day))
Benzene	0.029	0.029	—	—
Toluene	—	—	0.114	0.2
Ethylbenzene	—	—	0.286	0.1
Xylenes	—	—	2.0	2.0
Naphthalene	—	—	0.004	0.004
Benzo(a)pyrene	6.1	7.3	—	—
Benz(a)anthracene	0.61	0.73	—	—
Chrysene	0.061	0.073	—	—

[ARC 9011B, IAB 8/25/10, effective 9/29/10]

### Appendix B – Tier 2 Equations and Parameter Values (Revised Model)

All Tier 1 equations and parameters apply at Tier 2 except as specified below.

#### Equation for Tier 2 Groundwater Contaminant Transport Model

Equation (1)

$$C(x) = C_s \exp\left(\frac{x_m}{2\alpha_x} \left[1 - \sqrt{1 + \frac{4\lambda\alpha_x}{u}}\right]\right) \operatorname{erf}\left(\frac{S_w}{4\sqrt{\alpha_y x_m}}\right) \operatorname{erf}\left(\frac{S_d}{4\sqrt{\alpha_z x_m}}\right)$$

Equation (2)

Where  $x_m = ax + bx^c$

The value of  $X_m$  is computed from Equation (2), where the values for a, b and c in Equation (2) are given in Table 1.

Table 1. Parameter Values for Equation (2)

Chemical	a	b	c
Benzene	1	0.000000227987	3.929438689
Toluene	1	0.000030701	3.133842393
Ethylbenzene	1	0.0001	2.8
Xylenes	1	0.0	0.0
TEH-Diesel	1	0.000000565	3.625804634
TEH-Waste Oil	1	0.000000565	3.625804634
Naphthalene	1	0	0

#### Variable definitions

x: distance in the x direction downgradient from the source

erf( ): the error function

C(x): chemical concentration in groundwater at x

$C_s$ : Source concentration in groundwater (groundwater concentration at x=0)

$S_w$ : width of the source (perpendicular to x)

$S_d$ : vertical thickness of the source

u: groundwater velocity (pore water velocity);  $u=Ki/\theta e$

K: hydraulic conductivity

i: groundwater head gradient

$\theta e$ : effective porosity

$\lambda$ : first order decay coefficient, chemical specific

$\alpha_x, \alpha_y, \alpha_z$ : dispersivities in the x, y and z directions, respectively

For the following lists of parameters, one of three is required: site-specific measurements, defaults or the option of either (which means the default may be used or replaced with a site-specific measurement).

#### Soil parameters

Parameter	Default Value	Required	
$\rho_s$	soil bulk density	1.86 g/cm <sup>3</sup>	option
$f_{oc}$	fraction organic carbon in the soil	0.01 kg-C/kg-soil	option
$\theta_T$	total soil porosity	0.3cm <sup>3</sup> -voids/cm <sup>3</sup> -soil	option
$\theta_{as}$	volumetric air content in vadose zone	0.2cm <sup>3</sup> -air/cm <sup>3</sup> -soil	default
$\theta_{ws}$	volumetric water content in vadose zone	0.1cm <sup>3</sup> -H <sub>2</sub> O/cm <sup>3</sup> -soil	default

Parameter		Default Value	Required
$\theta_{\text{acrack}}$	volumetric air content in foundation/wall cracks	0.2cm <sup>3</sup> -air/cm <sup>3</sup> -soil	default
$l$	infiltration rate of water through soil	7 cm/year	default

If the total porosity is measured, assume 1/3 is air filled and 2/3 is water filled for determining the water and air fraction in the vadose zone soil and floor cracks.

#### Groundwater Transport Modeling Parameters

Parameter		Default Value	Required
$K$	hydraulic conductivity	16060 cm/year	site-specific
$i$	groundwater head gradient	0.01 cm/cm	site-specific
$S_w$	width of the source	use procedure specified in 135.10(2)	site-specific
$S_d$	vertical thickness of the source	3 m	default
$\alpha_x$	dispersivity in the x direction	0.1x	default
$\alpha_y$	dispersivity in the y direction	0.33 $\alpha_x$	default
$\alpha_z$	dispersivity in the z direction	0.05 $\alpha_x$	default
$\theta_e$	effective porosity	0.1	default

where  $u=Ki/\theta_e$

#### First-order Decay Coefficients

Chemical	Default Value $\lambda$ (d-1)	Required
Benzene	0.000127441	default
Toluene	0.0000208066	default
Ethylbenzene	0.0	default
Xylenes	0.0005	default
Naphthalene	0.00013	default
TEH-Diesel	0.0000554955	default
TEH-Waste Oil	0.0000554955	default

#### Other Parameters for Groundwater Vapor to Enclosed Space

Parameter		Default Value	Required
$L_{gw}$	depth to groundwater from the enclosed space foundation	1 cm	option
$L_B$	enclosed space volume/infiltration area ratio	200 cm	option
$ER$ (s-1)	enclosed space air exchange rate	0.00014	default
$L_{\text{crack}}$	enclosed space foundation or wall thickness	15 cm	default
$\eta$	areal fraction of cracks in foundation/wall	0.01	default

## Other Parameters for Soil Vapor to Enclosed Space

Parameter		Default Value	Required
$L_s$	depth to subsurface soil sources from the enclosed space foundation	1 cm	option
$L_B$	enclosed space volume/infiltration area ratio	250 cm *	option
ER (s-1)	enclosed space air exchange rate	0.000185 *	default
Lcrack	enclosed space foundation or wall thickness	15 cm	default
$\eta$	areal fraction of cracks in foundation/wall	0.01	default

\*These values are an average of residential and nonresidential factors.

## Soil Leaching to Groundwater

Parameter		Default Value	Required
$\delta$	groundwater mixing zone	2 m	default

## Building Parameters for Iowa Tier 2

Parameter		Residential	Nonresidential
ER (s-1)	enclosed space air exchange rate	0.00014	0.00023
$L_B$	enclosed space volume/infiltration area ratio	200 cm	300 cm

Other Parameters

For Tier 2, the following are the same as Tier 1 values (refer to Appendix A): chemical-specific parameters, slope factors and reference doses, and exposure factors (except for those listed below).

Exposure Factors for Tier 2 Groundwater Vapor to Enclosed Space Modeling:

Potential Residential: use residential exposure and residential building parameters.

Potential Nonresidential: use nonresidential exposure and nonresidential building parameters.

Diesel and Waste Oil

Diesel and Waste Oil			Chemical-Specific Values for Tier 1			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	150	0.012	0.12	1.2
		potential	150	1.2	12.0	NA
	Groundwater Vapor to Enclosed Space	all	4,440	NA	NA	NA
	Groundwater to Water Line	all	150	1.2	12.0	NA
	Surface Water	all	150	1.2	12.0	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	7.6	NA	NA	NA
	Soil Vapor to Enclosed Space	all	95	NA	NA	NA
	Soil to Water Line	all	21	NA	NA	NA

Due to difficulties with analytical methods for the four individual chemicals listed in the above table, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that diesel contains 0.2% naphthalene, 0.001% benzo(a)pyrene, 0.001% benz(a)anthracene, and 0.001% chrysene. Resulting TEH Default Values are shown in the following table.

Diesel			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a)pyrene	Benz(a)anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	75,000	1,200	12,000	120,000
		potential	75,000	120,000	1,200,000	NA
	Groundwater Vapor to Enclosed Space	all	2,200,000	NA	NA	NA
	Groundwater to Water Line	all	75,000	120,000	1,200,000	NA
	Surface Water	all	75,000	120,000	1,200,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	3,800	NA	NA	NA
	Soil Vapor to Enclosed Space	all	47,500	NA	NA	NA
	Soil to Water Line	all	10,500	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.

Due to difficulties with analytical methods for the four individual chemicals, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that waste oil contains no naphthalene, 0.003% benzo(a)pyrene, 0.003% benz(a)anthracene, and 0.003% chrysene. Resulting TEH Default Values are shown in the following table.

Waste Oil			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a)pyrene	Benz(a)anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	NA	400	4,000	40,000
		potential	NA	40,000	400,000	NA
Groundwater (ug/L)	Groundwater Vapor to Enclosed Space	all	NA	NA	NA	NA
	Groundwater to Water Line	all	NA	40,000	400,000	NA
	Surface Water	all	NA	40,000	400,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	NA	NA	NA	NA
	Soil Vapor to Enclosed Space	all	NA	NA	NA	NA
	Soil to Water Line	all	NA	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.

## Water Line Calculations

**Explanation of Target Levels for  
Petroleum Fuel-Derived BTEX Compounds in Groundwater and Soil**

**GROUNDWATER**PVC or Gasketed Mains*Benzene: 7,500 µg/L*

Gasoline-saturated groundwater was considered to be an extreme condition of environmental contamination, and it was considered unacceptable to leave water lines, regardless of material, in contact with this level of benzene contamination. While Ong et al. (2008) showed that gasoline-saturated groundwater would not pose a significant risk of permeation exceeding the 5 µg/L MCL for benzene of gasketed DI or PVC water mains, a safety factor of 1/8th was applied to the level of benzene in premium gasoline-saturated water determined by Ong et al. (2008). A 1/2 safety factor was compounded for each of four potential safety risks: material defects in the pipe (= 1/2), presence of service line taps (= 1/4), stagnation of water (= 1/6), and water line breaks (= 1/8). This was an average of 67.5 mg/L ± 4.9 mg/L for multiple preparations of gasoline-saturated water and was rounded to 60.0 mg/L to conservatively account for the statistical uncertainty. Hence,

$$\text{Target Level} = \frac{1}{8} \times 60,000 \text{ µg/L} = 7,500 \text{ µg/L benzene}$$

*Toluene: 6,250 µg/L*

The target level for toluene was determined similarly to that for benzene. The level of toluene in premium gasoline-saturated water was determined by Ong et al. (2008) to be 56.2 mg/L ± 4.9 mg/L and conservatively rounded to 50.0 mg/L. Hence,

$$\text{Target Level} = \frac{1}{8} \times 50,000 \text{ µg/L} = 6,250 \text{ µg/L toluene}$$

*Ethylbenzene: 40,000 µg/L*

The target level was set to be double that for PVC or Gasketed Service Lines (20,000 µg/L – see below).

*Total Xylenes: 48,000 µg/L*

The target level was set to be double that for PVC or Gasketed Service Lines (24,000 µg/L – see below).

PVC or Gasketed Service Lines*Benzene: 3,750 µg/L*

The target level was set to be one-half of that for PVC or Gasketed Mains (7,500 µg/L as above) since service lines tend to be of higher risk than mains owing to their smaller diameter and greater potential for stagnation.

*Toluene: 3,120 µg/L*

Similar to benzene, the target level was set to be one-half of that for PVC or Gasketed Mains (6,250 µg/L as above) since service lines tend to be of higher risk than mains owing to their smaller diameter and greater potential for stagnation. Odd-even rounding to 3 significant figures was applied.

*Ethylbenzene: 20,000 µg/L*

The target level was based on two observations by Ong et al. (2008): (1) premium gasoline-saturated water has an average concentration of 3.4 mg/L ethylbenzene and (2) ethylene permeates high density polyethylene 46 times slower than does benzene (presumably, this is reasonably representative of other materials such as rubber gaskets). The 1/8 safety factor was also applied, as above. Odd-even rounding to 2 significant figures was applied. Hence:

$$\text{Target Level} = 3,400 \mu\text{g/L} \times 46 \times \frac{1}{8} = 19,550 \mu\text{g/L} = 20,000 \mu\text{g/L}$$

*Total Xylenes: 24,000 µg/L*

Similar to ethylbenzene, the target level was based on (1) premium gasoline-saturated water has an average concentration of 19 mg/L total xylenes and (2) total xylenes permeate high density polyethylene 10 times slower than does benzene. The 1/8 safety factor was also applied, as above. Odd-even rounding to 2 significant figures was applied. Hence:

$$\text{Target Level} = 19,000 \mu\text{g/L} \times 10 \times \frac{1}{8} = 23,750 \mu\text{g/L} = 24,000 \mu\text{g/L}$$

#### PE/PB/AC

*Benzene: 200 µg/L*

The target level was set at the concentration of benzene in groundwater surrounding a 1" HDPE service line (SIDR 9 IPS) that would result in a concentration of 2 µg/L benzene in the service line after a 24 hr stagnation period. This level was chosen because 2 µg/L is generally the minimum reportable concentration of benzene in laboratory reports received by the department.

The permeation rate is a function of the concentration of benzene in the groundwater as described by Ong et al. (2008), equation 3.4a:

$$P_m = 0.0079 C_{bulk}^{1.1323}$$

where  $P_m$  is the benzene permeation rate in  $\mu\text{g}/\text{cm}^2/\text{day}$  through the pipe described above ( $\text{cm}^2$  refers to the inner surface of the pipe) and  $C_{bulk}$  is the concentration of benzene in the groundwater (mg/L).

For any length of exposed 1" SIDR 9 IPS pipe,  $l$  (cm), the concentration in the pipe after 24 hr stagnation,  $C_{24hr}$  ( $\mu\text{g}/\text{L}$ ), can be computed from  $P_m$  and the ratio of the inner surface of the pipe to the internal volume:

$$C_{24hr} = P_m \times \left( \frac{2\pi r l}{\pi r^2 l / 1000} \right) = 0.0079 C_{bulk}^{1.1323} \times \frac{2000}{r}$$

where  $r$  is the inside radius of the pipe (cm),  $l$  is the length of exposed pipe (cm), and dividing by 1000 converts from  $\text{cm}^3$  to liters (and, therefore,  $2000/r$  converts  $\mu\text{g}/\text{cm}^2/\text{day}$  to  $\mu\text{g}/\text{L}/\text{day}$ ).

Solving for  $C_{bulk}$  (mg/L) with  $C_{24hr} = 2 \mu\text{g}/\text{L}$  and  $r = 1.28$  cm (per manufacturer's specifications):

$$C_{bulk}^{1.1323} = \frac{2 \times 1.28}{0.0079 \times 2000}$$

and

$$C_{bulk} = \sqrt[1.1323]{0.162} = 0.200 \text{ mg/L} = 200 \mu\text{g/L}$$

While the target level is expressed as 200 µg/L for clarity, the underlying data support only two significant figures. In a stricter treatment of the data, this would be expressed as  $20 \times 10^1$  µg/L.

*Toluene: 3,120 µg/L*

The target level was set to be equal to that for PVC or Gasketed Service Lines. Calculations similar to those used above for benzene (Ong et al. (2008), equation 3.4b) indicate that 3,120 µg/L toluene in groundwater would result in 50 µg/L inside a 1" SIDR 9 IPS HDPE pipe after 24 hours of stagnation, which is 1/20th of the 1,000 µg/L MCL for toluene.

*Ethylbenzene: 3,400 µg/L*

The target level was set to be equal to the concentration of ethylbenzene in premium gasoline-saturated water (see discussion above for PVC or Gasketed Mains/Benzene). Unlike other target levels based on contaminant concentrations in gasoline-saturated water, the 1/8th safety factor was not applied because of the very low permeation rate of ethylbenzene through HDPE, the relatively low solubility of ethylbenzene in water, and the relatively high MCL (700 µg/L). Ong et al. (2008) found that permeation of HDPE by aqueous ethylbenzene was minimal and of no consequence for public health.

*Total Xylenes: 19,000 µg/L*

The target level was set to be equal to the concentration of ethylbenzene in premium gasoline-saturated water following the same reasoning for ethylbenzene (above). The permeation rate and water solubility are also very low, and the MCL is 10,000 µg/L. Ong et al. (2008) found that permeation of HDPE by aqueous xylenes was minimal and of no consequence for public health.

## SOIL

Target levels for soil were set to be the same for mains and service lines of any material discussed above under "Groundwater." The underlying data support two significant figures for target levels in soil. Odd-even rounding was applied where appropriate.

*Benzene: 2.0 mg/Kg*

The target level was derived from the concentration of benzene (mg/Kg) that would result if soil that was 10% moisture and 1% organic matter was equilibrated with premium gasoline-saturated water (60 mg/L benzene – as per discussion of PVC or Gasketed Mains/Benzene above). The equilibrium concentration in soil was calculated using the approach of Chiou et al. (1983). The 1/8th safety factor discussed previously for groundwater was applied. Accordingly:

$$C_T = C_w K_d + C_w \theta$$

where  $C_T$  is the total concentration of benzene in soil (mg/Kg),  $\theta$  is the fraction of moisture in the soil (Kg/Kg), and  $K_d$  is the partition coefficient from water to soil (L/Kg). Further:

$$K_d = K_{om} f_{om}$$

where  $K_{om}$  is the partition coefficient from water to organic matter in the soil, which is 16.8 L/Kg for benzene in soils with naturally occurring organic matter (Chiou et al. (1983)), and  $f_{om}$  is the fraction of organic matter in the dry soil (Kg/Kg).

For soil containing 1% naturally occurring organic matter and 10% moisture, the total concentration of benzene upon exposure to premium gasoline-saturated groundwater (60 mg/L benzene, as per above discussion of PVC or Gasketed Mains) would be:

$$C_T = \left( \frac{60 \text{ mg}}{\text{L}} \times \left( \frac{16.8 \text{ L}}{\text{Kg}} \times \frac{0.01 \text{ Kg}}{\text{Kg}} \right) \right) + \left( \frac{60 \text{ mg}}{\text{L}} \times \frac{0.1 \text{ Kg}}{\text{Kg}} \right) = \frac{16 \text{ mg}}{\text{Kg}}$$

Applying the 1/8th safety factor:

$$\text{Target Level} = \frac{1}{8} \times \frac{16 \text{ mg}}{\text{Kg}} = \frac{2.0 \text{ mg}}{\text{Kg}}$$

*Toluene: 3.2 mg/Kg*

The target level was derived in the same manner as for benzene except that the concentration of toluene in premium gasoline-saturated water is 50 mg/L and  $K_{om}$  is 42 L/Kg. Accordingly:

$$C_T = \left( \frac{50 \text{ mg}}{\text{L}} \times \left( \frac{42 \text{ L}}{\text{Kg}} \times \frac{0.01 \text{ Kg}}{\text{Kg}} \right) \right) + \left( \frac{50 \text{ mg}}{\text{L}} \times \frac{0.1 \text{ Kg}}{\text{Kg}} \right) = \frac{26 \text{ mg}}{\text{Kg}}$$

and

$$\text{Target Level} = \frac{1}{8} \times \frac{26 \text{ mg}}{\text{Kg}} = \frac{3.2 \text{ mg}}{\text{Kg}}$$

*Ethylbenzene: 45 mg/Kg*

The target level was based on the target level set for Groundwater/PVC or Gasketed Mains (40,000  $\mu\text{g/L}$ , rounded from 39,100  $\mu\text{g/L}$ , or 39.1 mg/L) and the principles of Chiou et al. (1983) discussed above. In a manner similar to that for benzene in soil,  $C_W$  was 3.4 mg/L,  $K_d$  was 0.106 L/Kg, and  $C_T$  was calculated to be 3.9 mg/Kg. The target level for soil that is equivalent to the target level set for groundwater was calculated as follows:

$$\text{Target Level mg/Kg} = 39.1 \text{ mg/L} \times \frac{3.9 \text{ mg/Kg}}{3.4 \text{ mg/L}} = 45 \text{ mg/Kg}$$

*Total Xylenes: 52 mg/Kg*

The target level was set in the same manner as for ethylbenzene (above), based on the groundwater target level of 48,000  $\mu\text{g/L}$  (rounded from 47.5 mg/L).  $C_W$  was 19 mg/L,  $K_d$  was 1.001 L/Kg (assuming a mixture of m-, o-, and p-xylenes which is 60%, 20%, and 20%, respectively, which is typical of xylenes derived from petroleum), and  $C_T$  was calculated to be 21 mg/Kg. Hence:

$$\text{Target Level mg/Kg} = 47.5 \text{ mg/L} \times \frac{21 \text{ mg/Kg}}{19 \text{ mg/L}} = 52 \text{ mg/Kg}$$

**NOTE:** The 1/8th safety factor was applied above to the target levels for ethylbenzene and total xylenes for Groundwater, PVC or Gasketed Service Lines, thence the target levels for Groundwater, PVC or Gasketed Mains, were derived. Consequently, the 1/8th safety factor has also been applied to the target levels for both ethylbenzene and total xylenes in soil.

## REFERENCES

- Chiou, C. T., P. E. Porter and D. W. Schmedding. 1983. Partition equilibria of nonionic organic compounds between soil organic matter and water. *Environ. Sci. Technol.*, 17(4)227-231.
- Ong, S. K., J. A. Gaunt, F. Mao, C. L. Cheng, L. Esteve-Agelet, and C. R. Hurburgh. 2008. Impact of hydrocarbons on PE/PVC pipes and pipe gaskets, Publication 91204. Awwa Research Foundation (presently Water Research Foundation), Denver, CO.

### Appendix B-1 – Tier 2 Equations and Parameter Values (Old Model)

All Tier 1 equations and parameters apply at Tier 2 except as specified below.

Equation for Tier 2 Groundwater Contaminant Transport Model

$$C(x) = C_s \exp \left( \frac{x}{2\alpha_x} \left[ 1 - \sqrt{1 + \frac{4\lambda\alpha_x}{u}} \right] \right) \operatorname{erf} \left( \frac{S_w}{4\sqrt{\alpha_y x}} \right) \operatorname{erf} \left( \frac{S_d}{4\sqrt{\alpha_z x}} \right)$$

#### Variable definitions

x: distance in the x direction downgradient from the source

erf( ): the error function

C(x): chemical concentration in groundwater at x

C<sub>s</sub>: Source concentration in groundwater (groundwater concentration at x=0)

S<sub>w</sub>: width of the source (perpendicular to x)

S<sub>d</sub>: vertical thickness of the source

u: groundwater velocity (pore water velocity); u=Ki/θe

K: hydraulic conductivity

i: groundwater head gradient

θe: effective porosity

λ: first-order decay coefficient, chemical specific

α<sub>x</sub>, α<sub>y</sub>, α<sub>z</sub>: dispersivities in the x, y and z directions, respectively

For the following lists of parameters, one of three is required: site-specific measurements, defaults or the option of either (which means the default may be used or replaced with a site-specific measurement).

#### Soil parameters

Parameter	Default Value	Required	
ρ <sub>s</sub>	soil bulk density	1.86 g/cm <sup>3</sup>	option
f <sub>oc</sub>	fraction organic carbon in the soil	0.01 kg-C/kg-soil	option
θ <sub>T</sub>	total soil porosity	0.3cm <sup>3</sup> -voids/cm <sup>3</sup> -soil	option
θ <sub>as</sub>	volumetric air content in vadose zone	0.2cm <sup>3</sup> -air/cm <sup>3</sup> -soil	default
θ <sub>ws</sub>	volumetric water content in vadose zone	0.1cm <sup>3</sup> -H <sub>2</sub> O/cm <sup>3</sup> -soil	default
θ <sub>acrack</sub>	volumetric air content in foundation/wall cracks	0.2cm <sup>3</sup> -air/cm <sup>3</sup> -soil	default
θ <sub>wcrack</sub>	volumetric water content in foundation/wall cracks	0.1cm <sup>3</sup> -H <sub>2</sub> O/cm <sup>3</sup> -soil	default
l	infiltration rate of water through soil	7 cm/year	default

If the total porosity is measured, assume 1/3 is air filled and 2/3 is water filled for determining the water and air fraction in the vadose zone soil and floor cracks.

## Groundwater Transport Modeling Parameters

Parameter		Default Value	Required
K	hydraulic conductivity	16060 cm/year	site-specific
i	groundwater head gradient	0.01 cm/cm	site-specific
S <sub>w</sub>	width of the source	use procedure specified in 135.10(2)	site-specific
S <sub>d</sub>	vertical thickness of the source	3 m	default
α <sub>x</sub>	dispersivity in the x direction	0.1x	default
α <sub>y</sub>	dispersivity in the y direction	0.33α <sub>x</sub>	default
α <sub>z</sub>	dispersivity in the z direction	0.05α <sub>x</sub>	default
θ <sub>e</sub>	effective porosity	0.1	default

where  $u=Ki/\theta_e$

## First-order Decay Coefficients

Chemical	Default Value λ (d-1)	Required
Benzene	0.0005	default
Toluene	0.0007	default
Ethylbenzene	0.00013	default
Xylenes	0.0005	default
Naphthalene	0.00013	default
Benzo(a)pyrene	0	default
Benz(a)anthracene	0	default
Chrysene	0	default

## Other Parameters for Groundwater Vapor to Enclosed Space

Parameter		Default Value	Required
L <sub>gw</sub>	depth to groundwater from the enclosed space foundation	1 cm	option
L <sub>B</sub>	enclosed space volume/infiltration area ratio	200 cm	option
ER (s-1)	enclosed space air exchange rate	0.00014	default
L <sub>crack</sub>	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

## Other Parameters for Soil Vapor to Enclosed Space

Parameter		Default Value	Required
L <sub>s</sub>	depth to subsurface soil sources from the enclosed space foundation	1 cm	option
L <sub>B</sub>	enclosed space volume/infiltration area ratio	250 cm *	option
ER (s-1)	enclosed space air exchange rate	0.000185 *	default
L <sub>crack</sub>	enclosed space foundation or wall thickness	15 cm	default
η	areal fraction of cracks in foundation/wall	0.01	default

\*These values are an average of residential and nonresidential factors.

## Soil Leaching to Groundwater

Parameter		Default Value	Required
$\delta$	groundwater mixing zone	2 m	default

## Building Parameters for Iowa Tier 2

Parameter		Residential	Nonresidential
ER (s-1)	enclosed space air exchange rate	0.00014	0.00023
$L_B$	enclosed space volume/infiltration area ratio	200 cm	300 cm

Other Parameters

For Tier 2, the following are the same as Tier 1 values (refer to Appendix A): chemical-specific parameters, slope factors and reference doses, and exposure factors (except for those listed below).

Exposure Factors for Tier 2 Groundwater Vapor to Enclosed Space Modeling:

Potential Residential: use residential exposure and residential building parameters.

Potential Nonresidential: use nonresidential exposure and nonresidential building parameters.

Diesel and Waste Oil

Diesel and Waste Oil			Chemical-Specific Values for Tier 1			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a)pyrene	Benz(a)anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	150	0.012	0.12	1.2
		potential	150	1.2	12.0	NA
	Groundwater Vapor to Enclosed Space	all	4,440	NA	NA	NA
	Groundwater to Plastic Water Line	all	150	1.2	12.0	NA
	Surface Water	all	150	1.2	12.0	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	7.6	NA	NA	NA
	Soil Vapor to Enclosed Space	all	95	NA	NA	NA
	Soil to Plastic Water Line	all	21	NA	NA	NA

Due to difficulties with analytical methods for the four individual chemicals listed in the above table, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that diesel contains 0.2% naphthalene, 0.001% benzo(a)pyrene, 0.001% benz(a)anthracene, and 0.001% chrysene. Resulting TEH Default Values are shown in the following table.

Diesel			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	75,000	1,200	12,000	120,000
		potential	75,000	120,000	1,200,000	NA
	Groundwater Vapor to Enclosed Space	all	2,200,000	NA	NA	NA
	Groundwater to Plastic Water Line	all	75,000	120,000	1,200,000	NA
	Surface Water	all	75,000	120,000	1,200,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	3,800	NA	NA	NA
	Soil Vapor to Enclosed Space	all	47,500	NA	NA	NA
	Soil to Plastic Water Line	all	10,500	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.

Due to difficulties with analytical methods for the four individual chemicals, Total Extractable Hydrocarbon (TEH) default values were calculated for each chemical, using the assumption that waste oil contains no naphthalene, 0.003% benzo(a)pyrene, 0.003% benz(a)anthracene, and 0.003% chrysene. Resulting TEH Default Values are shown in the following table.

Waste Oil			TEH Default Values			
Media	Exposure Pathway	Receptor	Naphthalene	Benzo(a) pyrene	Benz(a) anthracene	Chrysene
Groundwater (ug/L)	Groundwater Ingestion	actual	NA	400	4,000	40,000
		potential	NA	40,000	400,000	NA
Groundwater (ug/L)	Groundwater Vapor to Enclosed Space	all	NA	NA	NA	NA
	Groundwater to Plastic Water Line	all	NA	40,000	400,000	NA
	Surface Water	all	NA	40,000	400,000	NA
Soil (mg/kg)	Soil Leaching to Groundwater	all	NA	NA	NA	NA
	Soil Vapor to Enclosed Space	all	NA	NA	NA	NA
	Soil to Plastic Water Line	all	NA	NA	NA	NA

The lowest TEH default value for each pathway (shown as a shaded box) was used in the Tier 1 Table.  
[ARC 9011B, IAB 8/25/10, effective 9/29/10]

**APPENDIX C****DECLARATION OF RESTRICTIVE COVENANTS**

Rescinded IAB 7/19/06, effective 8/23/06

**APPENDIX D****IOWA DEPARTMENT OF NATURAL RESOURCES****NO FURTHER ACTION CERTIFICATE**

This document certifies that the referenced underground storage tank site has been classified by the Iowa Department of Natural Resources (IDNR) as “no action required” as provided in the 1995 Iowa Code Supplement 455B.474(1)“h”(1). This certificate may be recorded as provided by law.

ISSUED TO: OWNERS/OPERATORS OF TANKS  
 DATE OF ISSUANCE:  
 IDNR FILE REFERENCES: LUST # REGISTRATION #  
 LEGAL DESCRIPTION OF UNDERGROUND STORAGE TANK SITE:

Issuance of this certificate does not preclude the IDNR from requiring further corrective action due to new releases and is based on the information available to date. The department is precluded from requiring additional corrective action solely because governmental action standards are changed. See 1995 Iowa Code Supplement 455B.474(1)“h”(1).

This certificate does not constitute a warranty or a representation of any kind to any person as to the environmental condition, marketability or value of the above referenced property other than that certification required by 1995 Iowa Code Supplement 455B.474(1)“h”.

These rules are intended to implement Iowa Code sections 455B.304, 455B.424 and 455B.474.

- [Filed emergency 9/20/85—published 10/9/85, effective 9/20/85]
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 [Editorial change: IAC Supplement 11/27/13]

<sup>1</sup> July 15, 1987, effective date of 135.9(4) delayed 70 days by Administrative Rules Review Committee at its June 1987 meeting.

<sup>2</sup> August 6, 2008, effective date of **ARC 6892B** delayed 70 days by Administrative Rules Review Committee at its July 2008 meeting. At its meeting held October 14, 2008, the Committee delayed until adjournment of the 2009 Session of the General Assembly the following provisions: **567—135.2(455B)**, definition of “Sensitive area”; **135.9(4)“f”**; **135.10(4)“a,”** last sentence: “A public water supply screening and risk assessment must be conducted in accordance with 135.10(4)“f” for this pathway” and **135.10(4)“b,”** last sentence of the first paragraph: “The certified groundwater professional or the department may request additional sampling of drinking water wells and non-drinking water wells as part of its evaluation”; **135.10(4)“f”**; **135.10(11)“h.”**

<sup>3</sup> February 17, 2010, effective date of 135.5(1)“e” delayed 70 days by the Administrative Rules Review Committee at its meeting held February 8, 2010. At its meeting held April 13, 2010, the Committee delayed the effective date of 135.5(1)“e” until adjournment of the 2011 Session of the General Assembly.



**PROFESSIONAL LICENSURE DIVISION[645]**

Created within the Department of Public Health[641] by 1986 Iowa Acts, chapter 1245.  
Prior to 7/29/87, for Chs. 20 to 22 see Health Department[470] Chs. 152 to 154.

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- 361.1(154E) Definitions
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- 362.1(154E,272C) Definitions
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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 5  
FEES

**645—5.1(147,152D) Athletic training license fees.** All fees are nonrefundable.

5.1(1) License fee for license to practice athletic training is \$120.

5.1(2) Temporary license fee for license to practice athletic training is \$120.

5.1(3) Biennial license renewal fee for each biennium is \$120.

5.1(4) Late fee for failure to renew before expiration is \$60.

5.1(5) Reactivation fee is \$180.

5.1(6) Duplicate or reissued license certificate or wallet card fee is \$20.

5.1(7) Verification of license fee is \$20.

5.1(8) Returned check fee is \$25.

5.1(9) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapters 17A, 147, 152D and 272C.

**645—5.2(147,158) Barbering license fees.** All fees are nonrefundable.

5.2(1) License fee for an initial license to practice barbering, license by endorsement, license by reciprocity or an instructor's license is \$60.

5.2(2) Biennial renewal fee for a barber license or barber instructor license is \$60.

5.2(3) Temporary permit fee is \$12.

5.2(4) Practical examination fee is \$75.

5.2(5) Demonstrator permit fee is \$45 for the first day and \$12 for each day thereafter for which the permit is valid.

5.2(6) Barber school license fee is \$600.

5.2(7) Barber school annual renewal fee is \$300.

5.2(8) Barbershop license fee is \$72.

5.2(9) Biennial renewal fee for a barbershop license is \$72.

5.2(10) Late fee for failure to renew before expiration is \$60.

5.2(11) Reactivation fee for a barber license is \$120.

5.2(12) Reactivation fee for a barbershop license is \$132.

5.2(13) Reactivation fee for a barber school license is \$360.

5.2(14) Duplicate or reissued license certificate or wallet card fee is \$20.

5.2(15) Verification of license fee is \$20.

5.2(16) Returned check fee is \$25.

5.2(17) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.80 and Iowa Code chapter 158.

[ARC 8349B, IAB 12/2/09, effective 1/6/10]

**645—5.3(147,154D) Behavioral science license fees.** All fees are nonrefundable.

5.3(1) License fee for license to practice marital and family therapy or mental health counseling is \$120.

5.3(2) Temporary license fee for license to practice marital and family therapy or mental health counseling is \$120.

5.3(3) Biennial license renewal fee for each biennium is \$120.

5.3(4) Late fee for failure to renew before expiration is \$60.

5.3(5) Reactivation fee is \$180.

5.3(6) Duplicate or reissued license certificate or wallet card fee is \$20.

5.3(7) Verification of license fee is \$20.

5.3(8) Returned check fee is \$25.

5.3(9) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 154D and 272C.

[ARC 8152B, IAB 9/23/09, effective 10/28/09]

**645—5.4(151) Chiropractic license fees.** All fees are nonrefundable.

- 5.4(1) License fee for license to practice chiropractic is \$270.
  - 5.4(2) Fee for issuance of annual temporary certificate is \$120.
  - 5.4(3) Biennial license renewal fee is \$120.
  - 5.4(4) Late fee for failure to renew before the expiration date is \$60.
  - 5.4(5) Reactivation fee is \$180.
  - 5.4(6) Duplicate or reissued license certificate or wallet card fee is \$20.
  - 5.4(7) Fee for verification of license is \$20.
  - 5.4(8) Returned check fee is \$25.
  - 5.4(9) Disciplinary hearing fee is a maximum of \$75.
- This rule is intended to implement Iowa Code chapters 17A, 151 and 272C.

**645—5.5(147,157) Cosmetology arts and sciences license fees.** All fees are nonrefundable.

- 5.5(1) License fee for license to practice cosmetology arts and sciences, license by endorsement, license by reciprocity, or an instructor's license is \$60.
- 5.5(2) Biennial license renewal fee for each license for each biennium is \$60.
- 5.5(3) Late fee for failure to renew before expiration is \$60.
- 5.5(4) Reactivation fee for applicants licensed to practice cosmetology is \$120; for salons, \$144; and for schools, \$330.
- 5.5(5) Duplicate or reissued license certificate or wallet card fee is \$20.
- 5.5(6) Fee for verification of license is \$20.
- 5.5(7) Returned check fee is \$25.
- 5.5(8) Disciplinary hearing fee is a maximum of \$75.
- 5.5(9) Fee for license to conduct a school teaching cosmetology arts and sciences is \$600.
- 5.5(10) Fee for renewal of a school license is \$270 annually.
- 5.5(11) Salon license fee is \$84.
- 5.5(12) Biennial license renewal fee for each salon license for each biennium is \$84.
- 5.5(13) Demonstrator and not-for-profit temporary permit fee is \$42 for the first day and \$12 for each day thereafter that the permit is valid.
- 5.5(14) An initial fee or a reactivation fee for certification to administer microdermabrasion or utilize a certified laser product or an intense pulsed light (IPL) device is \$25 for each type of procedure or certified laser product or IPL device.
- 5.5(15) An initial fee or a reactivation fee for certification of cosmetologists to administer chemical peels is \$25.

This rule is intended to implement Iowa Code section 147.80 and chapter 157.

**645—5.6(147,152A) Dietetics license fees.** All fees are nonrefundable.

- 5.6(1) License fee for license to practice dietetics, license by endorsement, or license by reciprocity is \$120.
- 5.6(2) Biennial license renewal fee for each biennium is \$120.
- 5.6(3) Late fee for failure to renew before expiration is \$60.
- 5.6(4) Reactivation fee is \$180.
- 5.6(5) Duplicate or reissued license certificate or wallet card fee is \$20.
- 5.6(6) Verification of license fee is \$20.
- 5.6(7) Returned check fee is \$25.
- 5.6(8) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 152A and 272C.

**645—5.7(147,154A) Hearing aid dispensers license fees.** All fees are nonrefundable.

- 5.7(1) Application fee for a license to practice by examination, endorsement, or reciprocity is \$156.

**5.7(2)** Examination fee (check or money order made payable to the International Hearing Society) is \$95.

**5.7(3)** Renewal of license fee is \$60.

**5.7(4)** Temporary permit fee is \$42.

**5.7(5)** Late fee is \$60.

**5.7(6)** Reactivation fee is \$120.

**5.7(7)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.7(8)** Verification of license fee is \$20.

**5.7(9)** Returned check fee is \$25.

**5.7(10)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapter 154A.

**645—5.8(147) Massage therapy license fees.** All fees are nonrefundable.

**5.8(1)** License fee for license to practice massage therapy is \$120.

**5.8(2)** Biennial license renewal fee for each biennium is \$60.

**5.8(3)** Temporary license fee for up to one year is \$120.

**5.8(4)** Late fee for failure to renew before expiration is \$60.

**5.8(5)** Reactivation fee is \$120.

**5.8(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.8(7)** Verification of license fee is \$20.

**5.8(8)** Returned check fee is \$25.

**5.8(9)** Disciplinary hearing fee is a maximum of \$75.

**5.8(10)** Initial application fee for approval of massage therapy education curriculum is \$120.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

**645—5.9(147,156) Mortuary science license fees.** All fees are nonrefundable.

**5.9(1)** License fee for license to practice funeral directing is \$120.

**5.9(2)** Biennial funeral director's license renewal fee for each biennium is \$120.

**5.9(3)** Late fee for failure to renew before expiration is \$60.

**5.9(4)** Reactivation fee for a funeral director is \$180 and for a funeral establishment or cremation establishment is \$150.

**5.9(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.9(6)** Verification of license fee is \$20.

**5.9(7)** Returned check fee is \$25.

**5.9(8)** Disciplinary hearing fee is a maximum of \$75.

**5.9(9)** Funeral establishment or cremation establishment fee is \$90.

**5.9(10)** Three-year renewal fee of funeral establishment or cremation establishment is \$90.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 156 and 272C.

**645—5.10(147,155) Nursing home administrators license fees.** All fees are nonrefundable.

**5.10(1)** License fee for license to practice nursing home administration is \$120.

**5.10(2)** Biennial license renewal fee for each license for each biennium is \$60.

**5.10(3)** Late fee for failure to renew before expiration is \$60.

**5.10(4)** Reactivation fee is \$120.

**5.10(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.10(6)** Verification of license fee is \$20.

**5.10(7)** Returned check fee is \$25.

**5.10(8)** Disciplinary hearing fee is a maximum of \$75.

**5.10(9)** Provisional license fee is \$120.

This rule is intended to implement Iowa Code section 147.80 and Iowa Code chapter 155.

**645—5.11(147,148B) Occupational therapy license fees.** All fees are nonrefundable.

**5.11(1)** License fee for an OT or OTA license to practice occupational therapy is \$120.

**5.11(2)** Biennial license renewal fee to practice occupational therapy is \$60.

**5.11(3)** Biennial license renewal fee for an occupational therapy assistant is \$60.

**5.11(4)** Late fee for failure to renew before expiration is \$60.

**5.11(5)** Reactivation fee is \$120.

**5.11(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.11(7)** Verification of license fee is \$20.

**5.11(8)** Returned check fee is \$25.

**5.11(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148B and 272C.

**645—5.12(147,154) Optometry license fees.** All fees are nonrefundable.

**5.12(1)** License fee for license to practice optometry, license by endorsement, or license by reciprocity is \$300.

**5.12(2)** Biennial license renewal fee for each biennium is \$144.

**5.12(3)** Late fee for failure to renew before expiration date is \$60.

**5.12(4)** Reactivation fee is \$204.

**5.12(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.12(6)** Verification of license fee is \$20.

**5.12(7)** Returned check fee is \$25.

**5.12(8)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code chapters 17A, 147, 154 and 272C.

**645—5.13(147,148A) Physical therapy license fees.** All fees are nonrefundable.

**5.13(1)** License fee for license to practice physical therapy or as a physical therapist assistant is \$120.

**5.13(2)** Biennial license renewal fee for a physical therapist is \$60.

**5.13(3)** Biennial license renewal fee for a physical therapist assistant is \$60.

**5.13(4)** Late fee for failure to renew before expiration is \$60.

**5.13(5)** Reactivation fee is \$120.

**5.13(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.13(7)** Verification of license fee is \$20.

**5.13(8)** Returned check fee is \$25.

**5.13(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148A and 272C.

**645—5.14(148C) Physician assistants license fees.** All fees are nonrefundable.

**5.14(1)** Application fee for a license is \$120.

**5.14(2)** Fee for a temporary license is \$120.

**5.14(3)** Renewal of license fee is \$120.

**5.14(4)** Late fee for failure to renew before expiration is \$60.

**5.14(5)** Reactivation fee is \$180.

**5.14(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.14(7)** Fee for verification of license is \$20.

**5.14(8)** Returned check fee is \$25.

**5.14(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148C and 272C.

**645—5.15(147,148F,149) Podiatry license fees.** All fees are nonrefundable.

**5.15(1)** License fee for license to practice podiatry, license by endorsement, or license by reciprocity is \$400.

**5.15(2)** License fee for temporary license to practice podiatry is \$200.

**5.15(3)** The fee for a license to practice orthotics, prosthetics, or pedorthics received on or before July 1, 2015, shall be \$600. The fee for a license to practice orthotics, prosthetics, or pedorthics received after July 1, 2015, shall be \$400.

**5.15(4)** Biennial license renewal fee is \$400 for each biennium.

**5.15(5)** Reactivation fee is \$460.

**5.15(6)** Temporary license renewal fee is \$200.

**5.15(7)** Late fee for failure to renew before expiration is \$60.

**5.15(8)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.15(9)** Verification of license fee is \$20.

**5.15(10)** Returned check fee is \$25.

**5.15(11)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 148F, 149 and 272C.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—5.16(147,154B) Psychology license fees.** All fees are nonrefundable.

**5.16(1)** License fee for license to practice psychology is \$120.

**5.16(2)** Biennial license renewal fee is \$170.

**5.16(3)** Late fee for failure to renew before expiration is \$60.

**5.16(4)** Reactivation fee is \$230.

**5.16(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.16(6)** Verification of license fee is \$20.

**5.16(7)** Returned check fee is \$25.

**5.16(8)** Disciplinary hearing fee is a maximum of \$75.

**5.16(9)** Processing fee for exemption to licensure is \$60.

**5.16(10)** Certification fee for a health service provider is \$60.

**5.16(11)** Biennial renewal fee for certification as a certified health service provider in psychology is \$60.

**5.16(12)** Reactivation fee for certification as a certified health service provider in psychology is \$60.

This rule is intended to implement Iowa Code section 147.80 and chapters 17A, 154B and 272C.

**645—5.17(147,152B) Respiratory care license fees.** All fees are nonrefundable.

**5.17(1)** Initial or endorsement license fee to practice respiratory care is \$120, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).

**5.17(2)** Biennial license renewal fee for each biennium is \$60.

**5.17(3)** Late fee for failure to renew before expiration is \$60.

**5.17(4)** Reactivation fee is \$120, plus the cost for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) if the license has been on inactive status for two or more years.

**5.17(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**5.17(6)** Verification of license fee is \$20.

**5.17(7)** Returned check fee is \$25.

**5.17(8)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 152B and 272C.

**645—5.18(147,154E) Sign language interpreters and transliterators license fees.** All fees are nonrefundable.

**5.18(1)** License fee for license to practice interpreting or transliterating is \$120.

**5.18(2)** License fee for temporary license to practice interpreting or transliterating is \$120.

**5.18(3)** Biennial license renewal fee for each biennium is \$120.

- 5.18(4) Late fee for failure to renew before expiration is \$60.
- 5.18(5) Duplicate or reissued license certificate or wallet card fee is \$20.
- 5.18(6) Verification of license fee is \$20.
- 5.18(7) Returned check fee is \$25.
- 5.18(8) Disciplinary hearing fee is a maximum of \$75.
- 5.18(9) Reactivation fee is \$180.

This rule is intended to implement Iowa Code chapters 17A, 147, 154E and 272C.

**645—5.19(147,154C) Social work license fees.** All fees are nonrefundable.

- 5.19(1) License fee for license to practice social work is \$120.
- 5.19(2) Biennial license renewal fee for a license at the bachelor's level is \$72; at the master's level, \$120; and independent level, \$144.
- 5.19(3) Late fee for failure to renew before expiration is \$60.
- 5.19(4) Reactivation fee for the bachelor's level is \$132; for the master's level, \$180; and independent level, \$204.
- 5.19(5) Duplicate or reissued license certificate or wallet card fee is \$20.
- 5.19(6) Verification of license fee is \$20.
- 5.19(7) Returned check fee is \$25.
- 5.19(8) Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.80 and chapters 17A, 154C and 272C.

**645—5.20(147) Speech pathology and audiology license fees.** All fees are nonrefundable.

- 5.20(1) License fee for license to practice speech pathology or audiology, temporary clinical license, license by endorsement, or license by reciprocity is \$120.
- 5.20(2) Biennial license renewal fee for each biennium is \$96.
- 5.20(3) Late fee for failure to renew before expiration is \$60.
- 5.20(4) Reactivation fee is \$156.
- 5.20(5) Duplicate or reissued license certificate or wallet card fee is \$20.
- 5.20(6) Verification of license fee is \$20.
- 5.20(7) Returned check fee is \$25.
- 5.20(8) Disciplinary hearing fee is a maximum of \$75.
- 5.20(9) Temporary clinical license renewal fee is \$60.
- 5.20(10) Temporary permit fee is \$30.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

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CHAPTER 221  
LICENSURE OF ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

**645—221.1(148F) 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 podiatry.

“*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 an orthotist, prosthetist, or pedorthist in the state of Iowa.

“*License expiration date*” means June 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is or has been licensed in another state.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of orthotists, prosthetists, or pedorthists who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 645—221.8(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice orthotics, prosthetics, or pedorthics to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of podiatry to license persons who have the same or similar qualifications to those required in Iowa.

“*Reinstatement*” means the process as outlined in rule 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has 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.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—221.2(148F) Transition period.** Current practitioners of orthotics, prosthetics, and pedorthics who submit a completed application and appropriate licensure fee to the board office on or prior to June 30, 2014, may be issued an initial license based on the following criteria:

1. Verification of current certification in good standing as an orthotist, prosthetist, or pedorthist from the American Board for Certification in Orthotics, Prosthetics, and Pedorthics, Incorporated. The verification must be submitted to the board directly from the accrediting body; or

2. Verification of current certification in good standing as an orthotist, prosthetist, or pedorthist from the Board of Certification, International. The verification must be submitted to the board directly from the accrediting body; or

3. Verification of continuous practice of at least 30 hours per week as an orthotist, prosthetist, or pedorthist for at least five of seven years in an accredited and bonded facility. The five years of continuous practice must occur between July 1, 2007, and June 30, 2014. The practice must occur in an accredited and bonded facility unless the facility is not required to be accredited and bonded by Medicare.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—221.3(148F) Requirements for licensure.** The following criteria shall apply to licensure:

**221.3(1)** An 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 the Board of Podiatry, Bureau of Professional Licensure, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**221.3(2)** An 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.

**221.3(3)** Each application shall be accompanied by the appropriate fees payable to the Board of Podiatry. The fees are nonrefundable.

**221.3(4)** No application will be considered complete until official copies of academic transcripts are received.

*a.* Applicants for licensure in orthotics or prosthetics must submit proof of graduation from an educational program approved by the Commission on Accreditation of Allied Health Education Programs.

*b.* Applicants for licensure in pedorthics must submit proof of graduation from an educational program approved by the National Commission on Orthotic and Prosthetic Education.

**221.3(5)** Transcripts must be sent directly from the school to the board.

**221.3(6)** Licensees who were issued their licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

**221.3(7)** 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.* Retained upon written request of the applicant. The applicant is responsible for requesting that the file be retained.

**221.3(8)** The applicant shall ensure that the passing score from the appropriate professional examination is sent directly to the board from the examination service.

**221.3(9)** Applicants for licensure in orthotics or prosthetics must provide documentation of successful completion of a residency program accredited by the National Commission on Orthotic and Prosthetic Education.

**221.3(10)** Applicants for licensure in pedorthics must provide documentation of successful completion of a qualified clinical experience program.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

#### **645—221.4(148F) Written examinations.**

**221.4(1)** Prosthetists must have completed and passed the Board of Certification/Accreditation, International (BOC), or American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated (ABC), examination for prosthetists.

**221.4(2)** Orthotists must have completed and passed the BOC or ABC examination for orthotists.

**221.4(3)** Pedorthists must have completed and passed the BOC or ABC examination for pedorthists.

**221.4(4)** The applicant has responsibility for:

*a.* Making arrangements to take the examinations; and

*b.* Arranging to have the examination score reports sent directly to the board from the ABC or BOC.

**221.4(5)** A passing score as recommended by the administrators of the ABC or BOC examination shall be required.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

#### **645—221.5(148F) Educational qualifications.**

**221.5(1)** An applicant for licensure to practice as an orthotist or prosthetist shall present official copies of academic transcripts, verifying completion of the following requirements:

*a.* A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the school to the board of podiatry; and

*b.* Verification of completion of an academic program in orthotics or prosthetics accredited by the Commission on Accreditation of Allied Health Education Programs (CAAHEP). Transcripts must be sent directly from the school to the board of podiatry.

**221.5(2)** An applicant for licensure to practice as a pedorthist shall present official copies of academic transcripts, verifying completion of the following requirements:

- a. A high school diploma or its equivalent; and
- b. Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the school to the board of podiatry.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—221.6(148F) Licensure by endorsement.**

**221.6(1)** An applicant who has been a licensed orthotist, prosthetist, or pedorthist under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office. The board may receive by endorsement any applicant from the District of Columbia, another state, territory, province or foreign country who:

- a. Submits to the board a completed application;
- b. Pays the licensure fee;
- c. Shows evidence of licensure requirements that are similar to those required in Iowa;
- d. For prosthetic or orthotic licensure, provides:
  - (1) A baccalaureate or higher degree from a regionally accredited college or university. Transcripts must be sent directly from the school to the board of podiatry; and
  - (2) Verification of completion of an academic program in orthotics or prosthetics accredited by CAAHEP. Transcripts must be sent directly from the school to the board of podiatry;
- e. For pedorthic licensure, provides:
  - (1) A high school diploma or its equivalent; and
  - (2) Verification of completion of an academic program in pedorthics accredited by the National Commission on Orthotic and Prosthetic Education. Verification must be sent directly from the school to the board of podiatry;
- f. 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:
  - (1) Licensee's name;
  - (2) Date of initial licensure;
  - (3) Current licensure status; and
  - (4) Any disciplinary action taken against the license;
- g. Submits a copy of the scores from the appropriate professional examination to be sent directly from the examination service to the board.

**221.6(2)** Individuals who were issued their licenses by endorsement within six months of the license renewal date will not be required to renew their licenses until the next renewal date two years later.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—221.7(148F) License renewal.**

**221.7(1)** The biennial license renewal period for a license to practice orthotics, prosthetics, or pedorthics shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive notice from the board does not relieve the licensee of the responsibility for renewing the license.

**221.7(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.

**221.7(3)** A licensee seeking renewal shall:

- a. Meet the continuing education requirements of rule 645—225.2(148F,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.

**221.7(4)** Upon receipt of 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.

**221.7(5)** A person licensed to practice orthotics, prosthetics, or pedorthics shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

**221.7(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 5.15(7). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

**221.7(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 an orthotist, prosthetist, or pedorthist in Iowa until the license is reactivated. A licensee who practices as an orthotist, prosthetist, or pedorthist 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 1192C, IAB 11/27/13, effective 1/1/14]

**645—221.8(17A,147,272C) License reactivation.** To apply for reactivation of an inactive license, a licensee shall:

**221.8(1)** Submit a reactivation application on a form provided by the board.

**221.8(2)** Pay the reactivation fee that is due as specified in rule 645—5.15(147,148F,149).

**221.8(3)** Provide verification of current competence to practice 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:

1. For orthotists or prosthetists, 30 hours of continuing education within two years of application for reactivation.

2. For pedorthists, 20 hours of continuing education within two years of application for reactivation.

*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:

1. For orthotists or prosthetists, 60 hours of continuing education within two years of application for reactivation.

2. For pedorthists, 40 hours of continuing education within two years of application for reactivation.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—221.9(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 rule 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with rule 645—221.8(17A,147,272C) prior to practicing as an orthotist, a prosthetist, or a pedorthist in this state.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

These rules are intended to implement Iowa Code chapters 17A, 147, 148F, and 272C.

[Filed ARC 1192C (Notice ARC 0942C, IAB 8/7/13), IAB 11/27/13, effective 1/1/14]



CHAPTER 224  
DISCIPLINE FOR PODIATRISTS, ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS  
[Prior to 2/6/02, see 645—Chapter 220]

**645—224.1(148F,149) Definitions.**

“*Board*” means the board of podiatry.

“*Discipline*” means any sanction the board may impose upon licensees.

“*Licensee*” means a person licensed to practice as a podiatrist, orthotist, prosthetist, or pedorthist in Iowa.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—224.2(148F,149,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 645—224.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

**224.2(1)** Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

*a.* False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a license in this state, or

*b.* Attempting to file or filing with the board or the department of public health any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a license in this state.

**224.2(2)** Professional incompetency. Professional incompetency includes, but is not limited to:

*a.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

*b.* A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other practitioners in the state of Iowa acting in the same or similar circumstances.

*c.* A failure to exercise the degree of care which is ordinarily exercised by the average practitioner acting in the same or similar circumstances.

*d.* Failure to conform to the minimal standard of acceptable and prevailing practice of a podiatrist, orthotist, prosthetist, or pedorthist in this state.

*e.* Inability to practice with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

*f.* Being adjudged mentally incompetent by a court of competent jurisdiction.

**224.2(3)** Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

**224.2(4)** Practice outside the scope of the profession.

**224.2(5)** Use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, an action by a licensee in making information or intention known to the public which is false, deceptive, misleading or promoted through fraud or misrepresentation.

**224.2(6)** Habitual intoxication or addiction to the use of drugs.

**224.2(7)** Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

**224.2(8)** Rescinded IAB 11/27/13, effective 1/1/14.

**224.2(9)** Falsification of client records.

**224.2(10)** Acceptance of any fee by fraud or misrepresentation.

**224.2(11)** Negligence by the licensee in the practice of the profession. Negligence by the licensee in the practice of the profession includes a failure to exercise due care including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair the ability to safely and skillfully practice the profession.

**224.2(12)** Conviction of a crime related to the profession or occupation of the licensee or the conviction of any crime that would affect the licensee's ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**224.2(13)** Violation of a regulation or law of this state, another state, or the United States, which relates to the practice of the profession.

**224.2(14)** Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

**224.2(15)** Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice of the profession in another state, district, territory or country.

**224.2(16)** Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

**224.2(17)** Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

**224.2(18)** Engaging in any conduct that subverts or attempts to subvert a board investigation.

**224.2(19)** Failure to comply with a subpoena issued by the board, or otherwise fail to cooperate with an investigation of the board.

**224.2(20)** Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

**224.2(21)** Failure to pay costs assessed in any disciplinary action.

**224.2(22)** Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

**224.2(23)** Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

**224.2(24)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice as a podiatrist, orthotist, prosthetist, or pedorthist.

**224.2(25)** Failure to report a change of name or address within 30 days after it occurs.

**224.2(26)** Representing oneself as a podiatrist, orthotist, prosthetist, or pedorthist when one's license has been suspended or revoked, or when one's license is on inactive status.

**224.2(27)** Permitting another person to use the licensee's license for any purpose.

**224.2(28)** Permitting an unlicensed employee or person under the licensee's control to perform activities requiring a license.

**224.2(29)** Unethical conduct. In accordance with Iowa Code section 147.55(3), behavior (i.e., acts, knowledge, and practices) which constitutes unethical conduct may include, but need not be limited to, the following:

*a.* Verbally or physically abusing a patient, client or coworker.

*b.* Improper sexual contact with, or making suggestive, lewd, lascivious or improper remarks or advances to a patient, client or coworker.

*c.* Betrayal of a professional confidence.

*d.* Engaging in a professional conflict of interest.

**224.2(30)** Failure to comply with universal precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

**224.2(31)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

[ARC 9508B, IAB 5/18/11, effective 6/22/11; ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—224.3(147,272C) Method of discipline.** The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board, or for a specific period, the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$1000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

**645—224.4(272C) Discretion of board.** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

**645—224.5(149) Order for mental, physical, or clinical competency examination or alcohol or drug screening.** Rescinded IAB 11/5/08, effective 12/10/08.

**645—224.6(148F,149,272C) Indiscriminately prescribing, administering or dispensing any drug for other than a lawful purpose.** The board may impose any of the disciplinary sanctions provided in rule 645—224.3(147,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

**224.6(1)** Self-prescribing or self-dispensing controlled substances.

**224.6(2)** Prescribing or dispensing controlled substances to members of the licensee's immediate family for an extended period of time.

*a.* Prescribing or dispensing controlled substances to members of the licensee's immediate family is allowable for an acute condition or on an emergency basis when the physician conducts an examination, establishes a medical record, and maintains proper documentation.

*b.* Immediate family includes spouse or life partner, natural or adopted children, grandparent, parent, sibling, or grandchild of the physician; and natural or adopted children, grandparent, parent, sibling, or grandchild of the physician's spouse or life partner.

**224.6(3)** Prescribing or dispensing controlled substances outside the scope of the practice of podiatry.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

These rules are intended to implement Iowa Code chapters 147, 148F, 149 and 272C.

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CHAPTER 225  
CONTINUING EDUCATION FOR ORTHOTISTS, PROSTHETISTS, AND PEDORTHISTS

**645—225.1(148F) Definitions.** For the purpose of these rules, the following definitions shall apply:

“*ABC*” means the American Board for Certification in Orthotics, Prosthetics and Pedorthics, Incorporated.

“*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 podiatry.

“*BOC*” means the Board of Certification/Accreditation, International.

“*Continuing education*” means planned, organized learning acts acquired during licensure 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.

“*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 the rules and includes a posttest.

“*License*” means license to practice.

“*Licensee*” means any person licensed to practice as an orthotist, prosthetist, or pedorthist in the state of Iowa.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—225.2(148F,272C) Continuing education requirements.**

**225.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 of each even-numbered year and ending on June 30 of the next even-numbered year.

*a.* Each biennium, each person who is licensed to practice as an orthotist in this state shall be required to complete a minimum of 30 hours of continuing education.

*b.* Each biennium, each person who is licensed to practice as a prosthetist in this state shall be required to complete a minimum of 30 hours of continuing education.

*c.* Each biennium, each person who is licensed to practice as a pedorthist in this state shall be required to complete a minimum of 20 hours of continuing education.

**225.2(2)** Requirements for 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.

*a.* The new orthotic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

*b.* The new prosthetic licensee will be required to complete a minimum of 30 hours of continuing education per biennium for each subsequent license renewal.

*c.* The new pedorthic licensee will be required to complete a minimum of 20 hours of continuing education per biennium for each subsequent license renewal.

**225.2(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.

**225.2(4)** No hours of continuing education shall be carried over into the next biennium.

**225.2(5)** It is the responsibility of each licensee to finance the cost of continuing education.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—225.3(148F,272C) Standards.**

**225.3(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, location, course title, and 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.

**225.3(2) Specific criteria for licensees.**

a. Licensees may obtain continuing education hours of credit by attending workshops, conferences, symposiums, electronically transmitted courses, live interactive conferences, and academic courses which relate directly to the professional competency of the licensee. Official transcripts indicating successful completion of academic courses which apply to the field of orthotics, prosthetics, or pedorthics will be necessary in order to receive the following continuing education credits:

1 academic semester hour = 15 continuing education hours of credit

1 academic trimester hour = 12 continuing education hours of credit

1 academic quarter hour = 10 continuing education hours of credit

b. Licensees may obtain continuing education hours of credit by teaching in an approved college, university, or graduate school. The licensee may receive credit on a one-time basis for the first offering of a course.

c. Continuing education hours of credit may be granted for any of the following activities not to exceed a maximum combined total of 15 hours for orthotists and prosthetists and 10 hours for pedorthists:

(1) Presenting professional programs which meet the criteria listed in this rule. Two hours of credit will be awarded for each hour of presentation. A course schedule or brochure must be maintained for audit.

(2) Authoring research or other activities, the results of which are published in a recognized professional publication. The licensee shall receive 5 hours of credit per page.

(3) Viewing videotaped presentations and electronically transmitted material that have a postcourse test if the following criteria are met:

1. There is a sponsoring group or agency;
2. There is a facilitator or program official present;
3. The program official is not the only attendee; and
4. The program meets all the criteria specified in this rule.

(4) Participating in home study courses that have a certificate of completion and a postcourse test.

(5) Participating in courses that have business-related topics: marketing, time management, government regulations, and other like topics.

(6) Participating in courses that have personal skills topics: career burnout, communication skills, human relations, and other like topics.

(7) Participating in courses that have general health topics: clinical research, CPR, child abuse reporting, and other like topics.

[ARC 1192C, IAB 11/27/13, effective 1/1/14]

**645—225.4(148F,272C) Audit of continuing education report.** In addition to the requirements of 645—4.11(272C), proof of current BOC or ABC certification as an orthotist, prosthetist, or pedorthist shall be accepted in lieu of individual certificates of completion for an audit.  
[ARC 1192C, IAB 11/27/13, effective 1/1/14]

These rules are intended to implement Iowa Code section 272C.2 and chapter 148F.

[Filed ARC 1192C (Notice ARC 0942C, IAB 8/7/13), IAB 11/27/13, effective 1/1/14]



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Rescinded IAB 7/28/99, effective 9/1/99

CHAPTER 227  
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Rescinded IAB 7/28/99, effective 9/1/99

CHAPTER 228  
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Rescinded IAB 7/28/99, effective 9/1/99

CHAPTER 229  
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Rescinded IAB 7/28/99, effective 9/1/99

CHAPTER 230  
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Rescinded IAB 7/28/99, effective 9/1/99

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FOR THE BOARD OF PSYCHOLOGY EXAMINERS  
[Prior to 8/24/88, see Health Department[470], Ch 140]  
[Prior to 7/11/01, see 645—Chapter 240]  
Rescinded IAB 9/24/08, effective 10/29/08



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[Prior to 5/18/88, Dental Examiners, Board of[320]]

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CHAPTER 29  
SEDATION AND NITROUS OXIDE INHALATION ANALGESIA  
[Prior to 5/18/88, Dental Examiners, Board of[320]]

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

“*Antianxiety premedication*” means minimal sedation. A dentist providing minimal sedation must meet the requirements of rule 650—29.7(153).

“*ASA*” refers to the American Society of Anesthesiologists Patient Physical Status Classification System. Category 1 means normal healthy patients, and category 2 means patients with mild systemic disease. Category 3 means patients with moderate systemic disease, and category 4 means patients with severe systemic disease that is a constant threat to life.

“*Board*” means the Iowa dental board established in Iowa Code section 147.14(1)“*d.*”

“*Capnography*” means the monitoring of the concentration of exhaled carbon dioxide in order to assess physiologic status or determine the adequacy of ventilation during anesthesia.

“*Committee*” or “*ACC*” means the anesthesia credentials committee of the board.

“*Conscious sedation*” means moderate sedation.

“*Deep sedation/general anesthesia*” is a controlled state of unconsciousness, produced by a pharmacologic agent, accompanied by a partial or complete loss of protective reflexes, including inability to independently maintain an airway and respond purposefully to physical stimulation or verbal command.

“*Facility*” means a dental office, clinic, dental school, or other location where sedation is used.

“*Maximum recommended dose (MRD)*” means the maximum FDA-recommended dose of a drug as printed in FDA-approved labeling for unmonitored home use.

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

“*Moderate sedation*” means a drug-induced depression of consciousness, either by enteral or parenteral means, during which patients respond purposefully to verbal commands, either alone or accompanied by light tactile stimulation. No interventions are required to maintain a patent airway and spontaneous ventilation is adequate. Cardiovascular function is usually maintained. Prior to January 1, 2010, moderate sedation was referred to as conscious sedation.

“*Monitoring nitrous oxide inhalation analgesia*” means continually observing the patient receiving nitrous oxide and recognizing and notifying the dentist of any adverse reactions or complications.

“*Nitrous oxide inhalation analgesia*” refers to the administration by inhalation of a combination of nitrous oxide and oxygen producing an altered level of consciousness that retains the patient’s ability to independently and continuously maintain an airway and respond appropriately to physical stimulation or verbal command.

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

[ARC 8614B, IAB 3/10/10, effective 4/14/10; ARC 1194C, IAB 11/27/13, effective 11/4/13]

**650—29.2(153) Prohibitions.**

**29.2(1) *Deep sedation/general anesthesia.*** Dentists licensed in this state shall not administer deep sedation/general anesthesia in the practice of dentistry until they have obtained a permit. Dentists shall only administer deep sedation/general anesthesia in a facility that has successfully passed inspection as required by the provisions of this chapter.

**29.2(2) *Moderate sedation.*** Dentists licensed in this state shall not administer moderate sedation in the practice of dentistry until they have obtained a permit. Dentists shall only administer moderate sedation in a facility that has successfully passed inspection as required by the provisions of this chapter.

**29.2(3) Nitrous oxide inhalation analgesia.** Dentists licensed in this state shall not administer nitrous oxide inhalation analgesia in the practice of dentistry until they have complied with the provisions of rule 650—29.6(153).

**29.2(4) Antianxiety premedication.** Dentists licensed in this state shall not administer antianxiety premedication in the practice of dentistry until they have complied with the provisions of rule 650—29.7(153).

[ARC 8614B, IAB 3/10/10, effective 4/14/10; ARC 1194C, IAB 11/27/13, effective 11/4/13]

**650—29.3(153) Requirements for the issuance of deep sedation/general anesthesia permits.**

**29.3(1)** A permit may be issued to a licensed dentist to use deep sedation/general anesthesia on an outpatient basis for dental patients provided the dentist meets the following requirements:

- a. Has successfully completed an advanced education program accredited by the Commission on Dental Accreditation that provides training in deep sedation and general anesthesia; and
- b. Has formal training in airway management; and
- c. Has completed a minimum of one year of advanced training in anesthesiology and related academic subjects beyond the undergraduate dental school level in a training program approved by the board; and
- d. Has completed a peer review evaluation, as may be required by the board, prior to issuance of a permit.

**29.3(2)** A dentist using deep sedation/general anesthesia shall maintain a properly equipped facility at each facility where sedation is administered. The dentist shall maintain and be trained on the following equipment at each facility where sedation is provided: capnography, EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. A licensee may submit a request to the board for an exemption from any of the provisions of this subrule. Exemption requests will be considered by the board on an individual basis and shall be granted only if the board determines that there is a reasonable basis for the exemption.

**29.3(3)** The dentist shall ensure that each facility where sedation services are provided is permanently equipped pursuant to subrule 29.3(2) and staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of general anesthesia. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.

**29.3(4)** A dentist administering deep sedation/general anesthesia must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course.

**29.3(5)** A dentist who is performing a procedure for which deep sedation/general anesthesia was induced shall not administer the general anesthetic and monitor the patient without the presence and assistance of at least two qualified auxiliary personnel in the room who are qualified under subrule 29.3(3).

**29.3(6)** A dentist qualified to administer deep sedation/general anesthesia under this rule may administer moderate sedation and nitrous oxide inhalation analgesia provided the dentist meets the requirements of rule 650—29.6(153).

**29.3(7)** A licensed dentist who has been utilizing deep sedation/general anesthesia in a competent manner for the five-year period preceding July 9, 1986, but has not had the benefit of formal training as outlined in this rule, may apply for a permit provided the dentist fulfills the provisions set forth in 29.3(2), 29.3(3), 29.3(4), and 29.3(5).

[ARC 8614B, IAB 3/10/10, effective 4/14/10; ARC 1194C, IAB 11/27/13, effective 11/4/13]

**650—29.4(153) Requirements for the issuance of moderate sedation permits.**

**29.4(1)** A permit may be issued to a licensed dentist to use moderate sedation for dental patients provided the dentist meets the following requirements:

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

- b. Has formal training in airway management; or
- c. Has submitted evidence of successful completion of an accredited residency program that includes formal training and clinical experience in moderate sedation, which is approved by the board; and
- d. Has completed a peer review evaluation, as may be required by the board, prior to issuance of a permit.

**29.4(2)** A dentist utilizing moderate sedation shall maintain a properly equipped facility. The dentist shall maintain and be trained on the following equipment at each facility where sedation is provided: EKG monitor, positive pressure oxygen, suction, laryngoscope and blades, endotracheal tubes, magill forceps, oral airways, stethoscope, blood pressure monitoring device, pulse oximeter, emergency drugs, defibrillator. A licensee may submit a request to the board for an exemption from any of the provisions of this subrule. Exemption requests will be considered by the board on an individual basis and shall be granted only if the board determines that there is a reasonable basis for the exemption.

**29.4(3)** The dentist shall ensure that each facility where sedation services are provided is permanently equipped pursuant to subrule 29.4(2) and staffed with trained auxiliary personnel capable of reasonably handling procedures, problems and emergencies incident to the administration of moderate sedation. Auxiliary personnel shall maintain current certification in basic life support and be capable of administering basic life support.

**29.4(4)** A dentist administering moderate sedation must document and maintain current, successful completion of an Advanced Cardiac Life Support (ACLS) course.

**29.4(5)** A dentist who is performing a procedure for which moderate sedation is being employed shall not administer the pharmacologic agents and monitor the patient without the presence and assistance of at least one qualified auxiliary personnel in the room who is qualified under subrule 29.4(3).

**29.4(6)** Dentists qualified to administer moderate sedation may administer nitrous oxide inhalation analgesia provided they meet the requirement of rule 650—29.6(153).

**29.4(7)** If moderate sedation results in a general anesthetic state, the rules for deep sedation/general anesthesia apply.

**29.4(8)** A dentist utilizing moderate sedation on pediatric or ASA category 3 or 4 patients must have completed an accredited residency program that includes formal training in anesthesia and clinical experience in managing pediatric or ASA category 3 or 4 patients. A dentist who does not meet the requirements of this subrule is prohibited from utilizing moderate sedation on pediatric or ASA category 3 or 4 patients.

[ARC 8614B, IAB 3/10/10, effective 4/14/10; ARC 1194C, IAB 11/27/13, effective 11/4/13]

#### **650—29.5(153) Permit holders.**

**29.5(1)** No dentist shall use or permit the use of deep sedation/general anesthesia or moderate sedation for dental patients, unless the dentist possesses a current permit issued by the board. No dentist shall use or permit the use of deep sedation/general anesthesia or moderate sedation for dental patients in a facility that has not successfully passed an equipment inspection pursuant to the requirements of subrule 29.3(2). A dentist holding a permit shall be subject to review and facility inspection at a frequency described in subrule 29.5(10).

**29.5(2)** An application for a deep sedation/general anesthesia permit must include the appropriate fee as specified in 650—Chapter 15, as well as evidence indicating compliance with rule 650—29.3(153).

**29.5(3)** An application for a moderate sedation permit must include the appropriate fee as specified in 650—Chapter 15, as well as evidence indicating compliance with rule 650—29.4(153).

**29.5(4)** If a facility has not been previously inspected, no permit shall be issued until the facility has been inspected and successfully passed.

**29.5(5)** Permits shall be renewed biennially at the time of license renewal following submission of proper application and may involve board reevaluation of credentials, facilities, equipment, personnel, and procedures of a previously qualified dentist to determine if the dentist is still qualified. The appropriate fee for renewal as specified in 650—Chapter 15 of these rules must accompany the application.

**29.5(6)** Upon the recommendation of the anesthesia credentials committee that is based on the evaluation of credentials, facilities, equipment, personnel and procedures of a dentist, the board may determine that restrictions may be placed on a permit.

**29.5(7)** The actual costs associated with the on-site evaluation of the facility shall be the primary responsibility of the licensee. The cost to the licensee shall not exceed the fee as specified in 650—Chapter 15.

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

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

**29.5(10)** Frequency of facility inspections.

*a.* The board office will conduct ongoing facility inspections of each facility every five years, with the exception of the University of Iowa College of Dentistry.

*b.* The University of Iowa College of Dentistry shall submit written verification to the board office every five years indicating that it is properly equipped pursuant to this chapter.

**29.5(11)** Use of capnography required beginning January 1, 2014. Consistent with the practices of the American Association of Oral and Maxillofacial Surgeons (AAOMS), all general anesthesia/deep sedation permit holders shall use capnography at all facilities where they provide sedation beginning January 1, 2014.

[ARC 8614B, IAB 3/10/10, effective 4/14/10; ARC 0265C, IAB 8/8/12, effective 9/12/12; ARC 1194C, IAB 11/27/13, effective 11/4/13]

#### **650—29.6(153) Nitrous oxide inhalation analgesia.**

**29.6(1)** A dentist may use nitrous oxide inhalation analgesia sedation on an outpatient basis for dental patients provided the dentist:

*a.* Has completed a board approved course of training; or

*b.* Has training equivalent to that required in 29.6(1) "a" while a student in an accredited school of dentistry, and

*c.* Has adequate equipment with fail-safe features and minimum oxygen flow which meets FDA standards.

*d.* Has routine inspection, calibration, and maintenance on equipment performed every two years and maintains documentation of such, and provides documentation to the board upon request.

*e.* Ensures the patient is continually monitored by qualified personnel while receiving nitrous oxide inhalation analgesia.

**29.6(2)** A dentist utilizing nitrous oxide inhalation analgesia shall be trained and capable of administering basic life support, as demonstrated by current certification in a nationally recognized course in cardiopulmonary resuscitation.

**29.6(3)** A licensed dentist who has been utilizing nitrous oxide inhalation analgesia in a dental office in a competent manner for the 12-month period preceding July 9, 1986, but has not had the benefit of formal training outlined in paragraph 29.6(1) "a" or 29.6(1) "b," may continue the use provided the dentist fulfills the requirements of paragraphs 29.6(1) "c" and "d" and subrule 29.6(2).

**29.6(4)** A dental hygienist may administer nitrous oxide inhalation analgesia provided the administration of nitrous oxide inhalation analgesia has been delegated by a dentist and the hygienist meets the following qualifications:

*a.* Has completed a board-approved course of training; or

*b.* Has training equivalent to that required in 29.6(4) "a" while a student in an accredited school of dental hygiene.

**29.6(5)** A dental hygienist or registered dental assistant may monitor a patient under nitrous oxide inhalation analgesia provided all of the following requirements are met:

- a.* The hygienist or registered dental assistant has completed a board-approved course of training or has received equivalent training while a student in an accredited school of dental hygiene or dental assisting;
- b.* The task has been delegated by a dentist and is performed under the direct supervision of a dentist;
- c.* Any adverse reactions are reported to the supervising dentist immediately; and
- d.* The dentist dismisses the patient following completion of the procedure.

**29.6(6)** A dentist who delegates the administration of nitrous oxide inhalation analgesia in accordance with 29.6(4) shall provide direct supervision and establish a written office protocol for taking vital signs, adjusting anesthetic concentrations, and addressing emergency situations that may arise.

**29.6(7)** If the dentist intends to achieve a state of moderate sedation from the administration of nitrous oxide inhalation analgesia, the rules for moderate sedation apply.

[ARC 8369B, IAB 12/16/09, effective 1/20/10; ARC 8614B, IAB 3/10/10, effective 4/14/10]

**650—29.7(153) Minimal sedation.**

**29.7(1)** The term “minimal sedation” also means “antianxiety premedication” or “anxiolysis.”

**29.7(2)** If a dentist intends to achieve a state of moderate sedation from the administration of minimal sedation, the rules for moderate sedation shall apply.

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

**29.7(4)** Minimal sedation for adults.

*a.* Minimal sedation for adults is limited to a dentist’s prescribing or administering a single enteral drug that is no more than 1.0 times the maximum recommended dose (MRD) of a drug that can be prescribed for unmonitored home use. A single supplemental dose of the same drug may be administered, provided the supplemental dose is no more than one-half of the initial dose and the dentist does not administer the supplemental dose until the dentist has determined the clinical half-life of the initial dose has passed.

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

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

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

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

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

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

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

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

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

[ARC 8614B, IAB 3/10/10, effective 4/14/10]

**650—29.8(153) Noncompliance.** Violations of the provisions of this chapter may result in revocation or suspension of the dentist's permit or other disciplinary measures as deemed appropriate by the board.

**650—29.9(153) Reporting of adverse occurrences related to sedation, nitrous oxide inhalation analgesia, and antianxiety premedication.**

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

- a. Description of dental procedure.
- b. Description of preoperative physical condition of patient.
- c. List of drugs and dosage administered.
- d. Description, in detail, of techniques utilized in administering the drugs utilized.
- e. Description of adverse occurrence:
  1. Description, in detail, of symptoms of any complications, to include but not be limited to onset, and type of symptoms in patient.
  2. Treatment instituted on the patient.
  3. Response of the patient to the treatment.
- f. Description of the patient's condition on termination of any procedures undertaken.

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

[ARC 8614B, IAB 3/10/10, effective 4/14/10; ARC 1194C, IAB 11/27/13, effective 11/4/13]

**650—29.10(153) Anesthesia credentials committee.**

**29.10(1)** The anesthesia credentials committee is a peer review committee appointed by the board to assist the board in the administration of this chapter. This committee shall be chaired by a member of the board and shall include at least six additional members who are licensed to practice dentistry in Iowa. At least four members of the committee shall hold deep sedation/general anesthesia or moderate sedation permits issued under this chapter.

**29.10(2)** The anesthesia credentials committee shall perform the following duties at the request of the board:

- a. Review all permit applications and make recommendations to the board regarding those applications.
- b. Conduct site visits at facilities under rule 650—29.5(153) and report the results of those site visits to the board. The anesthesia credentials committee may submit recommendations to the board regarding the appropriate nature and frequency of site visits.
- c. Perform professional evaluations and report the results of those evaluations to the board.
- d. Other duties as delegated by the board or board chairperson.

[ARC 1194C, IAB 11/27/13, effective 11/4/13]

**650—29.11(153) Review of permit applications.**

**29.11(1) Review by board staff.** Upon receipt of a completed application, board staff will review the application for eligibility. Following staff review, a public meeting of the ACC will be scheduled.

**29.11(2) Review by the anesthesia credentials committee (ACC).** Following review and consideration of an application, the ACC may at its discretion:

- a. Request additional information;
- b. Request an investigation;
- c. Request that the applicant appear for an interview;
- d. Recommend issuance of the permit;

- e. Recommend issuance of the permit under certain terms and conditions or with certain restrictions;
  - f. Recommend denial of the permit;
  - g. Refer the permit application to the board for review and consideration without recommendation;
- or
- h. Request a peer review evaluation.

**29.11(3) Review by executive director.** If, following review and consideration of an application, the ACC recommends issuance of the permit with no restrictions or conditions, the executive director as authorized by the board has discretion to authorize the issuance of the permit.

**29.11(4) Review by board.** The board shall consider applications and recommendations from the ACC. The board may take any of the following actions:

- a. Request additional information;
- b. Request an investigation;
- c. Request that the applicant appear for an interview;
- d. Grant the permit;
- e. Grant the permit under certain terms and conditions or with certain restrictions; or
- f. Deny the permit.

**29.11(5) Right to defer final action.** The ACC or board may defer final action on an application if there is an investigation or disciplinary action pending against an applicant who may otherwise meet the requirements for permit until such time as the ACC or board is satisfied that issuance of a permit to the applicant poses no risk to the health and safety of Iowans.

**29.11(6) Appeal process for denials.** If a permit application is denied, an applicant may file an appeal of the final decision using the process described in rule 650—11.10(147).

[ARC 1194C, IAB 11/27/13, effective 11/4/13]

**650—29.12(153) Renewal.** A permit to administer deep sedation/general anesthesia or moderate sedation shall be renewed biennially at the time of license renewal. Permits expire August 31 of every even-numbered year.

**29.12(1)** To renew a permit, a licensee must submit the following:

- a. Evidence of renewal of ACLS certification.
- b. A minimum of six hours of continuing education in the area of sedation. These hours may also be submitted as part of license renewal requirements.
- c. The appropriate fee for renewal as specified in 650—Chapter 15.

**29.12(2)** Failure to renew the permit prior to November 1 following its expiration shall cause the permit to lapse and become invalid for practice.

**29.12(3)** A permit that has been lapsed may be reinstated upon submission of a new application for a permit in compliance with rule 650—29.5(153) and payment of the application fee as specified in 650—Chapter 15.

[ARC 8614B, IAB 3/10/10, effective 4/14/10; ARC 1194C, IAB 11/27/13, effective 11/4/13]

**650—29.13(147,153,272C) Grounds for nonrenewal.** A request to renew a permit may be denied on any of the following grounds:

**29.13(1)** After proper notice and hearing, for a violation of these rules or Iowa Code chapter 147, 153, or 272C during the term of the last permit renewal.

**29.13(2)** Failure to pay required fees.

**29.13(3)** Failure to obtain required continuing education.

**29.13(4)** Failure to provide documentation of current ACLS certification.

**29.13(5)** Failure to provide documentation of maintaining a properly equipped facility.

**29.13(6)** Receipt of a certificate of noncompliance from the college student aid commission or the child support recovery unit of the department of human services in accordance with 650—Chapter 33 or 650—Chapter 34.

[ARC 1194C, IAB 11/27/13, effective 11/4/13]

**650—29.14(153) Record keeping.**

**29.14(1) Minimal sedation.** An appropriate sedative record must be maintained and must contain the names of all drugs administered, including local anesthetics and nitrous oxide, dosages, time administered, and monitored physiological parameters, including oxygenation, ventilation, and circulation.

**29.14(2) Moderate or deep sedation.** The patient chart must include preoperative and postoperative vital signs, drugs administered, dosage administered, anesthesia time in minutes, and monitors used. Pulse oximetry, heart rate, respiratory rate, and blood pressure must be recorded continually until the patient is fully ambulatory. The chart should contain the name of the person to whom the patient was discharged.

**29.14(3) Nitrous oxide inhalation analgesia.** The patient chart must include the concentration administered and duration of administration, as well as any vital signs taken.

[ARC 8369B, IAB 12/16/09, effective 1/20/10; ARC 8614B, IAB 3/10/10, effective 4/14/10; ARC 1194C, IAB 11/27/13, effective 11/4/13]

These rules are intended to implement Iowa Code sections 153.33 and 153.34.

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[Filed 2/5/07, Notice 11/22/06—published 2/28/07, effective 4/4/07]

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[Filed ARC 8614B (Notice ARC 8370B, IAB 12/16/09), IAB 3/10/10, effective 4/14/10]

[Filed ARC 0265C (Notice ARC 0128C, IAB 5/16/12), IAB 8/8/12, effective 9/12/12]

[Filed Emergency After Notice ARC 1194C (Notice ARC 1008C, IAB 9/4/13), IAB 11/27/13, effective 11/4/13]

<sup>◇</sup> Two or more ARCs

<sup>1</sup> Effective date of 29.6(4) to 29.6(6) delayed 70 days by the Administrative Rules Review Committee at its meeting held June 9, 1998.

<sup>2</sup> Effective date of 29.6(4) to 29.6(6) delayed until the end of the 2000 Session of the General Assembly by the Administrative Rules Review Committee at its meeting held September 15, 1999. Subrules 29.6(4) and 29.6(5) were rescinded IAB 2/9/00, effective 3/15/00; delay on subrule 29.6(6) lifted by the Administrative Rules Review Committee at its meeting held January 4, 2000, effective January 5, 2000.

## **MEDICINE BOARD[653]**

[Prior to 5/4/88, see Health Department[470], Chs 135 and 136, renamed Medical Examiners Board[653] under the "umbrella" of Public Health Department[641] by 1986 Iowa Acts, ch 1245]  
[Prior to 7/4/07, see Medical Examiners Board[653]; renamed by 2007 Iowa Acts, Senate File 74]

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[Prior to 5/30/01, see 653—Chapter 11]

**653—8.1(147,148,272C) Definitions.**

“*Board*” means the Iowa board of medicine.

“*Service charge*” means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

**653—8.2(147,148,272C) Application and licensure fees for acupuncturists.**

**8.2(1)** *Licensure provisions for acupuncturists.* For licensure provisions for acupuncturists, see 653—Chapter 17, “Licensure of Acupuncturists.”

**8.2(2)** *Fees for acupuncturists.* The following fees apply to licensure for acupuncturists.

- a. Initial application fee for licensure as an acupuncturist, \$300.
- b. Reactivation of application for licensure, \$100.
- c. Renewal fee for licensure as an acupuncturist, \$300.
- d. Upon written request and payment of the designated fee, the board shall provide the following information about the status of an acupuncturist’s license or acupuncturist’s past registration:
  - (1) Certified statement that verifies the status of licensure or past registration in Iowa that requires the board seal or a letter of good standing, \$25.
  - (2) Verification of the status of licensure or past registration in Iowa that does not require a certified statement or letter, \$20.
- e. Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, \$45.

[ARC 8707B, IAB 5/5/10, effective 6/9/10; ARC 1187C, IAB 11/27/13, effective 1/1/14]

**653—8.3(147,148,272C) Examination fees for physicians.** The fee for taking the United States Medical Licensing Examination Step 3 administered by the board’s designated testing service is the fee established by the Federation of State Medical Boards plus \$50. See 653—subrule 9.4(2) for information about the examination.

**653—8.4(147,148,272C) Application and licensure fees to practice medicine and surgery or osteopathic medicine and surgery.**

**8.4(1)** Fees for permanent licensure. For provisions for permanent licensure, see 653—Chapter 9, “Permanent Physician Licensure.” The following fees shall apply to permanent licensure.

- a. Initial licensure, \$450 plus the \$45 fee for evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI).
- b. Reactivation of application for licensure, \$150.
- c. Renewal of an active license to practice.
  - (1) \$550 if renewal is made via paper application or \$450 if renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months.
  - (2) There is no renewal fee due for a physician who was on active duty in the U.S. armed forces, reserves or national guard during the renewal period. “Active duty” means full-time training or active service in the U.S. armed forces, reserves or national guard. A physician who fails to renew before the expiration of the license shall be charged a penalty fee as set forth in 8.4(1)“d.”
- d. Penalty for failure to renew before expiration, \$100 per calendar month after the expiration date of the license up to \$200. For example, if the license expired on January 1, a penalty of \$100 shall be charged for January and an additional \$100, or a total of \$200, shall be charged for renewal in February.
- e. There is no fee for placing a license on inactive status or allowing a license to become inactive.

*f.* Reinstatement of a license to practice one year or more after becoming inactive, \$500 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

*g.* Reinstatement of a license within one year of becoming inactive, \$550 except when the license in the most recent license period had been granted for less than 24 months. In that case, the reinstatement fee is prorated according to the date of issuance and the physician's month and year of birth.

**8.4(2)** Fees for resident physician licensure. For provisions for resident physician licensure, see 653—Chapter 10, "Resident, Special and Temporary Physician Licensure." The following fees apply to resident physician licensure.

*a.* Application for a resident physician license, \$100 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

*b.* Extension of a resident physician license, \$25.

*c.* Late fee for extension of a resident physician license, \$50, to be paid in addition to the extension fee.

**8.4(3)** Fees for special physician licensure. For provisions for special physician licensure, see 653—Chapter 10, "Resident, Special and Temporary Physician Licensure." The following fees apply to special physician licensure.

*a.* Application for a special physician license, \$300 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

*b.* Renewal of a special physician license, \$200.

**8.4(4)** Fees for temporary physician licensure. For provisions for temporary physician licensure, see 653—Chapter 10, "Resident, Special and Temporary Physician Licensure." The following fees apply to temporary physician licensure.

*a.* Application for a temporary physician license, \$100 plus the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks.

*b.* Renewal of a temporary physician license, \$50.

**8.4(5)** Fee for photocopy of a licensure application. Fee for a photocopy of a licensure application is \$20.

**8.4(6)** Fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks, \$45.

[ARC 0871C, IAB 7/24/13, effective 8/28/13; ARC 1187C, IAB 11/27/13, effective 1/1/14]

**653—8.5(147,148,272C) Fees for verification of physician licensure and certification of examination scores.**

**8.5(1)** *Verification fees.*

*a.* Physicians shall use VeriDoc to secure a certified statement that verifies Iowa licensure status for any state medical board that accepts VeriDoc. VeriDoc is accessible at <http://www.veridoc.org/>. The fee for this service is \$30.

*b.* A physician who needs a certified statement that verifies Iowa licensure status for a state medical board that does not accept verification from VeriDoc shall make a written request for a certified statement with payment of a \$30 verification fee to the Iowa Board of Medicine. The Iowa board shall provide a certified statement that verifies Iowa licensure status to the nonaccepting state medical board.

*c.* The fee for verification of Iowa licensure status that does not require a certified statement or letter is \$15.

*d.* The board shall provide an automated telephone or electronic verification service whereby users can input the licensee's license number or social security number to learn the licensee's current licensure status. There is no fee for this service.

The board shall provide a license number for an individual caller to use in the automated telephone or electronic verification service. Businesses that utilize verifications will be required to utilize the automated telephone or electronic verification service or the alternative outlined in 8.5(1) "c."

**8.5(2)** *Fees for certification of physician examination scores.* Upon request and payment of the designated fee, the board may provide certification of scores of an examination given by the board

in Iowa as permitted under Iowa Code section 147.21 and 653—paragraph 2.13(2)“f.” The scores available from the board are those from examinees who took the state-constructed examination.

a. Certified statement of grades attained by examination, \$45.

b. Certified statement of grades attained by examination including examination history or additional documentation, \$55.

[ARC 1187C, IAB 11/27/13, effective 1/1/14]

**653—8.6(147,148,272C) Public records.**

**8.6(1)** *Public records available at no cost.* The following records are available at no cost to the public:

a. Public action taken by the board against a licensee may be found under the licensee’s name on the board’s Web site, <http://medicalboard.iowa.gov>, under “Find A Physician.” Public actions are posted on the board’s Web site within approximately one week after the board has taken action.

b. Electronic files of press releases, statements of charges, final orders and consent agreements from each board meeting are available within approximately one week after the board has taken action. These files are available on the board's Web site, <http://medicalboard.iowa.gov>.

**8.6(2)** *Purchase of public records.* Public records are available according to 653—Chapter 2, “Public Records and Fair Information Practices.” Payment made to the Iowa Board of Medicine shall be received in the board office prior to the release of the records.

a. Printed copies of public records shall be calculated at \$.25 per page plus labor. The board may charge a \$16 per hour fee for labor in excess of one-quarter hour for searching and copying documents or retrieving and copying information stored electronically. No additional fee shall be charged for delivery of the records by mail, fax, or e-mail. Fax is an option if the requested records are fewer than 30 pages. The board office shall not require payment when the fees for the request would be less than \$5 total.

b. Electronic copies of public records delivered by e-mail shall be provided at no charge per page. The board may charge a \$16 per hour fee for labor in excess of one-quarter hour for searching and copying documents or retrieving and copying information stored electronically.

[ARC 1187C, IAB 11/27/13, effective 1/1/14]

**653—8.7(147,148,272C) Licensee data list.** A data list of all physicians and acupuncturists includes the following information about each licensee: full name, year of birth, mailing address, business telephone number, Iowa county (if applicable), medical school (if applicable), year of graduation from medical school (if applicable), two medical specialties (if available), license issue date, license expiration date, license number, license type, license status, and an indicator of whether the board has taken any public action on the license. There is no fee for an electronic file of this list. A printed copy of the data list is available at the board’s office at fees described in rule 653—8.6(147,148,272C). Payment made to the Iowa Board of Medicine shall be received in the board office prior to the release of a printed copy of the list.

[ARC 1187C, IAB 11/27/13, effective 1/1/14]

**653—8.8(147,148,272C) Returned checks.** The board shall charge a fee of \$25 for a check returned for any reason. If a license had been issued by the board office based on a check that is later returned by the bank, the board shall request payment by certified check or money order. If the fees are not paid within two weeks of notification of the returned check by certified mail, the licensee shall be subject to disciplinary action for noncompliance with board rules.

**653—8.9(147,148,272C) Copies of the laws and rules.** Electronic copies of laws and rules pertaining to the practice of medicine or acupuncture are available on the board’s Web site, [www.medicalboard.iowa.gov](http://www.medicalboard.iowa.gov), at no cost. Printed copies of these laws and rules are available at the board’s office at fees described in rule 653—8.6(147,148,272C).

[ARC 1187C, IAB 11/27/13, effective 1/1/14]

**653—8.10(147,148,272C) Refunds.** Application and licensure fees shall be collected by the board and shall not be refunded except by board action in unusual instances, e.g., documented illness or death of

the applicant. The board shall consider the cost of the work completed on the application and the cost of the work to grant a refund in determining the amount of refund to be granted.

**653—8.11(17A,147,148,272C) Waiver or variance prohibited.** Licensure and examination fees in this chapter are not subject to waiver or variance pursuant to 653—Chapter 3 or any other provision of law.

**653—8.12(8,147,148,272C) Request for reports.** The board may request a report from the National Practitioner Data Bank regarding an applicant or licensee. The cost of obtaining the report is included within the fee for initial licensure or licensure reinstatement or renewal.

[ARC 1187C, IAB 11/27/13, effective 1/1/14]

**653—8.13(8,147,148,272C) Monitoring fee.** The board may require payment of up to \$300 per quarter to cover the board's expenses to monitor a licensee's compliance with a settlement agreement or final decision and order.

[ARC 1187C, IAB 11/27/13, effective 1/1/14]

These rules are intended to implement Iowa Code sections 147.11, 147.80, 148.3, 148.5, 148.10, and 148.11.

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CHAPTER 9  
PERMANENT PHYSICIAN LICENSURE  
[Prior to 5/30/01, see 653—Chapter 11]

**653—9.1(147,148) Definitions.**

“*ABMS*” means the American Board of Medical Specialties, which is an umbrella organization for at least 24 medical specialty boards in the United States that assists the specialty boards in developing and implementing educational and professional standards to evaluate and certify physician specialists in the United States. The board recognizes specialty board certification by ABMS.

“*ACGME*” means the Accreditation Council for Graduate Medical Education, an accreditation body that is responsible for accreditation of post-medical school training programs in medicine and surgery in the United States of America. The board approves resident training programs accredited by ACGME.

“*AMA*” means the American Medical Association, a professional organization of physicians and surgeons.

“*Any jurisdiction*” means any state, the District of Columbia or territory of the United States of America or any other nation.

“*Any United States jurisdiction*” means any state, the District of Columbia or territory of the United States of America.

“*AOA*” means the American Osteopathic Association, which is the representative organization for osteopathic physicians (D.O.s) in the United States. The board approves osteopathic medical education programs with AOA accreditation; the board approves AOA-accredited resident training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty board certification by AOA. The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.

“*Applicant*” means a person who seeks authorization to practice medicine and surgery or osteopathic medicine and surgery in this state by making application to the board.

“*Approved abuse education training program*” means a training program using a curriculum approved by the abuse education review panel of the department of public health or a training program offered by a hospital, a professional organization for physicians, or the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

“*Board*” means Iowa board of medicine.

“*Board-approved resident training program*” means a hospital-affiliated graduate medical education program accredited by ACGME, AOA, RCPSC, or CFPC at the time the applicant is enrolled in the program.

“*Candidate*” means a person who applies to sit for an examination administered by the board or its designated testing service.

“*Category 1 credit*” means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of AOA that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. Credits designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed credits by the American Academy of Family Physicians are accepted as equivalent to category 1 credits.

“*CFPC*” means the College of Family Physicians of Canada, an organization that accredits graduate medical education in family practice in Canada.

“*COMLEX*” means the Comprehensive Osteopathic Medical Licensing Examination that is recognized by the board as the licensure examination that replaced the NBOME examination for graduates of osteopathic medical schools or colleges.

“*Committee*” means the licensure committee of the board.

“*COMVEX-USA*” means the Comprehensive Osteopathic Medical Variable-Purpose Examination for the United States of America. The National Board of Osteopathic Medical Examiners prepares the examination and determines its passing score. A licensing authority in any jurisdiction administers the examination. COMVEX-USA is the current evaluative instrument offered to osteopathic physicians who need to demonstrate current osteopathic medical knowledge.

“*Core credentials*” means those documents that demonstrate the applicant’s identity, medical training and practice history. “Core credentials” includes but is not limited to: medical school diploma, medical school transcript, dean’s letter, examination history, ECFMG certificate, fifth pathway certificate, and postgraduate training verification.

“*Current, active status*” means a license that is in effect and grants the privilege of practicing medicine and surgery or osteopathic medicine and surgery, as applicable.

“*ECFMG*” means the Educational Commission for Foreign Medical Graduates, an organization that assesses the readiness of foreign medical school graduates to enter ACGME-approved residency programs in the United States of America.

“*Expedited endorsement*” means the process whereby the state issues an unrestricted license to practice medicine to an applicant who holds a valid unrestricted and unlimited license in another jurisdiction through the acceptance of the applicant’s core credentials that have been subject to primary source verification by another jurisdiction’s physician licensing board or other authority using a process substantially similar to Iowa’s process for verifying the authenticity of the applicant’s core credentials.

“*FCVS*” means the Federation Credentials Verification Service, a service under the Federation of State Medical Boards that verifies and stores core credentials for retrieval whenever needed.

“*FLEX*” means the Federation Licensing Examination, a licensure examination used in the past that was approved by the board for graduates with a medical degree.

“*Foreign medical school,*” also known as an “international medical school,” means a medical school that is located outside of any United States jurisdiction.

“*FSMB*” means the Federation of State Medical Boards, the organization of medical boards of the United States of America.

“*Inactive license*” means any license that is not in current, active status. Inactive license may include licenses formerly known as delinquent, lapsed, or retired. A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice medicine under an Iowa license until the license is reinstated to current, active status.

“*Incidentally called into this state in consultation with a physician and surgeon licensed in this state*” as set forth in Iowa Code section 148.2(5) means all of the following shall be true:

1. The consulting physician shall be involved in the care of patients in Iowa only at the request of an Iowa-licensed physician.
2. The consulting physician has a license in good standing in another United States jurisdiction.
3. The consulting physician provides expertise and acts in an advisory capacity to an Iowa-licensed physician. The consulting physician may examine the patient and advise an Iowa-licensed physician as to the care that should be provided, but the consulting physician may not personally perform procedures, write orders, or prescribe for the patient.
4. The consulting physician practices in Iowa for a period not greater than 10 consecutive days and not more than 20 total days in any calendar year. Any portion of a day counts as one day.
5. The Iowa-licensed physician requesting the consultation retains the primary responsibility for the management of the patient’s care.

“*Initial license*” means the first permanent license granted to a qualified individual.

“*International medical school,*” also known as a “foreign medical school,” means a medical school that is located outside of any United States jurisdiction.

“*LCME*” means Liaison Committee on Medical Education, an organization that accredits educational institutions granting degrees in medicine and surgery. The board approves programs that are accredited by LCME.

“*LMCC*” means enrollment in the Canadian Medical Register as Licentiate of Medical Council of Canada with a certificate of registration as proof. LMCC requires passing the Medical Council of Canada Examination.

“*Medical degree*” means a degree of doctor of medicine and surgery or osteopathic medicine and surgery or comparable education from a foreign medical school.

“*National Practitioner Data Bank*” is a national data bank of disciplinary actions taken against health professionals, including physicians.

“*NBME*” means the National Board of Medical Examiners, an organization that prepares and administers qualifying examinations, either independently or jointly with other organizations.

“*NBOME*” means the National Board of Osteopathic Medical Examiners, an organization that prepares and administers qualifying examinations for osteopathic physicians.

“*Observer*” means a person who is not enrolled in an Iowa medical school or osteopathic medical school, who observes care to patients in Iowa for a defined period of time and for a noncredit experience, and who is supervised and accompanied by an Iowa-licensed physician as defined in 9.2(3). An observer shall not provide or direct hands-on patient care, regardless of the observer’s level of training or supervision. The supervising physician may authorize an observer to read a chart, observe a patient interview or examination, or witness procedures, including surgery. An observer shall not chart; touch a patient as part of an examination; conduct an interview; order, prescribe or administer medications; make decisions that affect patient care; direct others in providing patient care; or conduct procedures, including surgery. Any of these activities requires licensure to practice in Iowa. An unlicensed physician observer or a medical student observer may touch a patient to verify a physical finding in the immediate presence of a physician but shall not conduct a more inclusive physical examination.

An unlicensed physician observer may:

1. Participate in discussions regarding the care of individual patients, including offering suggestions about diagnosis or treatment, provided the unlicensed physician observer does not direct the care; and
2. Elicit information from a patient provided the unlicensed physician observer does not actually perform a physical examination or otherwise touch the patient.

“*Permanent licensure*” means licensure granted after review of the application and credentials to determine that the individual is qualified to enter into practice. The individual may only practice when the license is in current, active status.

“*Practice*” means the practice of medicine and surgery or osteopathic medicine and surgery.

“*Primary source verification*” means:

1. Verification of the authenticity of documents with the original source that issued the document.
2. Original source verification by another jurisdiction’s physician licensing organization.
3. Original source verification by the FSMB’s Federation Credentials Verification Service.

“*RCPSC*” means the Royal College of Physicians and Surgeons of Canada, an organization that accredits graduate medical education in Canada.

“*Reinstatement*” means the process for returning an inactive license to current, active status.

“*Resident physician*” means a physician enrolled in an internship, residency or fellowship.

“*Resident training program*” means a hospital-affiliated graduate medical education program that enrolls interns, residents or fellows and may be referred to as a postgraduate training program for purposes of licensure.

“*Service charge*” means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

“*SPEX*” means Special Licensure Examination prepared by the Federation of State Medical Boards and administered by a licensing authority in any jurisdiction. The passing score on SPEX is 75.

“*Training for chronic pain management*” means required training on chronic pain management identified in 653—Chapter 11.

“*Training for end-of-life care*” means required training on end-of-life care identified in 653—Chapter 11.

“*Training for identifying and reporting abuse*” means training on identifying and reporting child abuse or dependent adult abuse required of physicians who regularly provide primary health care to children or adults, respectively, as specified in 653—Chapter 11. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69; the full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*Uniform application for physician state licensure*” means a Web-based application that is intended to standardize and simplify the licensure application process for state medical licensure. The Federation of State Medical Boards created and maintains the application. This application is used for all license types issued by the Iowa board of medicine.

“*USMLE*” means the United States Medical Licensing Examination.  
[ARC 8554B, IAB 3/10/10, effective 4/14/10; ARC 0215C, IAB 7/25/12, effective 8/29/12]

### **653—9.2(147,148) General licensure provisions.**

**9.2(1) Licensure required.** Licensure is required for practice in Iowa as identified in Iowa Code section 148.1; the exceptions are identified in subrule 9.2(2). Provisions for permanent physician licensure are found in this chapter; provisions for resident, special and temporary physician licensure are found in 653—Chapter 10.

**9.2(2) Licensure not required.** The following persons are not required to obtain a license to practice in Iowa:

- a. Those persons described in Iowa Code sections 148.2(1) to 148.2(5).
  - (1) A medical student or osteopathic medical student in an international medical school may not take on the role of a medical student in the patient care setting unless the student is enrolled in the University of Iowa’s Carver College of Medicine or in Des Moines University’s College of Osteopathic Medicine; however, an international medical student not enrolled at either of these institutions may be an observer as defined in rule 653—9.1(147,148).
  - (2) A graduate of an international medical school shall not practice medicine without an Iowa medical license; however, the graduate may be an observer as defined in rule 653—9.1(147,148).
- b. Those persons who are incidentally called into this state in consultation with a physician or surgeon licensed in this state as described in Iowa Code section 148.2(5) and as defined in rule 653—9.1(147,148).
- c. Physicians and surgeons who hold a current, active license in good standing in another United States jurisdiction and who come into Iowa on a temporary basis to aid disaster victims at the time of a disaster in accordance with Iowa Code section 29C.6.
- d. Physicians and surgeons who hold a current, active license in good standing in another United States jurisdiction and who come to Iowa to participate in further medical education may participate in patient care under the request and supervision of the patient’s Iowa-licensed physician in charge of the education. The Iowa-licensed physician shall retain the primary responsibility for management of the patient’s care.
- e. Physicians and surgeons who hold a current, active license in good standing in another United States jurisdiction and who come into Iowa to serve as expert witnesses as long as they do not provide treatment.
- f. Physicians and surgeons from out of state who hold a current, active license in good standing in another United States jurisdiction and who accompany one or more individuals into Iowa for the purpose of providing medical care to these individuals on a short-term basis, e.g., a team physician for an out-of-state college football team that comes into Iowa for a game.
- g. Physicians and surgeons who come to Iowa to observe patient care and who do not provide or direct hands-on patient care.
- h. Visiting resident physicians who come to Iowa to practice as part of their resident training program if under the supervision of an Iowa-licensed physician. An Iowa physician license is not required of a physician in training if the physician has a resident or permanent license in good standing in the home state of the resident training program. An Iowa temporary license is required of a physician

in training if the physician does not hold a resident or permanent physician license in good standing in the home state of the resident training program (see rule 653—10.5(147,148)).

**9.2(3) *Supervision of an observer.*** An Iowa-licensed physician who supervises an observer shall accompany the observer and solicit consent from each patient, where feasible, for the observation. The physician shall inform the patient of the observer's background, e.g., high school student considering a medical career, a medical graduate who is working on licensure. The supervising physician shall ensure that the observer remains within the scope of an observer as defined in rule 653—9.1(147,148).

[ARC 0215C, IAB 7/25/12, effective 8/29/12]

**653—9.3(147,148) Eligibility for permanent licensure.**

**9.3(1) Requirements.** To be eligible for permanent licensure, an applicant shall meet all of the following requirements:

*a.* Fulfill the application requirements specified in rule 653—9.4(147,148), 653—9.5(147,148) or 653—9.6(147,148).

*b.* Hold a medical degree from an educational institution approved by the board at the time the applicant graduated and was awarded the degree.

(1) Educational institutions approved by the board shall be fully accredited by an accrediting agency recognized by the board as schools of instruction in medicine and surgery or osteopathic medicine and surgery and empowered to grant academic degrees in medicine.

(2) The accrediting bodies currently recognized by the board are:

1. LCME for the educational institutions granting degrees in medicine and surgery; and

2. AOA for educational institutions granting degrees in osteopathic medicine and surgery.

(3) If the applicant holds a medical degree from an educational institution not approved by the board at the time the applicant graduated and was awarded the degree, the applicant shall meet one of the following requirements:

1. Hold a valid certificate issued by ECFMG;

2. Have successfully completed a fifth pathway program established in accordance with AMA criteria;

3. Have successfully passed either a basic science examination administered by a United States or Canadian medical licensing authority or SPEX; and have successfully completed three years of resident training in a program approved by the board; and have submitted evidence of five years of active practice without restriction as a licensee of any United States or Canadian jurisdiction; or

4. Have successfully passed either a basic science examination administered by a United States or Canadian medical licensing authority or SPEX; and hold board certification by a specialty board approved by ABMS or AOA; and submit evidence of five years of active practice without restriction as a licensee of any United States or Canadian jurisdiction.

*c.* Have successfully completed one year of resident training in a hospital-affiliated program approved by the board at the time the applicant was enrolled in the program. An applicant who is a graduate of an international medical school shall have successfully completed 24 months of such training.

(1) For those required to have 12 months of training, the program shall have been 12 months of progressive training in not more than two specialties and in not more than two programs approved for resident training by the board. For those required to have 24 months of training, the program shall have been 24 continuous months of progressive training in not more than two specialties and in not more than two programs approved for resident training by the board.

(2) Resident training approved by the board shall be accredited by an accrediting agency recognized by the board for the purpose of accrediting resident training programs.

(3) The board approves resident training programs accredited by:

1. ACGME;

2. AOA;

3. RCPSC; and

4. CFPC.

(4) The board shall accept each 12 months of practice as a special licensee as equivalent to one year of resident training in a hospital-affiliated program approved by the board.

*d.* Pass one of the licensure examinations or combinations as prescribed in rule 653—9.7(147,148).

**9.3(2)** Reserved.

[ARC 8554B, IAB 3/10/10, effective 4/14/10; ARC 0215C, IAB 7/25/12, effective 8/29/12]

**653—9.4(147,148) Licensure by examination.**

**9.4(1)** *Applicant eligibility.* An applicant who has never been licensed in any United States or Canadian jurisdiction shall meet the following requirements to be eligible for permanent licensure by examination.

**9.4(2)** *Requirements.* To apply for permanent licensure, an applicant shall:

*a.* Pay a nonrefundable initial application fee of \$450 plus the \$45 fee identified in 653—subrule 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

*b.* Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant.

*c.* Pass the USMLE, COMLEX, or Medical Council of Canada Examination as prescribed in rule 653—9.7(147,148) and authorize the testing authority to verify scores.

**9.4(3)** *Application.* The application shall require the following information:

*a.* Full legal name, date and place of birth, home address, mailing address and principal business address.

*b.* A photograph of the applicant suitable for positive identification.

*c.* A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.

*d.* A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application.

*e.* A certified statement of scores on any licensure examination required in rule 653—9.7(147,148) that the applicant has taken in any jurisdiction. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

*f.* A photocopy of the applicant's medical degree issued by an educational institution.

(1) A complete translation of any diploma not written in English shall be submitted. An official transcript, written in English and received directly from the school, showing graduation from medical school is a suitable alternative.

(2) An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

(3) If a copy of the medical degree cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution.

*g.* A sworn statement from an official of the educational institution certifying the date the applicant received the medical degree and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. If a sworn statement from an official of the educational institution cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution.

*h.* An official transcript, or its equivalent, received directly from the school for every medical school attended if requested by the board. A complete translation of any transcript not written in English shall be submitted if requested by the board. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

*i.* If the educational institution awarding the applicant the degree has not been approved by the board, the applicant shall provide a valid ECFMG certificate or evidence of successful completion of

a fifth pathway program in accordance with criteria established by AMA. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

*j.* Documentation of successful completion of resident training approved by the board as specified in paragraph 9.3(1)“c.” An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.

*k.* Verification of an applicant’s hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.

*l.* A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction.

*m.* A statement of the applicant’s physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care.

*n.* A statement disclosing and explaining the applicant’s involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process.

*o.* A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding to have the conviction or plea set aside is pending.

*p.* A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

[ARC 8554B, IAB 3/10/10, effective 4/14/10; ARC 0215C, IAB 7/25/12, effective 8/29/12; ARC 1187C, IAB 11/27/13, effective 1/1/14]

### **653—9.5(147,148) Licensure by endorsement.**

**9.5(1) Applicant eligibility.** An applicant who has been licensed in any United States jurisdiction or Canada shall meet one of the following requirements to be eligible for permanent licensure by endorsement.

*a.* Applicants who have been licensed for at least five years may meet expedited endorsement requirements set forth in rule 653—9.6(147,148).

*b.* An M.D. applicant who has been licensed in any United States jurisdiction or Canada shall meet the licensure examination requirements in effect in Iowa at the time of original licensure if the examination precedes USMLE. An M.D. applicant who has been licensed in any United States jurisdiction or Canada based on USMLE shall meet the requirements in rule 653—9.7(147,148). The applicant shall authorize the appropriate testing authority to verify scores obtained on the examination as specified in this rule.

*c.* A D.O. applicant who has been licensed in any United States jurisdiction shall meet the licensure examination requirements in effect in Iowa at the time of original licensure if the examination precedes USMLE or COMLEX, whichever is applicable. A D.O. applicant who has been licensed in any United States jurisdiction based on USMLE or COMLEX shall meet the requirements in rule 653—9.7(147,148). The applicant shall authorize the appropriate testing authority to verify scores obtained on the examination as specified in this rule.

**9.5(2) Requirements.** To apply for permanent licensure, an applicant shall:

*a.* Pay a nonrefundable initial application fee of \$450 plus the \$45 fee identified in 653—subrule 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

*b.* Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant.

**9.5(3) Application.** The application shall require the following information:

- a.* Full legal name, date and place of birth, home address, mailing address and principal business address.
- b.* A photograph of the applicant suitable for positive identification.
- c.* A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.
- d.* A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application.
- e.* A certified statement of scores on any examination required in rule 653—9.7(147,148) that the applicant has taken in any jurisdiction. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.
- f.* A photocopy of the applicant's medical degree issued by an educational institution.
  - (1) A complete translation of any diploma not written in English shall be submitted. An official transcript, written in English and received directly from the school, showing graduation from medical school is a suitable alternative.
  - (2) An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.
  - (3) If a copy of the medical degree cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution.
- g.* A sworn statement from an official of the educational institution certifying the date the applicant received the medical degree and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. If a sworn statement from an official of the educational institution cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution.
- h.* An official transcript, or its equivalent, received directly from the school for every medical school attended if requested by the board. A complete translation of any transcript not written in English shall be submitted if requested by the board. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.
- i.* If the educational institution awarding the applicant the degree has not been approved by the board, the applicant shall provide a valid ECFMG certificate or evidence of successful completion of a fifth pathway program in accordance with criteria established by AMA. An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.
- j.* Documentation of successful completion of resident training approved by the board as specified in paragraph 9.3(1)"c." An official FCVS Physician Information Profile that supplies this information for the applicant is a suitable alternative.
- k.* Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.
- l.* A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction.
- m.* A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care.
- n.* A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process.
- o.* A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding to have the conviction or plea set aside is pending.

*p.* A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

[ARC 8554B, IAB 3/10/10, effective 4/14/10; ARC 0215C, IAB 7/25/12, effective 8/29/12; ARC 1187C, IAB 11/27/13, effective 1/1/14]

### **653—9.6(147,148) Licensure by expedited endorsement.**

**9.6(1) Applicant eligibility.** An applicant who has been licensed in any United States jurisdiction or Canada for more than five years shall meet the following requirements to be eligible for permanent licensure by expedited endorsement.

**9.6(2) Requirements.** To apply for permanent licensure by expedited endorsement, an applicant shall:

*a.* Pay a nonrefundable initial application fee of \$450 plus the \$45 fee identified in 653—subrule 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

*b.* Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant.

*c.* Meet the eligibility requirements set forth in subrule 9.3(1).

*d.* Be licensed in at least one other United States jurisdiction or Canadian province.

*e.* Hold an unrestricted license in every jurisdiction in which the applicant is licensed.

*f.* Have no formal disciplinary actions; no active or pending investigations; no past, pending, public or confidential restrictions or sanctions by a board of medicine, licensing authority, medical society, professional society, hospital, medical school, federal agency, or institution staff sanctions in any state, country or jurisdiction.

*g.* Hold current specialty board certification by an ABMS or AOA specialty board. Lifetime certification is excluded.

*h.* Have been engaged in continuous, active practice within the five years immediately preceding the date of submitting an application for licensure. Continuous, active practice includes private practice, employment in a hospital or clinical setting, employment by any governmental entity in community or public health, or practice of administrative, academic or research medicine. Continuous, active practice does not include residency, fellowship or postgraduate training of any kind.

**9.6(3) Application.** The application shall require the following information:

*a.* Full legal name, date and place of birth, home address, mailing address and principal business address.

*b.* A photograph of the applicant suitable for positive identification.

*c.* A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance.

*d.* A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application.

*e.* Verification of an applicant's hospital and clinical staff privileges and other professional experience for the past five years if requested by the board.

*f.* A statement disclosing and explaining any informal or nonpublic actions, warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, a training or research program, or a health facility in any jurisdiction.

*g.* A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care.

*h.* A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process.

*i.* A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding to have the conviction or plea set aside is pending.

*j.* A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

NOTE: The board reserves the right to request information listed in rule 653—9.5(147,148).  
[ARC 8554B, IAB 3/10/10, effective 4/14/10; ARC 0215C, IAB 7/25/12, effective 8/29/12; ARC 1187C, IAB 11/27/13, effective 1/1/14]

### **653—9.7(147,148) Licensure examinations.**

#### **9.7(1) USMLE.**

*a.* The USMLE is a joint program of FSMB and the NBME. The USMLE is a multipart examination consisting of Step 1, Step 2, and Step 3. Steps 1 and 2 are administered by NBME and ECFMG. The board contracts with FSMB for the administration of Step 3. USMLE Steps 1 and 2 were implemented in 1992; Step 3 was implemented in 1994.

*b.* Since 1999, Step 3 is a computerized examination offered at testing centers in the Des Moines area and other locations around Iowa and the United States.

*c.* Applications are available at Department of Examination Services, FSMB, 400 Fuller Wiser Road, Suite 300, Euless, Texas 76039, or [www.fsmb.org](http://www.fsmb.org).

*d.* Candidates who meet the following requirements are eligible to take USMLE Step 3:

(1) Submit a completed application form and pay the required examination fee as specified in 653—subrule 8.3(1).

(2) Document successful completion of USMLE Steps 1 and 2 in accordance with the requirements of NBME. Graduates of a foreign medical school shall meet the requirements of ECFMG.

(3) Document holding a medical degree from a board-approved educational institution. If a candidate holds a medical degree from an educational institution not approved by the board at the time the applicant graduated and was awarded the degree, the candidate shall meet the requirements specified in 9.3(1)“c”(3).

(4) Document successful completion of a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for Step 3 or enrollment in a resident training program approved by the board at the time of the application for Step 3.

*e.* The following conditions shall apply to applicants for licensure in Iowa who utilize USMLE as the licensure examination.

(1) Passing Steps 1, 2, and 3 is required within a ten-year period beginning with the date of passing either Step 1 or Step 2, whichever occurred first. Board certification by the ABMS or AOA is required if the applicant was not able to pass Steps 1, 2, and 3 within the required time as specified in this paragraph.

(2) Step 3 may be taken and passed only after Steps 1 and 2 are passed.

(3) A score of 75 or better on each step shall constitute a passing score on that step.

(4) Each USMLE step must be passed individually, and individual step scores shall not be averaged to compute an overall score.

(5) A failure of any USMLE step, regardless of the jurisdiction for which it was taken, shall be considered a failure of that step for the purposes of Iowa licensure.

(6) Successful completion of a progressive three-year resident training program is required if the applicant passes the examination after more than six attempts on Step 1 or six attempts on Step 2 CK and Step 2 CS combined or three attempts on Step 3.

*f.* Any candidate deemed eligible to sit for USMLE Step 3 is required to adhere to the examination procedures and protocol established by FSMB and NBME in the following publications: USMLE Test Administration Standards and Policies and Procedures Regarding Indeterminate Scores and Irregular Behavior, FSMB, 400 Fuller Wiser Road, Suite 300, Euless, Texas 76039.

**9.7(2) NBME.**

- a. NBME Part Examinations (Parts I, II, and III) were first administered in 1916. The last regular administration of Part I occurred in 1991, Part II in April 1992, and Part III in May 1994.
- b. Successful completion of NBME Parts I, II, and III was a requirement for NBME certification.
- c. A score of 75 or better on each part shall constitute a passing score on that part.

**9.7(3) FLEX.**

a. From 1968 to 1985, (Old) FLEX was a three-day examination. Day 1 covered basic science; Day 2 covered clinical science; and Day 3 covered clinical competency. Applicants who took Old FLEX shall provide evidence of successful achievement of at least two of the following:

- (1) Certification under seal that the applicant passed FLEX with a FLEX-weighted average of 75 percent or better, as determined by the state medical licensing authority, in no more than two sittings.
- (2) Verification under seal of medical licensure in the state that administered the examination.
- (3) Evidence of current certification by an American specialty board approved or recognized by the Council of Medical Education of AMA, ABMS, or AOA.

b. From 1985 to 1994, (New) FLEX replaced the Old FLEX. New FLEX was a three-day nationally standardized examination consisting of two, one and one-half day components referred to as Component I (basic and clinical science principles and mechanisms underlying disease and modes of therapy) and Component II (knowledge and cognitive abilities required of a physician assuming independent responsibility for the general delivery of medical care to patients). The last regular administration of both components of New FLEX occurred in 1993. Two special administrations of New FLEX Component I were offered in 1994 to examinees who passed Component II but not Component I prior to 1994. To be eligible for permanent licensure, the candidate must have passed both components in Iowa with a FLEX score of 75 or better within a seven-year period beginning with the date of initial examination.

(1) Candidates who took the FLEX for the first time were required to take both components during the initial sitting. A candidate who failed either or both components must have repeated and passed the component failed, though Component II could only be repeated if the candidate had received a passing score of 75 percent or better on Component I.

(2) Eligible candidates were permitted to sit for the initial examination and reapply to the board to repeat a failed component or complete the entire examination two additional times. However, candidates who failed either or both components three times were required to wait one year, during which time the candidate was encouraged to obtain additional training, before being permitted to sit two additional times for either or both components of the FLEX.

**9.7(4) Combination examination sequences.** To accommodate individuals who had already passed some part of the NBME Parts or FLEX before implementation of the USMLE, the USMLE program recommended and the board approved the following licensing combinations of examinations for licensure only if completed prior to January 1, 2000. These combinations are now only acceptable from an applicant who already holds a license from any United States jurisdiction.

a. FLEX Component I plus USMLE Step 3 with a passing score of 75 or better on each examination;

b. NBME Part I or USMLE Step 1 plus NBME Part II or USMLE Step 2 plus FLEX Component II with a passing score of 75 or better on each examination; or

c. NBME Part I or USMLE Step 1 plus NBME Part II or USMLE Step 2 plus NBME Part III or USMLE Step 3 with a passing score of 75 or better on each examination.

**9.7(5) Examinations for graduates of board-approved colleges of osteopathic medicine and surgery.****a. COMLEX.**

(1) COMLEX is a three-level examination that replaced the three-part NBOME examination. COMLEX Level 3 was first administered in February 1995; Level 2 was first administered in March 1997; and Level 1 was first administered in June 1998. All three examinations must be successfully completed in sequential order within ten years of the successful completion of COMLEX Level 1. Board certification by the ABMS or AOA is required if the applicant was not able to pass Levels 1, 2, and 3 within the required time as specified in this paragraph.

(2) A standard score of 400 on Level 1 or Level 2 is required to pass the examination. A standard score of 350 on Level 3 is required to pass the examination.

(3) A candidate shall have successfully completed a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for Level 3 or enrollment in a resident training program approved by the board at the time of the application for Level 3.

(4) Successful completion of a progressive three-year resident training program is required if the applicant passes the examination after more than six attempts on Level 1 or six attempts on Level 2 CE and Level 2 PF combined or three attempts on Level 3.

(5) Each COMLEX level must be passed individually, and individual level scores shall not be averaged to compute an overall score.

(6) Level 3 may be taken and passed only after Levels 1 and 2 are passed.

(7) A failure of any COMLEX level, regardless of the jurisdiction for which it was taken, shall be considered a failure of that level for the purposes of Iowa licensure.

*b. NBOME.* The board accepts a passing score on the NBOME licensure examination for graduates of colleges of osteopathic medicine and surgery in any United States jurisdiction.

(1) NBOME was a three-part examination. All three parts must have been successfully completed in sequential order within seven years of the successful completion of NBOME Part 1.

(2) A passing score is required on each part of the examination.

(3) A candidate shall have successfully completed a minimum of seven calendar months of resident training in a program approved by the board at the time of the application for NBOME Part 3. Candidates shall have completed their resident training by the last day of the month in which the examination was taken.

(4) Successful completion of a three-year resident training program is required if the applicant passes the examination after more than six attempts on Part 1 or six attempts on Part 2 or three attempts on Part 3.

(5) Each NBOME part must have been passed individually, and individual part scores shall not be averaged to compute an overall score.

(6) Part 3 must have been taken and passed only after Parts 1 and 2 were passed.

(7) A failure of any NBOME part, regardless of the jurisdiction for which it was taken, shall be considered a failure of that part for the purposes of Iowa licensure.

**9.7(6) LMCC.**

*a.* The board accepts toward Iowa licensure a verification of a Licentiate's registration with the Medical Council of Canada, based on passing the Medical Council of Canada Examination.

*b.* The Medical Council of Canada may be contacted at P.O. Box/CP 8234, Station 'T', Ottawa, Ontario, Canada K1G 3H7 or (613)521-9417.

[ARC 8554B, IAB 3/10/10, effective 4/14/10; ARC 0215C, IAB 7/25/12, effective 8/29/12]

**653—9.8(147,148) Permanent licensure application review process.** The process below shall be utilized to review each application. Priority shall be given to processing a licensure application when a written request is received in the board office from an applicant whose practice will primarily involve provision of services to underserved populations, including but not limited to persons who are minorities or low-income or who live in rural areas.

**9.8(1)** An application for initial licensure shall be considered open from the date the application form is received in the board office with the nonrefundable initial licensure fee.

**9.8(2)** After reviewing each application, staff shall notify the applicant about how to resolve any problems. An applicant shall provide additional information when requested by staff or the board. Staff shall refer an expedited endorsement applicant to the process for licensure by endorsement or to the committee if:

*a.* The applicant does not meet the requirements set forth in rule 653—9.6(147,148) for expedited endorsement; or

*b.* Staff has reasonable concerns about the accuracy or thoroughness of another jurisdiction's licensing process.

**9.8(3)** If the final review indicates no questions or concerns regarding the applicant's qualifications for licensure, staff may administratively grant the license. The staff may grant the license without having received a report on the applicant from the FBI.

**9.8(4)** If the final review indicates questions or concerns that cannot be remedied by continued communication with the physician, the executive director, director of licensure and administration and director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

*a.* If there is no current concern, staff shall administratively grant the license.

*b.* If any concern exists, the application shall be referred to the committee.

**9.8(5)** Staff shall refer to the committee for review matters which include but are not limited to: falsification of information on the application, criminal record, malpractice, substance abuse, competency, physical or mental illness, or professional disciplinary history.

**9.8(6)** If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to grant the license administratively.

**9.8(7)** If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

*a.* Request an investigation;

*b.* Request that the applicant appear for an interview;

*c.* If the physician has not engaged in active practice in the past three years in any jurisdiction of the United States or Canada, require an applicant to:

(1) Successfully pass a competency evaluation approved by the board;

(2) Successfully pass SPEX, COMVEX-USA, or another examination approved by the board;

(3) Successfully complete a retraining program arranged by the physician and approved in advance by the board; or

(4) Successfully complete a reentry to practice program or monitoring program approved by the board.

*d.* Grant a license;

*e.* Grant a license under certain terms and conditions or with certain restrictions;

*f.* Request that the applicant withdraw the licensure application; or

*g.* Deny a license.

**9.8(8)** The board shall consider applications and recommendations from the committee and shall:

*a.* Request further investigation;

*b.* Require that the applicant appear for an interview;

*c.* If the physician has not engaged in active practice in the past three years in any jurisdiction of the United States or Canada, require an applicant to:

(1) Successfully pass a competency evaluation approved by the board;

(2) Successfully pass SPEX, COMVEX-USA, or another examination approved by the board;

(3) Successfully complete a retraining program arranged by the physician and approved in advance by the board; or

(4) Successfully complete a reentry to practice program or monitoring program approved by the board.

*d.* Grant a license;

*e.* Grant a license under certain terms and conditions or with certain restrictions;

*f.* Request that the applicant withdraw the licensure application; or

*g.* Deny a license. The board may deny a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial is set forth in rule 653—9.15(147,148). [ARC 8554B, IAB 3/10/10, effective 4/14/10; ARC 0215C, IAB 7/25/12, effective 8/29/12]

### **653—9.9(147,148) Licensure application cycle.**

**9.9(1)** *Failure to submit application materials.* If the applicant does not submit all materials, including a completed fingerprint packet, within 90 days of the board's initial request for further

information, the application shall be considered inactive. The board office shall notify the applicant of this change in status.

**9.9(2) *Reactivation of the application.*** To reactivate the application, an applicant shall submit a nonrefundable reactivation of application fee of \$150 and shall update credentials.

*a.* The period for requesting reactivation is limited to 90 days from the date the applicant is notified that the application is inactive, unless the applicant is granted an extension in writing by the committee or the board.

*b.* The period for reactivation of application shall extend 90 days from the date the request and fee are received in the board office. During this period, the applicant shall update credentials and submit the remaining requested materials unless granted an extension in writing by the committee or the board.

*c.* Once the reactivation period expires, an applicant must reapply and submit a new nonrefundable application fee and a new application, documents and credentials.

[ARC 8554B, IAB 3/10/10, effective 4/14/10; ARC 0215C, IAB 7/25/12, effective 8/29/12]

**653—9.10(147,148) Discretionary board actions on licensure applications.** As circumstances warrant, the board may determine that any applicant for licensure is subject to the following:

**9.10(1)** The board may impose limits or restrictions on the practice of any applicant once licensed in this state that are equal in force to the limits or restrictions imposed on the applicant by any jurisdiction.

**9.10(2)** The board may defer final action on an application for licensure if there is an investigation or disciplinary action pending against an applicant in any jurisdiction until such time as the board is satisfied that licensure of the applicant poses no risk to the health and safety of Iowans.

**9.10(3)** The board is not precluded from taking disciplinary action after licensure is granted related to issues that arose in the licensure application process.

[ARC 8554B, IAB 3/10/10, effective 4/14/10]

**653—9.11(147,148) Issuance of a permanent license.**

**9.11(1) *Issuance.*** Upon the granting of permanent licensure, staff shall issue an original license to practice that shall expire on the first day of the licensee's birth month.

*a.* Licenses of persons born in even-numbered years shall expire in an even-numbered year, and licenses of persons born in odd-numbered years shall expire in an odd-numbered year.

*b.* The license shall not be issued for a period less than two months or greater than two years and two months, in accordance with the licensee's month and year of birth.

*c.* When a resident physician receives a permanent Iowa license, the resident physician license shall immediately become inactive.

*d.* When a physician with a special license receives a permanent Iowa license, the special license shall immediately become inactive.

**9.11(2) *Display of license.*** The original permanent license shall be displayed in the licensee's primary location of practice.

[ARC 8554B, IAB 3/10/10, effective 4/14/10; ARC 0215C, IAB 7/25/12, effective 8/29/12]

**653—9.12(147,148) Notification required to change the board's data system.**

**9.12(1) *Change of address.*** A licensee shall notify the board of any change in the home address or the address of the place of practice within one month of making an address change.

**9.12(2) *Change of name.*** A licensee shall notify the board of any change in name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

**9.12(3) *Deceased.*** A licensee file shall be closed and labeled "deceased" when the board receives a copy of the physician's death certificate.

[ARC 8554B, IAB 3/10/10, effective 4/14/10]

**653—9.13(147,148) Renewal of a permanent license.**

**9.13(1) *Renewal notice.*** Staff shall send a renewal notice by regular mail to each licensee at the licensee's last-known address at least 60 days prior to the expiration of the license.

**9.13(2) Licensee obligation.** 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 responsibility for renewing that license.

**9.13(3) Renewal application requirements.** A licensee seeking renewal shall submit a completed renewal application; information on continuing education, training on chronic pain management, training on end-of-life care, and training on identifying and reporting abuse; and the required fee prior to the expiration date on the current license.

*a.* Renewal fee.

(1) The renewal fee is \$550 if renewal is made via paper application or \$450 if renewal is made via on-line application, per biennial period or a prorated portion thereof if the current license was issued for a period of less than 24 months.

(2) There is no renewal fee due for a physician who was on active duty in the U.S. armed forces, reserves or national guard during the renewal period. "Active duty" means full-time training or active service in the U.S. armed forces, reserves or national guard. A physician who fails to renew before the expiration of the license shall be charged a penalty fee as set forth in 653—paragraph 8.4(1) "d."

*b.* The requirements for continuing education and training on identifying and reporting abuse are found in 653—Chapter 11.

*c.* The first renewal fee shall be prorated on a monthly basis according to the date of issuance and the physician's month and year of birth, if the original permanent license was issued for a period of less than 24 months.

**9.13(4) Issuance of a renewal.** Upon receiving the completed renewal application, staff shall administratively issue a two-year license that expires on the first day of the licensee's birth month. 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.

**9.13(5) Renewal penalties.** If the licensee fails to submit the renewal application and renewal fee prior to the expiration date on the current license, the licensee shall be charged a penalty fee as set forth in 653—paragraph 8.4(1) "d."

**9.13(6) Failure to renew.** Failure of the licensee to renew a license within two months following its expiration date shall cause the license to become inactive and invalid. A licensee whose license is invalid is prohibited from practice until the license is reinstated in accordance with rule 653—9.15(147,148).

*a.* In order to ensure that the license will not become inactive when a paper renewal form is used, the completed renewal application and appropriate fees must be received in the board office by the fifteenth of the month prior to the month the license becomes inactive. For example, a licensee whose license expires on January 1 has until March 1 to renew the license or the license becomes inactive and invalid. The licensee must submit and the board office must receive the renewal materials prior to or on February 15 to ensure that the license will be renewed prior to becoming inactive and invalid on March 1.

*b.* In order to ensure that the license will not become inactive when on-line renewal is used, the licensee must complete the on-line renewal prior to midnight of the last day of the month in the month after the expiration date on the license. For example, a licensee whose license expiration date is January 1 must complete the on-line renewal before midnight on the last day of February; the license becomes inactive and invalid at 12:01 a.m. on March 1.

**9.13(7) Display of license.** Renewal licenses shall be displayed along with the original permanent license in the primary location of practice.

[ARC 8554B, IAB 3/10/10, effective 4/14/10; ARC 0215C, IAB 7/25/12, effective 8/29/12; ARC 0871C, IAB 7/24/13, effective 8/28/13]

### **653—9.14(147,148) Inactive status and reinstatement of a permanent license.**

**9.14(1) Definition of inactive status.** An inactive license is any license that is not a current, active license.

*a.* "Inactive status" may include licenses formerly known as delinquent, lapsed, or retired.

*b.* A physician with an inactive license may not practice medicine until the license is reinstated to current, active status.

*c.* A physician whose license is inactive continues to hold the privilege of licensure in Iowa but may not practice medicine under an Iowa license until the license is reinstated to current, active status. A licensee who practices under an Iowa license when the license is inactive 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, or other available legal remedies.

**9.14(2)** *Mechanisms for becoming inactive.* A licensee seeking to become inactive may do so by submitting a written request to the board office or by failing to renew a license by the first day of the third month after the expiration date. For example, a licensee whose license expires on January 1 will be considered inactive if the license is not renewed by March 1.

**9.14(3)** *Fee.* There is no fee to become inactive.

[ARC 8554B, IAB 3/10/10, effective 4/14/10]

### **653—9.15(147,148) Reinstatement of an unrestricted Iowa license.**

**9.15(1)** *Reinstatement within one year of the license's becoming inactive.* An individual whose license is in inactive status for up to one year and who wishes to reinstate the license shall submit a completed renewal application; documentation of continuing education; training on chronic pain management, training on end-of-life care, and training on identifying and reporting abuse; and the reinstatement fee. All of the information shall be received in the board office within one year of the license's becoming inactive for the applicant to reinstate under this subrule. For example, a physician whose license became inactive on March 1 has until the last day of the following February to renew under this subrule.

*a.* *Fees for reinstatement within one year of the license's becoming inactive.* The reinstatement fee is \$550 except when the license in the most recent license period had been granted for less than 24 months; in that case, the reinstatement fee is prorated according to the date of issuance and the physician's month and year of birth.

*b.* *Continuing education and training requirements.* The requirements for continuing education, training on chronic pain management, training on end-of-life care, and training on identifying and reporting abuse are found in 653—Chapter 11. Applicants for reinstatement shall provide documentation of having completed:

(1) The number of hours of category 1 credit needed for renewal in the most recent license period. None of the credits obtained in the inactive period may be carried over to a future license period; and

(2) Training on chronic pain management, end-of-life care, and identifying and reporting abuse, if applicable, within the previous five years.

*c.* *Issuance of a reinstated license.* Upon receiving the completed application, staff shall administratively issue a license that expires on the renewal date that would have been in effect if the licensee had renewed the license before the license expired.

*d.* *Reinstatement application process.* The applicant who fails to submit all reinstatement information required within 365 days of the license's becoming inactive shall be required to meet the reinstatement requirements of 9.15(2). For example, if a physician's license expires on January 1, the completed reinstatement application is due in the board office by December 31, in order to meet the requirements of this subrule.

**9.15(2)** *Reinstatement of an unrestricted Iowa license that has been inactive for one year or longer.* An individual whose license is in inactive status and who has not submitted a reinstatement application that was received by the board within one year of the license's becoming inactive shall follow the application cycle specified in this rule and shall satisfy the following requirements for reinstatement:

*a.* Submit an application for reinstatement to the board upon forms provided by the board. The application shall require the following information:

(1) Full legal name, date and place of birth, license number, home address, mailing address and principal business address;

- (2) A chronology accounting for all time periods from the date of initial licensure;
- (3) Every jurisdiction in which the applicant is or has been authorized to practice including license numbers and dates of issuance;
- (4) Verification of the applicant's hospital and clinical staff privileges, and other professional experience for the past five years if requested by the board;
- (5) A statement disclosing and explaining any warnings issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction;
- (6) A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care;
- (7) A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process;
- (8) A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside; and
- (9) A completed fingerprint packet to facilitate a national criminal history background check. The \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.
  - b.* Pay the reinstatement fee of \$500 plus the \$45 fee identified in 653—subrule 8.4(6) for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks. No fee is required for reinstatement for those whose licenses became inactive between December 8, 1999, and July 4, 2001; however, the \$45 fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed.
  - c.* Provide documentation of completion of 80 hours of category 1 credit within the previous two years and documentation of training on chronic pain management, end-of-life care, and identifying and reporting abuse as specified in 653—Chapter 11.
  - d.* If the physician has not engaged in active practice in the past three years in any jurisdiction of the United States or Canada, require an applicant to:
    - (1) Successfully pass a competency evaluation approved by the board;
    - (2) Successfully pass SPEX, COMVEX-USA, or another examination approved by the board;
    - (3) Successfully complete a retraining program arranged by the physician and approved in advance by the board; or
    - (4) Successfully complete a reentry to practice program or monitoring program approved by the board.
  - e.* An individual who is able to submit a letter from the board with different reinstatement or reactivation criteria is eligible for reinstatement based on those criteria.

**9.15(3) Reinstatement application cycle and process.** The cycle and process are the same as described in rules 653—9.8(147,148) and 653—9.9(147,148).

[ARC 8554B, IAB 3/10/10, effective 4/14/10; ARC 0215C, IAB 7/25/12, effective 8/29/12; ARC 1187C, IAB 11/27/13, effective 1/1/14]

**653—9.16(147,148) Reinstatement of a restricted Iowa license.** A physician whose license has been suspended or revoked following a disciplinary proceeding is required to seek reinstatement pursuant to 653—Chapter 26.

[ARC 8554B, IAB 3/10/10, effective 4/14/10]

**653—9.17(147,148) Denial of licensure.**

**9.17(1) Preliminary notice of denial.** Prior to the denial of licensure to an applicant, the board shall issue a preliminary notice of denial that shall be sent to the applicant by regular, first-class mail at the address provided by the applicant. The preliminary notice of denial is a public record and shall cite the

factual and legal basis for denying the application, notify the applicant of the appeal process, and specify the date upon which the denial will become final if it is not appealed.

**9.17(2) *Appeal procedure.*** An applicant who has received a preliminary notice of denial may appeal the denial and request a hearing on the issues related to the preliminary notice of denial by serving a request for hearing upon the executive director not more than 30 calendar days following the date when the preliminary notice of denial was mailed. The applicant's current address shall be provided in the request for hearing. The request is deemed filed on the date it is received in the board office. If the request is received with a USPS nonmetered postmark, the board shall consider the postmark date as the date the request is filed. The request shall specify the factual or legal errors and that the applicant desires an evidentiary hearing, and may provide additional written information or documents in support of licensure.

**9.17(3) *Hearing.*** If an applicant appeals the preliminary notice of denial and requests a hearing, the hearing shall be a contested case and subsequent proceedings shall be conducted in accordance with 653—25.30(17A).

- a. License denial hearings are contested cases open to the public.
- b. Either party may request issuance of a protective order in the event privileged or confidential information is submitted into evidence.
- c. Evidence supporting the denial of the license may be presented by an assistant attorney general.
- d. While each party shall have the burden of establishing the affirmative of matters asserted, the applicant shall have the ultimate burden of persuasion as to the applicant's qualification for licensure.
- e. The board, after a hearing on license denial, may grant or deny the application for licensure. The board shall state the reasons for its decision and may grant the license, grant the license with restrictions or deny the license. The final decision is a public record.
- f. Judicial review of a final order of the board denying licensure, or issuing a license with restrictions, may be sought in accordance with the provisions of Iowa Code section 17A.19, which are applicable to judicial review of any agency's final decision in a contested case.

**9.17(4) *Finality.*** If an applicant does not appeal a preliminary notice of denial in accordance with 9.17(2), the preliminary notice of denial automatically becomes final. A final denial of an application for licensure is a public record.

**9.17(5) *Failure to pursue appeal.*** If an applicant appeals a preliminary notice of denial in accordance with 9.17(2), but the applicant fails to pursue that appeal to a final decision within one year from the date of the preliminary notice of denial, the board may dismiss the appeal. The appeal may be dismissed only after the board sends a written notice by first-class mail to the applicant at the applicant's last-known address. The notice shall state that the appeal will be dismissed and the preliminary notice of denial will become final if the applicant does not contact the board to schedule the appeal hearing within 30 days of the date the letter is mailed from the board office. Upon dismissal of an appeal, the preliminary notice of denial becomes final. A final denial of an application for licensure under this rule is a public record.  
[ARC 7756B, IAB 5/6/09, effective 6/10/09; ARC 8554B, IAB 3/10/10, effective 4/14/10]

**653—9.18(17A,147,148,272C) Waiver or variance requests.** Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

[ARC 8554B, IAB 3/10/10, effective 4/14/10]

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

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<sup>◇</sup> Two or more ARCs



CHAPTER 10  
RESIDENT, SPECIAL AND TEMPORARY PHYSICIAN LICENSURE

[Prior to 5/30/01, see 653—Chapter 11]

**653—10.1(147,148) Definitions.**

“*ABMS*” means the American Board of Medical Specialties, which is an umbrella organization for at least 24 medical specialty boards in the United States that assists the specialty boards in developing and implementing educational and professional standards to evaluate and certify physician specialists in the United States. The board recognizes specialty board certification by ABMS.

“*ACGME*” means Accreditation Council for Graduate Medical Education, an accreditation body that is responsible for accreditation of post-medical school training programs in medicine and surgery in the United States of America.

“*AMA*” means the American Medical Association, a professional organization of physicians and surgeons.

“*Any jurisdiction*” means any state, the District of Columbia or territory of the United States of America or any other nation.

“*Any United States jurisdiction*” means any state, the District of Columbia or territory of the United States of America.

“*AOA*” means the American Osteopathic Association, which is the representative organization for osteopathic physicians (D.O.s) in the United States. The board approves osteopathic medical education programs with AOA accreditation; the board approves AOA-accredited resident training programs in osteopathic medicine and surgery at hospitals for graduates of accredited osteopathic medical schools. The board recognizes specialty board certification by AOA. The board recognizes continuing medical education accredited by the Council on Continuing Medical Education of AOA.

“*Applicant*” means a person who seeks authorization to practice medicine and surgery or osteopathic medicine and surgery in this state by making application to the board.

“*Approved abuse education training program*” means a training program using a curriculum approved by the abuse education review panel of the department of public health or a training program offered by a hospital, a professional organization for physicians, or the department of human services, the department of education, an area education agency, a school district, the Iowa law enforcement academy, an Iowa college or university, or a similar state agency.

“*Board*” means Iowa board of medicine.

“*Board-approved activity*” means one of the following activities:

1. Covering for an Iowa-licensed physician who unexpectedly is unavailable to provide medical care to the physician’s patients;
2. Demonstrating or proctoring that involves providing hands-on patient care to patients in Iowa;
3. Conducting a procedure on a patient in Iowa when the consultant’s expertise in the procedure is greater than that of the Iowa-licensed physician who requested the procedure;
4. Providing medical care to patients in Iowa, if the physician is enrolled in an out-of-state resident training program and does not hold a resident or permanent license in the home state of the resident training program;
5. Serving as a camp physician;
6. Participating as a learner in a program of further medical education that allows hands-on patient care when the physician does not currently hold a license in good standing in any United States jurisdiction; or
7. Any other activity approved by the board.

“*Board-approved resident training program*” means a hospital-affiliated graduate medical education program accredited by ACGME, AOA, RCPSA, or CFPC at the time the applicant is enrolled in the program.

“*Category 1 credit*” means any formal education program which is sponsored or jointly sponsored by an organization accredited for continuing medical education by the Accreditation Council for Continuing Medical Education, the Iowa Medical Society, or the Council on Continuing Medical Education of AOA

that is of sufficient scope and depth of coverage of a subject area or theme to form an educational unit and is planned, administered and evaluated in terms of educational objectives that define a level of knowledge or a specific performance skill to be attained by the physician completing the program. Credits designated as formal cognates by the American College of Obstetricians and Gynecologists or as prescribed credits by the American Academy of Family Physicians are accepted as equivalent to category 1 credits.

“*CFPC*” means the College of Family Physicians of Canada.

“*Committee*” means the licensure committee of the board.

“*ECFMG*” means the Educational Commission for Foreign Medical Graduates, an organization that assesses the readiness of international medical school graduates to enter ACGME-approved residency programs in the United States of America.

“*FCVS*” means the Federation Credentials Verification Service, a service under the Federation of State Medical Boards that verifies and stores core credentials for retrieval whenever needed.

“*FSMB*” means the Federation of State Medical Boards, the organization of medical boards of the United States of America.

“*Incidentally called into this state in consultation with a physician and surgeon licensed in this state*” as set forth in Iowa Code section 148.2(5) means all of the following shall be true:

1. The consulting physician shall be involved in the care of patients in Iowa only at the request of an Iowa-licensed physician.

2. The consulting physician has a license in good standing in another United States jurisdiction.

3. The consulting physician provides expertise and acts in an advisory capacity to an Iowa-licensed physician. The consulting physician may examine the patient and advise an Iowa-licensed physician as to the care that should be provided, but the consulting physician may not personally perform procedures, write orders, or prescribe for the patient.

4. The consulting physician practices in Iowa for a period not greater than 10 consecutive days and not more than 20 total days in any calendar year. Any portion of a day counts as one day.

5. The Iowa-licensed physician requesting the consultation retains the primary responsibility for the management of the patient’s care.

“*LCME*” means Liaison Committee on Medical Education, an organization that accredits educational institutions granting degrees in medicine and surgery. The board approves programs that are accredited by LCME.

“*Medical degree*” means a degree of doctor of medicine and surgery or osteopathic medicine and surgery or comparable education from an international medical school.

“*Permanent licensure*” means licensure granted after review of the application and credentials to determine that the individual is qualified to enter into practice. The individual may only practice when the license is in current, active status.

“*Postgraduate training*” means graduate medical education, e.g., an internship, residency or fellowship, in a hospital-affiliated training program approved by the board at the time the applicant was enrolled in the program.

“*Practice*” means the practice of medicine and surgery or osteopathic medicine and surgery.

“*RCPSC*” means the Royal College of Physicians and Surgeons of Canada.

“*Resident physician*” means a physician enrolled in an internship, residency or fellowship.

“*Resident training program*” means a hospital-affiliated graduate medical education program that enrolls interns, residents or fellows and may be referred to as a postgraduate training program for purposes of licensure.

“*Service charge*” means the amount charged for making a service available on line and is in addition to the actual fee for a service itself. For example, one who renews a license on line will pay the license renewal fee and a service charge.

“*Training for chronic pain management*” means required training on chronic pain management identified in 653—Chapter 11.

“*Training for end-of-life care*” means required training on end-of-life care identified in 653—Chapter 11.

*“Training for identifying and reporting abuse”* means training on identifying and reporting child abuse or dependent adult abuse required of physicians who regularly provide primary health care to children or adults, respectively. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69; the full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

*“Uniform application for physician state licensure”* means a Web-based application that is intended to standardize and simplify the licensure application process for state medical licensure. The Federation of State Medical Boards created and maintains the application. This application is used for all license types issued by the Iowa board of medicine.

[ARC 0216C, IAB 7/25/12, effective 8/29/12]

**653—10.2(148) Licensure required.** Licensure is required for practice in Iowa as identified in Iowa Code section 148.1; the exceptions are identified in 653—subrule 9.2(2). Provisions for permanent physician licensure are found in 653—Chapter 9; provisions for resident, special and temporary physician licensure are found in this chapter.

**653—10.3(147,148) Resident physician licensure.**

**10.3(1) General provisions.**

a. The resident physician license shall authorize the licensee to practice as an intern, resident or fellow while under the supervision of a licensed practitioner of medicine and surgery or osteopathic medicine and surgery in a board-approved resident training program in Iowa. When the ACGME, AOA, RCPSC, or CFPC fails to offer accreditation for a fellowship or the fellowship fails to seek accreditation, the board shall approve the program if the parent program is accredited by one of the aforementioned accrediting bodies. However, completion of one or more years of a program that itself lacks such accreditation does not fulfill the one-year resident training requirement for permanent licensure.

b. An Iowa resident physician license or an Iowa permanent physician license is required of any resident physician enrolled in an Iowa resident training program and practicing in Iowa.

c. A resident physician license issued on or after February 14, 2003, shall expire on the expected date of completion of the resident training program as indicated on the licensure application. A resident physician license may be extended thereafter at the discretion of the board.

d. A resident physician license is valid only for practice in the program designated in the application. When the physician leaves that program, the license shall immediately become inactive. The director of the resident training program shall notify the board within 30 days of the licensee’s terminating from the program.

e. A resident physician licensee who changes resident training programs shall apply for a new resident physician license as described in subrule 10.3(3). Such changes include a transfer to a different program in the same institution, a move to a program in another institution, or becoming a fellow after completing a residency in the same core program. An individual who contracts with an institution to be in two programs from the time of application for the resident license shall not be required to apply for another resident license for the second program. For example, if a residency requires one year in internal medicine prior to three years in dermatology, the individual may apply initially for a four-year resident license to cover the bundled program. Relicensure is not required if the individual holds a permanent physician license in Iowa.

f. A visiting resident physician may come to Iowa to practice as a part of the physician’s resident training program if the physician is under the supervision of an Iowa-licensed physician. An Iowa physician license is not required of a physician in training if the physician has a resident or permanent license in good standing in the home state of the resident training program. An Iowa temporary physician license is required of a physician in training if the physician does not hold a resident or permanent physician license in good standing in the home state of the resident training program (see rule 653—10.5(147,148)).

g. An Iowa license is not required for residents when they are training in a federal facility in Iowa. An Iowa license is not required for faculty who are teaching in and employed by a federal facility in Iowa and who are licensed in another state.

h. The director of a resident training program that enrolls a resident with an Iowa resident physician license shall report annually on October 1 on the resident's progress and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action. The board shall inform the program directors on September 1 of the impending deadline.

i. A resident physician licensee shall notify the board of any change in name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

j. A resident physician licensee's file shall be closed and labeled "deceased" when the board receives a copy of the physician's death certificate.

**10.3(2) Resident licensure eligibility.** To be eligible for a resident license, an applicant shall meet all of the following requirements:

a. Fulfill the application requirements specified in subrule 10.3(3).

b. Be at least 20 years of age.

c. Hold a medical degree from an educational institution approved by the board at the time the applicant graduated and was awarded the degree.

(1) Educational institutions approved by the board shall be fully accredited by an accrediting agency recognized by the board as schools of instruction in medicine and surgery or osteopathic medicine and surgery and empowered to grant academic degrees in medicine.

(2) The accrediting bodies currently recognized by the board are:

1. LCME for the educational institutions granting degrees in medicine and surgery; and

2. AOA for educational institutions granting degrees in osteopathic medicine and surgery.

(3) If the applicant holds a medical degree from an educational institution not approved by the board at the time the applicant graduated and was awarded the degree, the applicant shall:

1. Hold a valid certificate issued by ECFMG, or

2. Have successfully completed a fifth pathway program established in accordance with AMA criteria.

**10.3(3) Resident physician licensure application.**

a. *Requirements.* To apply for resident physician licensure, an applicant shall:

(1) Pay a nonrefundable application fee of \$100 plus the \$45 fee identified in 653—subrule 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI); and

(2) Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant.

b. *Application.* The application shall require the following information:

(1) Full legal name, date and place of birth, home address, and mailing address;

(2) A photograph of the applicant suitable for positive identification;

(3) A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance;

(4) A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application;

(5) A photocopy of the applicant's medical degree issued by an educational institution.

1. A complete translation shall be submitted for any diploma not written in English. An official transcript, written in English and received directly from the school, verifying graduation from medical school is a suitable alternative. An official FCVS Physician Information Profile is a suitable alternative.

2. If a copy of the medical degree cannot be provided because of extraordinary circumstances, the board may accept other reliable evidence that the applicant obtained a medical degree from a specific educational institution;

(6) If the educational institution awarding the applicant the degree has not been approved by the board, the applicant shall provide a valid ECFMG certificate or evidence of successful completion of a fifth pathway program in accordance with criteria established by the AMA. An official FCVS Physician Information Profile is a suitable alternative;

(7) A statement disclosing and explaining any warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, training or research program, or health care facility in any jurisdiction;

(8) A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care;

(9) A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process;

(10) A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside; and

(11) A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

**10.3(4)** *Resident license application review process.* The process below shall be utilized to review each application for a resident license.

*a.* An application shall be considered open from the date the application form is received in the board office with the nonrefundable resident licensure fee.

*b.* After reviewing each application, staff shall notify the applicant or designee about how to resolve any problems identified by the reviewer.

*c.* If the final review indicates no questions or concerns regarding the applicant's qualifications for licensure, staff may grant administratively a resident license.

*d.* If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, director of licensure and administration, and director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) If there is no current concern, staff shall grant administratively a resident license.

(2) If any concern exists, the application shall be referred to the committee.

*e.* Staff shall refer to the committee for review matters which include, but are not limited to, falsification of information on the application, criminal record, substance abuse, competency, physical or mental illness, or educational disciplinary history.

*f.* If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to grant administratively a resident license.

*g.* If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) Grant a resident physician license for a particular residency program;

(4) Grant a license under certain terms and conditions or with certain restrictions;

(5) Request that the applicant withdraw the licensure application; or

(6) Deny a license.

*h.* The board shall consider applications and recommendations from the committee and shall:

(1) Request an investigation;

(2) Request that the applicant appear for an interview;

(3) Grant a resident physician license for a particular residency program;

(4) Grant a license under certain terms and conditions or with certain restrictions;

- (5) Request that the applicant withdraw the licensure application; or
- (6) Deny a license. The board may deny a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial is set forth in 653—9.15(147,148).

**10.3(5) Resident license application cycle.** If the applicant does not submit all materials within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status. An applicant must reapply and submit a new nonrefundable application fee and a new application, documents and credentials.

**10.3(6) Extension of a resident physician license.**

*a.* If the licensee fails to complete the program by the expiration date on the license, the licensee has a one-month grace period in which to complete the program or secure an extension from the board.

*b.* The resident physician licensee is responsible for applying for an extension if the licensee has not been granted permanent physician licensure and the licensee will not complete the program within the grace period. The following extension application materials are due in the board office prior to the expiration of the license:

- (1) A letter requesting an extension and providing an explanation of the need for an extension;
- (2) The extension fee of \$25; and
- (3) A statement from the director of the resident training program attesting to the new expected date of completion of the program and the individual's progress in the program and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.

*c.* Failure of the licensee to extend a license within one month following the expiration date shall cause the license to become inactive and invalid. For example, a license that expires on June 26 becomes inactive and invalid on July 26. A licensee whose license is inactive is prohibited from practice until the license is extended or replaced by a permanent physician or new resident physician license.

*d.* To extend an inactive resident license within one year of becoming inactive, an applicant shall submit the following:

- (1) A letter requesting an extension and providing an explanation of the need for an extension;
- (2) The extension fee of \$25;
- (3) A \$50 late fee; and
- (4) A statement from the director of the resident training program attesting to the new expected date of completion of the program and the individual's progress in the program and whether any warnings have been issued, investigations conducted or disciplinary actions taken, whether by voluntary agreement or formal action.

*e.* If more than one year has passed since the resident license became inactive, the applicant shall apply for a new resident license as described in subrule 10.3(3).

**10.3(7) Continuing education and training.** Applicants seeking an extension of a resident physician license or an extension of an inactive resident physician license are not required to complete continuing medical education or training requirements as identified in 653—Chapter 11.

**10.3(8) Review process for extending a resident license.** The process below shall be utilized to review each request for an extension of a resident license.

*a.* An extension request shall be considered open from the date the required letters and nonrefundable extension fee are received in the board office.

*b.* After reviewing each request for extension, staff shall notify the licensee or designee about how to resolve any problems identified by the reviewer. The applicant for license extension shall provide additional information when requested by staff or the board.

*c.* If the final review indicates no questions or concerns regarding the applicant's qualifications for continued licensure, staff may grant administratively an extension to a resident license.

*d.* If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, the director of licensure and administration, and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

- (1) If there is no current concern, staff shall grant administratively an extension to a resident license.

(2) If any concern exists, the application shall be referred to the committee.

*e.* Staff shall refer to the committee for review matters which include, but are not limited to, falsification of information in the request, criminal record, substance abuse, competency, physical or mental illness, or educational disciplinary history.

*f.* If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to grant administratively an extension to a resident license.

*g.* If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

- (1) Request an investigation;
- (2) Request that the licensee appear for an interview;
- (3) Grant a license under certain terms and conditions or with certain restrictions;
- (4) Request that the licensee withdraw the request for an extension; or
- (5) Deny a request for an extension of the license.

*h.* The board shall consider applications and recommendations from the committee and shall:

- (1) Request an investigation;
- (2) Request that the licensee appear for an interview;
- (3) Grant an extension to the resident physician license;
- (4) Grant an extension to the resident physician license under certain terms and conditions or with certain restrictions;
- (5) Request that the licensee withdraw the request for an extension; or
- (6) Deny a request for an extension of the license. The board may deny an extension of a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial of an extension is set forth in 653—9.15(147,148).

**10.3(9)** *An Iowa resident physician who changes resident training programs in Iowa.* A resident physician who changes resident training programs shall acquire new resident physician licensure or permanent licensure prior to entering the new resident training program. Such changes include a transfer to a different program in the same institution, a move to a program in another institution, or becoming a fellow after completing a residency in the same core program. An individual who contracts with an institution to be in two programs from the time of application for the resident license shall not be required to apply for another resident license for the second program.

**10.3(10)** *Discipline of a resident license.* The board may discipline a license for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code section 147.55 or 148.6, Iowa Code chapter 272C, and 653—Chapter 23.

**10.3(11)** *Transition from a resident license to a permanent license.* When a resident physician receives a permanent Iowa license, the resident physician license shall immediately become inactive.

[ARC 0216C, IAB 7/25/12, effective 8/29/12; ARC 1187C, IAB 11/27/13, effective 1/1/14]

## **653—10.4(147,148) Special licensure.**

### **10.4(1)** *General provisions.*

*a.* The board may grant a special license to a physician who is an academic staff member of a college of medicine or osteopathic medicine if that physician does not meet the qualifications for permanent licensure, but is held in high esteem for unique contributions the individual has made to medicine and will make by practicing in Iowa. The license is not designed for physicians in regular faculty positions that could be filled by a physician qualified for permanent licensure in Iowa or for the purpose of training the physician who receives the license, i.e., participating in a fellowship of any kind. The board will consider granting and renewing a special license on a case-by-case basis.

*b.* A special license may be issued for a period of not more than one year and may be renewed annually prior to expiration. The number of renewals granted by the board is not limited. The renewal of any special license granted for the first time after July 1, 2001, shall be limited to those physicians who continue to meet the requirements of paragraph “a” of this subrule and subrule 10.4(5). Academic

institutions are encouraged to assist special licensees in qualifying for permanent licensure if the physician is to remain in Iowa long term.

*c.* A special license shall specifically limit the licensee to practice at the medical college and at any health care facility affiliated with the medical college.

*d.* A special license shall automatically be placed on inactive status when the licensee discontinues service on the academic medical staff for which the special license was granted.

*e.* The board may cancel a special license if the licensee has practiced outside the scope of this license or for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code sections 147.55, 148.6, and 272C.10 and 653—Chapter 23. When cancellation of such a license is proposed, the board shall promptly notify the licensee by sending a statement of charges and notice of hearing by certified mail to the last-known address of the licensee. This contested case proceeding shall be governed by the provisions of 653—Chapter 25.

*f.* A special physician licensee shall notify the board of any change in home address or the address of the place of practice within one month of making an address change.

*g.* A special physician licensee shall notify the board of any change in name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

*h.* A special physician licensee file shall be closed and labeled “deceased” when the board receives a copy of the physician’s death certificate.

*i.* The board shall accept each 12 months of practice as a special licensee as equivalent to one year of postgraduate training in a hospital-affiliated program approved by the board for the purposes of permanent licensure.

**10.4(2) *Special license eligibility.*** To be eligible for a special license, an applicant shall meet all of the following requirements:

- a.* Fulfill the application requirements specified in subrule 10.4(3);
- b.* Be at least 21 years of age;
- c.* Be a physician in a medical specialty;
- d.* Present evidence of holding a medical degree from an educational institution that is located in a jurisdiction outside the United States or Canada and that is listed in the Directory of Medical Schools published by the International Medical Education Directory;
- e.* Have completed at least two years of postgraduate education in any jurisdiction;
- f.* Have practiced for five years after postgraduate education;
- g.* Demonstrate English proficiency as set forth in subparagraph 10.4(3) “a”(4); and
- h.* Be licensed in a jurisdiction outside the United States or Canada and present evidence that any licenses held in any jurisdiction are unrestricted.

**10.4(3) *Special license application.***

*a. Requirements.* To apply for a special license an applicant shall:

(1) Pay a nonrefundable special license fee of \$300 plus the \$45 fee identified in 653—subrule 8.4(6) for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks;

(2) Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet, and a sworn statement by the applicant attesting to the truth of all information provided by the applicant;

(3) Provide verification of successful completion of a medical degree;

(4) Demonstrate proficiency in English by providing a valid ECFMG certificate or verification of a passing score on the TSE, the Test of Spoken English, or TOEFL, the Test of English as a Foreign Language, examinations administered by the Educational Testing Service. A passing score on TSE is a minimum of 50. A passing score on TOEFL is a minimum overall score of 550 on the paper-based TOEFL that was administered on a Friday or Saturday (formerly special or international administration), a minimum overall score of 213 on the computer-administered TOEFL, or a minimum overall score of 79 on the Internet-based examination;

(5) Present a letter from the dean of the medical college in which the applicant will be practicing that indicates all of the following:

1. The applicant has been invited to serve on the academic staff of the medical school and in what capacity;

2. The applicant's qualifications and the unique contributions the applicant has made to the practice of medicine;

3. The unique contributions the applicant is expected to make by practicing in Iowa and how these contributions will serve the public interest of Iowans; and

(6) Present at least two letters of recommendation from universities, other educational institutions, or research facilities that indicate the applicant's noteworthy professional attainment.

*b. Application.* The application shall request the following information:

(1) Name, date and place of birth, home address, and mailing address;

(2) A photograph of the applicant suitable for positive identification;

(3) A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including license numbers and dates of issuance;

(4) A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application;

(5) A photocopy of the applicant's medical degree issued by an educational institution and a sworn statement from an official of the educational institution certifying the date the applicant received the medical degree and acknowledging what, if any, derogatory comments exist in the institution's record about the applicant. A complete translation of any diploma not written in English shall be submitted;

(6) A statement disclosing and explaining any warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction;

(7) A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care;

(8) A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process;

(9) A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside; and

(10) A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

**10.4(4)** *Special license application review process.* The process below shall be utilized to review each application for a special license.

*a.* An application shall be considered open from the date the application form is received in the board office with the nonrefundable special licensure fee.

*b.* After reviewing each application, staff shall notify the applicant or the applicant's academic institution about how to resolve any problems identified by the reviewer. The applicant shall provide additional information when requested by staff or the board.

*c.* If the final review indicates no questions or concerns regarding the applicant's qualifications for licensure, staff may administratively grant a special license.

*d.* If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, the executive director, director of licensure and administration, and director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for licensure.

(1) If there is no current concern, staff shall administratively grant a special license.

(2) If any concern exists, the application shall be referred to the committee.

*e.* Staff shall refer to the committee for review matters which include, but are not limited to, falsification of information on the application, criminal record, substance abuse, questionable competency, physical or mental illness, or educational disciplinary history.

*f.* If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to grant administratively a special license.

*g.* If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

- (1) Request that the applicant appear for an interview;
- (2) Grant a special license for practice at the medical college designated in the application;
- (3) Grant a license under certain terms and conditions or with certain restrictions;
- (4) Request that the applicant withdraw the licensure application; or
- (5) Deny a license.

*h.* The board shall consider applications and recommendations from the committee and shall:

- (1) Request that the applicant appear for an interview;
- (2) Grant a special license for practice at the medical college designated in the application;
- (3) Grant a license under certain terms and conditions or with certain restrictions;
- (4) Request that the applicant withdraw the licensure application; or
- (5) Deny a license. The board may deny a license for any grounds on which the board may discipline a license. The procedure for appealing a license denial is set forth in 653—9.15(147,148).

**10.4(5) *Special license application cycle.*** If the applicant does not submit all materials within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status. An applicant must reapply and submit a new nonrefundable application fee and a new application, documents and credentials.

**10.4(6) *Renewal of a special license.***

*a.* If the special physician licensee has not qualified for and received a permanent license, the board shall send a courtesy renewal notice by regular mail to the licensee's last-known address at least 60 days prior to the expiration date of the special physician 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 responsibility for renewing that license.

*b.* A special physician licensee shall apply for a one-year renewal by submitting the following:

- (1) A completed renewal application;
- (2) The renewal fee of \$200; and
- (3) Evidence of continuing education and training on chronic pain management, end-of-life care, and identifying and reporting abuse.

1. The requirement for continuing education is 20 hours of category 1 credit as specified in 653—Chapter 11.

2. The requirement for training on chronic pain management, end-of-life care, and identifying and reporting abuse is specified in 653—Chapter 11.

The dean of the medical college shall submit a letter that addresses the individual's unique contribution to the practice of medicine in Iowa, how the anticipated contribution will serve the public interest of Iowans, and the need for renewal of this license. For a licensee who received the initial special license prior to July 1, 2001, the only statement needed from the dean is verification of the academic appointment the licensee continues to hold.

*c.* Failure of the licensee to renew a license within one month of the expiration date shall cause the license to become inactive. A licensee whose license is inactive is prohibited from practice until a new special license is granted according to subrules 10.4(3) and 10.4(4).

[ARC 0216C, IAB 7/25/12, effective 8/29/12; ARC 1187C, IAB 11/27/13, effective 1/1/14]

**653—10.5(147,148) Temporary licensure.** The board may issue a temporary license authorizing a physician to participate in a board-approved activity in Iowa. Temporary licensure is granted on a case-by-case basis and depends upon the applicant's education and training, experience and licensure status elsewhere and upon the intended use of the temporary license.

**10.5(1) General provisions.**

a. The temporary license to practice is intended for a physician to participate in a board-approved activity, as defined in rule 653—10.1(147,148), in Iowa that is short-term. Temporary licensure is not intended to be a way for a physician to practice before a permanent license is granted. Temporary licensure is not intended for locum tenens.

b. The board may issue a temporary license authorizing the physician to practice in a board-approved activity. The license may be restricted to the board-approved activity, location(s) or time period of up to one year.

(1) A physician who is granted a temporary license for a board-approved activity may qualify for renewal of that license if the physician needs an extension of the license for the original purpose or to pursue more than one board-approved activity within a year.

(2) A physician who wishes to continue in a board-approved activity in Iowa for short intervals beyond one year is eligible for a temporary license each year after reapplying and qualifying on an annual basis.

c. A physician incidentally called into this state in consultation with a physician and surgeon licensed in this state, as defined in rule 653—10.1(147,148), is not required to obtain a temporary license in Iowa.

d. A physician who seeks to practice in Iowa and does not qualify for a temporary license may be eligible for permanent licensure under 653—Chapter 9.

e. The board may take disciplinary action on a temporary license if the licensee has practiced outside the scope of the temporary license or for any of the grounds for which licensure may be revoked or suspended as specified in Iowa Code sections 147.55, 148.6, and 272C.10 and 653—Chapter 23. Contested case proceedings shall be governed by the provisions of 653—Chapter 25.

f. A physician who holds a temporary license shall notify the board of any change in address within three days of making an address change.

g. A physician who holds a temporary license shall notify the board of any change in name within one month of making the name change. Notification requires a notarized copy of a marriage license or a notarized copy of court documents.

h. The file of a physician who holds a temporary license shall be closed and labeled “deceased” when the board receives a copy of the physician’s death certificate.

**10.5(2) Eligibility for a temporary license.** To be eligible for a temporary license, an applicant shall meet all of the following requirements:

a. Fulfill the requirements specified in subrules 10.5(3) and 10.5(4);

b. Be at least 21 years of age;

c. Hold a medical degree from an educational institution approved by the board (if the applicant is an international medical graduate, the educational institution must be listed in the International Medical Education Directory);

d. Hold a current active, unrestricted license to practice medicine issued by any jurisdiction;

e. Be fluent in the English language;

f. Present a letter justifying the need for temporary licensure from the organization or individual seeking the applicant’s participation in a board-approved activity.

**10.5(3) Requirements for a temporary license.** To apply for a temporary license, an applicant shall complete the requirements in paragraphs “a” and “b”:

a. Pay a nonrefundable application fee of \$100 plus the \$45 fee identified in 653—subrule 8.4(6) for the evaluation of the fingerprint packet and the criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI). A physician who is serving as a camp physician and who is not receiving payment other than expenses shall be exempt from the license application fee and the fee for the criminal history background check.

b. Complete and submit forms provided by the board, including required credentials, documents, a completed fingerprint packet and a sworn statement by the applicant attesting to the truth of all information provided by the applicant.

**10.5(4) Application.** The application shall require the following information:

- a. The applicant's full legal name, date and place of birth, home address, mailing address and principal business address;
- b. A photograph of the applicant suitable for positive identification;
- c. A statement listing every jurisdiction in which the applicant is or has been authorized to practice, including the applicant's license number and date of issuance of the license;
- d. A chronology accounting for all time periods from the date the applicant entered medical school to the date of the application;
- e. A statement by the applicant that discloses and explains any warnings issued, investigations conducted, or disciplinary actions taken, whether by voluntary agreement or formal action, by a medical or professional regulatory authority, an educational institution, training or research program, or health facility in any jurisdiction;
- f. A statement of the applicant's physical and mental health, including full disclosure and a written explanation of any dysfunction or impairment which may affect the ability of the applicant to engage in practice and provide patients with safe and healthful care;
- g. A statement disclosing and explaining the applicant's involvement in civil litigation related to practice in any jurisdiction. Copies of the legal documents may be requested if needed during the review process;
- h. A statement disclosing and explaining any charge of a misdemeanor or felony involving the applicant, filed in any jurisdiction, whether or not any appeal or other proceeding is pending to have the conviction or plea set aside;
- i. A statement from the applicant that justifies the need for a temporary license, including where the applicant intends to practice and the type of practice involved;
- j. A letter from the Iowa organization or individual seeking the applicant's services that explains the need for the applicant's participation in the board-approved activity in Iowa, the time period involved, the scope of practice, and the exact location and facilities where the board-approved activity will occur;
- k. For an international medical graduate who does not hold a license in good standing in any United States jurisdiction, a statement, which shall be submitted by the Iowa organization or individual offering the board-approved activity, identifying who the applicant's immediate supervisor will be;
- l. For an international medical graduate who does not hold a license in good standing in any United States jurisdiction:
  - (1) Verification, which shall be submitted from the licensing authority of the country in which the physician is licensed, that the physician has a license in good standing;
  - (2) Evidence of fluency in the English language;
- m. For a resident physician who does not hold a current, active resident or permanent license in the home state of the resident training program, a statement, which shall be submitted by the resident director or individual offering the board-approved activity, identifying who the applicant's immediate supervisor will be.
- n. A completed fingerprint packet to facilitate a national criminal history background check. The fee for the evaluation of the fingerprint packet and the DCI and FBI criminal history background checks will be assessed to the applicant.

**10.5(5)** *Standard application review process for a temporary license.* The standard review process shall be utilized to review each application for a temporary license, except that the process identified in subrule 10.5(6) shall be used for any international medical graduate who does not currently hold a license in good standing in any United States jurisdiction or for any physician who seeks temporary licensure for an activity not listed in paragraphs "1" through "6" of the definition of "board-approved activity" in rule 653—10.1(147,148). The standard application review process is as follows:

- a. An application shall be considered open from the date the application form and the nonrefundable fees are received in the board office.
- b. After reviewing each application, staff shall notify the applicant or designee about how to resolve any problems identified by the reviewer.
- c. If the final review indicates no questions or concerns regarding the applicant's qualifications for temporary licensure or the need for a temporary licensee, staff may administratively grant a temporary

license to the applicant for a specific activity, location(s) or specified duration based on the nature of the board-approved activity. The license shall not be granted for a period longer than one year.

*d.* If the final review indicates questions or concerns that cannot be remedied by continued communication with the applicant, then the executive director, the director of licensure and administration, and the director of legal affairs shall determine if the questions or concerns indicate any uncertainty about the applicant's current qualifications for temporary licensure or the organization's or requesting individual's need for a licensee with a temporary license.

- (1) If there is no current concern, staff shall administratively grant a temporary license.
- (2) If any concern exists, the application shall be referred to the committee.

*e.* Staff shall refer to the committee for review matters that include, but are not limited to, falsification of information on the application, criminal record, malpractice, substance abuse, competency, physical or mental illness, educational disciplinary history, or questionable need on the part of the organization.

*f.* If the committee is able to eliminate questions or concerns without dissension from staff or a committee member, the committee may direct staff to administratively grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity.

*g.* If the committee is not able to eliminate questions or concerns without dissension from staff or a committee member, the committee shall recommend that the board:

- (1) Grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity;
- (2) Grant a temporary license under certain terms and conditions or with certain restrictions;
- (3) Deny a temporary license; or
- (4) Request that the applicant withdraw the temporary licensure application.

*h.* The board shall consider applications and recommendations from the committee and shall:

- (1) Grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity;
- (2) Grant a temporary license under certain terms and conditions or with certain restrictions;
- (3) Request that the applicant withdraw the temporary licensure application. The request shall not imply that the applicant is ineligible for permanent licensure if that application process is pursued; or
- (4) Deny a temporary license. The board may deny a temporary license for any grounds on which the board may discipline a license or for lack of need for a physician's services by the organization or individual. The procedure for appealing a license denial is set forth in 653—9.17(147,148).

**10.5(6)** *Application review process for applicants with certain exceptions.* This application process shall be used to review applications submitted by an international medical graduate who does not currently hold a license in good standing in any United States jurisdiction or by a physician seeking temporary licensure for an activity not listed in paragraphs "1" through "6" of the definition of "board-approved activity" in rule 653—10.1(147,148). Following is the application review process for applicants with exceptions:

*a.* An application shall be considered open from the date the application form and the nonrefundable fees are received in the board office.

*b.* After reviewing each application, staff shall notify the applicant or designee about how to resolve any problems identified by the reviewer.

*c.* If the final review indicates no questions or concerns regarding the applicant's qualifications for temporary licensure or the need for a temporary license, staff shall submit the application to the committee for review and recommendation to the board about whether to grant a temporary license to the physician and whether the license should be granted for a specific activity, location(s) or specified duration based on the nature of the board-approved activity.

*d.* The board shall consider applications and recommendations from the committee and shall:

- (1) Grant a temporary license for a specific activity, location(s) or specified duration based on the nature of the board-approved activity;
- (2) Grant a temporary license under certain terms and conditions or with certain restrictions;

(3) Request that the applicant withdraw the temporary licensure application. The request shall not imply that the applicant is ineligible for permanent licensure if that application process is pursued; or

(4) Deny a temporary license. The board may deny a temporary license for any grounds on which the board may discipline a license or for lack of need for a physician's services by the organization or individual. The procedure for appealing a license denial is set forth in 653—9.17(147,148).

**10.5(7) Temporary license application cycle.** If the applicant does not submit all materials within 90 days of the board's initial request for further information, the application shall be considered inactive. The board office shall notify the applicant of this change in status. An applicant whose application is inactive must reapply and submit new nonrefundable fees and a new application, documents and credentials if the applicant wishes to pursue temporary licensure.

**10.5(8) Renewal of a temporary license.**

*a.* When the temporary license is granted, the board shall inform the licensee that the license may be renewed within the year, if the same need for a temporary license continues. The board shall not send a notice of renewal.

*b.* To apply for renewal of a temporary license, the licensee shall submit the following:

- (1) A request for renewal;
- (2) The renewal fee of \$50; and
- (3) Written justification for the renewal from the organization or individual seeking the applicant.

Failure of the licensee to renew a license by the expiration date shall cause the license to become inactive. The individual shall not practice in Iowa until securing a permanent medical license or until becoming eligible for a second temporary license.

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**653—10.6(17A,147,148,272C) Waiver or variance requests.** Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

These rules are intended to implement Iowa Code chapters 17A, 147, 148, and 272C.

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<sup>◇</sup> Two or more ARCs

CHAPTER 14  
IOWA PHYSICIAN HEALTH COMMITTEE

**653—14.1(272C) Iowa physician health committee.** Pursuant to the authority of Iowa Code section 272C.3(1)“k,” the board establishes the Iowa physician health committee, formerly known as the impaired physician review committee.

**653—14.2(272C) Definitions.**

“*Board*” means the board of medicine of the state of Iowa.

“*Health contract*” or “*contract*” means the written document executed by an applicant or licensee and the IPHC which establishes the terms for participation in the Iowa physician health program.

“*Impairment*” means an inability, or significant potential for inability, to practice with reasonable safety and skill as a result of alcohol or drug abuse, dependency, or addiction, or any mental or physical disorder or disability. For the purposes of this program, “impairment” does not include sexual dysfunction, sexual addiction, sexual compulsivity, paraphilia, or other sexual disorder.

“*Initial Agreement*” means the written document establishing the initial terms for participation in the Iowa physician health program.

“*IPHC*” or “*committee*” means the Iowa physician health committee.

“*IPHP*” or “*program*” means the Iowa physician health program.

“*Participant*” means an applicant or licensee who does any of the following: self-reports an impairment to the Iowa physician health program, is referred to the Iowa physician health program by the board pursuant to 653—14.11(272C), signs an initial agreement with the Iowa physician health committee, or signs a contract with the Iowa physician health committee.

“*Referral by the board*” means the board has determined, with or without having taken disciplinary action, that the applicant or licensee is an appropriate candidate for participation in the IPHP pursuant to 653—14.11(272C).

“*Self-report*” means an applicant’s or a licensee’s providing written notification to the IPHC that the applicant or the licensee has been, is, or may be impaired. Information related to an impairment or a potential impairment which is provided on a license application or renewal form may be considered a self-report upon the request of the applicant or licensee and authorization from the board and agreement by the IPHC.

[ARC 8917B, IAB 6/30/10, effective 8/4/10; ARC 1188C, IAB 11/27/13, effective 1/1/14]

**653—14.3(272C) Purpose.** The IPHC assists and monitors the recovery, rehabilitation, or maintenance of licensees who self-report impairments or are referred by the board pursuant to 653—14.11(272C) and, as necessary, notifies the board in the event of noncompliance with contract provisions. The IPHC is both an advocate for licensees’ health and a means to protect the health and safety of the public.

[ARC 8917B, IAB 6/30/10, effective 8/4/10]

**653—14.4(272C) Organization of the committee.** The board shall appoint the members of the IPHC.

**14.4(1) Membership.** The membership of the IPHC includes, but is not limited to:

- a. The executive director of the board or the director’s designee from the board’s staff;
- b. One physician who has remained free of addiction for a period of no less than two years following successful completion of a board-approved recovery program, a board-ordered probation for alcohol or drug abuse, dependency, or addiction, or an IPHC contract;
- c. One practitioner with expertise in substance abuse/addiction treatment programs;
- d. One psychiatrist; and
- e. One public member.

**14.4(2) Officers.** The IPHC shall elect a chairperson and a co-chairperson or a vice chairperson at the last meeting of each calendar year to begin serving a one-year term on January 1.

- a. The chairperson and co-chairperson are responsible for offering guidance and direction to staff between regularly scheduled committee meetings, including negotiation and execution of initial

agreements, contracts, and program descriptions and interim restrictions on practice on behalf of the committee. The IPHC retains authority to review all interim decisions at its discretion.

*b.* The vice chairperson is responsible for providing guidance and direction to staff between regularly scheduled committee meetings if the chairperson is unavailable or unable to assist in a particular matter.

**14.4(3) Terms.** Committee members, except the executive director, shall be appointed for three-year terms, for a maximum of three terms. Terms shall expire on December 31 of the third year of the term. [ARC 1188C, IAB 11/27/13, effective 1/1/14]

**653—14.5(272C) Eligibility.** To be eligible for participation in the IPHP, an applicant or a licensee must self-report an impairment or potential impairment directly to the IPHP or be referred by the board for an impairment or potential impairment pursuant to 653—14.11(272C) and be determined by the IPHC to be an appropriate candidate for participation in the IPHP.

**14.5(1)** Participation in the program does not divest the board of its authority or jurisdiction over the participant. A participant with an impairment or potential impairment as defined at 653—14.2(272C) may retain eligibility to participate in the program if appropriate while subject to investigation or discipline by the board for matters other than the alleged impairment.

**14.5(2)** A participant may be determined to be ineligible to participate in the program as a self-reporter or a referral from the board if the committee finds sufficient evidence of any of the following:

*a.* The participant provided inaccurate, misleading, or fraudulent information or failed to fully cooperate with the IPHC.

*b.* The participant fails to sign a contract when recommended by the IPHC.

*c.* The IPHC determines it will be unable to assist the participant.

**14.5(3)** The IPHC shall report to the board any knowledge of violations of administrative rules or statutes other than the impairment, including, but not limited to, competency concerns or sexual misconduct.

[ARC 8917B, IAB 6/30/10, effective 8/4/10; ARC 1188C, IAB 11/27/13, effective 1/1/14]

**653—14.6(272C) Type of program.** The IPHP is an individualized recovery, rehabilitation, or maintenance program designed to meet the specific needs of the participant. The committee, in consultation with an IPHC-approved evaluator, shall determine the type of recovery, rehabilitation, or maintenance program required to treat the participant's impairment. The IPHC shall prepare a contract, to be signed by the participant, that shall provide a detailed description of the goals of the program, the requirements for successful participation, and the participant's obligations therein.

[ARC 1188C, IAB 11/27/13, effective 1/1/14]

**653—14.7(272C) Terms of participation.** A participant shall agree to comply with the terms for participation in the IPHP established in the initial agreement and contract. Terms of participation specified in the contract shall include, but are not limited to:

**14.7(1) Duration.** The length of time a participant may participate in the program shall be determined by the IPHC in accordance with the following:

*a.* Participation in the program for participants impaired as a result of alcohol or drug dependency or addiction is set at a minimum of five years. The IPHC may offer a contract with a shorter duration to a participant who can demonstrate successful participation in another state's physician health program, who can document similar experience, or who, as a board referral, has successfully completed a portion of the monitoring period established in the board order.

*b.* Length of participation in the program for participants with impairments resulting from mental or physical disorders or disabilities will vary depending upon the recommendations provided by an approved evaluator and the determination of the IPHC following review of all relevant information.

**14.7(2) Noncompliance.** A participant is responsible for promptly notifying the IPHC of all instances of noncompliance including a relapse. Notification of noncompliance made to the IPHC by

the participant, any person responsible for monitoring or treating the participant, or another party shall result in the following:

*a. First instance.* Upon receiving notification of a first instance of significant noncompliance including, but not limited to, a relapse, the IPHC shall make a report to the board which identifies the participant by IPHP case number, describes the relevant terms of the participant's contract and the noncompliance, and includes the IPHC's recommendation as to whether the participant should remain in the program. Upon receiving the report, the board shall determine if formal disciplinary charges should be filed, pursuant to 653—subrule 23.1(12).

*b. Second instance.* Upon receiving notification of a second instance of significant noncompliance including, but not limited to, a relapse, the IPHC shall refer the case and the participant's identity to the board for a determination of whether formal disciplinary charges should be filed or other appropriate action taken. In its referral, the IPHC may make recommendations as to whether the participant should be allowed to remain in the program.

**14.7(3) Practice restrictions.** The IPHC may impose restrictions on the license to practice the applicable profession as a term of the initial agreement or contract until such time as it receives a report from an approved evaluator and the IPHC determines, based on all relevant information, that the participant is capable of practicing with reasonable skill and safety. As a condition of participation in the program, a participant is required to agree to restrict practice in accordance with the terms specified in the initial agreement or contract. In the event that a participant refuses to agree to or comply with the restrictions established in the initial agreement or contract, the IPHC shall refer the participant to the board for appropriate action.

[ARC 8917B, IAB 6/30/10, effective 8/4/10; ARC 1188C, IAB 11/27/13, effective 1/1/14]

#### **653—14.8(272C) Limitations.**

**14.8(1)** The IPHC establishes the terms of and monitors a participant's compliance with the program specified in the initial agreement and contract. The IPHC is not responsible for participants who fail to comply with the terms of the initial agreement or contract or who fail to otherwise successfully complete the IPHP.

**14.8(2)** Participation in the IPHP shall not relieve the board of any duties and shall not divest the board of any authority or jurisdiction otherwise provided. A participant who violates a statute or administrative rule of the board which is unrelated to impairment, including, but not limited to, competency concerns or sexual misconduct, shall be referred to the board in accordance with these administrative rules for appropriate action.

[ARC 1188C, IAB 11/27/13, effective 1/1/14]

**653—14.9(272C) Confidentiality.** Information in the possession of the board or the committee shall be subject to the confidentiality requirements of Iowa Code section 272C.6. Information about applicants or licensees in the program shall not be disclosed except as provided in this rule.

**14.9(1)** The IPHC is authorized pursuant to Iowa Code section 272C.6(4) to communicate information about a current or former IPHP participant to the applicable regulatory authorities or impaired licensee programs in the state of Iowa and in any jurisdiction of the United States or foreign nations in which the participant is currently licensed to practice medicine or in which the participant seeks licensure. IPHP participants must report their participation to the applicable physician health program or licensing authority in any state in which the participant is currently licensed or in which the participant seeks licensure.

**14.9(2)** The IPHC is authorized to communicate information about an IPHP participant to any person assisting in the participant's treatment, recovery, rehabilitation, monitoring, or maintenance for the duration of the contract.

**14.9(3)** The IPHC is authorized to communicate information about an IPHP participant to the board in the event a participant does not comply with the terms of the contract as set forth in subrule 14.7(2). The IPHC may provide the board with a participant's IPHP file in the event the participant does not comply with the terms of the contract and the IPHC refers the case to the board for the filing of formal disciplinary charges or other appropriate action. If the board initiates disciplinary action against

a licensee for noncompliance with the terms of the contract, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing. The IPHC is also authorized to communicate information about an IPHP participant to the board in the event the participant is under investigation by the board.

**14.9(4)** The IPHC is authorized to communicate information about a current or former IPHP participant to the board if reliable information held by the IPHC reasonably indicates a significant risk to the public exists. If the board initiates disciplinary action based upon this information, the board may include information about a licensee's participation in the IPHP in the statement of charges, settlement agreement and final order, or order following hearing if necessary to address impairment issues related to the violations which are the subject of the disciplinary action.

**14.9(5)** The IPHC shall file with the board a report on board-referred cases upon the licensee's successful completion of the program.

**14.9(6)** The IPHC shall maintain a participant's complete IPHP file for the ten-year period after a participant's contract has expired or is terminated. After that period, the Executive Summary and contract shall be retained.

[ARC 8917B, IAB 6/30/10, effective 8/4/10; ARC 1188C, IAB 11/27/13, effective 1/1/14]

**653—14.10(28E) Authority for 28E agreements.** The IPHC may enter into 28E agreements with other health professional licensing boards to evaluate, assist, and monitor impaired licensees from other health professions who self-report and to report to those professional licensing boards regarding the compliance of individual licensees. In the event of noncompliance, the licensee may be referred to the appropriate licensing board for appropriate disciplinary action. If the IPHC enters into a 28E agreement with another health professional licensing board, this chapter applies and the word "physician" shall be replaced with the word "licensee" for the purpose of interpreting this chapter.

**653—14.11(272C) Board referrals to the Iowa physician health program.**

**14.11(1) Eligibility for board referral to IPHP.** The board may refer to the IPHP a licensee or applicant for whom the following circumstances apply:

- a. The applicant or licensee has a potential impairment as defined in rule 653—14.2(272C).
- b. The board determines that the applicant or licensee is an appropriate candidate for participation in the IPHP.

NOTE: A licensee who is the subject of a formal board disciplinary order relating to an impairment must demonstrate a sufficient period of compliance with the disciplinary order before referral to the IPHP.

c. The IPHC determines that the applicant or licensee is an appropriate candidate for participation in the IPHP.

**14.11(2) Referral process.**

a. Determination of whether an applicant or licensee is appropriate for referral to the IPHP is in the sole discretion of the board. Upon the board's approval, a referral shall be made to the IPHP and board staff shall provide relevant information about the applicant or licensee to the IPHC.

b. The IPHC shall make a determination whether the applicant or licensee is an appropriate candidate for participation in the IPHP. Upon this determination, the IPHC shall offer the referred applicant or licensee a health contract which provides a detailed description of the goals of the program, the requirements for successful participation, and the applicant's or licensee's obligations therein. See 653—14.6(272C).

c. If the IPHC finds that the applicant or licensee is not an appropriate candidate for participation in the IPHP or if the applicant or licensee fails to sign the initial agreement or contract in the time period specified by the IPHC, the IPHC shall notify the board promptly.

d. When the referred applicant or licensee signs the contract, the IPHC shall notify the board.

e. Upon notification that the contract has been finalized for a participant who is the subject of a formal board disciplinary order relating to the impairment, the board shall file an order referring the licensee to the IPHP, and that order shall be a public record.

*f.* The IPHC shall notify the board upon the participant's successful completion of the program. The board may file an order recognizing the participant's successful completion of the program in cases where the referral was included in a public record. An order recognizing completion of the program shall be a public record.

*g.* Referral of an applicant or licensee by the board to the IPHP shall not relieve the board of any duties of the board and shall not divest the board of any authority or jurisdiction otherwise provided. Upon referral, the applicant or licensee shall be subject to the provisions of 653—Chapter 14. Specifically, the applicant or licensee shall be subject to board review and potential formal disciplinary action pursuant to subrule 14.7(2) for noncompliance with the provisions of the IPHP health contract.

**14.11(3)** *Investigation and disciplinary action on referrals.* Rescinded IAB 6/30/10, effective 8/4/10.

[ARC 8917B, IAB 6/30/10, effective 8/4/10; ARC 1188C, IAB 11/27/13, effective 1/1/14]

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CHAPTER 71  
ASSESSMENT PRACTICES AND EQUALIZATION  
[Prior to 12/17/86, Revenue Department[730]]

**701—71.1(405,427A,428,441,499B) Classification of real estate.**

**71.1(1) Responsibility of assessors.** All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. There can be only one classification per property. An assessor shall not assign one classification to the land and a different classification to the building or separate classifications to the land or separate classifications to the building (dual classification). A building or structure on leased land is considered a separate property and may be classified differently than the land upon which it is located. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. The assessor shall classify property according to its present use and not according to its highest and best use. See subrule 71.1(8) for an exception to the general rule that property is to be classified according to its use. The classification shall be utilized on the abstract of assessment submitted to the department of revenue pursuant to Iowa Code section 441.45. See rule 701—71.8(428,441).

**71.1(2) Responsibility of boards of review, county auditors, and county treasurers.** Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall classify property as provided in this rule and adhere to the requirements of this rule.

**71.1(3) Agricultural real estate.**

*a. Generally.* Agricultural real estate shall include all tracts of land and the improvements and structures located on them which are in good faith used primarily for agricultural purposes except buildings which are primarily used or intended for human habitation as defined in subrule 71.1(4). Land and the nonresidential improvements and structures located on it shall be considered to be used primarily for agricultural purposes if its principal use is devoted to the raising and harvesting of crops or forest or fruit trees, the rearing, feeding, and management of livestock, or horticulture, all for intended profit. Agricultural real estate shall also include woodland, wasteland, and pastureland, but only if that land is held or operated in conjunction with agricultural real estate as defined in paragraph “a” or “b” of this subrule.

*b. Vineyards.* Beginning with valuations established on or after January 1, 2002, vineyards and any buildings located on a vineyard and used in connection with the vineyard shall be classified as agricultural real estate if the primary use of the land and buildings is an activity related to the production or sale of wine.

*c. Algae cultivation and production.* Beginning with valuations established on or after January 1, 2013, real estate used directly in the cultivation and production of algae for harvesting as a crop for animal feed, food, nutritionals, or biofuel production shall be classified as agricultural real estate if the real estate is an enclosed pond or land which contains a photobioreactor. Pursuant to 2013 Iowa Acts, House File 632, section 1, a photobioreactor is not attached to land upon which it sits and shall not be assessed and taxed as real property.

(1) Determining direct usage. To determine if real estate is used “directly” in the cultivation and production of algae, one must first ensure that the real estate is used to perform activities that cultivate and produce algae and is not used for activities that occur before or after the cultivation and production of algae. If the real estate is used to perform activities for the cultivation and production of algae, to be “directly” so used, the real estate must be used to perform activities that are integral and essential to the cultivation and production, as distinguished from activities that are incidental, merely convenient to, or remote from cultivation and production. The fact that real estate is used for activities that are essential or necessary to the cultivation and production of algae does not mean that the real estate is also “directly” used in production. Even if the real estate is used for activities that are essential or necessary

to the cultivation and production of algae, if the activities are far enough removed from the cultivation or production of algae, the real estate would not qualify for the agricultural designation.

(2) Examples. The following are nonexclusive examples of real estate which would not be directly used in the cultivation and production of algae:

1. Real estate that is used to store, assemble, or repair machinery and equipment that is used for cultivation and production of algae.
2. Real estate that is used in the management, administration, advertising, or selling of algae.
3. Real estate that is used in the management, administration, or planning of the cultivation and production of algae.
4. Real estate that is used for packaging of the algae which has been produced and cultivated.

**71.1(4) Residential real estate.** Residential real estate shall include all lands and buildings which are primarily used or intended for human habitation, including those buildings located on agricultural land. Buildings used primarily or intended for human habitation shall include the dwelling as well as structures and improvements used primarily as a part of, or in conjunction with, the dwelling. This includes but is not limited to garages, whether attached or detached, tennis courts, swimming pools, guest cottages, and storage sheds for household goods. Residential real estate located on agricultural land shall include only buildings as defined in this subrule. Buildings for human habitation that are used as commercial ventures, including but not limited to hotels, motels, rest homes, and structures containing three or more separate living quarters shall not be considered residential real estate. However, regardless of the number of separate living quarters, multiple housing cooperatives organized under Iowa Code chapter 499A and land and buildings owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be considered residential real estate.

An apartment in a horizontal property regime (condominium) referred to in Iowa Code chapter 499B which is used or intended for use for human habitation shall be classified as residential real estate regardless of who occupies the apartment. Existing structures shall not be converted to a horizontal property regime unless building code requirements have been met.

**71.1(5) Commercial real estate.** Commercial real estate shall include all lands and improvements and structures located thereon which are primarily used or intended as a place of business where goods, wares, services, or merchandise is stored or offered for sale at wholesale or retail. Commercial realty shall also include hotels, motels, rest homes, structures consisting of three or more separate living quarters and any other buildings for human habitation that are used as a commercial venture. Commercial real estate shall also include data processing equipment as defined in Iowa Code section 427A.1(1) "j," except data processing equipment used in the manufacturing process. However, regardless of the number of separate living quarters or any commercial use of the property, single- and two-family dwellings, multiple housing cooperatives organized under Iowa Code chapter 499A, and land and buildings used primarily for human habitation and owned and operated by organizations that have received tax-exempt status under Section 501(c)(3) of the Internal Revenue Code, if the rental income from the property is not taxed as unrelated business income under Iowa Code section 422.33(1A), shall be classified as residential real estate.

An apartment in a horizontal property regime (condominium) referred to in Iowa Code chapter 499B which is used or intended for use as a commercial venture, other than leased for human habitation, shall be classified as commercial real estate. Existing structures shall not be converted to a horizontal property regime unless building code requirements have been met.

**71.1(6) Industrial real estate.**

a. *Land and buildings.*

(1) Industrial real estate includes land, buildings, structures, and improvements used primarily as a manufacturing establishment. A manufacturing establishment is a business entity in which the primary activity consists of adding to the value of personal property by any process of manufacturing, refining, purifying, the packing of meats, or the combination of different materials with the intent of selling the product for gain or profit. Industrial real estate includes land and buildings used for the storage of raw

materials or finished products and which are an integral part of the manufacturing establishment, and also includes office space used as part of a manufacturing establishment.

(2) Whether property is used primarily as a manufacturing establishment and, therefore, assessed as industrial real estate depends upon the extent to which the property is used for the activities enumerated in subparagraph 71.1(6)“a”(1). Property in which the performance of these activities is only incidental to the property’s primary use for another purpose is not a manufacturing establishment. For example, a grocery store in which bakery goods are prepared would be assessed as commercial real estate since the primary use of the grocery store premises is for the sale of goods not manufactured by the grocery and the industrial activity, i.e., baking, is only incidental to the store premises’ primary use. However, property which is used primarily as a bakery would be assessed as industrial real estate even if baked goods are sold at retail on the premises since the bakery premises’ primary use would be for an industrial activity to which the retail sale of baked goods is merely incidental. See *Lichty v. Board of Review of Waterloo*, 230 Iowa 750, 298 N.W. 654 (1941).

Similarly, a facility which has as its primary use the mixing and blending of products to manufacture feed would be assessed as industrial real estate even though a portion of the facility is used solely for the storage of grain, if the use for storage is merely incidental to the property’s primary use as a manufacturing establishment. Conversely, a facility used primarily for the storage of grain would be assessed as commercial real estate even though a part of the facility is used to manufacture feed. In the latter situation, the industrial use of the property — the manufacture of feed — is merely incidental to the property’s primary use for commercial purposes — the storage of grain.

(3) Property used primarily for the extraction of rock or mineral substances from the earth is not a manufacturing establishment if the only processing performed on the substance is to change its size by crushing or pulverizing. See *River Products Company v. Board of Review of Washington County*, 332 N.W.2d 116 (Iowa Ct. App. 1982).

*b. Machinery.*

(1) Machinery includes equipment and devices, both automated and nonautomated, which is used in manufacturing as defined in Iowa Code section 428.20. See *Deere Manufacturing Co. v. Beiner*, 247 Iowa 1264, 78 N.W.2d 527 (1956).

(2) Machinery owned or used by a manufacturer but not used within the manufacturing establishment is not assessed as industrial real estate. For example, “X” operates a factory which manufactures building materials for sale. In addition, “X” uses some of these building materials in construction contracts. The machinery which “X” would primarily use at the construction site would not be used in a manufacturing establishment and, therefore, would not be assessed as industrial real estate.

(3) Machinery used in manufacturing but not used in or by a manufacturing establishment is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963).

(4) Where the primary function of a manufacturing establishment is to manufacture personal property that is consumed by the manufacturer rather than sold, the machinery used in the manufacturing establishment is not assessed as industrial real estate. See *Associated General Contractors of Iowa v. State Tax Commission*, 255 Iowa 673, 123 N.W.2d 922 (1963).

**71.1(7) Point-of-sale equipment.** As used in Iowa Code section 427A.1(1)“j,” the term “point-of-sale equipment” means input, output, and processing equipment used to consummate a sale and to record or process information pertaining to a sale transaction at the time the sale takes place and which is located at the counter, desk, or other specific point at which the transaction occurs. As used in this subrule, the term “sale” means the sale or rental of goods or services and includes both retail and wholesale transactions. Point-of-sale equipment does not include equipment used primarily for depositing or withdrawing funds from financial institution accounts.

**71.1(8) Housing development property.**

*a. Ordinances adopted or amended on or after January 1, 2011.*

(1) Adoption of ordinance by board of supervisors. A county board of supervisors may adopt an ordinance providing that property acquired and subdivided for development of housing on or after January 1, 2011, shall continue to be assessed for taxation in the manner it was assessed prior to the

acquisition. Each lot shall continue to be taxed in the manner it was taxed prior to acquisition for housing until the lot is sold for construction or occupancy of housing or 5 years from the date of subdivision, whichever occurs first.

(2) Amendments to ordinance by board of supervisors. On or after July 27, 2011, the board of supervisors of a county may amend an ordinance adopted or otherwise made effective under 2011 Iowa Code Supplement section 405.1(1) "a" to extend the 5-year time period for a period of time not to exceed 5 years beyond the end of the original 5-year period established under 2011 Iowa Code Supplement section 405.1(1). Thus, the maximum special assessment time for ordinances adopted on or subsequent to January 1, 2011, is 10 years. An extension of an ordinance under 2011 Iowa Code Supplement section 405.1(1) "a" may apply to all or a portion of the property that was subject to the original ordinance.

(3) Amendments to ordinance by city council. A city council may adopt an ordinance, affecting all or a portion of the property located within the incorporated area of the city subject to the county ordinance adopted under 2011 Iowa Code Supplement section 405.1(1) "a," extending the county ordinance not previously extended by the board of supervisors up to 5 years. An ordinance by a city council providing for an extension under 2011 Iowa Code Supplement section 405.1(3) shall be subject to the 5-year limitation under 2011 Iowa Code Supplement section 405.1(2). Thus, the maximum time to appeal an ordinance adopted on or subsequent to January 1, 2011, is 10 years if the city council amends an ordinance originally adopted by the county board of supervisors.

(4) Sale of lot; expiration of 5-year or extended period. Upon the sale of the lot for construction or occupancy for housing or upon the expiration of the 5-year or extended period, the property shall be assessed for taxation as residential or commercial multifamily property, whichever is applicable.

(5) Definition of "subdivide." As used in both paragraphs 71.1(8) "a" and "b," "subdivide" means to divide a tract of land into three or more lots.

*b. Ordinances adopted on or after January 1, 2004, but prior to January 1, 2011.*

(1) Ordinances adopted under 2011 Iowa Code Supplement sections 405.1(1) and 405.1(2), to the extent such ordinances affect the assessment of property subdivided for development of housing on or after January 1, 2004, but before January 1, 2011, shall remain in effect or otherwise be made effective, and such ordinances:

1. Adopted under 2011 Iowa Code Supplement section 405.1(1), applicable to counties with a population of less than 20,000, shall be extended, from a period of 5 years, to apply to a period of 10 years from the date of subdivision.

2. Adopted under 2011 Iowa Code Supplement section 405.1(2), applicable to counties with a population of 20,000 or more, shall be extended, from a period of 3 years, to apply to a period of 8 years from the date of subdivision.

Each lot shall continue to be taxed in the manner it was taxed prior to acquisition for housing until the lot is sold for construction or occupancy of housing, or 10 years pursuant to paragraph "1" above or 8 years pursuant to paragraph "2" above (or the extended period, if applicable) from the date of subdivision, whichever occurs first.

(2) Amendments to ordinance by board of supervisors. On or after July 27, 2011, the board of supervisors of a county may amend an ordinance adopted under 2011 Iowa Code Supplement section 405.1(1) or 405.1(2) to extend the 10- and 8-year periods, respectively, for a period of time not to exceed 5 years beyond the end of the 10- and 8-year periods established under 2011 Iowa Code Supplement section 405.1(1) "b." Thus, the maximum special assessment time for ordinances adopted on or after January 1, 2004, but prior to January 1, 2011, for counties with a population of less than 20,000 shall be 15 years. For counties with a population of 20,000 or more, the maximum shall be 13 years.

(3) Amendments to ordinance by city council. A city council may adopt an ordinance, affecting all or a portion of the property located within the incorporated area of the city subject to the county ordinance adopted under 2011 Iowa Code Supplement sections 405.1(1) and 405.1(2), extending the county ordinances not previously extended by the board of supervisors up to 5 years. An ordinance by a city council providing for an extension under 2011 Iowa Code Supplement section 405.1(3) shall be subject to the 5-year limitation under 2011 Iowa Code Supplement section 405.1(2). Thus, the maximum time to appeal an ordinance adopted on or after January 1, 2004, but prior to January 1, 2011, for counties

with a population of less than 20,000 shall be 15 years if the city council amends an ordinance originally adopted by the board of supervisors. For counties with a population of 20,000 or more, the maximum special assessment time shall be 13 years.

(4) Sale of lot. Upon the sale of the lot for construction or occupancy for housing or upon the expiration of the 10- or 8-year or extended period, the property shall be assessed for taxation as residential or commercial multifamily property, whichever is applicable.

**71.1(9) Assessment of platted lots.**

a. When a subdivision plat is recorded pursuant to Iowa Code chapter 354 on or after January 1, 2011, the individual lots within the subdivision plat shall not be assessed, in the aggregate, in excess of the total assessment of the land as acreage or unimproved property for 5 years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in Iowa Code chapters 428 and 441.

b. For subdivision plats recorded pursuant to Iowa Code chapter 354 (relating to division and subdivision of land) on or after January 1, 2004, but before January 1, 2011, the individual lots within the subdivision plat shall not be assessed, in the aggregate, in excess of the total assessment of the land as acreage or unimproved property for 8 years after the recording of the plat or until the lot is actually improved with permanent construction, whichever occurs first. When an individual lot has been improved with permanent construction, the lot shall be assessed for taxation purposes as provided in Iowa Code chapters 428 and 441.

c. 2011 Iowa Code Supplement section 441.72 does not apply to special assessment levies.

This rule is intended to implement Iowa Code sections 405.1, 427A.1, 428.4 and 441.22 and chapter 499B and Iowa Code Supplement section 441.21 as amended by 2002 Iowa Acts, House File 2584.

[ARC 8559B, IAB 3/10/10, effective 4/14/10; ARC 0400C, IAB 10/17/12, effective 11/21/12; ARC 1196C, IAB 11/27/13, effective 1/1/14]

**701—71.2(421,428,441) Assessment and valuation of real estate.**

**71.2(1) Responsibility of assessor.** The valuation of real estate as established by city and county assessors shall be the actual value of the real estate as of January 1 of the year in which the assessment is made. New parcels of real estate created by the division of existing parcels of real estate shall be assessed separately as of January 1 of the year following the division of the existing parcel of real estate.

**71.2(2) Responsibility of other assessing officials.** Whenever local boards of review, county auditors, and county treasurers exercise assessment functions allowed or required by law, they shall follow the provisions of subrule 71.2(1) and rules 701—71.3(421,428,441) to 701—71.7(421,427A,428,441).

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

**701—71.3(421,428,441) Valuation of agricultural real estate.** Agricultural real estate shall be assessed at its actual value as defined in Iowa Code section 441.21 by giving exclusive consideration to its productivity and net earning capacity. In determining the actual value of agricultural real estate, city and county assessors shall use the Iowa Real Property Appraisal Manual and any other guidelines issued by the department of revenue pursuant to Iowa Code section 421.17(18).

**71.3(1) Productivity.**

a. In determining the productivity and net earning capacity of agricultural real estate, the assessor shall also use available data from Iowa State University, the United States Department of Agriculture (USDA) National Agricultural Statistics Service (NASS), the USDA Farm Service Agency (FSA), the Iowa department of revenue, or other reliable sources. The assessor shall also consider the results of a modern soil survey, if completed. The assessor shall determine the actual valuation of agricultural real estate within the assessing jurisdiction and distribute such valuation throughout the jurisdiction so that each parcel of real estate is assessed at its actual value as defined in Iowa Code section 441.21.

b. In distributing such valuation to each parcel under paragraph 71.3(1)“a,” the assessor shall adjust non-cropland. The adjustment shall be applied to non-cropland with a corn suitability rating (CSR) that is greater than 50 percent of the average CSR for cropland for the county. The adjustment shall be determined for each county based upon the five-year average difference in cash rent between

non-irrigated cropland and pasture land as published by NASS. The assessor may utilize the USDA FSA-published Common Land Unit digital data or other reliable sources in determining non-cropland. Counties shall implement the adjustments under this paragraph on or before the 2017 assessment year. The department of revenue may, in a case involving hardship, extend the implementation of the adjustments required under this paragraph to the 2019 assessment year. No extension of time shall be granted unless the county makes a written request to the department of revenue for such action.

*c.* A taxpayer may apply to the county for the adjustment to non-cropland under paragraph 71.3(1) “*b*” beginning with the 2014 assessment and until the county’s full implementation of this subrule. Upon application, and subsequent approval by the assessor, the county assessor shall adjust non-cropland as provided in paragraph 71.3(1) “*b*.” Once a taxpayer applies for the adjustment, and upon approval, the assessor shall make the adjustment to the assessment year for which the application was submitted and until the county’s full implementation of this subrule, without the need to reapply for the adjustment.

*d.* EXAMPLE. The following is an example of the calculation used to compute adjustment on land determined to be non-cropland with a CSR that is greater than 50 percent of the average CSR for cropland for the county:

Average county CSR rating for cropland	80 CSR
50% of average cropland CSR	40 CSR
Example of non-cropland soil 11b CSR rating	58 CSR
Non-cropland CSR points to be adjusted	$58 - 40 = 18$ CSR points
5-year average rent for non-irrigated cropland	\$163.60
5-year average rent for pasture land	\$48.30
Percent difference (rounded)	$1 - (\$48.30/\$163.60) = 70\%$
Apply the percent difference to points to be adjusted	$18 \text{ CSR points} \times (1 - .70) = 5.40$ adjusted CSR points
Adjusted CSR non-cropland	$40 + 5.40 = 45.40$ adjusted CSR points

**71.3(2) Agricultural factor.** In order to determine a productivity value for agricultural buildings and structures, assessors must make an agricultural adjustment to the market value of these buildings and structures by developing an “agricultural factor” for the assessors’ jurisdictions. The agricultural factor for each jurisdiction is the product of the ratio of the productivity and net earning capacity value per acre as determined under subrule 71.12(1) over the market value of agricultural land within the assessing jurisdiction. The resulting ratio is then applied to the actual value of the agricultural buildings and structures as determined under the Iowa Real Property Appraisal Manual prepared by the department. The agricultural factor must be applied uniformly to all agricultural buildings and structures in the assessing jurisdiction. As an example, if a building’s actual value is \$500,000 and the agricultural factor is 30 percent, the productivity value of that building is \$150,000. See *H & R Partnership v. Davis County Board of Review*, 654 N.W.2d 521 (Iowa 2002). The 2007, 2008, and 2009 average of the market value of land will be used in determining the agricultural factor for assessment year 2011. A five-year market value average of land for years used to determine the productivity formula will be used to determine the agricultural factor for assessment year 2013 and subsequent assessment years.

**71.3(3) Classification.** Land classified as agricultural real estate includes the land beneath any dwelling and appurtenant structures located on that land and shall be valued by the assessor pursuant to rule 701—71.3(421,428,441). An assessor shall not value a part of the land as agricultural real estate and a part of the land as if it is residential real estate.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

[ARC 8542B, IAB 2/24/10, effective 3/31/10; ARC 9478B, IAB 4/20/11, effective 5/25/11; ARC 0770C, IAB 5/29/13, effective 7/3/13]

**701—71.4(421,428,441) Valuation of residential real estate.** Residential real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of residential real estate, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

**701—71.5(421,428,441) Valuation of commercial real estate.** Commercial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21. In determining the actual value of commercial real estate, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code section 421.17(18) as well as a locally conducted assessment/sales ratio study, an analysis of sales of comparable properties, and any other relevant data available.

**71.5(1) Property of long distance telephone companies.** The director of revenue shall assess the property of long distance telephone companies as defined in Iowa Code section 476.1D(10) which property is first assessed for taxation on or after January 1, 1996, in the same manner as commercial real estate.

**71.5(2) Low-income housing subject to Section 42 of the Internal Revenue Code.**

*a. Productive and earning capacity.* In assessing property that is rented or leased to low-income individuals and families as authorized by Section 42 of the Internal Revenue Code which limits the amount that the individual or family pays for the rental or lease of units in the property, the assessor shall use the productive and earning capacity from the actual rents received as a method of appraisal and shall take into account the extent to which that use and limitation reduces the market value of the property.

*b. Direct capitalization method.* The income approach to valuation shall be applied using the direct capitalization method. The assessor may use the discounted cash flow method as a test of the reasonableness of the results produced by the direct capitalization method. The direct capitalization method of the income approach involves dividing the Net Operating Income (NOI) on a cash basis by an overall capitalization rate to derive an indication of the value of the property for the assessment year.

In applying the direct capitalization method, the assessor shall develop a normalized measure of annual NOI based on the productive and earning capacity of the development utilizing (1) the actual rent schedule applicable for each of the available units as of January 1 of the year of assessment indicating the actual rent to be paid by the resident plus any Section 8 rental assistance or other direct cash rental subsidy provided to the resident by federal, state or local rent subsidy programs as limited pursuant to Section 42 of the Internal Revenue Code, (2) a normal vacancy/collection allowance, (3) the prior year's actual and current year's projected annual operating expenses associated with the property, excluding noncash items such as depreciation and amortization, but including property taxes and those actual costs expected to be incurred and paid as required by Internal Revenue Code Section 42 regulations, provisions, and restrictions as applicable to the assessment year, and (4) an appropriate provision for replacement reserves.

If no separate line item is included for reserves for replacement in the historic income and expense data, then the maintenance and repair categories of the historic expense data must be itemized. For properties that have attained a normalized operating history, the NOI results of the prior three years (as represented in the statements variously named as the Income and Loss Statement, the Profit and Loss Statement, the Income Statement, the Actual to Budget Comparison Statement, Balance Sheet, or some name variation of these) may be used to provide the basis for determining the normalized NOI used for purposes of applying the direct capitalization method for the year of assessment, provided an appropriate replacement reserve is included in the NOI determination and provided any additional costs required as a result of Section 42 regulation or compliance changes for the assessment year are included as an operating expense in the NOI determination. In addition, the assessor may utilize the current year operating budget to develop a measure of NOI for the assessment year. The assessor, in developing the measure of annual NOI on a cash basis, shall not consider as income any potential rental income differential that could otherwise be received from the property if the rents were not limited pursuant to Section 42 of the Internal Revenue Code, any tax credit equity, any tax credit value, or other subsidized financing.

*c. Filing of reports.* It shall be the responsibility of the property owner to file income and expense data with the local assessor by March 1 of each year. The assessor may require the filing of additional information if deemed necessary.

*d. Capitalization rate.* The overall capitalization rate to be used in applying the direct capitalization method for a Section 42 property is developed through the band-of-investment technique. The capitalization rate will be calculated annually by the Iowa department of revenue and distributed to all Iowa assessors by March 1. The capitalization rate is a composite rate weighted by the proportions of total property investment represented by debt and equity. The capital structure weights equity at 80 percent and debt at 20 percent unless actual market capital structure can be verified to the assessor. The yield, or market rate of return, for equity is calculated using the capital asset pricing model (CAPM). The yield for debt is equivalent to the average yield on 25-year Treasury bonds referred to as the Treasury long-term average rate. An example of the band-of-investment technique to be utilized is as follows:

	% to Total	Yield	Composite
Equity	80%	11.05%	8.84%
Debt	20%	5.94%	1.19%
	100%		10.03%

*e. Capital asset pricing model.* The capital asset pricing model (CAPM) is utilized to develop the equity rate. The formula is:

$$R_e = B(R_m - R_f) + R_f$$

Where:

- $R_e$  = return on equity
- $B$  = beta
- $R_m$  = return on the market
- $R_f$  = risk-free rate of return
- $R_m - R_f$  = market-risk premium

The beta is assumed to be 1 which indicates the risk level to be consistent with the market as a whole. The risk-free rate is calculated by finding the average of the three-month and six-month Treasury bill. The return on the market is calculated by taking the average of the return on the market for the Merrill Lynch Universe and Standard and Poor's 500 or by reference to other published secondary sources.

*f. Properties under construction.* For Section 42 properties under construction, the assessor may value the property by applying the percentage of completion to the replacement cost new (RCN) as calculated from the Iowa Real Property Appraisal Manual and adding the fair market value of the land. Alternatively, projected income and expense data may be utilized if available.

*g. Negative or minimal NOI.* If the Section 42 property shows a negative or minimal net operating income (NOI), the indicator of value as set forth in these rules shall not be utilized.

*h. Eligibility withdrawn.* The property owner shall notify the assessor when property is withdrawn from Section 42 eligibility under the Internal Revenue Code. The notification must be provided by March 1 of the assessment year or the owner is subject to a penalty of \$500.

This rule is intended to implement Iowa Code sections 421.17, 428.4, 441.21 as amended by 2004 Iowa Acts, Senate File 2296, and 476.1D(10).

**701—71.6(421,428,441) Valuation of industrial land and buildings.** Industrial real estate shall be assessed at its actual value as defined in Iowa Code section 441.21.

In determining the actual value of industrial land and buildings, city and county assessors shall use the appraisal manual issued by the department of revenue pursuant to Iowa Code subsection 421.17(18), and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 428.4 and 441.21.

**701—71.7(421,427A,428,441) Valuation of industrial machinery.** Industrial machinery as referred to in Iowa Code section 427A.1(1) “e” shall include all machinery used in manufacturing establishments and shall be assessed as real estate even though such machinery might be assessed as personal property if not used in a manufacturing establishment.

In determining the actual value of industrial machinery assessed as real estate, the assessor shall give consideration to the “Industrial Machinery and Equipment Valuation Guide” issued by the department of revenue and any other relevant data available.

This rule is intended to implement Iowa Code sections 421.17, 427A.1, 428.4 and 441.21.

**701—71.8(428,441) Abstract of assessment.** Each city and county assessor shall submit annually to the director of revenue at the times specified in Iowa Code section 441.45 an abstract of assessment for the current year. The assessor shall use the form of abstract prescribed and furnished by the department of revenue, and shall enter on the abstract all information required by the department. However, the department may approve the use of a computer-prepared abstract if the data is essentially the same format as on the form prescribed by the department. The information entered on the abstract of assessment shall be reviewed and considered by the director of revenue in equalizing the valuations of classes of properties.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

**701—71.9(428,441) Reconciliation report.** The assessor’s report of any revaluation required by Iowa Code section 428.4 shall be made on the reconciliation report prescribed and furnished by the department of revenue. The assessor shall enter on the report all information required by the department. The reconciliation report shall be a part of the abstract of assessment required by Iowa Code section 441.45 and shall be reviewed and considered by the director in equalizing valuations of classes of property.

This rule is intended to implement Iowa Code sections 428.4 and 441.45.

**701—71.10(421) Assessment/sales ratio study.**

**71.10(1) Basic data.** Basic data shall be that submitted to the department of revenue by county recorders and city and county assessors on forms prescribed and provided by the department, information furnished by parties to real estate transactions, and information obtained by field investigations made by the department of revenue.

**71.10(2) Responsibility of recorders and assessors.** County recorders and city and county assessors shall complete the prescribed forms as required by Iowa Code subsection 421.17(6) and rule 701—79.3(428A) in accordance with instructions issued by the department. Assessed values entered on the prescribed form shall be those established as of January 1 of the year in which the sale takes place.

**71.10(3) Normal sales.** All real estate transfers shall be considered by the department of revenue to be normal sales unless there exists definite information which would indicate the transfer was not an arms-length transaction or is of an excludable nature as provided in Iowa Code section 441.21.

This rule is intended to implement Iowa Code section 421.17.

**701—71.11(441) Equalization of assessments by class of property.** Commencing in 1977 and every two years thereafter, the director of revenue shall order the equalization of the levels of assessment of each class of property as provided in rule 701—71.12(441) by adding to or deducting from the valuation of each class of property, as reported to the department on the abstract of assessment and reconciliation report which is a part of the abstract, the percentage in each case as may be necessary to bring the level of assessment to its actual value as defined in Iowa Code section 441.21. Valuation adjustments shall be ordered if the director determines that the aggregate valuation of a class of property as reported on the abstract of assessment submitted by the assessor is at least 5 percent above or below the aggregate

valuation for that class of property as determined by the director pursuant to rule 701—71.12(441). Equalization orders of the director shall be restricted to equalizing the aggregate valuations of entire classes of property among the several assessing jurisdictions. All classifications of real estate shall be applied uniformly throughout the state of Iowa.

Equalization percentage adjustments determined for residential realty located outside incorporated areas and not located on agricultural land shall apply to buildings located on agricultural land outside incorporated areas, which are primarily used or intended for human habitation, as defined in subrule 71.1(4).

Equalization percentage adjustments determined for residential realty located within incorporated cities and not located on agricultural land shall apply to buildings located on agricultural land within incorporated cities which are primarily used or intended for human habitation as defined in subrule 71.1(4).

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.

**701—71.12(441) Determination of aggregate actual values.**

**71.12(1) Agricultural real estate.**

a. *Use of income capitalization study.* The equalized valuation of agricultural realty shall be based upon its productivity and net earning capacity and shall be determined in accordance with the provisions of this subrule. Data used shall pertain to crops harvested during the five-year period ending with the calendar year in which assessments were last equalized. The equalized valuation of agricultural realty shall be determined for each county as follows:

(1) Computation of county acres. This information shall be obtained from the USDA National Agricultural Statistics Service.

1. Total acres in farms: Total acreage used for agricultural purposes.
2. Corn acres: Sum of corn acres harvested including silage, popcorn and acres planted for sorghum.
3. Oats and wheat acres: Sum of oats and wheat acres harvested.
4. Soybean acres: Soybean acres harvested.
5. Hay acres: All hay acres harvested.
6. Pasture acres: All pasture acres. Total pasture acres shall be determined by multiplying the total acres in farms reported by the USDA National Agricultural Statistics Service by the percentage which total pasture land as reported in the most recent U.S. Census of Agriculture bears to the total acreage in farmland also reported in the most recent U.S. Census of Agriculture. The amount of tillable and nontillable pasture acres shall be determined as follows:

1.	From the most recent U.S. Census of Agriculture obtain the following:		
	Cropland used only for pasture and grazing	_____	acres
	Woodland pasture	_____	acres
	Pasture land and rangeland (other than cropland and woodland pasture)	_____	acres
	TOTAL PASTURE LAND (total of above):	_____	acres
2.	Determine what percentage of the total pasture land is cropland used only for pasture:	_____	%
3.	Apply the percentage in “2” above to the 5-year average total acres of pasture as determined above to determine the pasture acres to be classified as tillable pasture. The remainder of the 5-year average shall be classified as nontillable pasture land.	_____	acres

7. Government programs: Determine the 5-year average acres participating in applicable government programs. Obtain data from the USDA Farm Service Agency, including but not limited to acreage devoted to the Payment-In-Kind (PIK), diverted and deficiency programs.

8. Other acres: The difference between the total acreage for land uses listed above and the total of all land in farms. Add the total of the corn, oats, soybeans, hay, tillable and nontillable pasture and diverted acres. Subtract this total from total acres in farms. The residual is classified as other acres.

(2) Computation of county yields. This information shall be obtained for each county from the USDA National Agricultural Statistics Service.

1. Corn yield (including silage): Number of bushels of corn harvested for grain per acre.

2. Oat yield (including wheat): Number of bushels of oats harvested per acre.

3. Soybean yield: Number of bushels per acre harvested.

4. Hay yield in tons: Number of tons per acre harvested.

(3) Computation of county gross income.

1. Corn: One-half of the 5-year average production multiplied by the 5-year average price received for corn.

2. Silage: One-half of the 5-year average number of acres devoted to the production of silage multiplied by the 5-year average production per acre for corn. The amount of production so determined shall be added to the 5-year average production for corn and included in the determination of the gross income for corn.

3. Soybeans: One-half of the 5-year average production multiplied by the 5-year average price received.

4. Oats: One-half of the 5-year average production of oats and wheat multiplied by the 5-year average price received for oats.

5. Price adjustment: For corn, soybeans, hay, and oats, the prices used shall be as obtained from the USDA National Agricultural Statistics Service and shall be adjusted to reflect any individual county price conditions prior to the 2007 crop year. For the 2007 crop year and later, the USDA National Agricultural Statistics Service district prices shall be used and shall be adjusted to reflect any individual county price conditions.

6. Government programs: Gross income shall be one-half of the 5-year average amount of cash payments or equivalent (such as PIK bushels) including but not limited to diverted, deficiency and PIK programs as reported by the USDA Farm Service Agency.

7. Hay: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to hay by the product obtained by multiplying one-fourth of the 5-year average hay yield by the 5-year average price received for all types of hay.

8. Tillable pasture: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to tillable pasture by the product obtained in "hay" above.

9. Nontillable pasture: Gross income shall be a cash rent amount determined by multiplying the 5-year average number of acres devoted to nontillable pasture by one-half the product obtained in "hay" above.

10. Other acres: Income shall be the product of the number of other acres multiplied by 17 percent of the net income per acre for all other land uses.

(4) Computation of county production costs. The following data and procedures shall be used to determine specific county production costs.

1. Basic average landlord production costs. Landlord production costs for corn, soybeans, oats, diverted acres, hay, tillable pasture, nontillable pasture, fertilizer costs, and facilities' costs shall be obtained for each year from Iowa State University.

2. Production cost adjustment. The production costs for corn, soybeans, oats, and hay are adjusted for each county by multiplying the difference between the 5-year state average yield per acre and the 5-year county average yield per acre by the 5-year average facilities' costs. If a county's yield exceeds the state yield, production costs are increased by this amount. If a county's yield is less than the state yield, production costs are reduced by this amount.

3. Fertilizer cost adjustment. The adjustment for fertilizer costs is determined as follows: Multiply the difference between the 5-year state average corn yield per acre and the 5-year county average corn yield per acre obtained from the USDA National Agricultural Statistics Service by the fertilizer cost amount per bushel determined by dividing the statewide average cost of landlord's share of fertilizer cost per acre from Iowa State University by the statewide average corn yield per acre to produce the corn fertilizer cost per bushel adjustment. This amount is then multiplied by the 5-year county average corn acres determined in (2) above.

4. Expense adjustments. If a county's 5-year average corn yield is greater than the state 5-year average corn yield, this amount is allowed as an additional expense. If the county's average is less than the state average, this amount is an expense reduction.

5. Liability insurance cost adjustment. The 5-year average per acre cost of obtaining tort liability insurance shall be determined.

(5) Computation of county net income. From the total gross income, subtract the total expenses. Divide the resulting total by the total number of acres.

(6) Computation of dwelling adjustment factor. The amount determined in (5) above shall be reduced by 10.6 percent.

(7) Computation of county tax adjustment. Subtract the 5-year average per acre real estate taxes levied for land and structures including drainage and levee district taxes but excluding those levied against agricultural dwellings from the amount determined in (6) above. Taxes shall be the tax levied for collection during the 5-year period as reported by county auditors, and reduced by the amount of the agricultural land tax credit.

(8) Calculation of county valuation per acre. Divide the net income per acre ((7) above) for each county as determined above by the capitalization rate specified in Iowa Code section 441.21. The quotient shall be the actual per acre equalized valuation of agricultural land and structures for the current equalization year.

*b. Use of other relevant data.* The director may also consider other relevant data, including field investigations conducted by representatives of the department of revenue, to determine the level of assessment of agricultural real estate.

*c. Determination of value.* The aggregate actual value of agricultural real estate in each county shall be determined by multiplying the equalized per acre value by the number of acres of agricultural real estate reported on the abstract of assessment for the current year, adjusted where necessary by the results of any field investigations conducted by the department of revenue and any other relevant data available.

**71.12(2) Residential real estate outside and within incorporated cities.**

*a. Use of assessment/sales ratio study.* Basic data shall be that set forth in rule 701—71.10(421) refined by eliminating any sales determined to be abnormal or by adjusting the sales to eliminate the effects of factors which resulted in the sales having been determined to be abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The director may also supplement the assessment/sales ratio study with appraisals made by department of revenue appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of residential real estate in each assessing jurisdiction. The director of revenue may consider sales and appraisal data for prior years if it is determined the use of the sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the

department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

*b. Use of other relevant data.* The director may also consider other relevant data, including field investigations conducted by representatives of the department of revenue to determine the level of assessment of residential real estate.

*c. Equalization appraisal selection procedures for residential real estate.* Residential properties to be appraised by department of revenue personnel for use in supplementing the assessment/sales ratio study shall be selected for each jurisdiction in the following manner:

(1) The department appraiser assigned to the jurisdiction shall determine a systematic random sequence of numbers equal to the number of appraisals required and document the following steps.

1. The department appraiser assigned to the jurisdiction shall compute the interval number by dividing the total number of improved properties in the classification to be sampled by the number of appraisals to be performed.

EXAMPLE: In this example, ten appraisals are needed with a total of 1,397 improved residential units. Dividing 1,397 by 10, 139.7 is arrived at, which is rounded down to 139. This is the interval number.

2. The selection of the first sequence number shall be accomplished by having an available disinterested person randomly select a number from one through the interval number.

EXAMPLE: In this example a number from 1 to 139 is to be selected. The person randomly selected number 20.

3. The department appraiser shall develop a systematic sequence of numbers equal to the number of appraisals required. Starting with the randomly selected number previously picked by the disinterested person, add the interval number to this number and to each resulting number until a systematic sequence of numbers is obtained.

EXAMPLE: In this example ten appraisals are needed, so a sequence of ten numbers must be developed. Starting with number 20 and adding the interval number of 139 to it, each resulting number provides the following systematic sequence: 20, 159, 298, 437, 576, 715, 854, 993, 1,132, 1,271.

(2) Number of improved properties.

County jurisdictions—Put the name of each city or township having improved units in the classification to be sampled into a hat. Draw each one out of the hat and record its name in the order of its draw. Likewise, record the respective number of improved units for each. Then consecutively number all the improved units and document the procedure.

EXAMPLE:

City or Township	Number of Improved Residential Units	Code Numbers
Franklin Twp.	57	1-57
Pleasant View	160	58-217
Jackson Twp.	56	218-273
Johnston	300	274-573
Polk Twp.	110	574-683
Washington Twp.	114	684-797
Maryville	306	798-1103
Camden Twp.	110	1104-1213
Salem	184	1214-1397
Total	1,397	

(3) Determine the location of the improved properties selected for appraisal and document the procedure.

## EXAMPLE:

City or Township	Number of Improved Residential Units	Code Numbers	Sequence Number	Entry on Rolls
Franklin Twp.	57	1-57	20	20
Pleasant View	160	58-217	159	102
Jackson Twp.	56	218-273		
Johnston	300	274-573	298,437	25,164
Polk Twp.	110	574-683	576	3
Washington Twp.	114	684-797	715	32
Maryville	306	798-1103	854,993	57,196
Camden Twp.	110	1104-1213	1132	29
Salem	184	1214-1397	1271	58
Total	<u>1,397</u>			

1. The department appraiser shall locate the property to be appraised by finding the relationship between the sequence numbers and the code numbers and identify the property.

EXAMPLE: The first sequence number is 20. Since the improved residential properties in Franklin Township have been assigned code numbers 1 to 57, sequence number 20 is in that location.

To identify this property, examine the Franklin Township assessment roll book and stop at the twentieth improved residential entry.

Document the parcel number, owner's name, and legal description of this property.

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

- Current year sale
- Partial assessment
- Prior equalization appraisal
- Tax-exempt
- Value established by court action
- Value is not more than \$10,000
- Building on leased land

3. The department appraiser shall determine a substitute property if the originally selected one is ineligible. In ascending order, select code numbers until an eligible property is found.

EXAMPLE: If code number 20 is ineligible, use code number 21 as a substitute. If code number 21 is ineligible, use code number 22, etc., until an eligible property is found.

If the procedure described in 71.12(2)“c”(3)“3” moves the substitute property to another city or township, select substitute code numbers in descending order until an eligible property is found.

If the procedure described in the previous paragraph moves the substitute property to a preceding city or township, go back to the procedure of 71.12(2)“c”(3)“3” even if it moves the substitute property to a subsequent city or township.

4. Select an alternate property for the originally selected property which also would be eligible. This is necessary because at the time of appraisal the property may be found to be ineligible due to one of the restrictions in 71.12(2)“c”(3)“2.” Alternate properties are selected by using the same procedure described in 71.12(2)“c”(3)“3.”

5. Follow procedures 71.12(2)“c”(3), items “1” to “4,” for each of the other originally selected sequence numbers.

**71.12(3) Commercial real estate.**

a. *Use of assessment/sales ratio study.* Basic data shall be that set forth in rule 701—71.10(421), refined by eliminating any sales determined to be abnormal or by adjusting same to eliminate the effects

of factors which resulted in the sales having been determined to be abnormal. The basic data used shall be the assessment/sales ratio study conducted for sales taking place during the calendar year immediately preceding the year in which the equalization order is issued. The director may also supplement the assessment/sales ratio study with appraisals made by department of revenue appraisal personnel for the year immediately preceding the year in which the equalization order is issued. The assessment/sales ratio study including relevant appraisals, if any, shall be used to determine the aggregate actual valuation of commercial real estate in each assessing jurisdiction. The director of revenue may consider sales and appraisal data for prior years if it is determined the use of sales and appraisal data for the year immediately preceding the year in which the equalization order is issued is insufficient to determine market value. If such sales and appraisal data for prior years is used, consideration shall be given for any subsequent changes in either assessed value or market value.

*b. Use of other relevant data.* The director may also consider other relevant data, including field investigations conducted by representatives of the department of revenue to determine the level of assessment of commercial real estate. The diverse nature of commercial real estate precludes the use of a countywide or citywide income capitalization study.

Assessors shall provide any known facts or circumstances regarding reported sales transactions and department appraisals which would indicate abnormal or unusual conditions or reporting discrepancies which would necessitate exclusion or adjustment of sales or appraisals from the determination of aggregate actual values. Assessors shall provide those facts within 45 days of receipt from the department of information concerning sales and appraisal data proposed for assessment/sales ratio and equalization purposes.

*c. Equalization appraisal selection procedures for commercial real estate.* Commercial properties to be appraised by department of revenue personnel for use in supplementing the assessment/sales ratio study shall be selected for each jurisdiction in the following manner:

(1) The department appraiser assigned to the jurisdiction shall determine a systematic random sequence of numbers equal to the number of appraisals required and document the following steps.

1. The department appraiser shall compute the interval number by dividing the total number of improved properties in the classification to be sampled by the number of appraisals to be performed.

EXAMPLE: In this example, ten appraisals are needed with a total of 397 improved commercial units. Dividing 397 by 10, 39.7 is arrived at, which is rounded down to 39. This is the interval number.

2. The selection of the first sequence number shall be accomplished by having an available disinterested person randomly select a number from one through the interval number.

EXAMPLE: In this example a number from 1 to 39 is to be selected. The person randomly selected number 2.

3. The department appraiser shall develop a systematic sequence of numbers equal to the number of appraisals required. Starting with the randomly selected number previously picked by the disinterested person, add the interval number to this number and to each resulting number until a systematic sequence of numbers is obtained.

EXAMPLE: In this example ten appraisals are needed, so a sequence of ten numbers must be developed. Starting with number 2 and adding the interval number of 39 to it, each resulting number provides the following systematic sequence: 2, 41, 80, 119, 158, 197, 236, 275, 314, 353.

(2) Number of improved properties.

1. City jurisdictions—Utilizing the assessment book or a computer printout which follows the same order as the assessment book, consecutively number all the improved units and document the procedure.

2. County jurisdictions—Put the name of each city or township having improved units in the classification to be sampled into a hat. Draw each one out of the hat and record its name in the order of its draw. Likewise, record the respective number of improved units for each. Then consecutively number all the improved units and document the procedure.

## EXAMPLE:

City or Township	Number of Improved Commercial Units	Code Numbers
Franklin Twp.	4	1-4
Pleasant View	60	5-64
Jackson Twp.	9	65-73
Johnston	100	74-173
Polk Twp.	10	174-183
Washington Twp.	14	184-197
Maryville	106	198-303
Camden Twp.	10	304-313
Salem	84	314-397
Total	<u>397</u>	

(3) The department appraiser shall determine the location of the improved properties selected for appraisal and document the procedure.

## EXAMPLE:

City or Township	Number of Improved Commercial Units	Code Numbers	Sequence Number	Entry on Rolls
Franklin Twp.	4	1-4	2	2
Pleasant View	60	5-64	41	37
Jackson Twp.	9	65-73		
Johnston	100	74-173	80,119,158	7,46,85
Polk Twp.	10	174-183		
Washington Twp.	14	184-197	197	14
Maryville	106	198-303	236,275	39,78
Camden Twp.	10	304-313		
Salem	84	314-397	314,353	1,40
Total	<u>397</u>			

1. The department appraiser shall locate the property to be appraised by finding the relationship between the sequence numbers and the code numbers and identify the property.

EXAMPLE: The first sequence number is 2. Since the improved commercial properties in Franklin Township have been assigned code numbers 1 to 4, sequence number 2 is in that location.

To identify this property, examine the Franklin Township assessment roll book and stop at the second improved commercial entry.

The department appraiser shall document the parcel number, owner's name, and legal description of this property.

2. The department appraiser shall appraise the property selected unless it is ineligible because of any of the following restrictions:

Vacant building

Current year sale

Partial assessment

Prior equalization appraisal

Tax-exempt

Only one portion of a total property unit (example—a parking lot of a grocery store)

Value established by court action

Value is not more than \$5,000

Building on leased land

3. The department appraiser shall determine a substitute property if the originally selected one is ineligible. In ascending order, select code numbers until an eligible property is found.

EXAMPLE: If code number 2 is ineligible, use code number 3 as a substitute. If code number 3 is ineligible, use code number 4, etc., until an eligible property is found.

If the procedure described in 71.12(3)“c”(3)“3” moves the substitute property to a city or township, select substitute code numbers in descending order until an eligible property is found.

If the procedure described in the previous paragraph moves the substitute property to a preceding city or township, go back to the procedure of 71.12(3)“c”(3)“3” even if it moves the substitute property to a subsequent city or township.

4. Select an alternate property for the originally selected property which also would be eligible. This is necessary because at the time of appraisal the property may be found to be ineligible due to one of the restrictions in 71.12(3)“c”(3)“2.” Alternate properties are selected by using the same procedure described in 71.12(3)“c”(3)“3.”

5. Follow procedures 71.12(3)“c”(3), items “1” to “4,” for each of the other originally selected sequence numbers.

**71.12(4) Industrial real estate.** It is not possible to determine the level of assessment of industrial real estate by using accepted equalization methods. The lack of sales data precludes the use of an assessment/sales ratio study, the diverse nature of industrial real estate precludes the use of a countywide or citywide income capitalization study, and the limited number of industrial properties precludes the use of sample appraisals. The level of assessment of industrial real estate can only be determined by the valuation of individual parcels of industrial real estate. Any attempt to equalize industrial valuations by using accepted equalization methods would create an arbitrary result. However, under the circumstances set forth in Iowa Code subsection 421.17(10), the director may correct any errors in such assessments which are brought to the director’s attention.

**71.12(5) Personal property.** Rescinded IAB 10/25/95, effective 11/29/95.

**71.12(6) Centrally assessed property.** Property assessed by the director of revenue pursuant to Iowa Code chapters 428 and 433 to 438, inclusive, is equalized internally by the director in the making of the assessments. Further, the assessments are equalized with the aggregate valuations of other classes of property as a result of actions taken by the director of revenue pursuant to rule 701—71.11(441).

**71.12(7) Miscellaneous real estate.** Since it is not possible to use accepted equalization methods to determine the level of assessment of mineral rights and interstate railroad and toll bridges, these classes of property shall not be subject to equalization by the director of revenue. However, under the circumstances set forth in Iowa Code section 421.17(10), the director may correct any errors in assessments which are brought to the director’s attention.

This rule is intended to implement Iowa Code sections 441.21, 441.47, 441.48 and 441.49.  
[ARC 7726B, IAB 4/22/09, effective 5/27/09; ARC 9478B, IAB 4/20/11, effective 5/25/11]

**701—71.13(441) Tentative equalization notices.** Prior to the issuance of the final equalization order to each county auditor, a tentative equalization notice providing for proposed percentage adjustments to the aggregate valuations of classes of property as set forth in rule 701—71.12(441) shall be mailed to the county auditor whose valuations are proposed to be adjusted. The tentative equalization notice constitutes the ten days’ notice required by Iowa Code section 441.48.

This rule is intended to implement Iowa Code sections 441.47 and 441.48.

**701—71.14(441) Hearings before the director.**

**71.14(1) Protests.** Written or oral protest against the proposed percentage adjustments as set forth in the tentative equalization notice issued by the director of revenue shall be made only on behalf of the affected assessing jurisdiction. The protests shall be made only by officials of the assessing jurisdiction, including, but not limited to, an assessing jurisdiction’s city council or board of supervisors, assessor,

or city or county attorney. An assessing jurisdiction may submit a written protest in lieu of making an oral presentation before the director, or may submit an oral protest supported by written documentation. Protests against the adjustments in valuation contained in the tentative equalization notices shall be limited to a statement of the error or errors complained of and shall include such facts as might lead to their correction. No other factors shall be considered by the director in reviewing the protests. Protests and hearings on tentative equalization notices before the director are excluded from the provisions of the Iowa Administrative Procedure Act governing contested case proceedings.

**71.14(2) *Conduct of hearing.*** The director shall schedule each hearing so as to allow the same amount of time within which each assessing jurisdiction can make its presentation. During the hearing each assessing jurisdiction shall be afforded the opportunity to present evidence relevant to its protest. The director or the director's designated representative shall preside at the hearing which shall be held at the time and place designated by the director or such other time and place as may be mutually agreed upon by the director and the protesting assessing jurisdiction.

This rule is intended to implement Iowa Code section 441.48.

**701—71.15(441) Final equalization order.** After the tentative equalization notice has been issued and an opportunity for a hearing described in rule 701—71.14(441) has been afforded, the director shall issue a final equalization order by mail to the county auditor. The order shall specify any percentage adjustments in the aggregate valuations of any class of property to be made effective for the county as of January 1 of the year in which the order is issued. The final equalization order shall be issued on or before October 1 unless for good cause it cannot be issued until after October 1. The final equalization order shall be implemented by the county auditor.

An assessing jurisdiction may appeal a final equalization order to the state board of tax review. The protest must be filed or postmarked not later than ten days after the date the final equalization order is issued.

This rule is intended to implement Iowa Code sections 441.48 and 441.49.

**701—71.16(441) Alternative method of implementing equalization orders.**

**71.16(1) *Application for permission to use an alternative method.*** A request by an assessing jurisdiction for permission to use an alternative method of applying the final equalization order must be made in writing to the director of revenue within ten days from the date the county auditor receives the final equalization order. The written request shall include the following information:

*a.* Facts evidencing the need to use an alternative method of implementing the final equalization order. Such facts shall clearly show that the proposed method is essential to ensure compliance with the provisions of Iowa Code section 441.21.

*b.* The exact methods to be employed in implementing the requested alternative method for each class of property.

*c.* The specific method of notifying affected property owners of the valuation changes.

*d.* Evidence that the alternative method will result in an aggregate property class valuation adjustment equivalent to that prescribed in the director's final equalization order.

The director of revenue shall review each written request for an alternative method and shall notify the assessing jurisdiction of acceptance or rejection of the proposed method by October 15. The assessing jurisdiction shall immediately inform the county auditor of the director's decision. The county auditor shall include a description of any approved alternative method in the required newspaper publication of the final equalization order. In those instances where the approved alternative method includes individual property owner notification, the publication shall not be considered proper notice to the affected property owners.

**71.16(2) *Implementation of alternative method.*** If an alternative method is approved by the director of revenue, any individual notification of property owners shall be completed by the assessor by not later than October 25.

**71.16(3) Appeal by property owners.** If an alternative method is approved by the director of revenue, the special session of the local board of review to hear equalization protests shall be extended to November 30. In such instances, protests may be filed up to and including November 4.

This rule is intended to implement Iowa Code section 441.49.

**701—71.17(441) Special session of boards of review.**

**71.17(1) Grounds for protest.** The only ground for protesting to the local board of review reconvened in special session pursuant to Iowa Code section 441.49 is that the application of the director's final equalization order results in a value greater than that permitted under Iowa Code section 441.21.

**71.17(2) Authority of board of review.** When in special session to hear protests resulting from equalization adjustments, the local board of review shall only act upon protests for those properties for which valuations have been increased as a result of the application of the director of revenue's final equalization order.

The local board of review may adjust valuations of those properties it deems warranted, but under no circumstance shall the adjustment result in a value less than that which existed prior to the application of the director's equalization order. The local board of review shall not adjust the valuation of properties for which no protests have been filed.

**71.17(3) Report of board of review.** In the report to the director of revenue of action taken by the local board of review in special session, the board of review shall report the aggregate valuation adjustments by class of property as well as all other information required by the director of revenue to determine if such actions may have substantially altered the equalization order.

**71.17(4) Meetings of board of review.** If the final equalization order does not increase the valuation of any class of property, the board of review is not required to meet during the special session. If the final equalization order increases the valuation of one or more classes of property but no protests are filed by the times specified in Iowa Code section 441.49, the board of review is not required to meet during the special session.

This rule is intended to implement Iowa Code sections 421.17(10) and 441.49.

**701—71.18(441) Judgment of assessors and local boards of review.** Nothing stated in these rules should be construed as prohibiting the exercise of honest judgment, as provided by law, by the assessors and local boards of review in matters pertaining to valuing and assessing of individual properties within their respective jurisdictions.

This rule is intended to implement Iowa Code sections 441.17 and 441.35.

**701—71.19(441) Conference boards.**

**71.19(1) Establishment and abolition of office.**

*a.* As referred to in Iowa Code section 441.1, the term "federal census" includes any special census conducted by the Bureau of the Census of the U.S. Department of Commerce as well as the Bureau's decennial census.

*b.* Within 60 days of receiving the certified results of a federal census indicating the population of a city having its own assessor has fallen below 10,000, the city council of the city shall repeal the ordinance providing for its own assessor.

*c.* Whenever the office of city assessor is abolished, all moneys in the assessment expense fund and the special appraiser fund shall be transferred to the appropriate accounts in the county assessor's office, and all equipment and supplies shall be transferred to the county assessor's office. Employees of the city assessor's office may, at the discretion of the county assessor, become employees of the county assessor. However, any deputy assessor of the city may not be appointed a deputy county assessor unless certified as eligible for appointment pursuant to Iowa Code sections 441.5 and 441.10.

**71.19(2) Membership.**

*a.* *County conference boards.* A county conference board consists of the county board of supervisors, the mayor of each incorporated city in the county whose property is assessed by the county assessor, and one member of the board of directors of each high school district in the county, provided

the member is a resident of the county. Members representing school districts serve one-year terms, and the board of directors each year must notify the clerk of the conference board of its representative on the conference board. A member of the board of directors of a school district may serve on the county conference board even though the member lives in a city having its own assessor (1978 O.A.G. 466).

*b. City conference boards.* A city conference board consists of the county board of supervisors, the city council, and the entire board of directors of each school district whose property is assessed by the city assessor.

**71.19(3) Voting.**

*a.* Votes on matters before a conference board shall be by units as provided in Iowa Code section 441.2. At least two members of each voting unit must be present in order for the unit to cast a vote (1960 O.A.G. 226). In the event the vote of the members of a voting unit ends in a tie, that unit shall not cast a vote on the particular matter before the conference board.

*b.* If a member of a conference board is absent from a meeting, the member's vote may not be cast by another person, except that a mayor pro tem as provided in Iowa Code section 372.14(3) may vote for the mayor when the mayor is absent from or unable to perform official duties.

This rule is intended to implement Iowa Code section 441.2.

**701—71.20(441) Board of review.**

**71.20(1) Membership.**

*a. Occupation of members.* One member of the county board of review must be actively engaged in farming as that member's primary occupation. However, it is not necessary for a board of review to have as a member one licensed real estate broker and one registered architect or person experienced in the building and construction field if the person cannot be located after a good faith effort to do so has been made by the conference board (1966 O.A.G. 416). In determining eligibility for membership on a board of review, a retired person is not considered to be employed in the occupation pursued prior to retirement, unless that person remains in reasonable contact with the former occupation, including some participation in matters associated with that occupation.

*b. Residency of members.* A person must be a resident of the assessor jurisdiction served to qualify for appointment as a member of the board of review. However, a member changing assessing jurisdiction residency after appointment to the board may continue to serve on the board until the member's current term of office expires.

*c. Term of office.* The term of office of members of boards of review shall be for six years and shall be staggered as provided in Iowa Code section 441.31. In the event of the death, resignation, or removal from office of a member of a board of review, the conference board or city council shall appoint a successor to serve the unexpired term of the previous incumbent.

*d. Membership on other boards.* A member of a board of review shall not at the same time serve on either the conference board or the examining board, or be an employee of the assessor's office (1948 O.A.G. 120, 1960 O.A.G. 226).

*e. Number of members.* A conference board or city council may at any time change the composition of a board of review to either three or five members. To reduce membership from five members to three members, the conference board or city council shall not appoint successors to fill the next two vacancies which occur (1970 O.A.G. 342). To increase membership from three members to five members, the conference board or city council shall appoint two additional members whose initial terms shall expire at such times so that no two board members' terms expire at the end of the same year. Also, the conference board or city council may increase the membership of the board of review by an additional two members if it determines that a large number of protests warrant the emergency appointments. If the board of review has ten members, not more than four additional members may be appointed by the conference board. The terms of the emergency members will not exceed two years.

*f. Removal from office.* A member of a board of review may be removed from office by the conference board or city council but only after specific charges have been filed by the conference board or city council.

*g. Appointment of members.* Members of a county board of review shall be appointed by the county conference board. Members of a city board of review shall be appointed by the city conference board in cities with an assessor or by the city council in cities without an assessor. A city without an assessor can only have a board of review if the population of the city is 75,000 or more. A city with a population of more than 125,000 may appoint a city board of review or request the county conference board to appoint a ten-member county board of review.

**71.20(2) Sessions of boards of review.**

*a.* It is mandatory that a board of review convene on May 1 and adjourn no later than May 31 of each year. However, if either date falls on a Saturday, Sunday, or legal holiday, the board of review shall convene or adjourn on the following Monday.

*b.* Extended session. If a board of review determines it will be unable to complete its work by May 31, it may request that the director of revenue extend its session up to July 15. The request must be signed by a majority of the membership of the board of review and must contain the reasons the board of review cannot complete its work by May 31. During the extended session, a board of review may perform the same functions as during its regular session unless specifically limited by the director of revenue.

*c.* Special session. If a board of review is reconvened by the director of revenue pursuant to Iowa Code section 421.17, the board of review shall perform those functions specified in the order of the director of revenue and shall perform no other functions.

**71.20(3) Actions initiated by boards of review.**

*a.* Internal equalization of assessments. A board of review in reassessment years as provided in Iowa Code section 428.4 has the power to equalize individual assessments as established by the assessor, but cannot make percentage adjustments in the aggregate valuations of classes of property (1966 O.A.G. 416). In nonreassessment years, a board of review can adjust the valuation of an entire class of property by adjusting all assessment by a uniform percentage. Nothing contained in this rule shall restrict the director from exercising the responsibilities set forth in Iowa Code section 421.17.

*b.* Omitted assessments. A board of review may assess for taxation any property which was not assessed by the assessor, including property which the assessor determines erroneously is not subject to taxation by virtue of enjoying an exempt status (*Talley v. Brown*, 146 Iowa 360, 125 N.W. 248 (1910)).

*c.* Notice to taxpayers. If the value of any property is increased by a board of review or a board of review assesses property not previously assessed by the assessor, the person to whom the property is assessed shall be notified by regular mail of the board's action. The notification shall state that the taxpayer may protest the action by filing a written protest with the board of review within five days of the date of the notice. After at least five days have passed since notifying the taxpayer, the board of review shall meet to take final action on the matter, including the consideration of any protest filed. However, if the valuations of all properties within a class of property are raised or lowered by a uniform percentage in a nonreassessment year, notice to taxpayers need be provided only by newspaper publication as described in Iowa Code section 441.35.

**71.20(4) Appeals to boards of review.**

*a.* A board of review may act only upon written protests which have been filed with the board of review between April 16 and May 5, inclusive. In the event May 5 falls on a Saturday or Sunday, protests filed the following Monday shall be considered to have been timely filed. Protests postmarked by May 5 or the following Monday if May 5 falls on a Saturday or Sunday shall also be considered to have been timely filed. All protests must be in writing and signed by the taxpayer or the taxpayer's authorized agent. A written request for an oral hearing must be made at the time of filing the protest and may be made by checking the appropriate box on the form prescribed by the department of revenue. Protests may be filed for previous years if the taxpayer discovers that a mathematical or clerical error was made in the assessment, provided the taxes have not been fully paid or otherwise legally discharged. The protester may combine on one form assessment protests on parcels separately assessed if the same grounds are relied upon as the basis for protesting each separate assessment. If an oral hearing is requested on more than one of the protests, the person making the combined protests may request that the oral hearings

be held consecutively. A board of review may allow protests to be filed in electronic format. Protests transmitted electronically are subject to the same deadlines as written protests.

*b.* Grounds for protest. Taxpayers may protest to a board of review on one or more of the grounds specified in Iowa Code section 441.37. The grounds for protest and procedures for considering protests are as follows:

(1) The assessment is not equitable when compared with those of similar properties in the same assessing district. If this ground is a basis for the protest, the protest must contain the legal descriptions and assessments of the comparable properties. The comparable properties selected by the taxpayer must be located within the same assessing district as the property for which the protest has been filed (*Maytag Co. v. Partridge*, 210 N.W.2d 584 (Iowa 1973)). In considering a protest based upon this ground, the board of review should examine carefully all information used to determine the assessment of the subject property and the comparable properties and determine that those properties are indeed comparable to the subject property. It is the responsibility of the taxpayer to establish that the other properties submitted are comparable to the subject property and that inequalities exist in the assessments (*Chicago & N. W. Ry. Co. v. Iowa State Tax Commission*, 257 Iowa 1359, 137 N.W.2d 246(1965)).

(2) The property is assessed at more than its actual value as defined in Iowa Code section 441.21. If this ground is used, the taxpayer must state both the amount by which the property is overassessed and the amount considered to be the actual value of the property.

(3) The property is not assessable and should be exempt from taxation. If using this ground, taxpayers must state the reasons why it is felt the property is not assessable.

(4) There is an error in the assessment. An error in the assessment would most probably involve erroneous mathematical computations or errors in listing the property. The improper classification of property also constitutes an error in the assessment. If this ground is used, the taxpayer's protest must state the specific error alleged.

A board of review must determine:

1. If an error exists, and
2. How the error might be corrected.

(5) There is fraud in the assessment. If this ground of protest is used, the taxpayer's protest must state the specific fraud alleged, and the board of review must first determine if there is validity to the taxpayer's allegation. If it is determined there is fraud in the assessment, the board of review shall take action to correct the assessment and report the matter to the director of revenue.

(6) There has been a change of value of real estate since the last assessment. The board of review must determine that the value of the property as of January 1 of the current year has changed since January 1 of the previous reassessment year. This is the only ground upon which a protest pertaining to the valuation of a property can be filed in a year in which the assessor has not assessed or reassessed the property pursuant to Iowa Code section 428.4. In a year subsequent to a year in which a property has been assessed or reassessed pursuant to Iowa Code section 428.4, a taxpayer cannot protest to the board of review based upon actions taken in the year in which the property was assessed or reassessed (*James Black Dry Goods Co. v. Board of Review for City of Waterloo*, 260 Iowa 1269, 151 N.W.2d 534 (1967); *Commercial Merchants Nat'l Bank and Trust Co. v. Board of Review of Sioux City*, 229 Iowa 1081, 296 N.W. 203 (1941)).

*c.* Disposition of protests. After reaching a decision on a protest, the board of review shall give the taxpayer written notice of its decision. The notice shall contain the following information:

(1) The valuation and classification of the property as determined by the board of review.

(2) If the protest was based on the ground the property was not assessable, the notice shall state whether the exemption is allowed and the value at which the property would be assessed in the absence of the exemption.

(3) The specific reasons for the board's decision with respect to the protest.

(4) That the board of review's decision may be appealed to the district court within 20 days of the board's adjournment or May 31, whichever date is later. If the adjournment date is known, the date shall be stated on the notice. If the adjournment date is not known, the notice shall state the date will be no

earlier than May 31. Notice of the appeal shall be served on the chairperson, presiding officer, or clerk of the board of review after the written notice of appeal has been filed with the clerk of district court.

This rule is intended to implement Iowa Code sections 441.31 to 441.37 and Iowa Code Supplement section 441.38 as amended by 2006 Iowa Acts, House File 2794.

**701—71.21(421,17A) Property assessment appeal board.**

**71.21(1) Establishment, membership, and location of the property assessment appeal board.**

a. A statewide property assessment appeal board is created for the purpose of establishing a consistent, fair, and equitable property assessment appeal process. The statewide property assessment appeal board is established within the department of revenue. The board's principal office shall be in the office of the department of revenue.

b. The property assessment appeal board shall consist of three members appointed by the governor and subject to confirmation by the senate. The members shall be appointed to staggered six-year terms beginning initially on January 1, 2007, and ending as provided in Iowa Code section 69.19. Members' subsequent terms shall begin and end as provided in Iowa Code section 69.19. The governor shall appoint from the members a chairperson, subject to confirmation by the senate, of the board to a two-year term. Vacancies on the board shall be filled for the unexpired portion of the term in the same manner as regular appointments are made.

Each member of the property assessment appeal board shall be qualified by virtue of at least two years' experience in the area of government, corporate, or private practice relating to property appraisal and property tax administration. One member of the board shall be a certified real estate appraiser or hold a professional appraisal designation, one member shall be an attorney practicing in the area of state and local taxation or property tax appraisals, and one member shall be a professional with experience in the field of accounting or finance and with experience in state and local taxation matters. No more than two members of the board may be from the same political party as that term is defined in Iowa Code section 43.2.

c. The property assessment appeal board shall organize by appointing a secretary who shall take the same oath of office as the members of the board. The board may employ additional personnel as it finds necessary. All personnel employed by the board shall be considered state employees and are subject to the merit system provisions of Iowa Code chapter 8A, subchapter IV.

**71.21(2) Powers and duties of the board.** The property assessment appeal board shall:

a. Review any final decision, finding, ruling, determination, or order of a local board of review relating to assessment protests, valuation, or application of an equalization order.

b. Affirm, reverse, or modify a final decision, finding, ruling, determination, or order of a local board of review.

c. Order the payment or refund of property taxes in a matter over which the board has jurisdiction.

d. Grant other relief or issue writs, orders, or directives that the board deems necessary or appropriate in the process of disposing of a matter over which the board has jurisdiction.

e. Subpoena documents and witnesses and administer oaths.

f. Adopt administrative rules pursuant to Iowa Code chapter 17A for the administration and implementation of its powers, including rules for practice and procedure for protests filed with the board, the manner in which hearings on appeals of assessments shall be conducted, filing fees to be imposed by the board, and for the determination of the correct assessment of property which is the subject of an appeal.

g. Adopt administrative rules pursuant to Iowa Code chapter 17A necessary for the preservation of order and the regulation of proceedings before the board, including forms or notice and the service thereof, which rules shall conform as nearly as possible to those in use in the courts of this state.

h. If an appeal to district court is taken from the action of the property assessment appeal board, notice of appeal shall be served as an original notice on the secretary of the board after the written notice of appeal has been filed with the clerk of district court.

**71.21(3) General counsel.** The property assessment appeal board shall employ a competent attorney to serve as its general counsel, and assistants to the general counsel as it finds necessary for the full and

efficient discharge of its duties. The general counsel is the attorney for, and legal advisor of, the board. The general counsel or an assistant to the general counsel shall provide the necessary legal advice to the board in all matters and shall represent the board in all actions instituted in a court challenging the validity of a rule or order of the board. The general counsel shall devote full time to the duties of the office. During employment as general counsel to the board, the counsel shall not be a member of a political committee, contribute to a political campaign, participate in a political campaign, or be a candidate for partisan political office. The general counsel and assistants to the general counsel shall be considered state employees and are subject to the merit system provisions of Iowa Code chapter 8A, subchapter IV.

**71.21(4) Compensation.** The members of the property assessment appeal board shall receive compensation from the state commensurate with the salary of a district judge. The members of the board shall be considered state employees for purposes of salary and benefits and are subject to the merit system provisions of Iowa Code chapter 8A, subchapter IV. Members of the board and any employees of the board, when required to travel in the discharge of official duties, shall be paid their actual and necessary expenses incurred in the performance of their duties.

**71.21(5) Appeal board review committee.** Effective January 1, 2012, a property assessment appeal board review committee is established. Staffing assistance to the committee shall be provided by the department of revenue. The committee shall consist of six members of the general assembly, two appointed by the majority leader of the senate, one appointed by the minority leader of the senate, two appointed by the speaker of the house of representatives, and one appointed by the minority leader of the house of representatives; the director of revenue or the director's designee; a county assessor appointed by the Iowa state association of counties; and a city assessor appointed by the Iowa league of cities.

The property assessment appeal board review committee shall review the activities of the property assessment appeal board since its inception. The review committee may recommend the revision of any rules, regulations, directives, or forms relating to the activities of the property assessment appeal board.

The review committee shall report to the general assembly by January 15, 2013. The report shall include any recommended changes in laws relating to the property assessment appeal board, the reasons for the committee's recommendations, and any other information the committee deems advisable.

**71.21(6) Applicability and scope.** These subrules set forth herein govern the proceedings for all cases in which the property assessment appeal board (board) has jurisdiction to hear appeals from the action of a local board of review. For the purpose of these subrules, the following definitions shall apply:

*"Appellant"* means the party filing the notice of appeal with the secretary of the property assessment appeal board.

*"Board"* means the property assessment appeal board as created by chapter 150 of the Acts of the Eighty-first General Assembly and governed by Iowa Code chapter 17A and sections 421.1A and 441.37A.

*"Department"* means the Iowa department of revenue.

*"Local board of review"* means the board of review as defined by Iowa Code section 441.31.

*"Party"* means a property owner, an aggrieved taxpayer, an assessor, an appellant or an appellee in an appeals process before the board.

*"Presiding officer"* means the chairperson, member or members of the property assessment appeal board who preside over an appeal of proceedings before the property assessment appeal board.

*"Secretary"* means the secretary for the property assessment appeal board.

**71.21(7) Appeal and jurisdiction.** Notice of appeal confers jurisdiction for the board. The procedure for appeals and parameters for jurisdiction are as follows:

*a.* Jurisdiction is conferred upon the board by written notice of appeal given to the secretary. The written notice of appeal shall include a petition setting forth the basis of the appeal and the relief sought. The written notice of appeal shall be filed with the secretary within 20 days after the postmarked date of the disposition of the protest by the local board of review. Appeals postmarked within 20 days after the postmarked date of the disposition of the protest by the local board of review shall also be considered to have been timely filed. The appellant may appeal the action of the board of review relating to protests of assessment, valuation, or the application of an equalization order. A party may request to participate by telephone in any hearing before the board.

b. The notice of appeal must be proper in format and content as set forth in subrule 71.21(9), which governs the notice of appeal. Notice of appeal may be delivered in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery to the secretary of the board.

**71.21(8) Scope of review.** The board shall determine anew all questions arising before the local board of review which relate to the liability of the property to assessment or the amount thereof. The board will consider only those grounds set out in the protest to the local board of review. However, additional evidence may be introduced in the board proceedings relevant to the grounds set out in the protest. The board shall afford each party an opportunity to present briefs and oral arguments. There shall be no presumption as to the correctness of the valuation of the assessment appealed from.

**71.21(9) Form of appeal.** The written notice of appeal shall contain a caption in the following form:

THE PROPERTY ASSESSMENT APPEAL BOARD	
(Appellant's name and address) v. (Board of Review)	}
NOTICE OF APPEAL and PETITION DOCKET NO. _____ (Docket No. assigned by board)	

The notice of appeal shall include:

- a. The appellant's name and mailing address;
- b. A copy of the petition to the local board of review;
- c. Copies of all evidence submitted to the local board of review in support of the petition to the local board of review;
- d. A copy of the postmarked envelope and a copy of the letter of disposition by the local board of review;
- e. A short and plain statement of the claim showing that the appellant is entitled to relief;
- f. The relief sought; and
- g. The signature of the appealing party or the party's legal representative.

To have legal representation before the board, a party must file a valid and complete power of attorney form as provided by the board or in compliance with the power of attorney form provided by the board.

**71.21(10) Notice to local board of review.** The secretary shall mail a copy of the appellant's written notice of appeal and petition to the local board of review whose decision is being appealed. Notice to all affected taxing districts shall be deemed to have been given when written notice is provided to the local board of review.

**71.21(11) Certification by local board of review.** Within 14 days after notice of appeal is given, the local board of review shall certify to the board all records, documents, or reports, or disposition order or directive from which an appeal is taken, the complete property record card for the subject property, the protest hearing minutes of the local board of review kept pursuant to Iowa Code chapter 21, and all other pertinent information.

The local board of review shall submit to the board in writing the name, address, and telephone number of the attorney representing the local board of review before the board. The local board of review may make a written request for additional time to certify a copy of its record to the board.

**71.21(12) Docketing.** Appeals shall be assigned consecutive docket numbers. Records consisting of the case name and the corresponding docket number assigned to the case must be maintained by the secretary. The records of each case shall also include each action and each act done, with the proper dates as follows:

- a. The title of the appeal including jurisdiction and parcel identification number;
- b. Brief statement of the grounds for the appeal and the relief sought;
- c. Postmarked date of the local board of review's letter of disposition;
- d. The manner and date/time of service of notice of appeal;
- e. Date of notice of hearing;
- f. Date of hearing; and
- g. The decision by the board, or other disposition of the case, and date thereof.

**71.21(13) *Appearances.*** A party may appear in person, by legal representative or through an attorney. In order to be considered the legal representative before the board, a valid power of attorney form as provided by the board or in compliance with the power of attorney form provided by the board must be properly completed and filed with the board. An attorney shall file an appearance. All orders, correspondence, or other documents shall be served on the designated individual.

**71.21(14) *Filing of papers.*** After the notice of appeal and petition have been filed, either in person, mailed by first-class mail, or delivered to an established courier service for immediate delivery, all motions, pleadings, briefs, and other papers to be filed shall be filed with the secretary of the board. Motions, pleadings, briefs, and other papers to be filed with the board shall be delivered in person, mailed by first-class mail, or delivered to an established courier service. Parties shall also send copies to all other parties of record, unless represented by counsel of record, and then to such counsel.

- a. For most filings in a docket made with the board, only an original is required.
- b. For exhibits and other documents to be introduced at hearing, an original plus two copies are required.
- c. The board or presiding officer may request additional copies.

**71.21(15) *Motions.*** All motions shall be in writing, shall be filed with the secretary and shall contain the reasons and grounds supporting the motion. The board shall act upon such motions as justice may require. Motions based on matters which do not appear of record shall be supported by affidavit. Any party may file a written response to a motion no later than 10 days from the date the motion is filed, unless the time period is extended or shortened by the board or presiding officer.

**71.21(16) *Authority of board to issue procedural orders.*** The board may issue preliminary orders regarding procedural matters. The secretary shall mail copies of all procedural orders to the parties.

**71.21(17) *Members participating.*** An appeal may be reviewed and considered by less than a majority of the members of the board, and the chairperson of the board may assign members to consider appeals. Orders and decisions shall be signed by one member of the board and shall name participating members. Decisions shall affirm, modify, or reverse the decision, order, or directive from which an appeal was made. In order for the decision to be valid, a majority of the board must concur on the decision on appeal.

**71.21(18) *Notice of hearing.*** Unless otherwise designated by the board, the hearing shall be held in the hearing room of the board. All hearings are open to the public. If a hearing is requested, the secretary shall mail a notice of hearing to the parties at least 30 days prior to the hearing. The notice of hearing shall contain the following information:

- a. A statement of the date, time, and place of the hearing;
- b. A statement of 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. That the parties may appear and present oral arguments;
- e. That the parties may submit evidence and briefs;
- f. That the hearing will be electronically recorded by the board;
- g. That a party may obtain a certified court reporter for the hearing at the party's own expense;
- h. That audio visual aids and equipment are to be provided by the party intending to use them;
- i. A statement that, upon submission of the appeal, the board will take the matter under advisement. A letter of disposition will be mailed to the parties; and
- j. A compliance notice required by the Americans with Disabilities Act (ADA).

**71.21(19) *Transcript of hearing.*** All hearings shall be electronically recorded. Any party may provide a certified court reporter at the party's own expense. Any party may request a transcription of the hearing. The board reserves the right to impose a charge for copies and transcripts.

**71.21(20) *Continuance.*** Any hearing may be continued for "good cause." Requests for continuance prior to the hearing shall be in writing and promptly filed with the secretary of the board immediately upon "the cause" becoming known. An emergency oral continuance may be obtained from the board or presiding officer based on "good cause" and at the discretion of the board or presiding officer. In determining whether to grant a continuance, the board or presiding officer may consider:

- a. Prior continuances;

- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

**71.21(21) Telephone proceedings.** The board, at its discretion and based on “good cause,” may conduct a telephone conference in which all parties have an opportunity to participate. The board will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when the location is chosen.

**71.21(22) Disqualification of board member.** A board member or members must, on their own motion or on a motion from a party in the proceeding, withdraw from participating in an appeal if there are circumstances that warrant disqualification.

a. A board member or members shall withdraw from participation in the making of any proposed or final decision in an appeal before the board if that member is involved in one of the following circumstances:

- (1) Has a personal bias or prejudice concerning a party or a representative of a party;
  - (2) Has personally investigated, prosecuted, or advocated in connection with the appeal, the specific controversy underlying that appeal, or another pending factually related matter, or a pending factually related controversy that may culminate in an appeal involving the same parties;
  - (3) Is subject to the authority, direction, or discretion of any person who has personally investigated, prosecuted, or advocated in connection with that matter, the specific controversy underlying the appeal, or a pending factually related matter or controversy involving the same parties;
  - (4) Has acted as counsel to any person who is a private party to that proceeding within the past two years;
  - (5) Has a personal financial interest in the outcome of the appeal or any other significant personal interest that could be substantially affected by the outcome of the appeal;
  - (6) Has a spouse or relative within the third degree of relationship who:
    - 1. Is a party to the appeal, or an officer, director or trustee of a party;
    - 2. Is a lawyer in the appeal;
    - 3. Is known to have an interest that could be substantially affected by the outcome of the appeal;
- or
- 4. Is likely to be a material witness in the appeal; or
  - (7) Has any other legally sufficient cause to withdraw from participation in the decision making in that appeal.

b. Motion for disqualification. If a party asserts disqualification on any appropriate ground, including those listed in paragraph “a,” the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.11. The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification, but must establish the grounds by the introduction of evidence into the record.

If a majority of the board determines that disqualification is appropriate, the board member shall withdraw. If a majority of the board determines that withdrawal is not required, the board shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal and a stay as provided under 701—Chapter 7.

c. 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 functions of the board, including fact gathering for purposes other than investigation of the matter which culminates in an appeal. Factual information relevant to the merits of an appeal received by a person who later serves as presiding officer or a member of the board shall be disclosed if required by Iowa Code section 17A.11 and this rule.

*d. Withdrawal.* In a situation where a presiding officer or any other board member 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.

**71.21(23) Consolidation and severance.** A majority of the board may determine, in its discretion, if consolidation or severance of issues or proceedings should be performed in order to efficiently resolve matters on appeal before the board.

*a. Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more appeal proceedings where:

- (1) The matters at issue involve common parties or common questions of fact or law;
- (2) Consolidation would expedite and simplify consideration of the issues involved; and
- (3) Consolidation would not adversely affect the rights of any of the parties to those proceedings.

*b. Severance.* The presiding officer may, for good cause shown, order any appeal proceedings or portions of the proceedings severed.

**71.21(24) Withdrawal.** An appellant may withdraw the appeal prior to the hearing. Such a withdrawal of an appeal must be in writing and signed by the appellant or the appellant's legal representative. Unless otherwise provided, withdrawal shall be with prejudice and the appellant shall not be able to refile the appeal. Within 20 days of the board granting a withdrawal of appeal, the appellant may make a motion to reopen the file and rescind the withdrawal based upon fraud, duress, undue influence, or mutual mistake.

**71.21(25) Prehearing conference.** An informal conference of parties may be ordered at the discretion of the board or presiding officer or at the request of any party for any appropriate purpose. Any agreement reached at the conference shall be made a part of the record in the manner directed by the board or presiding officer.

**71.21(26) Hearing procedures.** A party to the appeal may request a hearing, or the appeal may proceed without a hearing. The local board of review may be present and participate at such hearing.

*a. Authority of presiding officer.* The presiding officer presides at the hearing and may rule on motions, require briefs, issue a decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

*b. Representation.* Parties to the appeal have the right to participate or to be represented in all hearings. Any party may be represented by an attorney or another person authorized by law. To have legal representation before the board, a party must complete a power of attorney form as provided by the board or in compliance with the power of attorney form provided by the board.

*c. Participation in hearing.* The parties to the appeal have the right to introduce evidence relevant to the grounds set out in the protest to the local board of review. 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.

*d. Decorum.* The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

*e. Conduct of the hearing.* The presiding officer shall conduct the hearing in the following manner:

- (1) The presiding officer shall give an opening statement briefly describing the nature of the proceedings;
- (2) The parties shall be given an opportunity to present opening statements;
- (3) The parties shall present their cases in the sequence determined by the presiding officer;

(4) Each witness shall be sworn or affirmed by the presiding officer and shall be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law; and

(5) When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

**71.21(27) Discovery**

*a. Discovery procedure.* Discovery procedures applicable in civil actions are available to parties in cases before the board. Unless lengthened or shortened by these rules, the board or presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

*b. Discovery motions.* Prior to filing any motion related to discovery, parties shall make a good-faith effort to resolve discovery disputes without the involvement of the board or presiding officer. Any motion related to discovery shall allege that the moving party has made a good-faith attempt to resolve the discovery issues involved with the opposing party. Opposing parties shall be given the opportunity to respond within 10 days of the filing of the motion unless the time is shortened by order of the board or presiding officer. The board or presiding officer may rule on the basis of the written motion and any response or may have a hearing or other proceedings on the motion.

*c. Admissibility of evidence.* Evidence obtained in discovery may be used in the case proceeding if that evidence would otherwise be admissible in that proceeding.

**71.21(28) Subpoenas**

*a. Issuance of Subpoena for Witness.*

(1) An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 10 days before the scheduled hearing.

(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.

*b. Issuance of Subpoena for Production of Documents.*

(1) An agency subpoena shall be issued to a party on request. The request shall be in writing and include the name, address, and telephone number of the requesting party. In absence of good cause for permitting later action, a request for subpoena must be received at least 20 days before the scheduled hearing.

(2) Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas.

*c. Motion to quash or modify.* Upon motion, the board or presiding officer may quash or modify a subpoena for any lawful reason.

**71.21(29) Evidence.**

*a. Admissibility.* The presiding officer shall rule on admissibility of evidence and may take official notice of facts in accordance with all applicable requirements of law.

*b. Stipulations.* Stipulation of facts by the parties is encouraged. The presiding officer may make a decision based on stipulated facts.

*c. Scope of admissible evidence.* Evidence in the proceeding shall be confined to the issues contained in the notice from the board 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. Admissible evidence is that which, in the opinion of the board, is determined to be material, relevant, or necessary for the making of a just decision. Irrelevant, immaterial or unduly repetitious evidence may be excluded. A finding shall be based upon the kind of evidence on which reasonably prudent persons are accustomed to rely for the conduct of their serious affairs, and may be based upon such evidence even if it would be inadmissible in a jury trial. Hearsay evidence is admissible. The rules of privilege apply in all proceedings before the board.

*d. Exhibits and briefs.* The party seeking admission of an exhibit must provide an opposing party with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents to be used as evidence shall be provided to the opposing party at least 10 days prior to the hearing,

unless the time period is extended or shortened by the board or presiding officer. All exhibits and briefs admitted into evidence shall be appropriately marked and be made part of the record. The appellant shall mark exhibits with consecutive numbers. The appellee shall mark exhibits with consecutive letters.

*e. Objections.* Any party may object to specific evidence or may request limits on the scope of examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which the objection is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

*f. Offers of proof.* 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.

**71.21(30) Settlements.** Parties to a case may propose to settle all or some of the issues in the case at any time prior to the issuance of a final decision. The board or presiding officer will not approve settlements unless the settlement is reasonable in light of the whole record, consistent with law, and in the public interest. Board adoption of a settlement constitutes the final decision of the board on issues addressed in the settlement.

**71.21(31) Appeals records.** The record of the appeal is maintained at the office of the board. Unless the record is held confidential, parties and members of the public may examine the record and obtain copies of documents.

**71.21(32) Motion to reopen records.** The board or presiding officer, on the board's or presiding officer's own motion or on the motion of a party, may reopen the record for the reception of further evidence. A motion to reopen the record may be made anytime prior to the issuance of a final decision.

**71.21(33) Rehearing and reconsideration.**

*a. Application for rehearing or reconsideration.* Any party to a case may file an application for rehearing or reconsideration of the final decision. The application for rehearing or reconsideration shall be filed within 20 days after the final decision in the case is issued.

*b. Contents of application.* Applications for rehearing or reconsideration shall specify the findings of fact and conclusions of law claimed to be erroneous, with a brief statement of the alleged grounds of error. Any application for rehearing or reconsideration asserting that evidence has arisen since the final order was issued as a ground for rehearing or reconsideration shall present the evidence by affidavit that includes an explanation of the competence of the person to sponsor the evidence and a brief description of the evidence sought to be included.

*c. Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the board shall serve copies on all parties.

*d. Requirements for objections to applications for rehearing or reconsideration.* An answer or objection to an application for rehearing or reconsideration must be filed within 14 days of the date the application was filed with the board, unless otherwise ordered by the board.

*e. Disposition.* Any application for a rehearing shall be deemed denied unless the board grants the application within 20 days after its filing.

**71.21(34) Dismissal.** If a party fails to appear or participate in an appeal hearing after proper service of notice, the presiding officer may dismiss the appeal unless a continuance is granted for good cause. If an appeal is dismissed for failure to appear, the board shall have no jurisdiction to consider any subsequent appeal on the appellant's protest.

**71.21(35) Waivers.**

*a.* In response to a request, or on its own motion, the board may grant a waiver from a rule adopted by the board, in whole or in part, as applied to a specific set of circumstances, if the board finds, based on clear and convincing evidence, that:

(1) The application of the rule would pose an undue hardship on the person for whom the waiver is requested;

- (2) The waiver would not prejudice the substantial rights of any person;
- (3) The provisions of the rule subject to a petition for waiver are not specifically mandated by statute or another provision of law; and
- (4) Substantially equal protection of public health, safety, and welfare will be afforded by means other than that prescribed in the rule for which the waiver is requested.

*b.* Persons requesting a waiver may submit their request in writing. The waiver request must state the relevant facts and reasons the requester believes will justify the waiver, if the reasons have not already been provided to the board in another pleading.

*c.* Grants or denials of waiver requests shall contain a statement of the facts and reasons upon which the decision is based. The board may condition the grant of the waiver on such reasonable conditions as appropriate to achieve the objectives of the particular rule in question. The board may at any time cancel a waiver upon appropriate notice and opportunity for hearing.

**71.21(36) Appeals of board decisions.** A party may seek judicial review of a decision rendered by the board by filing a written notice of appeal with the clerk of the district court within 20 days after the letter of disposition of the appeal by the board is mailed to the appellant.

**71.21(37) Time requirements.** Time shall be computed as provided in Iowa Code section 4.1(34).

**71.21(38) Judgment of the board.** Nothing stated in this rule should be construed as prohibiting the exercise of honest judgment, as provided by law, by the board in matters pertaining to valuation and assessment of individual properties.

This rule is intended to implement Iowa Code sections 421.1, 421.1A, 421.2, 441.37A, 441.38 and 441.49 and chapter 17A.

[ARC 9877B, IAB 11/30/11, effective 1/4/12]

#### **701—71.22(428,441) Assessors.**

**71.22(1) Conflict of interest.** An assessor shall not act as a private appraiser, or as a real estate broker or option agent in the jurisdiction in which serving as assessor (1976 O.A.G. 744).

**71.22(2) Listing of property.**

*a.* Forms. Assessors may design and use their own forms in lieu of those prescribed by the department of revenue provided that the forms contain all information contained on the prescribed form, are not substantially different from the prescribed form, and are approved by the director of revenue.

*b.* Assessment rolls. Assessment rolls must be prepared in duplicate for each property in a reassessment year as defined in Iowa Code section 428.4. However, the copy of the roll does not have to be issued to a taxpayer unless there is a change in the assessment or the taxpayer requests the issuance of the duplicate copy.

*c.* Whenever a date specified in Iowa Code chapter 441 falls on a Saturday, Sunday, or legal holiday, the action required to be completed on or before that date shall be considered to have been timely completed if performed on or before the following day which is not a Saturday, Sunday, or holiday.

*d.* Buildings erected or improvements made by a person other than the owner of the land on which they are located are to be assessed to the owner of the buildings or improvements. Unpaid taxes are a lien on the buildings or improvements and not a lien on the land on which they are located.

**71.22(3) Notice of protest.** If a protest or appeal is filed with the board of review, property assessment appeal board, or district court against the assessment of property valued at \$5 million or more, the assessor shall provide notice to the school district in which the property is located within ten days of the filing of the protest or the appeal, as applicable.

This rule is intended to implement Iowa Code chapter 428 and Iowa Code chapter 441 as amended by 2006 Iowa Acts, House File 2797.

**701—71.23 and 71.24** Reserved.

**701—71.25(441,443) Omitted assessments.****71.25(1) Property subject to omitted assessment.**

*a. Land and buildings.* An omitted assessment can be made only if land or buildings were not listed and assessed by the assessor. The failure to list and assess an entire building is an omission for which an omitted assessment can be made even if the land upon which the building is located has been listed and assessed. See *Okland v. Bilyeu*, 359 N.W.2d 412 (Iowa 1984). However, the failure to consider the value added as a result of an improvement made does not constitute an omission for which an omitted assessment can be made if the building or land to which the improvement was made has been listed and assessed.

*b. Previously exempt property.* Property which has been erroneously determined to be exempt from taxation may be restored to taxation by the making of an omitted assessment. See *Talley v. Brown*, 146 Iowa 360, 125 N.W. 243 (1910). An omitted assessment is also made to restore to taxation previously exempt property which ceases to be eligible for an exemption.

**71.25(2) Officials authorized to make an omitted assessment.**

*a. Local board of review.* A local board of review may make an omitted assessment of property during its regular session only if the property was not listed and assessed as of January 1 of the current assessment year. For example, during its regular session which begins May 1, 1986, a local board of review may make an omitted assessment only of property that was not assessed by the assessor as of January 1, 1986. During that session, the board of review could not make an omitted assessment for an assessment year prior to 1986.

*b. County auditor and local assessor.* The county auditor and local assessor may make an omitted assessment. However, no omitted assessment can be made by the county auditor or local assessor if taxes based on the assessment year in question have been paid or otherwise legally discharged. For example, if a tract of land was listed and assessed and taxes levied against that assessment have been paid or legally discharged, no omitted assessment can be made of a building located upon that tract of land even though the building was not listed and assessed at the time the land was listed and assessed. See *Okland v. Bilyeu*, 359 N.W.2d 412, 417 (Iowa 1984).

*c. County treasurer.* The county treasurer may make an omitted assessment within two years from the date the tax list which should have contained the assessment should have been delivered to the county treasurer. For example, for the 1999 assessment year, the tax list is to be delivered to the county treasurer on or before June 30, 2000. Thus, the county treasurer may make an omitted assessment for the 1999 assessment year at any time on or before June 30, 2002. The county treasurer may make an omitted assessment of a building even if taxes levied against the land upon which the building is located have been paid or legally discharged. See *Okland v. Bilyeu*, 359 N.W.2d 412, 417 (Iowa 1984). The county treasurer may not make an omitted assessment if the omitted property is no longer owned by the person who owned the property on January 1 of the year the original assessment should have been made.

*d. Director of revenue.* The director of revenue may make an omitted assessment of any property assessable by the director at any time within two years from the date the assessment should have been made.

This rule is intended to implement Iowa Code chapter 440 and sections 443.6 through 443.15 as amended by 1999 Iowa Acts, chapter 174.

**701—71.26(441) Assessor compliance.** The assessor shall determine the value of real property in accordance with rules adopted by the department of revenue and in accordance with forms and guidelines contained in the Iowa Real Property Appraisal Manual prepared by the department. The assessor may use an alternative manual to value property if it is a unique type of property not covered in the manual prepared by the department.

If the department finds that an assessor is not in compliance with the rules of the department relating to valuation of property or has disregarded the forms and guidelines contained in the real property appraisal manual, the department shall notify the assessor and each member of the conference board for that assessing jurisdiction. The notice shall be mailed by restricted certified mail and shall specify

the areas of noncompliance and the steps necessary to achieve compliance. The notice shall also inform the assessor and conference board that if compliance is not achieved, a penalty may be imposed.

The conference board shall respond to the department within 30 days of receipt of the notice of noncompliance. The conference board may respond to the notice by asserting that the assessor is in compliance with the rules, guidelines, and forms of the department or by informing the department that the conference board intends to submit a plan of action to achieve compliance. If the conference board responds to the notification by asserting that the assessor is in compliance, a hearing before the director of revenue shall be held on the matter within 60 days of receipt of the notice of noncompliance. If it is agreed that the assessor is not in compliance, the conference board shall submit a plan of action within 60 days of receipt of the notice of noncompliance.

The plan shall contain a time frame under which compliance shall be achieved, which shall be no later than January 1 of the following assessment year. The plan of action shall contain the signature of the assessor and of the chairperson of the conference board. The department shall review the plan to determine whether the plan is sufficient to achieve compliance. Within 30 days of receipt of the plan, the department shall notify the assessor and the chairperson of the conference board that it has accepted the plan or that it is necessary to submit an amended plan of action.

By January 1 of the assessment year following the calendar year in which the plan was submitted to the department, the conference board shall submit a report to the department verifying that the plan of action was followed and compliance has been achieved. The department may conduct a field inspection to ensure that the assessor is in compliance. By January 31, the department shall notify the assessor and the conference board, by restricted certified mail, either that compliance has been achieved or that the assessor remains in noncompliance. If the department determines that the assessor remains in noncompliance, the department shall take steps to withhold up to 5 percent of the reimbursement payment authorized in Iowa Code section 425.1 until the director of revenue determines that the assessor is in compliance.

If the conference board disputes the determination of the department, the chairperson of the conference board may appeal the determination to the state board of tax review.

This rule is intended to implement Iowa Code Supplement section 441.21.

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<sup>1</sup> Amendments nullified by 2000 Iowa Acts, SJR 2005, editorially removed IAC Supplement 7/12/00 pursuant to Iowa Code section 17A.6(3).

CHAPTER 10  
IOWA VETERANS HOME  
[Prior to 2/29/84, Social Services[770] Ch 134]  
[Prior to 2/11/87, Human Services[498] Ch 10]  
[Prior to 1/20/93, Human Services[441] Ch 10]

PREAMBLE

The Iowa Veterans Home is a long-term health care facility located in Marshalltown, Iowa, operated by the Commission of Veterans Affairs.

**801—10.1(35D) Definitions relevant to Iowa Veterans Home.** The following definitions are unique to rules pertaining to the Iowa Veterans Home.

*“Acute alcoholic”* means any disturbance of emotional equilibrium caused by the consumption of alcohol resulting in behavior not currently controllable.

*“Acutely mentally ill”* means any disturbance of emotional equilibrium manifested in maladaptive behavior and impaired functioning caused by genetic, physical, chemical, biological, psychological, social or cultural factors which requires hospitalization.

*“Addicted to drugs”* means a state of dependency as medically determined resulting from excessive or prolonged use of drugs as defined in Iowa Code chapter 124.

*“Admissions committee”* means the committee appointed by the commandant to review applications to determine eligibility for admission and appropriate level and category of care.

*“Admissions coordinator”* means the individual responsible for the coordination of the admissions process.

*“Applicant”* means a person who is applying for admission into the Iowa Veterans Home.

*“Assets”* means items of value held by, or on behalf of, an applicant or member. Assets include, but are not limited to, cash, savings and checking accounts; stocks; bonds; contracts for sale of property; homestead or nonhomestead property. Nonrecurring windfall payments such as, but not limited to, inheritances; death benefits; insurance or tort claim settlements; and cash payments received from the conversion of a nonliquid asset to cash shall be considered assets upon receipt.

*“At once”* or *“timely”* means within ten calendar days.

*“Chief operating officer”* means the chief executive assistant of the commandant who functions as the chief operations officer.

*“Collaborative care plan”* means the plan of care developed for a member by the interdisciplinary resident care committee.

*“Commandant”* means the chief executive officer of the Iowa Veterans Home.

*“Commission”* means the Iowa commission of veterans affairs.

*“Continuously disruptive”* means any behavior, on a recurring basis, which has been documented by Iowa Veterans Home staff, that causes harm to a member or staff or conflicts with the member responsibilities set forth in subrule 10.12(1).

*“Countable asset”* means an asset to be considered in calculation of member support obligation.

*“Dangerous to self or others”* means any activity by a member which would result in injury to the member or others.

*“Dependent”* means a person for whose financial support an applicant or member is legally responsible or obligated.

*“Diversion”* means income that is transferred to a spouse before the member support is determined.

*“DVA”* means the U.S. Department of Veterans Affairs.

*“Free time”* means 12 days of leave time each calendar year for which the member is not charged for care during absence.

*“Full support”* means the maximum daily rate of support times the billable days of care received in any month less any offsets.

*“Gold Star parent”* means a parent of a deceased member of the United States armed forces who died while serving on active duty during a time of military conflict or who died as a result of such service.

*“Honorable discharge”* means separation or retirement from active military service. The veteran must be eligible for medical care in the DVA system (excluding financial eligibility). Honorable discharge includes general discharges under honorable conditions.

*“Income”* means money gained by labor or service, or money paid periodically to an applicant or member. Income includes, but is not limited to, disability, retirement pensions or benefits; interest, dividends, payments from long-term care insurance, or other income received from investments; income from property rentals; certain moneys related to real estate contracts; earnings from regular employment or self-employment enterprises.

*“Interdisciplinary resident care committee”* or *“IRCC”* means the member, a social worker, a registered nurse, a dietitian, a medical provider, a recreation specialist and a mental health provider, as required, who are involved in reviewing a member’s assessment data and developing a collaborative care plan for the individual member.

*“IVH”* means the Iowa Veterans Home.

*“Legal representative”* for purposes of applicant or member personal and care decisions means durable power of attorney for health care, guardian, or next-of-kin (spouse, adult children, parents, adult siblings), as provided in Iowa Code chapters 144A, 144B, and 633. For applicant or member financial decisions, “legal representative” means conservator, power of attorney, fiduciary or representative payee.

*“Medical provider”* means a doctor of medicine or osteopathic medicine who is licensed to practice in the state of Iowa. Except as defined by Iowa law, a medical provider also means an advanced registered nurse practitioner or physician assistant who is licensed to practice in the state of Iowa.

*“Member”* means a resident of IVH.

*“Member support”* means the dollar amount which is billed monthly to the member or legal representative for the member’s care.

*“PASRR”* means preadmission screening and resident review.

*“Resource”* means assets and income.

*“Spouse”* means a person who is the legal or common-law wife or husband of a veteran.

*“Surviving spouse”* means a person who is the legal or common-law widow or widower of a veteran.

*“Therapeutic activity”* means an activity that is considered as treatment. A therapist shall determine that a particular activity is beneficial to the well-being of a member and shall include this determination in the member’s plan of care.

*“Veteran”* means a person who served in the active military and who was discharged or released therefrom under honorable conditions. Honorable and general discharges qualify a person as a veteran. The veteran must be eligible for medical care in the DVA system (excluding financial eligibility).

In addition, veteran includes a person who served in the merchant marine or as a civil service crew member between December 7, 1941, and August 15, 1945.

*“Voluntary discharge”* means a member wishes to terminate the member’s association with IVH on a permanent basis. This includes discharge for medical reasons which have been approved by a qualified medical provider. All other discharges are involuntary.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 9689B, IAB 8/24/11, effective 9/28/11; ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.2(35D) Eligibility requirements.** Veterans, spouses of veterans, and Gold Star parents shall be eligible for admission to IVH in accordance with the following:

**10.2(1)** Veterans shall be eligible for admittance to IVH in accordance with the following conditions:

a. The individual is disabled by reason of disease, injury or old age and meets the qualifications for nursing or residential level of care available at IVH.

b. The individual cannot be competitively employed on the day of admission or throughout the individual’s residency.

c. The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

*d.* An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

*e.* The individual must be eligible for care and treatment at a DVA medical center (excluding financial eligibility).

*f.* Individuals admitted to the domiciliary level of care must meet DVA criteria stated in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, M-1, Part 1, Chapter 3.11(h) (1), (2), and (3), and have prior DVA approval if the individual's income level exceeds the established cap.

*g.* Homelessness does not disqualify persons otherwise eligible for admission to IVH.

**10.2(2)** Spouses and surviving spouses shall be admitted in accordance with the following:

*a.* The spouse or surviving spouse shall have been married to a veteran for at least one year preceding date of application or date of death of veteran.

*b.* The spouse of a veteran is eligible for admittance to IVH only if the veteran is admitted.

*c.* The surviving spouse of a deceased veteran is eligible for admittance to IVH if the deceased veteran would also be eligible for admittance to IVH if still living.

*d.* Spouses, surviving spouses and Gold Star parents admitted to IVH shall not exceed more than 25 percent of the total number of members at IVH as provided in U.S.C. Title 38.

**10.2(3)** A Gold Star parent shall be eligible for admittance in accordance with the following conditions:

*a.* The parent's child died while serving on active duty in the armed forces of the United States during a time of military conflict or died as a result of such service.

*b.* The individual is disabled by reason of disease, injury or old age and meets the qualifications for nursing or residential level of care available at IVH.

*c.* The individual cannot be competitively employed on the day of admission or throughout the individual's residency.

*d.* The individual shall have met the residency requirements of the state of Iowa on the date of admission to IVH.

*e.* An individual who has been diagnosed by a qualified health care professional as acutely mentally ill, as an acute alcoholic, as addicted to drugs, as continuously disruptive, or as dangerous to self or others shall not be admitted to or retained at IVH.

*f.* Gold Star parents, spouses and surviving spouses admitted to IVH shall not exceed more than 25 percent of the total number of members at IVH as provided in U.S.C. Title 38.

**10.2(4)** An individual who was not a member of the United States armed forces may be eligible for admittance in accordance with the limitations described in subrule 10.2(1), if the following conditions are met:

*a.* The individual was a member of the armed services of a nation with which the United States was allied during a time of conflict.

*b.* The individual is eligible for admission to a DVA medical center in accordance with U.S.C. Title 38, Chapter 17, Medical Care, Subchapter 2, Section 1710.

[ARC 9689B, IAB 8/24/11, effective 9/28/11; ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.3(35D) Application.** All applicants shall apply for admission to IVH in accordance with the following subrules:

**10.3(1)** All applicants shall make application to IVH through the county commission of veterans affairs in the applicant's county of residence.

**10.3(2)** Application shall be made on the "Veteran Application for Admission to the Iowa Veterans Home," Form 475-0409, the "Spouse's Application for Admission to the Iowa Veterans Home," Form 475-0410, or the "Gold Star Parent Application for Admission to the Iowa Veterans Home," Form 475-2044. Separate applications shall be required for an eligible veteran and the spouse of the veteran when both veteran and spouse are applying for admission. The applications may be obtained at:

*a.* The county commission of veterans affairs' office.

- b.* DVA medical centers located in or serving veterans in the state of Iowa.
- c.* IVH.
- d.* Web site: [www.iowaveteranshome.org](http://www.iowaveteranshome.org).

**10.3(3)** The applicant shall be scheduled for a physical examination by a medical provider, and the results of the examination shall be entered on the application by the examining medical provider. If the applicant has had a complete physical examination within three months of application, a copy of this physical shall suffice. Information must be authenticated by the medical provider's original signature or electronic signature.

**10.3(4)** The following items shall be attached to the application before it is forwarded to IVH:

*a.* An affidavit signed by two members of the county commission of veterans affairs and notarized by the appropriate county official attesting to the best of their knowledge and belief that the applicant is a resident of that county and is an eligible applicant.

*b.* An original or a certified copy of the veteran's honorable discharge from the armed forces of the United States.

*c.* If the applicant is a married or surviving spouse, a copy of the marriage certificate or evidence of a common-law marriage on which a prudent person would rely.

*d.* If the applicant is a Gold Star parent, an original or certified copy of the child's birth certificate and certification of the child's death while serving on active duty in the armed forces of the United States during a time of military conflict.

*e.* An original or a certified copy of applicant's birth certificate.

*f.* A copy of divorce decrees or death certificate for the spouse, if applicable.

*g.* A completed "Personal Functional Assessment," Form 475-0837.

*h.* A completed "Supplement to Application for Admission to the Iowa Veterans Home," Form 475-0843.

*i.* A completed "Financial Affidavit," Form 475-0839.

**10.3(5)** Once the requirements of subrules 10.3(2), 10.3(3) and 10.3(4) have been met, the county commission of veterans affairs shall forward the completed application to the admissions office at IVH. No county shall require additional requirements for the application for admission beyond the requirements stated in these rules. Neither shall a county require additional forms to be filled out or provided by the applicant other than the forms required by these rules.

**10.3(6)** Eligibility determinations are subject to approval by the commandant or designee.  
[ARC 9689B, IAB 8/24/11, effective 9/28/11; ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

#### **801—10.4(35D) Application processing.**

**10.4(1)** Applications received by the admissions office shall be reviewed for completeness. The county commission of veterans affairs shall be required to submit additional information if needed.

**10.4(2)** The admissions committee shall assign the level of care required by the applicant. If a special care unit or treatment is required, this shall be designated.

**10.4(3)** Regardless of whether or not the applicant can be immediately admitted, the applicant shall be notified by the admissions coordinator of the applicant's designated level of care. An applicant who does not wish to be admitted to the designated level of care may submit evidence to show that another level of care may be more appropriate. However, once the admissions committee makes a final determination, the applicant who does not wish to be admitted under the designated level of care may withdraw the application or have the application denied.

**10.4(4)** When space is not immediately available in the level of care assigned or on the appropriate special care unit, the applicant's name shall be placed on the appropriate waiting list for that level of care or special care unit in the order of the date the application was received.

**10.4(5)** When space is available at time of application, or when space becomes available in accordance with the designated waiting list, the applicant shall be scheduled for admittance to IVH as follows:

*a.* An applicant whose physical examination or personal functional assessment, or both if applicable, was completed more than three months prior to the scheduled date of admittance may be

required to obtain another physical examination by a medical provider or complete a current personal functional assessment, or both if applicable. This information shall be reviewed to determine that the applicant is capable of functioning at the previously determined level of care.

*b.* An applicant who requires a different level of care than previously determined shall be admitted to the level of care required if a bed is available or shall have the applicant's name placed on the waiting list for the appropriate level of care in accordance with the date the original application was received.

*c.* If there is a question regarding the level of care for which the applicant qualifies, the applicant shall be scheduled for a preadmission visit with appropriate staff in order to make a determination of appropriate level of care. If there is a question of whether or not the applicant qualifies for nursing or residential level of care programs, the applicant shall be scheduled for a site visit.

*d.* Prior to an applicant's admission to a nursing care unit, the PASRR is completed.  
[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.5(35D) Applicant's responsibilities.** Prior to admission to IVH, the applicant or a person acting on the applicant's behalf shall:

**10.5(1)** Report any change in the applicant's condition that could affect the previously determined level of care.

**10.5(2)** Report changes in mailing address, county or state of residency.

**10.5(3)** Provide additional information, verification or authorization for verification concerning the applicant's circumstances, condition of health, and resources if required.

**10.5(4)** Participate in a preadmission evaluation for level of care if required.

**801—10.6(35D) Admission to IVH.**

**10.6(1)** The applicant shall be notified by the admissions coordinator to appear for admission to IVH.

**10.6(2)** Upon arrival at IVH, the applicant or legal representative shall report to the admissions office for an admission interview.

**10.6(3)** During the interview, the following items will be reviewed with the applicant or legal representative:

*a.* The applicant's resources.

*b.* The member support, billing process and banking services.

*c.* The "Contractual Agreement," Form 475-1833.

**10.6(4)** In order to meet the requirements of subrule 10.6(3), the applicant or legal representative shall complete and sign the following forms as applicable:

*a.* Permission for Treatment, Form 475-0814.

*b.* Financial Affidavit, Form 475-0839.

**10.6(5)** An applicant becomes a member at that point in time when the applicant or legal representative signs and dates the "Contractual Agreement," Form 475-1833, or otherwise authorizes, in writing, acceptance of the terms of admittance specified in the Contractual Agreement.

**10.6(6)** Each member shall be placed on a unit providing the appropriate level of care based on individual needs.

*a.* A member requiring a change in placement based on individual care needs shall be transferred to a unit which provides the appropriate level of care within the scope of its licensure.

*b.* Members shall have priority over new admissions for placement on a unit when a vacant bed becomes available.

**10.6(7)** Care at IVH shall be provided in accordance with Iowa Code chapter 135C; 481—Chapter 57, Residential Care Facilities; 481—Chapter 58, Nursing Facilities; and DVA State Veterans Homes, Veterans Health Administration, M-5, Part 8, Chapter 2, Procedure for Obtaining Recognition of a State Veterans Home and Applicable Standards, 2.07, Standards for Nursing Care, and 2.08, Standards for Domiciliary Care, November 4, 1992.

[ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.7 to 10.10** Reserved.

**801—10.11(35D) Member rights.**

**10.11(1)** Member rights shall be in accordance with those listed in 481—Chapter 57 for members residing in the residential care facility level of care, those listed in 481—Chapter 58 for members residing in the nursing facility level of care, and those noted in Department of Veterans Affairs, State Veterans Homes, Veterans Health Administration, pertaining to residents of state veterans homes.

**10.11(2)** A member has the right to share a room with the member's spouse when both members consent to the arrangement.

**10.11(3)** If a member is incompetent and not restored to legal capacity, or if the medical provider determines that a member is incapable of understanding and exercising these rights, the rights devolve to the member's legal representative.

**10.11(4)** In some cases, a member may be determined to be in need of a fiduciary or agent by the DVA, the Social Security Administration or by a similar funding source. In these cases the commandant or designee may serve as agent subject to Iowa Code section 135C.24. All rights and responsibilities regarding the financial awards shall devolve to the commandant or designee.

[ARC 9689B, IAB 8/24/11, effective 9/28/11; ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.12(35D) Member responsibilities.**

**10.12(1)** The member or legal representative has the responsibility:

*a.* To timely report the existence of or changes in the member's income, spouse's income, assets or marital status, including the conversion of nonliquid assets to liquid assets. The member shall also complete the change report which is enclosed with the monthly member support bill.

*b.* To apply for all benefits due (such as, but not limited to, Title XIX, DVA pension, DVA compensation, Social Security, private pension programs, or any combination), and accept the available billing programs offered at IVH.

*c.* To provide information concerning the physical condition and, to the best of the member's knowledge, accurate and complete information concerning present physical complaints, past illnesses, hospitalizations, medications and other matters related to the member's health.

*d.* To report unexpected changes in the member's condition to the attending medical provider or other clinician.

*e.* To participate in treatment planning, cooperate with the treatment team in carrying out the treatment plan, and to participate in the evaluation of the member's care.

*f.* To be considerate of the rights of other members and staff and control behavior in respect to smoking, noise, and number of visitors.

*g.* To treat other members and staff with dignity and respect.

*h.* To respect the property of other members, staff, and IVH. A member or legal representative may be held financially responsible for any property damaged or destroyed by the member.

*i.* To ask questions about anything that the member may not understand about the member's care or IVH.

*j.* To accept the consequences of the member's actions if the member refuses treatment or fails to follow prescribed care.

*k.* To follow the rules and regulations of IVH regarding member care and conduct as set out in subrule 10.40(1).

*l.* To keep scheduled appointments with staff. If unable to do so, the member is responsible for notifying appropriate staff.

*m.* To maintain personal hygiene, including clothing, and maintain personal living area based on the member's physical and mental capabilities.

*n.* To follow all fire, safety and sanitation regulations as established by IVH and applicable regulatory agencies.

*o.* To provide information and verification of resources. A member or legal representative must fulfill the member support obligation for member health care.

*p.* To carry Medicare Part B insurance if eligible. IVH shall buy the medical insurance portion of Medicare Part B if member is not eligible to receive Medicare Part B under Social Security.

*q.* To delegate to IVH the authorization to enroll the member in a prescription drug plan. The premium shall be deducted from the member's social security.

**10.12(2)** The member or legal representative is responsible for the full payment of the member's support charges within the calendar month that the monthly support bill is received. Failure to pay a monthly support bill within 30 days of issuance may result in discharge from IVH unless prior arrangements have been made.

**10.12(3)** In those instances when a legal representative is responsible for the handling of the member's resources, the legal representative shall keep any records necessary and provide all information or verification required for the computation of member support as set out in rule 801—10.14(35D). Failure of the legal representative to do so may result in the discharge of the member. In some cases, IVH may act to have the commandant or designee established as the member's fiduciary or agent as set out in subrule 10.11(4). In those cases when a guardian or conservator of a member fails to keep necessary records or provide needed information or verification or to meet the member support obligation, IVH may notify the court of problems and request to establish another individual as guardian or conservator. The conservator of a member shall submit a copy of the annual conservatorship report to IVH.

**10.12(4)** When a member temporarily needs a level of care that is not offered by IVH, the member shall be referred by IVH medical staff to a DVA medical center or to another medical facility. When a member goes to a DVA medical center, that member is responsible for the payment of any DVA charges except those charges exempted by the commandant.

*a.* If a member who is treated at a DVA medical center has coinsurance to supplement Medicare, this coinsurance shall be used for the DVA medical center charges. IVH shall be responsible for all DVA medical center charges if the member does not carry coinsurance supplement.

*b.* If a member chooses a medical facility other than a DVA medical center or other medical facility as referred by IVH medical staff, the member is responsible for costs resulting from care at the medical facility chosen.

[ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.13** Reserved.

**801—10.14(35D) Computation of member support.** As a condition of admittance to and residency in IVH, each member is required to contribute toward the cost of that member's care based on that member's resources and ability to pay.

**10.14(1)** A monthly member support bill shall be sent to the member or legal representative charging the member for care in the previous month with any necessary adjustment for prior months. A member may be required to pay member support charges from the member's liquid assets, long-term care insurance benefits, or from the member's income. The monthly member support charge shall be the billable days, as set out in subrule 10.14(3), multiplied by the appropriate per diem from rule 801—10.15(35D). This amount shall be reduced by any offsets as set out in subrules 10.15(2) and 10.15(3). The member or legal representative shall pay an amount not to exceed the amount calculated based on the resources available for the cost of care as set out in this chapter.

**10.14(2)** Title XIX residents. If a member is certified as eligible and participating in the Title XIX program, the amount of payment shall be determined by the department of human services income maintenance worker.

**10.14(3)** Billable days (non-Title XIX). Billable days for members not participating in the Title XIX program shall be counted as follows:

*a.* All days in the month for which the member received care (in-house).

*b.* All leave days in excess of the 12 free days up through the fifty-ninth leave day. Any leave days in excess of 59 days shall be considered billable, but the member must pay the full member support, not the amount determined by resources.

c. The first ten days of each hospitalization. On the eleventh day the member's bed shall be held without charge until the termination of hospital stay and member returns to IVH. A hospital stay may occur more than once in a calendar year.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

**801—10.15(35D) Per diems.**

**10.15(1)** For members not participating in the Title XIX program, the per diem by which the billable days shall be multiplied shall be established as follows:

a. *Nursing level of care.*

(1) The charge for care is the per diem submitted by IVH to department of human services for the Title XIX certified units as calculated in January and July of each year for the preceding six months.

(2) The charge for care shall be adjusted, if necessary, semiannually on March 1 and September 1 of each year.

(3) Members or financial legal representatives shall be sent a notice one month in advance of the rate change.

b. *Domiciliary level of care.*

(1) The total cost of care per member shall be determined in January and July of each year for the preceding six months and calculated in a manner similar to the nursing level of care. This cost shall be the charge for care.

(2) The charge for care shall be adjusted, if necessary, semiannually on March 1 and September 1 of each year.

(3) Members or financial legal representatives shall be sent a notice one month in advance of the rate change.

**10.15(2)** Veteran members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance for whom IVH receives a per diem from the U.S. DVA (under Title 38). IVH shall consider this per diem as a third-party reimbursement to the charge for care and shall be an offset to the member support bill. The offset of the per diem received (billed to DVA) shall be shown as an offset for the month billed. The provisions of 38 U.S.C. 1745(a), which were established by Section 211 of the Veterans Benefits, Health Care, and Information Technology Act of 2006 (Public Law 109-461), set forth a mechanism for paying a higher per diem rate for certain veterans who have service-connected disabilities and are receiving nursing home care in state homes.

**10.15(3)** For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance. The daily per diem charge shall be reduced by an amount equal to the "usual" Medicare premium calculated as a per diem. This offset shall be available only to members eligible for Medicare insurance.

**10.15(4)** For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance. The member support charge shall be reduced in accordance with subrules 10.15(2) and 10.15(3), if applicable. The member shall then contribute all remaining available resources up to the charge for care.

Members receiving DVA pension and aid and attendance shall be considered as having used the amount equal to aid and attendance first in payment for their care at IVH.

**10.15(5)** Payment of support is due on the tenth of the month in which the monthly support bill is received, or ten business days after the member's last income deposit for that month.

a. If payment is not received by IVH within 30 days following the due date, a notice of discharge may be issued.

b. If there are extenuating circumstances, the member or legal representative should meet with the commandant or designee to work out a schedule of payments.

[ARC 8014B, IAB 7/29/09, effective 7/10/09]

**801—10.16(35D) Assets.** The following rules specify the treatment of assets, as defined in rule 801—10.1(35D), in the payment of member support as described in rule 801—10.14(35D). Only liquid assets shall be considered in the payment of member support.

**10.16(1)** For members living on Title XIX certified units who have applied for and are eligible to receive Title XIX medical assistance, rule 441—75.5(249A) shall apply. Financial eligibility for Title XIX shall be determined by the department of human services income maintenance worker.

**10.16(2)** For members not living on Title XIX certified units and those living on Title XIX certified units but not eligible for Title XIX medical assistance, the following rules apply:

*a. Assets considered.* The assets considered shall include all assets owned by the member, or if married, both the member and the spouse living in the community, except for the following:

(1) The homestead is exempt as follows: The exempt homestead is defined as the house, used as a home, and may contain one or more contiguous lots or tracts of land, including buildings and appurtenances. Contiguous means that portions of the homestead cannot be separated from the home by intervening property owned by others. However, the homestead is considered contiguous if portions of it are separated from the home only because of roads or other public rights-of-way. Property that is not exempt as part of the homestead shall be treated in accordance with the rules of this chapter.

The homestead, as defined, can retain its exempt status for a period of time not to exceed 36 months, while the member, spouse and dependents are temporarily absent, provided the following conditions are met:

1. There is a specific purpose for the absence.
2. The member, spouse or dependents intend to return to the homestead when the reason for the absence has been accomplished.
3. The member, spouse or dependents can reasonably be expected to return to the home during the 36-month time limitation.
4. If a person is an applicant at the time the homestead becomes vacant due to the absence of the applicant, spouse or dependents, the first month of the 36-month period is the month of admission to IVH.
5. If a person is a member when the homestead becomes vacant due to the absence of the member, spouse or dependents, the first month of the 36-month period is the month following the month in which the homestead is vacated.
6. Any homestead that does not qualify for this exemption or any homestead that is vacant for a period of time exceeding the 36-month limit shall be treated in accordance with subrule 10.16(3).
- (2) Household goods, personal effects and motor vehicles.
- (3) The value of any burial spaces held for the purpose of providing a place for the burial of the member, spouse or any other member of the immediate family.
- (4) Exempt income-producing property includes, but is not limited to, tools, equipment, livestock, inventory and supplies, and grain held in storage.
- (5) Other property essential to the means of self-support of either the member or spouse as to warrant its exclusion under the Supplemental Security Income program.
- (6) Assets of a blind or disabled person who has a plan for achieving self-support as determined by the division of vocational rehabilitation or the department of human services.
- (7) Assets of Native Americans belonging to certain tribes arising from judgment fund and payments from certain land and subsurface mineral rights. This does not include per capita payments from casino proceeds.
- (8) Any amounts arising from Public Law 101-239 which provides assistance to veterans under the Agent Orange product liability litigation.
- (9) Assistance under the Disaster Relief Act and Emergency Assistance Act or other assistance provided pursuant to federal statute as a result of a presidential disaster declaration and interest earned on these funds for the nine-month period beginning on the date these funds are received or for a longer period where good cause is shown.
- (10) An amount that is irrevocable and separately identifiable, having a principal amount not in excess of a predetermined amount set by the department of human services, without an itemized billing, for the member or spouse to meet the burial and related expenses of that person.
- (11) Federal assistance paid for housing occupied by the spouse living in the community.

(12) Assistance from a fund established by a state to aid victims of crime for nine months from receipt when the client demonstrates that the amount was paid as compensation for expenses incurred or losses suffered as a result of a crime.

(13) Relocation assistance provided by a state or local government to a member or spouse comparable to assistance provided under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 which is subject to the treatment required by Section 216 of the Act.

(14) Any other asset excluded by statute.

*b. Assets of a single member.* When liquid assets not exempted in paragraph “a” above are equal to or exceed \$2,000, those liquid assets shall be considered an available resource for the payment of member support. These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.

*c. Assets of a married member with spouse in a care facility.* If a member’s spouse is residing in a nursing facility, the member shall be treated as a single member for asset determination purposes. If the member and the spouse become members of IVH on the same day, all resources of both members shall be added together and split one-half to each member for asset determination purposes. If the spouse is residing in a residential care facility, the rules pertaining to a spouse living in the community apply.

*d. Assets of a married member with spouse living in the community.* When liquid assets not exempted in paragraph “a” above are equal to or exceed \$2,000, those liquid assets shall be considered an available resource for the payment of member support. These assets shall be considered available for payment of member support until such time that the remaining liquid assets total less than \$500, but leaving at least \$140.

The assets attributed to the member shall be determined from the documented assets of both the member and spouse living in the community as of the first day of admission to IVH. All resources of both the member and the spouse shall be added together. If the total resources are less than \$24,000 (the amount set by 441 IAC 75.5(3) “d” and “f,” Public Law 100-365 and Public Law 100-485), then that amount shall be protected for the spouse living in the community. If applicable, the next \$24,000 shall be awarded to the member. Any resources over \$48,000 shall be split one-half to the member and one-half to the spouse up to a predetermined amount set by the department of human services. All resources over the predetermined amount shall be awarded to the member unless it is determined that the member would never be eligible for Medicaid benefits; in this circumstance, assets will be split one-half to the member and one-half to the spouse. Other resources attributed to the spouse living in the community shall be determined by the department of human services through the attribution process.

(1) If the member has transferred assets to the spouse living in the community under a court order for the support of the spouse, the amount transferred shall be the amount attributed to the spouse to the extent it exceeds the specified limits above.

(2) After the month in which the member is admitted, no attributed resources of the spouse living in the community shall be deemed available to the member during the continuous period in which the member is at IVH. Resources which are owned wholly or in part by the member and which are not transferred to the spouse living in the community shall be counted in determining member support. The assets of the member shall not count for member support to the extent that the member intends to transfer and does transfer the assets to the spouse living in the community within 90 days.

(3) Report of results. The department of human services shall provide the member and spouse and legal representative, if applicable, a report of the results of the attribution. The report shall state that either has a right to appeal the attribution in accordance with rule 801—10.45(35D).

*e. Exception based on estrangement.* When it is established by a disinterested third-party source and confirmed by the commandant or designee that the member is estranged from the spouse living in the community, member support shall be determined on the basis of resources of a single member.

**10.16(3)** When a member owns an available, nonliquid, nonexempt asset, the value of which would affect the computation of member support as described in rule 801—10.14(35D), the asset shall be liquidated. The value of that asset shall be considered in the computation of member support. The following paragraphs are to be considered when liquidating assets:

*a.* Net market value, or equity value, is the gross price for which property or an item can be sold on the open market less any legal debts, claims or liens against the property or item. IVH shall consider the condition and location of an item or property and local market conditions in determining the gross sales price of the item or property. In order for a loan or claim to be considered a lien or encumbrance against an asset, the loan or claim must be made under circumstances that result in the creditors having a recorded legal right to satisfy the debt.

*b.* An asset must be available in order for it to be treated in accordance with the rules of this chapter. An asset is considered available when:

(1) The member owns the property in part or in full and has control over it; that is, it can be occupied, rented, leased, sold or otherwise used and disposed of at the member's discretion; and

(2) The member has a legal interest in a liquidated sum and has the legal ability to make the sum available for member support.

*c.* A member must take all appropriate action to gain title and control of any asset of which the value would affect the computation of member support.

*d.* The value of the asset may be adjusted if the member or legal representative:

(1) Advertises the asset for sale, through appropriate methods, on a continual basis.

(2) Lists the asset with a real estate broker or other agent appropriate to the asset.

(3) Asks a reasonable price which is consistent with the asking price of similar items of property in the community.

(4) Does not refuse a reasonable offer.

(5) Does not sell the asset for an unreasonably low price.

*e.* Cash proceeds from the sale of an asset, conversion of an asset to cash, or receipt of any cash asset as defined in rule 801—10.1(35D) shall be used in the computation of member support beginning with the calendar month of receipt.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 9689B, IAB 8/24/11, effective 9/28/11]

### **801—10.17(35D) Divestment of assets.**

**10.17(1)** “Intentional divestment of assets” means:

*a.* To knowingly sell, give or transfer by member or legal representative for less than fair market value, any asset, the value of which would affect member support; or

*b.* To knowingly and voluntarily place an asset, the value of which would affect member support, under a trust or other legal instrument that ends or limits the availability of that asset.

**10.17(2)** Transfers of resources shall be presumed to be divestiture unless the individual furnishes convincing evidence to establish that the transaction was exclusively for some other purpose. In addition to giving away or selling assets for less than fair market value, examples of transferring resources include, but are not limited to, establishing a trust, contributing to a charity or other organization, removing a name from a joint bank account, or decreasing the extent of ownership interest in a resource or any other transfer as defined in the Supplemental Security Income program.

*a.* Convincing evidence to establish that the transaction was not a divestiture may include documents, letters, and contemporaneous writings, as well as other circumstantial evidence.

*b.* In rebutting the presumption that the transfer was a divestiture, the burden of proof is on the individual to establish:

(1) The fair market value of the compensation;

(2) That the compensation was provided pursuant to an agreement, contract, or expectation in exchange for the resource; and

(3) That the agreement, contract, or expectation was established at the time of transfer.

**10.17(3)** An applicant or legal representative shall not knowingly and intentionally divest an asset, as set out in subrule 10.17(1), within the period established by Title XIX statute prior to admission, with the intention of reducing the applicant's member support or of obtaining admission to IVH.

When it is determined by the commandant or designee that an applicant did intentionally divest an asset, upon admission that applicant shall be charged member support as if divestment did not occur.

**10.17(4)** A member or legal representative shall not knowingly and intentionally divest an asset, as described in subrule 10.17(1), while a member with the intention of reducing the member support.

When it is discovered that a member or legal representative improperly divested an asset(s), that member shall be charged member support as if divestment did not occur.

**801—10.18(35D) Commencement of civil action.** The commandant or designee may file a civil action for money judgment against a member or discharged member or the member's legal representative for support charges when the member or discharged member fails to pay member support in accordance with 801—Chapter 10.

**801—10.19(35D) Income.** This rule describes the treatment of income, as defined at rule 801—10.1(35D), in the computation of member support as described at rule 801—10.14(35D).

**10.19(1)** For members living on Title XIX certified units who are eligible for Title XIX medical assistance, rule 441—75.5(249A) shall apply. For those members participating in the Title XIX medical assistance program, the difference between the \$140 personal needs allowance and the Title XIX personal needs allowance shall be returned to the member out of individual member participation.

**10.19(2)** For members living on units which are not Title XIX certified and members living on Title XIX certified units who are not eligible for Title XIX, the following shall apply:

- a. The following types of income are exempt in the computation of member support:
  - (1) The earned income of the spouse or dependents.
  - (2) Unearned income restricted to the needs of the spouse or dependents (Social Security, DVA, etc.).
  - (3) Any other income that can be specifically identified as accruing to the spouse or dependents.
  - (4) Nonrecurring gifts, contributions or winnings, not to exceed \$60 in a calendar quarter.
  - (5) Interest income of less than \$20 per month from any one source.
  - (6) State bonus for military services.
  - (7) Any earnings received by a member for that member's participation in money-raising activities administered by veterans organizations or auxiliaries.
  - (8) Any money received by a member from the sale of items resulting from a therapeutic activity.
  - (9) The first \$150 received by a member in a month for participation in the incentive therapy or other programs as described in rule 801—10.30(35D), for members in the domiciliary level of care. For members in the nursing level of care, the first \$75 shall be exempted.
  - (10) Personal loans.
  - (11) In-kind contributions to the member.
  - (12) Title XIX payments.
  - (13) Yearly DVA compensation clothing allowance for those who qualify.
  - (14) Other income as specifically exempted by statute.
  - (15) Any income similar in its origin to the assets excluded in subparagraphs 10.16(2) "a"(6) and (7).
  - (16) Income from employment as outlined in the IVH discharge planning policy (IVH policy #265).
- b. Personal needs allowance. All members shall have an amount exempted from their monthly income intended to cover the purchase of clothing and incidentals.
  - (1) All income up to the first \$140 shall be kept as a personal needs allowance.
  - (2) The personal needs allowance shall be subtracted from the member's income prior to determination of moneys to which the spouse may be entitled.
- c. Any type of income not specifically exempted shall be considered for the payment of member support as provided in rule 801—10.14(35D).
- d. Determining income from property.
  - (1) Nontrust property. Where there is nontrust property, income paid in the name of one person shall be available only to that person unless the document providing income specifies differently. If payment of income is in the name of two persons, one-half is attributed to each. If payment is in the name of several persons, the income shall be considered in proportion to their ownership interest. If the

member or spouse can establish different ownership by a preponderance of evidence, the income shall be divided in proportion to the ownership.

(2) Trust property. Where there is trust property, the payment of income shall be considered available as provided in the trust. In the absence of specific provisions in the trust, the income shall be considered as stated above for nontrust property.

*e.* The amount of income to consider in the computation of member support shall be as follows:

(1) Regular monthly pensions and entitlements. The amount of income to be considered is the amount of the monthly entitlement or pension received.

(2) Investments or nonrecurring lump-sum payments. Net unearned income from investments or nonrecurring lump-sum payments shall be determined by deducting income-producing costs from the gross unearned income. Income-producing costs include, but are not limited to, brokerage fees, property manager's salary, maintenance costs and attorney fees.

(3) Property sold on contract. The amount of income to consider shall be the amount received minus any payments for mortgage, taxes, insurance or assessments still owed on the property.

(4) Earned income from a rental, sole or partnership enterprise. The amount of income to consider shall be the net profit figure as determined for the Internal Revenue Service on the member's income tax return.

EXCEPTION: The deductions of the previous year's state and federal taxes and depreciation on the income tax return are not allowable deductions for the purpose of the computation of member support. If a tax return is not available, the member or legal representative shall provide all information and verification needed in order to correctly compute member support.

(5) Partnership income. The member's share of the net profit shall be determined in the same manner as the partnership percentage as determined for Internal Revenue Service's purposes.

**10.19(3)** Member income diversion to dependent spouse not living at IVH. A portion of the member's income shall be diverted to the spouse according to the following:

*a.* Spouse living in the community. One-half the income in exclusion of an amount equal to aid and attendance and after reduction of personal needs allowance.

*b.* Spouse in another nursing home not on Title XIX. The same amount as a spouse living in the community in accordance with paragraph 10.19(3) "a."

*c.* Spouse in nursing home on Title XIX. Member shall be treated as single. If member is in receipt of DVA pension, the amount of income provided Title XIX spouse would be the DVA pension dependency amount.

*d.* Spouses living in a residential care facility. Spouses shall be treated under the same rules as a spouse living in the community in accordance with paragraph 10.19(3) "a."

*e.* All current court order proceedings and guardian/conservatorship appointments regarding financial obligations, except child support or alimony, shall be honored.

**10.19(4)** Income disbursements.

*a.* All monthly diversions to spouse or valid court orders shall be mailed as designated or on a monthly basis.

*b.* All checks shall be mailed no later than the eighth day of any given month to proper recipient or, at IVH's option, five business days after the member's last income deposit for that month.

*c.* Monthly income disbursements to a community spouse may be delayed or canceled if there is an overdue amount owed for support payments.

[ARC 7890B, IAB 7/1/09, effective 7/1/09; ARC 9689B, IAB 8/24/11, effective 9/28/11; ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

### **801—10.20(35D) Other income.**

**10.20(1)** When a member receives regular monthly payments of unearned income, it shall be included in the resources available for the payment of member support.

**10.20(2)** When a member receives periodic recurring income which is received less frequently than monthly, this countable income, after the deduction of any allowable income-producing expenses, shall be considered in the month received.

**10.20(3)** When a member receives a nonrecurring retroactive payment from a specific entitlement source for a prior period of time, it shall be considered as income in the month received. The aid and attendance amount of the DVA pension shall be computed as a manual adjustment (available to member due to IVH nursing care).

**10.20(4)** Income from a particular source is considered terminated as of the date the member receives the last income payment from that source or the date that a sole or partnership enterprise ends, whichever is later.

**10.20(5)** When income from a particular source decreases in a calendar month, the decrease in income shall be considered in the computation of that month's member support. Income from a particular source is considered to be decreased as of the date the member receives the first income payment in the decreased amount.

**10.20(6)** When income from a particular source increases in a month, the increase in income shall be considered in the computation of that month's member support. Income from a particular source is considered to be increased as of the date the member receives the first income payment in the increased amount.

**10.20(7)** Recurring lump-sum payments shall be treated as income in the month received.

**10.20(8)** Nonrecurring lump-sum payments earned prior to admission, regardless of when received, shall not be counted as income but may be considered as an available liquid asset.

**10.20(9)** Any income as defined in rule 801—10.20(35D) that exceeds the member support billing for that month shall thereafter be considered a liquid asset available under rule 801—10.16(35D).

**10.20(10)** Employment is only allowed as identified in the IVH discharge planning policy (IVH policy #265).

[ARC 9689B, IAB 8/24/11, effective 9/28/11; ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.21(35D) Fraud.** Applicants, members or legal representatives who knowingly conceal the existence of resources may be subject to the billing of full member support, discharge for failure to pay for member's care or denial of admission. Further, members who knowingly conceal liquid assets or income which would have affected member support shall be charged for the amount not previously billed due to the fraudulent act. If upon admission it is determined that medical or other pertinent information provided during the application process was fraudulent, notice of discharge may be issued. In addition, any applicant, member or legal representative suspected of fraud may be referred to the department of inspections and appeals, division of investigations, for possible criminal or civil action. The attorney general's office shall conduct the investigation.

**801—10.22(35D) Overcharges.** When it is discovered that a member was charged for support in excess of the amount actually due, the member shall receive a refund or credit to the member's account. If the member is discharged or deceased, a refund shall be conveyed to the member or legal representative.

**801—10.23(35D) Penalty.**

**10.23(1)** All members who have resources in excess of the full support rate shall be charged the full member support rate. If any member does not apply for all benefits due (such as, but not limited to, Title XIX, DVA pension, DVA compensation, Social Security, or any combination), fails to report resources accurately in order to not pay full support, or refuses to accept the available billing programs offered at IVH, that member shall be charged up to full member support as if these responsibilities had been followed. Failure to comply with these rules may result in discharge from IVH.

**10.23(2)** If a member is required to pay full member support under these rules, the monthly charge shall be calculated as the per diem in paragraph 10.15(1) "a" or 10.15(1) "b" times the billable days less any offsets. The only exception to this monthly charge will be the additional amount of aid and attendance in the DVA retroactive payment for the time period of nursing care at IVH. This amount, in total, shall be due regardless of resources available. If a member is required to pay member support based on additional resources, these figures shall be obtained from the appropriate agencies.

**801—10.24 to 10.29** Reserved.

**801—10.30(35D) Incentive therapy and nonprofit rehabilitative programs.** Members may be offered the opportunity to perform services for IVH through the incentive therapy program as part of their plan of care. Participating members shall be compensated for their involvement in the incentive therapy program according to applicable guidelines established by the U.S. Department of Labor, Wage and Hour Division, and the commandant or designee. If members enrolled in nonprofit rehabilitative programs receive an income from such programs, that income shall be treated in the same manner as the incentive therapy program or IVH policy.

This rule is intended to implement Iowa Code section 35D.7(3).  
[ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.31 to 10.34** Reserved.

**801—10.35(35D) Handling of pension money and other funds.** Each member who has not been assigned a guardian, conservator, fiduciary or representative payee or has not designated a power of attorney while competent or as otherwise specified, may manage that member's own personal financial affairs. Upon the receipt of written authorization from the member or legal representative to the commandant or designee, the commandant or designee may assist the member in the management of the member's financial affairs.

**10.35(1)** Pension money or other funds deposited with IVH are not assignable except as specified at subrule 10.19(3) or 10.40(2) "b"(1).

**10.35(2)** If authorized by a member, the commandant or designee may act on behalf of that member in receiving, disbursing, and accounting for personal funds of the member received from any source subject to the requirements of Iowa Code section 135C.24. The authorization may be given or withdrawn in writing by the member or legal representative at any time. The authorization shall not be a condition of admission to or retention at IVH.

**10.35(3)** IVH shall maintain a commercial account with a federally insured bank for the personal deposits of its members. The account shall be known as the IVH membership account. The commandant or designee shall record each member's personal deposits individually and shall deposit the funds in the membership account where the members' deposits shall be held in the aggregate. Interest shall accrue on those accounts that are on deposit the last working Friday of each month. IVH may withdraw moneys from the account maintained pursuant to this subrule to establish certificates of deposit for the benefit of all members.

**10.35(4)** If authorized in writing by the member or legal representative, the commandant or designee may make withdrawals against that member's personal account to pay regular bills and other expenses incurred by the member. The authorization may be given or withdrawn in writing by the member or legal representative at any time. The authorization shall not be a condition of admission to or retention at IVH.

**10.35(5)** The commandant or designee shall maintain a written record of each member's funds which are received by or deposited with IVH. The member or legal representative shall receive a monthly statement showing deposits, withdrawals, disbursements, interest and current balances. If the commandant or designee is made representative payee for the member's financial transactions, this statement shall be maintained in the member's administrative file.

**10.35(6)** Except as otherwise specified, funds deposited with IVH shall be released to the member or legal representative upon request with a statement showing deposits, disbursements, interest, and the final balance at the time the funds are withdrawn. When the member continues to maintain residency at IVH, the funds shall be released and statement provided within three working days following the request. When a member is being discharged from IVH, the funds shall be released and a statement provided no later than the tenth day of the month following the month of discharge.

**10.35(7)** Upon the death of a member with personal funds deposited with IVH, IVH will first take payment for the final support bill. If funds remain, IVH will convey promptly the member's funds to any outstanding funeral home bill, the individual paying last funeral expenses, or whoever is administering the member's estate. If probate papers are produced, a final accounting of those funds must also be

provided to the individual administering the member's estate. If the value of the member's estate is so small as to make the granting of administration inadvisable, IVH must hold, then deliver all money plus interest within one year to the proper heirs equally or adhere to the member's request in the member's last will and testament.

This rule is intended to implement Iowa Code sections 35D.11(2) and 35D.12(2).  
[ARC 9689B, IAB 8/24/11, effective 9/28/11; ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

### **801—10.36(35D) Leave, bed holds and 96-hour passes.**

#### **10.36(1) *Non-Title XIX members.***

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign "Discharge Against Medical Advice," Form 475-0940.

b. Leaves are required if the member expects to be absent past midnight.

c. All leaves other than free time shall require payment of member support charges as though the member were in residency. Failure to pay regular member support charges shall result in discharge of the member. Leave length may be changed by notification from the member or legal representative to the nursing unit social worker or domiciliary office.

d. Hospital leaves. Leaves spent in approved medical facilities away from IVH shall not be counted against the 59-day leave time limit as set out in paragraph 10.14(3) "b."

Hospital leaves shall be granted and the charges for such leaves shall be as follows: During the first ten days of any hospital stay, the member shall pay the regular and usual assessed charge of the level of care of the bed held. Beginning on the eleventh day through the remainder of the hospitalization, the member shall not be charged. Each monthly member support bill shall reflect any adjustments related to hospitalization. Members discharged while on leave from IVH shall have the account closed before the first of the month following the discharge.

Leaves to other medical facilities for the purpose of treatment shall be treated as hospital leaves.

e. General leaves.

(1) Twelve days of leave time each calendar year shall be free time.

(2) The member shall be charged the usual support charge for leave time over 12 days up to and including 59 days.

(3) The member shall be charged the full member support for the level of care in which the member resides for leave time over 59 days.

(4) Leave time is not cumulative from one calendar year to another calendar year.

(5) Leave time the member has not utilized or cannot utilize shall not be credited toward the member's support.

(6) Support charges for the member on leave who wishes to retain the member's room or bed shall be due and payable as though the member were in residency as set forth in paragraph 10.36(1) "c."

f. When the nursing care member is on leave, the member shall remain on in-house status for the first 12 leave days per calendar year for DVA per diem purposes and IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

g. When a member has used 12 non-hospital leave days, IVH is not financially responsible for any medical charges for the member while on leave.

#### **10.36(2) *Members who are receiving Title XIX benefits.***

a. Members are free to leave IVH grounds unless contraindicated by medical determination. In cases where it is determined to be medically contraindicated and a member chooses to leave, the member or legal representative must sign "Discharge Against Medical Advice," Form 475-0940.

b. A leave as set out in paragraph 10.36(1) "b" is required if a member expects to be absent past midnight.

c. The member's bed shall be held while the member is visiting away from IVH for a period not to exceed 18 days in any calendar year. There is no restriction as to the amount of days taken in any one month or during any one visit, as long as the days taken in the calendar year do not exceed 18. Additional

days shall be allowed if the member's medical provider recommends in the plan of care that additional days would be rehabilitative.

*d.* A member or a legal representative who wishes to exceed the 18 visitation days and retain the member's bed, but does not have medical provider recommendation for an extension, must make arrangements with the financial services division administrator or designee for payment of the rate determined by the department of human services income maintenance worker for all days in excess of the 18 visitation days. If prior arrangements and payment are not made, a member may be discharged in accordance with subrule 10.12(2).

*e.* A bed shall be held for a hospitalized member. The member's client participation shall be paid according to the department of human services' income maintenance worker for all hospitalized days until member returns or is discharged.

*f.* IVH is not financially responsible for any medical charges for the member when visiting away from IVH.

**10.36(3)** *Ninety-six-hour passes for domiciliary members.*

*a.* A pass shall not exceed 96 hours. If a member expects to be gone for more than 96 hours, a leave is required.

*b.* Upon return from a pass, the member must spend 24 hours in residence before another pass is issued.

*c.* When a member is on pass, the member shall remain on in-house status for DVA per diem purposes; IVH shall be financially responsible for medical expenses unless these are assumed by the member or legal representative in relation to choice of medical facility.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 8417B, IAB 12/30/09, effective 2/3/10; ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.37 to 10.39** Reserved.

**801—10.40(35D) Requirements for member conduct.** The commandant or designee shall administer and enforce all requirements for member conduct. Subject to these rules and Iowa Code section 135C.23, the commandant or designee may transfer or discharge any member from IVH when the commandant or designee determines that the health, safety or welfare of the members or staff is in immediate danger, and other reasonable alternatives have been exhausted.

**10.40(1)** In addition to the member responsibilities as set out in rule 801—10.12(35D), each member shall also comply with the following requirements:

*a.* The use of intoxicants or alcoholic beverages on IVH premises is prohibited unless prescribed by a medical provider.

*b.* The bringing of alcoholic beverages or illicit substances on IVH premises is prohibited. Any illicit substances or drug paraphernalia or both found in the member's possession shall be grounds for immediate discharge.

*c.* The use of illegal substances while a member of IVH is prohibited. A urinalysis shall confirm the presence of illegal substances. A member's refusal to submit to a urinalysis in response to a request based on probable cause shall be considered a positive result and is grounds for discharge.

*d.* Firearms or weapons of any nature shall be turned in to the commandant or designee for safekeeping. The commandant or designee shall decide if an instrument is a weapon. Firearms or weapons in the possession of a member which constitute a hazard to self or others shall be removed and stored in a place provided and controlled by the facility.

*e.* Smoking in members' rooms is prohibited. Members who smoke shall do so within designated smoking areas so as not to endanger self or others.

*f.* Continuously disruptive behavior on the part of a member is grounds for transfer or discharge.

*g.* Members shall comply with legal requests and orders of the commandant or designee.

*h.* Members shall not violate state and federal statutes.

*i.* Members shall report to the admissions coordinator or designee any changes in assets/income, and pay support by the tenth of each month.

**10.40(2)** When a member is found in violation of the requirements of conduct established in subrule 10.40(1), the following steps may be taken:

*a.* For a first offense, a member is counseled by an appropriate staff person and options for correcting the behavior are considered. Options may include but are not limited to:

- (1) Funds restriction.
- (2) Substance abuse treatment.
- (3) Mental health services.

*b.* IVH control of the member's personal funds as follows:

(1) The pension money and other incomes and available liquid assets shall be deposited by the commandant or designee in a separate account for and on behalf of the member. The commandant or designee shall, under the procedures established in subrules 10.35(3) and 10.35(4), make withdrawals and disbursements to meet the regular bills and other expenses of the member.

(2) If, after a period of up to six months, the member's behavior is deemed appropriate by the facility, the handling of funds will be reviewed, and funds may be returned to the member.

(3) If the member is discharged from IVH, the balance of the deposit shall be paid to the member or financial legal representative within 30 days of discharge.

*c.* For a second offense, a member is offered the services above and is placed on probation that warns a third offense may lead to discharge.

*d.* For a third offense, discharge from IVH in accordance with subrule 10.40(3).

**10.40(3)** The steps described in subrule 10.40(2) shall generally be followed in that order. However, if the member's violation is of an extreme nature and the member is not amenable to counseling, the commandant or designee shall choose to discharge the member after the expiration of a 30-day written notification period which begins when the notice is personally delivered. If the IRCC, in conjunction with the medical provider and mental health personnel, deems that the member's behavior poses a threat of imminent danger, the commandant or designee may issue notice of an immediate involuntary discharge. In such an emergency situation, a written notice shall be given prior to or within 48 hours following the discharge.

The member's county commission of veterans affairs and the legal representative shall be informed in writing of the decision to discharge. Written notification shall also be issued to appropriate governmental agencies including the commission, the department of inspections and appeals, and the department on aging's long-term care ombudsman to ensure that the member's health, safety or welfare shall not be in danger upon the member's release.

**10.40(4)** A member who has been previously discharged under the provisions of subrule 10.40(2) or 10.40(3) shall be readmitted to IVH only upon the approval of the commandant or designee. If not approved, the applicant shall receive written notice of the denial. A copy of the denial notice shall be forwarded to the commission and the appropriate county commission of veterans affairs. Any decision to deny readmittance is subject to the review of the commission.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.41(35D) County of settlement upon discharge.** A member does not acquire legal settlement in the county in which IVH is located unless the member is voluntarily or involuntarily discharged from IVH, continuously resides in the county for a period of one year subsequent to the discharge and during that year is not readmitted to IVH and does not receive any services from IVH.

**801—10.42(35D) Disposition of personal property and funds.**

**10.42(1)** A discharged member shall remove all personal property at the time of discharge or within 30 days. Personal property not removed within 30 days after discharge shall become the property of IVH to dispose of as the commandant or designee directs. Personal property may be forwarded at the member's expense to the member's last-known address. When the member is discharged from IVH, the member's funds shall be released to the member or legal representative with a statement provided no later than the tenth day of the month following the month of discharge.

**10.42(2)** Following written notification to the legal representative or first next of kin, a deceased member's personal property remaining at IVH 30 days after written notification shall become the property of IVH to dispose of as the commandant or designee directs. If there is a known legal representative or first next of kin, the property may be shipped to the legal representative or first next of kin at the expense of the estate, legal representative, or first next of kin.

**10.42(3)** Upon death of a member with personal funds deposited at IVH, IVH shall convey the member's funds with a final statement to the legal representative administering the member's estate. When an estate is not opened or in cases where no executor is appointed, IVH shall attempt to locate the deceased member's heirs and deliver the funds and property to the heirs within one year after date of death.

**801—10.43(35D) Rule enforcement—power to suspend and discharge members.** The commandant or designee shall administer and enforce all rules adopted by the commission, including rules of discipline and, subject to these rules, may immediately suspend the membership of and discharge any member from IVH for infraction of the rules when the commandant or designee determines that the health, safety or welfare of the members of IVH is in immediate danger and other reasonable alternatives have been exhausted. The suspension and discharge are temporary pending action by the commission. Judicial review of the action of the commission may be sought in accordance with Iowa Code chapter 17A.

**10.43(1)** The commandant or designee shall, with the input and recommendation of the IRCC, involuntarily discharge a member for any of the following reasons:

*a.* The member has been diagnosed with a substance use disorder but continues to abuse alcohol or an illegal drug in violation of the member's conditional or provisional agreement entered into at the time of admission, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and has been given the opportunity to correct the behavior through either of the following options:

1. Being given the opportunity to receive the appropriate level of treatment in accordance with best practices for standards of care.

2. By having been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1)"*a*," if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the IRCC and the commandant or designee may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged under paragraph 10.43(1)"*a*" if the member's actions or behavior jeopardizes the life or safety of other members or staff.

*b.* The member refuses to utilize the resources available to address issues identified in the member's collaborative care plan, and all of the following conditions are met:

(1) The member has been provided sufficient notice of any changes in the member's collaborative care plan.

(2) The member has been notified of the member's commission of three offenses and the member has been placed on probation by IVH for a second offense.

Notwithstanding the member meeting the criteria for discharge under paragraph 10.43(1)"*b*," if the member has demonstrated progress toward the goals established in the member's collaborative care plan, the IRCC and the commandant or designee may exercise discretion regarding the discharge. Notwithstanding any provision to the contrary, the member may be immediately discharged if the member's actions or behavior jeopardizes the life or safety of other members or staff.

*c.* The member no longer requires a residential or nursing level of care, as determined by the IRCC.

*d.* The member requires a level of licensed care not provided at IVH.

**10.43(2)** Provisions for member following discharge from IVH.

*a.* If a member is discharged under this rule, the discharge plan shall include placement in a suitable living situation which may include but is not limited to a transitional living program approved by the commission or a living program provided by DVA.

*b.* If a member is involuntarily discharged under this rule, the commission shall, to the greatest extent possible, ensure against the member being homeless and ensure that the domicile to which the member is discharged is fit and habitable and offers a safe and clean environment which is free from health hazards and provides appropriate heating, ventilation and protection from the elements.

**10.43(3)** Discharge notice, including right to appeal. An involuntary discharge of a member under this rule shall be preceded by a written notice to the member. The notice shall state that, unless the discharge is an immediate discharge due to the member's actions or behavior which jeopardizes the life or safety of other members or staff, the effective date of the discharge is 30 calendar days from the date of receipt of the discharge notice, and that the member has the right to appeal the discharge. In addition, the discharge notice shall contain:

*a.* The stated reason for the proposed discharge or transfer.

*b.* The actual effective date of the proposed discharge or transfer.

*c.* A statement in not less than 12-point type which reads: "You have a right to appeal the facility's decision to transfer or discharge you. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as "Commission") within five (5) calendar days after receiving this notice. You have a right to be represented at the hearing by an attorney or any other individual of your choice. If you request a hearing, it will be held, and a decision rendered within ten (10) calendar days of the filing of the appeal. Provision may be made for extension of the ten (10) day requirement upon request to the Commission designee. If you lose the hearing, you will not be discharged or transferred before the expiration of 30 days following receipt of the original notice of the discharge or transfer, or no sooner than five (5) days following final decision of such hearing. To request a hearing or receive further information, call the Commission or write to the Commission to the attention of: Chairperson, Commission of Veterans Affairs."

**10.43(4)** Emergency discharge. In the case of an emergency transfer or discharge relating to a threat of imminent harm, the resident must still be given a written notice prior to or within 48 hours following transfer or discharge. A copy of this notice must be placed in the resident's file, and it must contain all the information required by 10.43(3). In addition, the notice must contain a statement in not less than 12-point type (elite), which reads: "You have a right to appeal the facility's decision to transfer or discharge you on an emergency basis. If you think you should not have to leave this facility, you may request a hearing in writing or verbally with the Commission of Veterans Affairs (hereinafter referred to as 'Commission') within 5 calendar days after receiving this notice. If you request a hearing, it will be held and a decision rendered within 10 calendar days of the filing of the appeal no later than 14 days after receipt of your request by the Commission. You may be transferred or discharged before the hearing is held or before a final decision is rendered. If you win the hearing, you have the right to be transferred back into the facility. To request a hearing or receive further information, you may call the Commission or write to the Commission to the attention of: Chairperson, Commission of Veterans Affairs."

**10.43(5)** Appeal by member.

*a.* If a member appeals the discharge under this rule, the member shall be provided with the information relating to the appeals process as specified in rule 801—10.47(35D).

*b.* If a member appeals the discharge under this rule, the involuntary discharge appeal process in rule 801—10.47(35D) shall apply.

**10.43(6)** By the fourth Monday of each session of the general assembly, the commandant shall submit a report annually to the senate veterans affairs committee and the house veterans affairs committee specifying the number, circumstances and placement of each member involuntarily discharged from IVH under this rule during the previous calendar year.

**10.43(7)** Any involuntary discharge by the commandant or designee under this rule shall comply with the rules adopted by the commission and by the department of inspections and appeals pursuant to 2009 Iowa Acts, Senate File 407, section 2.

[**ARC 8014B**, IAB 7/29/09, effective 7/10/09; **ARC 8417B**, IAB 12/30/09, effective 2/3/10; **ARC 1157C**, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.44** Reserved.

#### APPEAL PROCESS

**801—10.45(35A,35D) Applicant appeal process.** An applicant who believes that any of the provisions of this chapter have not been upheld, or have been upheld unfairly, may file an appeal directly with the commandant or designee containing a statement of the grievance and requested action. The commandant or designee shall investigate and may hold an informal hearing with the applicant and other involved individuals. Subrules 10.46(4) to 10.46(8) apply subsequently. The commandant or designee shall notify the applicant of the decision in writing within ten working days of receipt of the grievance.

[**ARC 1157C**, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.46(35A,35D) Member appeal process.** A member who believes that any of the provisions of 801—Chapter 10 have not been upheld or have been upheld unfairly may file an appeal.

**10.46(1)** A member shall discuss the problem and action desired with the assigned social worker within five working days of the incident which caused the problem. The social worker shall investigate the situation and attempt to resolve the problem within five working days of the discussion with the member. If the assigned social worker has allegedly caused the grievance, the member may file the grievance directly with the supervising unit manager.

**10.46(2)** If unable to resolve the problem, or if the member is dissatisfied with the solution, the social worker shall assist the member with filing a formal grievance and shall submit a report of the facts and recommendations to the administrator of nursing within five working days of the discussion with the member. The administrator of nursing shall inform the member of the decision in writing within five working days of receipt of the social worker's report.

**10.46(3)** If the member is not satisfied with the decision of the administrator of nursing, or if no decision is given within the time specified in subrule 10.46(2), the member may appeal to the commandant or designee within ten working days of the decision of the administrator of nursing or, if no decision is given, within ten working days of the time limit specified in subrule 10.46(2). The grievance shall be submitted in writing and contain a statement of the cause of the grievance and requested action. A copy of the decision of the administrator of nursing shall be attached to the grievance statement, if applicable. The commandant or designee shall investigate the grievance and may hold an informal hearing with the member, administrator of nursing, and other involved individuals. The commandant or designee shall notify the member and the administrator of nursing of the decision in writing within ten working days of receipt of the grievance.

**10.46(4)** If the member is not satisfied with the decision of the commandant, or if no decision is given within the time limits specified in subrule 10.46(3), the member may appeal to the commission within ten working days of the commandant's decision. The member and commandant shall be notified in writing within five working days of the commission's receipt of the appeal. The commission shall schedule a hearing with the member, commandant, and other involved individuals to determine the facts and make a final decision.

**10.46(5)** The member may appoint any individual to represent the member in the appeal process, at the member's expense.

**10.46(6)** No reprisals of any kind shall be taken against a member for filing an appeal.

**10.46(7)** The member may obtain judicial review of the commission's final decision in accordance with Iowa Code chapter 17A.

**10.46(8)** The time limits specified in the above subrules may be extended when mutually agreed upon by the persons involved in the appeal process.

[ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

Rules 801—10.45(35A,35D) and 801—10.46(35A,35D) are intended to implement Iowa Code subsection 35A.3(4) and Iowa Code chapter 35D.

**801—10.47(35D) Involuntary discharge appeal.** When a member appeals an involuntary discharge, the following provisions shall apply:

**10.47(1)** The member shall file the appeal with the commission within 5 calendar days of receipt of the discharge notice.

**10.47(2)** The commission shall conduct a contested case proceeding in accordance with the uniform rules on contested case proceedings found in 801—Chapter 8. The rules in 801—Chapter 8 are adopted by reference with the following amendment: The presiding officer must be a member of the commission and cannot be an administrative law judge with the department of inspections and appeals.

**10.47(3)** The commission shall render a decision on the appeal and notify the member of the decision in writing within 10 calendar days of the filing of the appeal.

**10.47(4)** If the member is not satisfied with the decision of the commission, the member may appeal the commission's decision by filing an appeal with the department of inspections and appeals within 5 calendar days of being notified in writing of the commission's decision.

**10.47(5)** The department of inspections and appeals shall render a decision on the appeal of the commission's decision and notify the member of the decision in writing within 15 calendar days of the filing of the appeal with the department.

**10.47(6)** The maximum time period that shall elapse between receipt by the member of the discharge notice and actual discharge shall not exceed 55 days which includes the 30-day discharge notice period and any time during which any appeals to the commission or the department of inspections and appeals are pending.

**10.47(7)** If a member is not satisfied with the decision of the department of inspections and appeals, the member may seek judicial review in accordance with Iowa Code chapter 17A. A member's discharge under rule 801—10.43(35D) shall not be stayed while judicial review is pending.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 8417B, IAB 12/30/09, effective 2/3/10; ARC 8635B, IAB 3/24/10, effective 4/28/10]

**801—10.48 and 10.49** Reserved.

#### GROUND AND FACILITY ADMINISTRATION

**801—10.50(35D) Visitors.** Visitors are welcome to IVH subject to the following conditions:

**10.50(1)** Member visitation hours are from 8 a.m. to 11 p.m. daily. Visiting hours may be extended on an individual basis with the approval of the commandant or designee.

**10.50(2)** Visitors are subject to the policies and procedures as established by IVH rules.

**10.50(3)** Tours of IVH may be arranged by contacting the commandant or designee.

**10.50(4)** Weapons, illegal substances or alcoholic beverages are not permitted on IVH grounds.

**10.50(5)** Any disruptive behavior on the part of a visitor shall result in modification, denial or termination of visiting privileges.

**10.50(6)** Trespass. Visitors shall not enter IVH grounds with the intent to commit a public offense, remain upon the grounds or in IVH buildings without justification after being notified or requested to abstain from entering, or to remove or vacate therefrom by any peace officer, magistrate, or public employee whose duty it is to supervise the use or maintenance of IVH and its grounds.

**10.50(7)** Any visitor violating any of the rules within this chapter may be restricted from IVH for a period of time to be determined by the commandant or designee.

[ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.51(35D) Mail.**

**10.51(1)** Each competent member shall be afforded a choice in the methods of handling the member's business mail and in meeting the member's responsibilities for reporting resources for computation of member support purposes. A member found to be mentally incompetent shall have that member's business mail handled in a manner as to respect that member's dignity and still meet the needs of IVH for complete information regarding resources.

**10.51(2)** Each competent member shall be allowed to handle that member's business mail to the degree of responsibility chosen by the member. A member may:

*a.* Elect to receive all business mail personally and provide the resident finance office with financial documentation, or

*b.* Designate that the member shall receive personal mail items, but business mail received at IVH from entitlement sources or concerning assets shall be routed to the resident finance office.

[ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.52(35D) Interviews and statements.**

**10.52(1)** Releases to the news media shall be the responsibility of the commandant or designee. Authority for dissemination and release of information shall be designated to other persons at the discretion of the commandant or designee.

**10.52(2)** Interviews of members within IVH by the news media or other outside groups are permitted only with prior consent of the member to be interviewed or the member's legal representative. At the request of the person or group who wishes to conduct an interview, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

[ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.53(35D) Donations.** Donations of money, new clothing, books, games, recreational equipment or other gifts shall be made directly to the commandant or designee. The commandant or designee shall evaluate the donation in terms of the nature of the contribution to the facility program. The commandant or designee shall be responsible for accepting the donation and reporting the gift to the commission. All monetary gifts shall be acknowledged in writing to the donor.

[ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.54(35D) Photographing and recording of members and use of cameras.**

**10.54(1)** Photographs and recordings of members within IVH by news media or other outside groups are permitted only with prior consent of the member to be photographed or recorded, or the member's legal representative. At the request of the person or group who wishes to make photographs or recordings, the commandant or designee shall seek to obtain the required consent from the member or the member's legal representative.

**10.54(2)** Every effort shall be made to preserve the inherent dignity of the member and to preclude exploitation or embarrassment of the member or the family of the member.

[ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.55(35D) Use of grounds and facilities.**

**10.55(1)** Persons wishing to use the facilities and grounds for civic purposes, programs for members, meetings, and similar purposes, must contact the commandant or designee at least two weeks in advance of the requested date. The commandant or designee may disapprove a request when the requested facilities are scheduled for use by or for the members, or when the activity would disrupt the normal operation of IVH. Previous arrangements to use the facilities or grounds may be canceled by the commandant or designee in the event of an emergency or when changes in the schedule require the use of the facilities or grounds for the members. Persons who use the facilities or grounds shall be held responsible for leaving the facilities or grounds in satisfactory condition and for any damages caused by or resulting from use.

**10.55(2)** Outside organizations permitted to use facilities or grounds shall observe the same rules as visitors to the facility.

[ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.56(35D) Nonmember use of cottages.** Cottages may be made available to IVH staff or to other members of the public with the commandant's or designee's approval and at the established rate.

**10.56(1)** Expenses incurred as a result of damage or need for exceptional cleaning/sanitizing procedures, or both, may result in additional charges as determined by IVH.

**10.56(2)** Posted occupancy capacities shall not be exceeded and may be grounds for denial of use.

**10.56(3)** Pets are not allowed inside the cottages. Occupants who bring pets must comply with IVH rules regarding pet health and safety. Pets will be housed in a portable pet kennel outside the cottage and kept on a leash while on the IVH grounds. The kennel shall be provided by the pet owner.

[ARC 8014B, IAB 7/29/09, effective 7/10/09; ARC 9689B, IAB 8/24/11, effective 9/28/11; ARC 1157C, IAB 10/30/13, effective 12/4/13; see Delay note at end of chapter]

**801—10.57(35D) Operating motor vehicles on grounds.**

**10.57(1)** The operator of a motor vehicle shall have a valid license for the type of vehicle being driven upon IVH grounds.

**10.57(2)** All persons operating a motor vehicle on IVH grounds shall comply with the applicable state and local laws and IVH policies.

**10.57(3)** No driver of a motor vehicle or motorcycle shall disobey the instructions of any traffic-control device, warning, or sign placed.

**10.57(4)** No person shall drive any vehicle in such a manner as to indicate either a willful or wanton disregard for the safety of person or property. The person operating the motor vehicle or motorcycle shall have same under control and shall reduce the speed to 20 miles per hour on IVH grounds and reduce the speed to a lower, reasonable rate when approaching and passing a person walking in the traveled portion of a street.

**10.57(5)** No person shall stop, park, or leave standing any type vehicle in established fire lanes, emergency vehicle areas, and other essential lanes. No person shall park any type vehicle on roadways.

**10.57(6)** No person shall leave any type vehicle unattended by not locking doors or removing keys.

**10.57(7)** Failure to comply with rules may cause limitation or curtailment of driving privileges on IVH grounds for an indefinite period.

**10.57(8)** Motor vehicles belonging to members may be parked in member-designated parking on IVH grounds.

This chapter is intended to implement Iowa Code subsection 35A.3(4) and chapter 35D.

[Filed 2/19/76, Notice 1/12/76—published 3/8/76, effective 4/12/76]

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[Filed ARC 1157C (Notice ARC 0924C, IAB 8/7/13), IAB 10/30/13, effective 12/4/13]<sup>1</sup>

<sup>1</sup> December 4, 2013, effective date of ARC 1157C [amendments to ch 10] delayed 70 days by the Administrative Rules Review Committee at its meeting held November 8, 2013.



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 and scope.** These rules institute administrative and operational procedures for implementation of Iowa Code chapter 89. An object shall not be considered “under pressure” and shall not be within the scope of Iowa Code chapter 89 when there is clear evidence that the manufacturer did not intend it to be operated at more than 3 psi and the object is operating at 3 psi or less.

[ARC 0416C, IAB 10/31/12, effective 12/5/12]

**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.

“*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.

“*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 standard for construction or installation in effect at the time of installation.

“*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.

“*Institution of health and custodial care*” means any of the following:

1. A health care facility as defined by Iowa Code section 135C.1;
2. An assisted living program as defined by Iowa Code section 231C.2;
3. A boarding home as defined by Iowa Code section 1350.1;
4. A hospice that offers inpatient services in an institutional setting;
5. Any institution or facility in which persons are housed to receive medical, health, or other care or treatment; or

6. Any other institution or facility in which persons are housed to receive assistance with meeting personal needs or activities of daily living.

A facility or office that provides care and services only on an outpatient basis shall not be an “institution of health and custodial care.”

“*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.

“*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 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; ARC 9790B, IAB 10/5/11, effective 11/9/11; ARC 0319C, IAB 9/5/12, effective 10/10/12; ARC 0739C, IAB 5/15/13, effective 6/19/13]

**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 (2011), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

**90.6(2) Schedule.**

*a.* All required inspections must be performed according to the schedule set forth in Iowa Code section 89.3.

*b.* Except for inspections of unfired steam pressure vessels operating in excess of 15 pounds per square inch and low pressure steam boilers, each certificate inspection must be performed within a 60-day period prior to the expiration date of the operating certificate. Modification of this 60-day period will be permitted only upon written application showing just cause for waiver of the 60-day period.

*c.* 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 fire.
- g.* A welded repair not documented as required.

*h.* Evidence of an accident, incident or malfunction that could affect or may have resulted from a problem with the object'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.

**90.6(8)** *Internal inspections on a four-year cycle.* The owner shall demonstrate compliance with the requirements set forth in 2012 Iowa Acts, Senate File 2280, by annually submitting to the labor commissioner a notarized affidavit. The affidavit shall be in a format approved by the labor commissioner and shall be signed by the owner or an officer of the company.

[ARC 8283B, IAB 11/18/09, effective 1/1/10; ARC 0319C, IAB 9/5/12, effective 10/10/12; ARC 1189C, IAB 11/27/13, effective 1/1/14]

#### **875—90.7(89) Fees.**

**90.7(1)** *Special inspector commission fee.* A \$40 fee shall be paid annually to the commissioner to obtain a special inspector commission pursuant to Iowa Code section 89.7.

**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; ARC 0319C, IAB 9/5/12, effective 10/10/12]

**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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<sup>◇</sup> Two or more ARCs

<sup>1</sup> Date corrected IAC Supp. 3/26/08