

State of Iowa

Iowa
Administrative
Code
Supplement

Biweekly
December 31, 2008



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

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

In addition to the changes adopted by agencies, the replacement chapters may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(4); an effective date delay imposed by the ARRC pursuant to section 17A.4(5) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(6); 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) 281-8157

Credit Union Division[189]

- Replace Chapter 1
- Replace Chapter 3
- Replace Chapters 6 and 7
- Replace Chapters 9 to 17
- Replace Chapter 19
- Replace Chapter 23
- Replace Chapter 25

Iowa Finance Authority[265]

- Replace Chapter 12

Elder Affairs Department[321]

- Replace Analysis
- Replace Chapter 16
- Replace Reserved Chapters 22 and 23 with Chapter 22 and Reserved Chapter 23

Ethics and Campaign Disclosure Board, Iowa[351]

- Replace Analysis
- Replace Chapter 4
- Replace Chapter 7

Human Services Department[441]

- Replace Chapters 51 and 52

Environmental Protection Commission[567]

- Replace Analysis
- Replace Chapter 22
- Replace Chapter 113
- Replace Chapter 119

Professional Licensure Division[645]

- Replace Analysis
- Replace Reserved Chapters 46 to 58 with Reserved Chapters 46 to Chapter 59
- Remove Chapter 59
- Replace Chapters 60 to 65

Revenue Department[701]

Replace Chapter 10

Secretary of State[721]

Replace Chapter 21

Index

Replace "P"

CHAPTER 1
DESCRIPTION OF ORGANIZATION

189—1.1(533) Definitions. The definitions of terms included in Iowa Code section 17A.2 shall apply to such terms used in this chapter. In addition, as used in this chapter:

“*Board*” means the credit union review board.

“*Division*” means the credit union division.

“*Superintendent*” means the superintendent of the credit union division.

189—1.2(17A,533) Scope and application. This chapter describes the office of the superintendent and the methods whereby the public may obtain forms, instructions, and information regarding credit unions.

189—1.3(17A,533) Credit union division. The division is the office of the superintendent and other personnel who discharge the duties and responsibilities imposed upon the superintendent by the laws of this state. The superintendent has general supervisory and regulatory authority over all state chartered credit unions.

1.3(1) Central organization—superintendent. The superintendent is appointed by the governor and approved by the senate. The superintendent is the head of the credit union division with offices located at 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309. Rules may be promulgated by the superintendent subject to prior approval by the board. The superintendent may employ personnel as necessary to carry out the provisions of the credit union law.

1.3(2) Credit union review board. The credit union review board is composed of seven members who are appointed by the governor and approved by the senate. With the exception of four members first appointed as of January 1, 1979, board members serve for a three-year term. The board may adopt, amend, and repeal rules or take other action it deems necessary or suitable to effect the provisions of the credit union law. The board meets at least four times each year and special meetings may be called by the chairperson. A majority of the members of the board shall constitute a quorum to transact business.

This rule is intended to implement Iowa Code section 533.107.

189—1.4(17A,533) Forms and instructions. Information concerning the forms and instructions of the superintendent is available at the offices of the credit union division during usual business hours, 8 a.m. to 4 p.m. daily, excluding Saturdays, Sundays and holidays. Copies of the forms and instructions are also available at the credit union division’s Web site at <http://www.iacudiv.state.ia.us>.

This rule is intended to implement Iowa Code section 533.102.

[Filed 8/10/79, Notice 5/30/79—published 9/5/79, effective 10/10/79]

[Filed emergency 12/8/82—published 1/5/83, effective 12/8/82]

[Filed emergency 10/28/87—published 11/18/87, effective 11/18/87]

[Filed 1/31/03, Notice 12/25/02—published 2/19/03, effective 3/26/03]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 3
CONVERSION OF AN IOWA-CHARTERED CREDIT UNION
TO ANOTHER CHARTER TYPE

189—3.1(533) Definitions. As used in this chapter:

“*Credit union*” means credit union as defined in the Iowa Credit Union Act, Iowa Code section 533.102.

“*Federal banking agencies*” means federal banking agencies as defined in Section 3 of the Federal Deposit Insurance Act.

“*Federal credit union*” means credit union as defined in Section 101 of the Federal Credit Union Act, 12 U.S.C. 1752(1).

“*Mutual savings bank*” and “*savings association*” have the same meaning as defined in Section 3 of the Federal Deposit Insurance Act.

“*Senior management official*” means a chief executive officer, an assistant chief executive officer, a chief financial officer, and any other senior executive officer as defined by the appropriate federal banking agency pursuant to Section 32(f) of the Federal Deposit Insurance Act, 12 U.S.C. 1831i(f).

“*Superintendent*” means the superintendent of credit unions of the Iowa credit union division of the department of commerce.

189—3.2(533) Authority to convert.

3.2(1) An Iowa-chartered credit union, with the approval of its members, may convert to a federal credit union, subject to applicable law, regulation and procedures of the governing recipient chartering authority, the National Credit Union Administration, and the requirements of this chapter.

3.2(2) An Iowa-chartered credit union shall remain responsible for the entire annual fee pursuant to Iowa Code section 533.112 during the year in which the credit union converts.

3.2(3) No credit union shall convert to a federal credit union without full disclosure to its members of the intents and purposes of conversion. If the intent to undertake a second conversion to a mutual savings bank or a savings association is among the purposes for conversion to a federal credit union, those facts and all related information shall be fully disclosed to members. If a further conversion to a stock institution is among the possible outcomes from the conversion, the converting Iowa-chartered credit union must fully and accurately disclose this possibility to its members.

189—3.3(533) Board of directors and membership approval.

3.3(1) Any conversion proposal may be approved by the board of directors only upon the affirmative vote of a majority of the board. The board must then set a date for a vote on the proposal by the members of the credit union.

3.3(2) The membership must approve the proposal to convert by the affirmative vote of a majority of those members who vote on such proposal. Each eligible member shall have one vote regarding the conversion proposal.

3.3(3) The vote of the members to convert must be at a special meeting called for that purpose, must be in the manner prescribed in the bylaws and this chapter, and must satisfy the number of members necessary to constitute a quorum to convene a meeting of the members as prescribed in the bylaws.

3.3(4) The board of directors must notify the superintendent of any proposed conversion and of any abandonment or disapproval of the conversion by the members or by the recipient chartering authority, the National Credit Union Administration, or applicable federal deposit insurer.

3.3(5) Prior to completion of any conversion, the board shall supply the superintendent a certified affidavit of compliance with these rules.

189—3.4(533) Notice to members and voting procedures.

3.4(1) A credit union that proposes to convert must submit written notice of its intent to convert by first-class mail, postage prepaid, to each member who is eligible to vote on the conversion, and the board of directors must cause a copy of the notice to be posted in a conspicuous location in each credit

union office from the date of the mailings until the date of the meeting. The notice to members must be submitted and posted 90 calendar days, 60 calendar days, and 30 calendar days before the date of the membership meeting to vote on the conversion and a ballot must be submitted not less than 30 calendar days before the date of the vote. A member who joins the credit union subsequent to the 30-calendar-day notice and prior to the date and time of the special meeting and who is eligible to vote on the conversion shall be provided a copy of the 30-calendar-day notice and a ballot.

3.4(2) The notice to members must adequately describe the purpose and subject matter of the vote to be taken at the special meeting or by submission of the written ballot. The notice must provide an accurate disclosure of the reasons for the conversion stated in specific terms and not as generalities. The notice shall specify the costs of the conversion, such as changing the credit union name, examination and operating fees, attorney and consulting fees, tax liability. The notice must clearly inform the member that each eligible member may vote in person at the special meeting or by submitting the written ballot by mail or personal delivery to the credit union so it is received on or before the date and time of the special meeting. A member other than a natural person may cast a single vote through a delegated agent as provided by law. There shall be no voting by proxy. The notice must state in boldface type that the conversion will be decided by a majority of credit union members who vote on the issue.

3.4(3) In addition to the ballot provided to all eligible voting members under this rule, a return envelope preaddressed to the election committee, marked "ballot," must be provided with the ballot. A location on the outside of the envelope must be provided for the voting member to print the member's name and address. The voting process used for casting ballots in person at the special meeting shall be the same as that used for submitting the ballot by mail or personal delivery, by submission using an envelope preaddressed to the election committee, marked "ballot," with a location on the outside of the envelope for the voting member to print the member's name and address.

3.4(4) The board of directors shall appoint an election committee of no fewer than seven credit union members to be in charge of counting the ballots and verifying that no eligible member voted more than once. No board member or employee, or member of a board member's or employee's immediate family, may be a member of the election committee. No director, employee, agent or member of the election committee shall reveal the manner in which any member voted on the proposed conversion. The election committee shall see that all ballot envelopes are delivered to the committee unopened and that the counting of the ballots does not commence until after the close of the special meeting held in connection with the conversion proposal. The election committee shall be responsible for certifying the results of the election to the board of directors, including the actual number of eligible members who voted on the proposal and the number of those who voted in favor of and the number of those opposed to the conversion proposal.

3.4(5) The notice to members must state the date, time, and place of the meeting. The members may not vote on the proposal until the credit union has received preliminary approval from the superintendent given under 189—3.5(533) and preliminary determination from the National Credit Union Administration on the proposition for conversion.

3.4(6) If a purpose of conversion is to become a mutual savings bank, a savings association that is in mutual form or a stock institution, the notice must clearly inform the member that the conversion, if approved, could lead to members losing their ownership interest in the credit union. The notice must disclose that a credit union member has no more than one vote regardless of the number of shares held; whereas, in a mutual savings bank or savings association, voting may be based upon the amount in the member's deposit accounts, commonly one vote granted for each \$100 on deposit. The notice must further disclose that, if the mutual savings bank or savings association converts to a stock institution, members will lose their ownership interests and voting rights automatically received as a member.

3.4(7) In connection with the notices required by this rule, the converting credit union must include an affirmative statement that, at the time of conversion to a federal credit union and for a period of five years thereafter, the credit union does or does not intend to:

- a. Convert to a mutual savings bank or savings association or a stock institution;
- b. Provide any compensation to previously uncompensated members of the board of directors, or increase compensation or other conversion-related economic benefit, including stock options, special

prices on stock, or first rights of refusal, to directors, senior management officials, or their agents, brokers, family members or other closely related parties;

c. Base member voting rights on account balances.

3.4(8) In addition, if the purpose of conversion is to become a mutual savings bank or savings association, or a stock institution, the notice must describe a method that will be used to provide for a pro-rata distribution of all unencumbered credit union retained and undivided earnings in excess of regulatory required reserves, as calculated pursuant to Iowa Code section 533.303, or in excess of a well-capitalized net worth level, calculated pursuant to the Federal Credit Union Act, 12 U.S.C. Section 1790d, whichever amount is greater. The pro-rata distribution shall occur on all shares of record as of the date of first notice to members under this rule, and must be based upon the member's share balance less any amount pledged to share-secured loans.

3.4(9) At any time prior to completion of a conversion to a federal credit union, the board or the members by written request as provided in the bylaws may call for a special meeting of the members to be held to terminate the conversion proceedings. The membership must approve the proposal to terminate the conversion proceedings by the affirmative vote of a majority of those members who vote on such proposal as provided in this chapter.

189—3.5(533) Notice to the superintendent.

3.5(1) The credit union must provide the superintendent with notice of its intent to convert and a plan of conversion no less than 30 calendar days prior to the 90-calendar-day period preceding the date of the membership vote on the conversion under 189—3.4(533).

3.5(2) The credit union must give notice to the superintendent and provide a plan of conversion describing the material features of the conversion, along with a copy of the filing the credit union has made with the federal regulatory agency by which the credit union seeks that agency's approval of the conversion. The credit union must include with the notice to the superintendent a copy of the notice the credit union provides to members under 189—3.4(533), as well as the ballot form and all written materials the credit union has distributed or intends to distribute to its members, a copy of the return envelope addressed to the election committee marked "ballot" provided with the ballot form, and the procedures the election committee will follow in its receipt and counting of the ballots.

3.5(3) The superintendent will make a preliminary determination regarding the methods and procedures applicable to the membership vote. The superintendent will notify the credit union within 30 calendar days of receipt of the credit union's notice of intent to convert if the superintendent disapproves of the proposed methods and procedures applicable to the membership vote. The credit union's submission of the notice of intent and plan of conversion does not relieve the credit union of its obligation to certify the results of the membership vote required by 189—3.6(533) or certify compliance with these rules required by 189—3.3(533) or eliminate the right of the superintendent to disapprove the actual methods and procedures applicable to the membership vote if the credit union fails to conduct the membership vote in a fair and legal manner.

3.5(4) The superintendent may disapprove a plan of conversion submitted by the board of directors of a credit union based upon any of the following determinations:

- a.* The plan is inconsistent with applicable statutes and regulations.
- b.* The plan does not contain all required information.
- c.* The plan fails to fully and fairly disclose the effect of the proposal on members of the credit union.
- d.* The plan does not fairly compensate members for their ownership interests in the credit union.

189—3.6(533) Certification of vote on conversion proposal. The board of directors of the converting credit union must certify the results of the membership vote to the superintendent within ten calendar days after the vote is taken. The board of directors must also certify at the same time that the notice, ballot and other written materials provided to members were identical to those submitted pursuant to 189—3.5(533) or provide copies of any new or revised materials and an explanation of the reasons for the changes.

189—3.7(533) Superintendent oversight of methods and procedures of membership vote.

3.7(1) The superintendent will issue a determination that the methods and procedures applicable to the membership vote are approved or disapproved within ten calendar days of receipt from the credit union of the certification of the result of the membership vote required under 189—3.6(533).

3.7(2) If the superintendent disapproves of the methods by which the membership vote was taken or the procedures applicable to the membership vote, the superintendent may direct that a new vote be taken at a time and place acceptable to the board of directors and the superintendent.

3.7(3) The superintendent's review of the methods by which the membership vote was taken and the procedures applicable to the membership vote includes determining that the notice to members is accurate and not misleading, that all notices required by these rules were timely, and that the membership vote was conducted in a fair and legal manner.

189—3.8(533) Other regulatory oversight of methods and procedures of membership vote. The federal agency that will have jurisdiction over the financial institution after conversion may subject the membership vote to verification and may direct that a new vote be taken if it disapproves of the methods by which the membership vote was taken or of the procedures applicable to the membership vote.

189—3.9(533) Completion of conversion.

3.9(1) Upon receipt of approvals under 189—3.7(533) and 189—3.8(533), the credit union may complete the conversion transaction.

3.9(2) The board of directors of the credit union must file with the superintendent appropriate evidence of approval of the conversion by the appropriate federal agency having jurisdiction over the financial institution after conversion and from the federal agency providing deposit insurance to the converted financial institution, and, if applicable, a copy of the notice from the National Credit Union Administration canceling the credit union insurance certificate. The board of directors of the credit union must also notify the superintendent of the actual date on which the conversion is to be effective.

3.9(3) Upon receipt of satisfactory proof that the Iowa-chartered credit union has complied with all applicable laws and regulations of this state and of the United States, the superintendent will cancel the charter of the credit union and issue a certificate of conversion which must be filed and recorded in the county in which the credit union has its principal place of business and in the county in which its original articles of incorporation or certification of organization were filed and recorded, if different.

3.9(4) In the event it is subsequently determined the conversion was accomplished contrary to applicable law, regulation or the requirements of this chapter, in whole or in part, with the intent to deceive or mislead the members of the credit union or the superintendent, the superintendent will take immediate action to cause the conversion to be declared null and void, and to request from the appropriate regulatory authority that the converted institution be ordered to surrender its charter and be thereupon returned to the authority of the superintendent for reinstatement as a state charter or other action. The provisions of Iowa Code chapter 533 shall apply in the event it is determined that any director, officer, agent, employee or clerk of the credit union knowingly submitted, made or exhibited false statements, papers or reports to the superintendent or committed any acts which might result in that person's being found to have engaged in a fraudulent practice.

3.9(5) If the superintendent finds a material deviation from the provisions of this chapter, or from Iowa Code chapter 533, that would invalidate any steps taken in the conversion, the superintendent will promptly notify the credit union and the National Credit Union Administration of the nature of the adverse findings.

3.9(6) The conversion of the Iowa credit union to a federal credit union will not be effective and completed until final approval is given by the superintendent, any improper actions are cured, and corrective steps have been accomplished, if applicable.

189—3.10(533) Limit on compensation of officials.

3.10(1) No director or senior management official of an Iowa credit union may receive any economic benefit in connection with a plan of conversion or the actual conversion of the credit union, other than

regular compensation and other usual benefits paid to directors or senior management officials in the ordinary course of business.

3.10(2) In connection with the notices to members required by this chapter, the converting credit union must disclose to the members the cost of the conversion, including any change or increase in compensation or economic benefit to directors or senior management officials of the credit union in the event the conversion process is accomplished.

These rules are intended to implement Iowa Code section 533.403.

[Filed emergency 11/19/03—published 12/10/03, effective 11/19/03]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 6
BRANCH OFFICES

189—6.1(533) Establishment of branch offices.

6.1(1) *Definition.* A branch office is determined to be a place where ordinary services of the credit union are provided to the members.

6.1(2) *Application.* A state chartered credit union desiring to establish and operate a branch office shall submit to the superintendent an “Application to Establish a Branch Office.” The application and instructions for preparing and filing it are furnished upon request.

6.1(3) Reserved for hearing and notice.

6.1(4) *Guidelines.* In determining whether or not approval of a branch office should be granted, the superintendent will consider the following factors:

a. Whether the establishment of a branch office is reasonably necessary for service to, and is in the best interest of, the applicant credit union’s membership.

b. Whether the member population density and other economic characteristics of the area primarily to be served by the proposed office afford reasonable promise of adequate support for the office.

c. Whether the capital structure of the applicant credit union is adequate in relation to the costs and anticipated increased business, if any, occasioned by the proposed branch office.

d. Whether the operation and management of the applicant credit union is such as will adequately provide for a branch office operation.

e. Such other factors as the superintendent determines appropriate or necessary in determining an applicant credit union’s ability to establish and operate a branch office.

6.1(5) Reserved.

6.1(6) *Certification.* If after notice and hearing the decision of the superintendent is favorable, the superintendent shall issue certification to evidence approval for the establishment and operation of the branch office to be effective on a specified date and at a designated location.

189—6.2(533) Change of location of branch office.

6.2(1) A credit union desiring to move its branch office shall submit to the superintendent an application to relocate a branch office. The rules governing the establishment of a branch office shall also govern the relocation of a branch office.

6.2(2) If a credit union elects to cease operations at a branch office facility such credit union shall notify the superintendent at least 60 days prior to the effective date of ceasing such operations.

These rules are intended to implement Iowa Code section 533.301(19).

[Filed 11/9/79, Notice 9/5/79—published 11/28/79, effective 1/2/80]¹

[Filed 3/28/80, Notice 2/6/80—published 4/16/80, effective 5/21/80]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 2/17/87, Notice 11/19/86—published 3/11/87, effective 4/15/87]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

¹ Effective date (Ch 6) delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 7
LOW-INCOME DESIGNATED CREDIT UNION

189—7.1(533) Authority. Iowa Code subsection 533.301(1) grants a credit union the power to receive from its members, nonmembers where the credit union is serving predominantly low-income members, other credit unions, and federal, state, county, and city governments, payments on shares or as deposits.

Low-income designated credit unions must comply with the National Credit Union Administration (NCUA) Rules and Regulations applicable to all federally insured credit unions. In particular, NCUA Rules and Regulations, Parts 701.32, 701.34 and 705, apply specifically to low-income designated credit unions.

A low-income designated credit union has the same purpose as all other credit unions: to create a source of credit at a fair and reasonable rate of interest; to encourage habits of thrift among its members; and to provide the opportunity for people to use and control their savings for their mutual benefit. In addition, these credit unions have the additional requirement that a majority of their members must be at or below the income standards set by these rules.

189—7.2(533) Definitions. The following words and terms, when used in these rules, shall have the meaning indicated:

“Account” or *“accounts”* means share, share draft, certificate and deposit accounts of a member (including public unit and nonmembers permitted by the Iowa Code) in a credit union which evidences money or its equivalent received or held by a credit union in the usual course of business and for which it has given or is obligated to give credit to the account of the member.

“Low-income member” means those members who make less than 80 percent of the average for all wage earners as established by the Bureau of Labor Statistics, or those members whose annual household income falls at or below 80 percent of the median household income for the nation as established by the Census Bureau, or those members otherwise defined as low-income as determined by the superintendent and the National Credit Union Administration Board. The term “low-income member” also includes those members who are enrolled as full-time or part-time students in a university, college, high school, or vocational school.

“Member” or *“members”* means those persons enumerated in the credit union’s field of membership who have been elected to membership in accordance with the credit union’s bylaws and the Iowa Code. It also includes those nonmembers permitted by the Iowa Code to maintain an account in a credit union, including nonmember financial institutions and nonmember public units and political subdivisions.

“Political subdivision” means any subdivision of a public unit, as defined by this subrule, or any principal department of such public unit, (1) the creation of which subdivision or department has been expressly authorized by state statute, (2) to which some functions of government have been delegated by state statute, and (3) to which funds have been allocated by statute or ordinance for its exclusive use and control. It also includes drainage, irrigation, navigation improvement, levee, sanitary, school or power districts and bridge or port authorities and other special districts created by state statute or compacts between states. Excluded from the term are subordinate or nonautonomous divisions, agencies, or boards within principal departments.

“Predominantly” means a majority greater than 50 percent.

“Public unit” means the United States, any state of the United States, the District of Columbia, any commonwealth, zone, territory or possession of the United States, any county, municipality, or political subdivision thereof, or any Indian tribe as defined in Section 3(c) of the Indian Financing Act of 1974.

“Subordinated debt account” means a debt having a claim against the issuer’s assets that is lower in ranking, or junior to, other obligations, and is paid after claims to holders of senior securities are satisfied.

“Superintendent” means the superintendent of credit unions for the credit union division of the Iowa department of commerce.

189—7.3(533) Low-income designation documentation. A credit union requesting designation, or a group requesting a charter, as a low-income credit union must submit a written request for a low-income

designation to, and receive approval from, the superintendent. The credit union or group must provide documentation supporting that the majority of the members, or potential members in the case of a newly organized credit union, meet the low-income designation.

In determining whether a credit union is or will be, in the case of a newly organized credit union, serving a low-income membership, any one of the following methods may be used:

7.3(1) *Loan survey.* Based on a 100 percent survey of the loans, more than 50 percent of the credit union's borrowers must qualify as low-income members.

7.3(2) *Member survey.* Based on a 100 percent survey of the current members, more than 50 percent of the credit union's members must qualify as low-income members.

7.3(3) *Zip code analysis.* Based on a 100 percent survey of the zip code residence of all current members, more than 50 percent of the credit union's current members must reside in defined low-income zip codes, based on current U.S. Census Bureau's median household income statistics.

7.3(4) *Other methods.* Any other method determined by the superintendent which shows reasonable evidence that more than 50 percent of the credit union's members, or potential members in the case of a newly chartered credit union, qualify as low-income or live in areas where a majority of the residents are low-income.

189—7.4(533) Nonmember deposits. Low-income credit unions can receive nonmember shares and deposits from any source, including other financial institutions, public units, philanthropic individuals or groups such as churches and foundations, and the Community Development Revolving Loan Program. Nonmember account holders shall not have the rights and privileges afforded by Iowa Code chapter 533 to members of a credit union, and are limited in their involvement with a credit union to that specified by this rule.

7.4(1) *Limitations.* Unless a greater amount has been approved by the superintendent, the maximum aggregate amount of all public unit and nonmember accounts shall not, at any given time, exceed 20 percent of the total shares and deposits of the credit union or \$1.5 million, whichever is greater.

7.4(2) *Exception to limit.* Before accepting any public unit or nonmember accounts in excess of 20 percent of total shares and deposits, the board of directors must adopt a specific written plan concerning the intended use of these accounts and forward a copy to, and receive approval from, the superintendent.

a. The plan must include:

(1) A statement of the credit union's needs, sources and intended uses of public unit and nonmember shares and deposits;

(2) Provision for matching maturities of public unit and nonmember shares and deposits with corresponding assets, or justification for any mismatch; and

(3) Provision for adequate income spread between public unit and nonmember shares and corresponding assets.

b. In addition to the plan specified by this subrule, a credit union seeking an exception must include in its written request:

(1) The new maximum level of public unit and nonmember shares and deposits being requested, either as a dollar amount or a percentage of total shares and deposits of the credit union;

(2) A copy of the credit union's latest financial statement, including income and expenses;

(3) A copy of the credit union's loan and investment policies; and

(4) Such other documentation as may be required by the superintendent.

7.4(3) *Use of nonmember deposits.* Nonmember deposits in low-income designated credit unions may be:

a. Loaned to the members when current member share and deposit accounts are insufficient to meet the loan demand and liquidity needs of the credit union;

b. Invested and the positive spread used to improve the income of the credit union; and

c. Invested and the positive spread used to build the capital of the credit union.

189—7.5(533) Removal of low-income designation. Once a credit union qualifies for low-income designation, it is presumed that the status will be retained. However, the income level of the field of

membership may increase due to improvement in economic conditions, or the merger or expansion of the credit union. Documentation regarding continued low-income status eligibility will be reviewed during each regular examination of the credit union to ensure that the credit union continues to meet the standards established by this rule. Final decision regarding removal of low-income designation rests with the superintendent. Removals may be appealed to the credit union review board in a timely manner.

7.5(1) Reason for removal. The designation as a low-income credit union may be removed by the superintendent:

a. At the request of the credit union if it is determined by the superintendent that to do so will not adversely affect the members of the credit union and that the removal action would be in the public interest; or

b. If, after notice to the credit union and the opportunity for a hearing, the superintendent determines that the credit union no longer meets the standards and limitations established by this rule and that the removal action would be in the public interest.

7.5(2) Result of loss of low-income designation on nonmember accounts. Immediately following the removal of the low-income status, the credit union shall provide all nonmembers written notice of the removal action, informing them:

a. That the credit union is no longer eligible to receive nonmember payments on shares and deposits;

b. That all nonmember accounts with a stated maturity date may be withdrawn prior to maturity without any early withdrawal penalty; and

c. That the nonmember shares and deposits held by the credit union must be withdrawn and the account closed either upon the stated date of maturity of the account or the date when the account ceases to be federally insured as required by Iowa Code section 533.307, whichever occurs first.

189—7.6(533) Receipt of secondary capital. A low-income designated credit union may offer secondary capital accounts to nonnatural person members and nonnatural person nonmembers, subject to the approval of the superintendent. Prior to offering secondary capital accounts, the board of directors must adopt a plan for the use of the funds and forward a copy to, and receive approval from, the superintendent.

7.6(1) Terms and conditions of a secondary capital account. A secondary capital account must be consistent with the following terms and conditions:

a. A secondary capital account contract agreement must be executed between an authorized representative of the account holder and the credit union, accurately disclosing the terms and conditions consistent with this subrule. A copy of the agreement must be retained by the credit union throughout the term of the agreement;

b. A secondary capital account must be established as a subordinated debt account and may not be pledged as security on any loan or other obligation with the credit union or any other party;

c. Funds in a secondary capital account must be subordinate to all other claims made upon the credit union, including those of shareholders, creditors and the National Credit Union Share Insurance Fund;

d. The stated maturity of a secondary capital account must be at least five years, may not be redeemed prior to its maturity, may be interest-bearing, and will not be eligible for insurance coverage by any governmental or private entity;

e. Funds in a secondary capital account must be made available to cover operating losses realized by the credit union which exceed the credit union's net available reserves and undivided earnings, exclusive of the allowance for loan and investment losses accounts. Losses are to be divided on a pro-rata basis among all secondary capital accounts held by a credit union at the time of the loss and, to the extent such funds are used, the credit union shall not restore or replenish the account; and

f. Upon the merger or other voluntary dissolution of a low-income designated credit union, except in the case of a merger with another low-income credit union, a secondary capital account held by the merging or dissolving credit union is to be closed and, to the extent not needed to cover losses as provided by this subrule, the funds in the account are to be paid out to the account holder.

7.6(2) *Accounting treatment for secondary capital accounts.* Funds in secondary capital accounts are to be recorded in the credit union books as a “secondary capital account.” For accounts with remaining maturities of less than five years, the financial statements of the credit union must be footnoted to reflect a value of the accounts according to the following scale:

- a. 4 or more years remaining maturity but less than 5 years—80 percent;
- b. 3 or more years remaining maturity but less than 4 years—60 percent;
- c. 2 or more years remaining maturity but less than 3 years—40 percent;
- d. 1 year or more remaining maturity but less than 2 years—20 percent; and
- e. Less than 1 year of remaining maturity—0 percent.

These rules are intended to implement Iowa Code section 533.301(1).

[Filed 8/23/96, Notice 6/19/96—published 9/11/96, effective 10/16/96]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 9
REAL ESTATE LENDING
[Prior to 7/6/94, see 189—Chs 9 and 10]

189—9.1(533) Real estate lending. These rules shall apply to real estate-related loans either originated by a credit union or acquired by purchase, assignment or otherwise.

9.1(1) The board of directors of the credit union shall formulate and maintain a written real estate lending policy that is appropriate for the size of the credit union and the nature and scope of its operation. Each policy must be comprehensive and consistent with safe and sound lending practices. The standards and limits established in the policy must be reviewed and approved at least annually by the board. The real estate lending policy should reflect the level of risk that is acceptable to the board and should provide clear and measurable underwriting standards that enable the credit union's lending staff to evaluate all relevant credit factors. The real estate lending policy, at a minimum, should:

- a. Establish loan portfolio diversification standards.
- b. Set appropriate terms and conditions by type of real estate loan.
- c. Establish loan origination and approval procedures.
- d. Establish prudent underwriting standards which include clear and measurable loan-to-value limitations.
- e. Establish review and approval procedures for exempted loans.
- f. Establish loan administration procedures.
- g. Establish real estate appraisal and evaluation programs.
- h. Monitor the portfolio and provide timely reports to the board of directors.
- i. Establish conformance with secondary market investor requirements where applicable.

9.1(2) The board of directors of the credit union shall establish its own internal loan-to-value (LTV) limits for real estate loans.

When formulating the real estate policy, the board should consider both internal and external factors, such as size and condition of the credit union, expertise of its lending staff, avoidance of undue concentrations of risk, compliance with all real estate-related laws and rules, and general market conditions.

9.1(3) Real estate loan made for sale into the secondary market shall be considered in transit for a period of up to 90 days after being sold and shall not be considered risk assets for reserving purposes during this time period.

This rule is intended to implement Iowa Code section 533.315(4)“a.”

189—9.2(533) Evidence of title. When lending for the purpose of acquisition or for the purpose of refinance of acquisition, when a new mortgage, deed of trust, or similar instrument is filed, the credit union shall obtain either:

1. A written legal opinion by an attorney admitted to practice in the state in which the real estate is located showing marketable title in the mortgagor and describing any existing liens and stating that the credit union's mortgage, deed of trust, or similar instrument is a first lien on the real estate; or
2. Title insurance written by an insurance company licensed to do business in the state in which the real estate is located describing any existing liens and insuring the title to the real estate and the validity and enforceability of the mortgage, deed of trust, or similar instrument as a first lien on the real estate.

This rule is intended to implement Iowa Code section 533.315(4)“a.”

[Filed 11/9/79, Notice 9/5/79—published 11/28/79, effective 1/30/80]

[Filed 12/20/79, Notice 10/31/79—published 1/9/80, effective 2/13/80]

[Filed emergency 9/24/82 after Notice 8/4/82—published 10/13/82, effective 9/24/82]

[Filed 2/22/85, Notice 11/7/84—published 3/13/85, effective 4/17/85]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 6/15/94, Notice 5/11/94—published 7/6/94, effective 8/10/94]

[Filed 1/24/97, Notice 12/18/96—published 2/12/97, effective 3/19/97]
[Filed 1/31/03, Notice 12/25/02—published 2/19/03, effective 3/26/03]
[Filed 11/3/05, Notice 9/28/05—published 11/23/05, effective 12/28/05]
[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 10
CORPORATE CENTRAL CREDIT UNION

189—10.1(533) Corporate central credit union powers. A corporate central credit union established in accordance with Iowa Code chapter 533 shall have all the powers, restrictions, and obligations imposed upon or granted to a credit union established in accordance with that chapter, the additional powers permitted under Iowa Code section 533.213, and such other powers granted to federally chartered corporate central credit unions under Part 704 of the National Credit Union Administration Rules and Regulations.

This rule is intended to implement Iowa Code section 533.213.

[Filed 6/15/94, Notice 5/11/94—published 7/6/94, effective 8/10/94]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 11
INSOLVENCY

189—11.1(533) Definition of insolvency. Insolvency shall exist where the assets of a credit union, if liquidated, would not equal the amount necessary to pay off the liability of the credit union.

189—11.2(533) Factors considered. In determining whether a credit union is insolvent, the superintendent shall, among other things, consider the following:

1. Amount and length of delinquent loans;
2. Available reserves;
3. Source of operating funds;
4. Book and market value of assets; and
5. Current and expected operating expenses.

189—11.3(533) First year of operation. A credit union in its first year of operation will not be subject to the insolvency provisions of rules 11.1(533) and 11.2(533) unless the extent of the insolvent condition threatens the safety and soundness of the credit union, or unless the credit union has violated a provision of Iowa Code chapter 533.

These rules are intended to implement Iowa Code section 533.501.

[Filed 12/20/79, Notice 10/31/79—published 1/9/80, effective 2/13/80]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 9/29/89, Notice 7/26/89—published 10/18/89, effective 11/22/89]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 12
BYLAW AMENDMENT VOTING PROCEDURE—MAILED BALLOT

189—12.1(533) Authority for mailed ballots. At an annual or special meeting a majority of the members present must have approved amending bylaw Section 19.1 to include the balloting by mail provision.

12.1(1) Any and all amendments to the bylaws must be approved by the superintendent before they become operative.

12.1(2) Reserved.

189—12.2(533) Notice to voting members.

12.2(1) The proposed amendment(s) shall be set forth in its entirety in a notice mailed to all members eligible to vote at least 20 days but not more than 30 days prior to the close of balloting by mail.

12.2(2) The notice shall state the date of the close of the balloting. Such closing date shall be not less than 20 days nor more than 30 days from the date of the notice.

12.2(3) The notice shall contain a summary of the board's reasons for recommending the bylaw amendment.

189—12.3(533) Balloting procedure.

12.3(1) A ballot shall be included with the notice to all eligible voting members of the credit union.

12.3(2) Ballots must be returned to the credit union by the date of the closing of the balloting.

12.3(3) Ballots hand-delivered to the credit union must be received by the closing date.

12.3(4) Ballots returned to the credit union by mail must be postmarked no later than the closing date in order to be valid.

12.3(5) The ballot must be signed by the member.

189—12.4(533) Balloting in conjunction with membership meeting.

12.4(1) Should the board of directors determine that balloting by mail will be done in conjunction with an annual or special meeting such ballots must be mailed to the members at least 20 days but not more than 30 days prior to the meeting.

12.4(2) The board shall inform the members they have the right to vote on the proposed amendment(s) in person at the meeting or by written ballot.

12.4(3) Written ballots must be postmarked or received in the credit union office no later than the date of the meeting to be valid.

12.4(4) Notice requirements shall be identical to those set forth in 189—12.2(533).

189—12.5(533) Ballot.

12.5(1) Ballots referred to in this chapter shall be substantially in the following form:

SAMPLE	BALLOT	SAMPLE
<p>I, the undersigned member of XYZ Credit Union acknowledge receipt of the notice containing proposed amendment(s) to the bylaws and herewith cast my vote.</p>		
<p>Shall the proposed amendment to the following be adopted?</p>		
Section 6.2	Yes___	No___
Section 7.4	Yes___	No___
Section 18.1	Yes___	No___
<p>_____ Signature of Member</p>		
<p>_____ Account Number</p>		
<p>_____ Date</p>		

12.5(2) Each proposed amendment must be listed separately on the ballot so that the member has the opportunity to vote on each proposal.

12.5(3) Bifold post cards which can be sealed by the member may be used as ballots.

12.5(4) Ballots shall be delivered to the election committee unopened.

189—12.6(533) Confidentiality of ballots.

12.6(1) The board shall appoint from the membership an election committee of not less than five members to be in charge of counting the ballots and verifying that no eligible member voted more than once. No member of the board may serve on the election committee.

12.6(2) Returned ballots become the property and responsibility of the election committee.

12.6(3) No director or employee or member of the election committee shall reveal the manner in which any member voted on the proposed amendment(s).

189—12.7(533) Certification of ballots in support of division approval.

12.7(1) No sooner than five days after the close of the balloting period the election committee shall certify the vote count to the board.

12.7(2) The following documentation shall be submitted by the board to the superintendent in support of their request for approval:

- a. A certified copy of the board minutes which contain the recommendation to submit the proposed amendment(s) to the membership.
- b. A certified copy of the notice.
- c. A certified copy of the ballot.
- d. A certified statement, including the vote count that a majority of the eligible members voted in favor of the proposed amendment(s).

189—12.8(533) Reporting the results of the vote to the membership.

12.8(1) The board shall inform the membership of the results of the vote and whether the amendment received the approval of the superintendent by conspicuously posting such notice in the credit union office for a period of 60 days and by one of the following methods:

- a. Include the results in the next mailing of the member's statements of account, or
- b. Include the results in the credit union newsletter, or

- c.* Include the results in the sponsor newsletter, or
- d.* A notice in a newspaper of general circulation within the credit union's area of operation.

12.8(2) Reserved.

189—12.9(533) Preservation of ballots.

12.9(1) Immediately upon certification of the vote by the election committee the ballots shall be sealed and appropriately labeled.

12.9(2) Ballots shall be retained in the credit union for a period of 60 days from the date of final approval or denial of the amendment(s) by the superintendent.

These rules are intended to implement Iowa Code section 533.201.

[Filed emergency 6/30/82—published 7/21/82, effective 7/1/82]

[Filed 8/27/82, Notice 7/21/82—published 9/15/82, effective 10/20/82]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 13
POWERS OF SUPERINTENDENT IN CONTROL OF CREDIT UNION

189—13.1(533) Powers of superintendent or special deputy superintendent. When the superintendent takes control of a credit union pursuant to Iowa Code sections 533.501 and 533.502, the superintendent or the superintendent's special deputy shall have the power to operate and direct the affairs of the credit union in its regular course of business which shall include, but not be limited to:

1. Approval, disapproval and administration of loans;
2. Approval, disapproval and administration of deposits and investments;
3. Approval, disapproval and administration of borrowing;
4. Making, administering and terminating contracts;
5. Purchase, sale and disposal of real and personal property;
6. Filing and defending legal actions and claims;
7. Hiring, supervising and firing employees, agents and consultants;
8. Causing examinations and audits; and
9. Taking any actions necessary to maintain insurance and protect property.

189—13.2(533) Surrender of control. The superintendent shall determine when the superintendent's control shall cease unless such right to control expires as provided by Iowa Code sections 533.501 and 533.502. Upon determining that control shall cease, the superintendent shall either turn the control of the credit union back to the board of directors of the credit union or shall seek a receivership.

These rules are intended to implement Iowa Code sections 533.501 and 533.502.

[Filed 9/29/89, Notice 7/26/89—published 10/18/89, effective 11/22/89]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 14

EXAMINATION REVIEWS AND INVESTIGATIONS

Note: Chapter 14, "Contested Case Proceedings," rescinded, IAB 2/21/90, effective 3/28/90.

189—14.1(533) Definitions.

"Division officer" means the superintendent, deputy superintendent or any division employee authorized by the superintendent under Iowa Code section 533.505 to subpoena witnesses, to compel their attendance, to administer oaths, to examine any person under oath and to require the production of books and records.

"Examination review" means the review of a division field examination before the superintendent at the division's office.

"Formal investigative proceeding" means the taking of subpoenaed testimony of a witness by a division officer.

"Formal order of investigation" means the written order of the superintendent which indicates the reason for the formal investigation as well as the division personnel appointed division officers.

"Warning" means a written direction by the superintendent, or by a division employee on behalf of the superintendent, to cease acts or practices violative of Iowa Code chapter 533 or which threaten the safety and soundness of a credit union.

189—14.2(533) Application of rules. The rules of this chapter shall apply only to examination reviews and investigations conducted by the division. They do not apply to inquiries conducted by the division regarding chartering or employee group applications, or to hearings, appeals or rule-making proceedings. Further, these rules in no way limit the authority granted to the division or the superintendent by Iowa Code chapter 533.

189—14.3(533) Examination reviews.

14.3(1) Based on the division's examination of a credit union, the superintendent may, by written notice, request a credit union or its directors to appear at an examination review at the division's office.

14.3(2) If a credit union or its directors fail to appear at an examination review, the superintendent may: institute a formal investigation and issue subpoenas; or institute a contested case hearing.

14.3(3) At any time, including during an examination or an examination review, the superintendent may issue a written warning directing a credit union or an officer, director or employee of a credit union, to take action as deemed consistent with Iowa Code chapter 533 or as necessary for the safety and soundness of the credit union.

14.3(4) If a credit union fails to comply with a warning of the superintendent, the superintendent may institute a formal investigation or a contested case hearing.

14.3(5) If an officer, director or employee of a credit union fails to comply with the superintendent's warning, the superintendent may: institute a formal investigation; initiate a contested case hearing regarding removal of the officer, director or employee of the credit union; or refer the matter for criminal prosecution.

189—14.4(533) Preliminary informal investigations. An informal investigation may be conducted if the division receives an indication that there may be a violation of Iowa Code chapter 533 or that the safety and soundness of a credit union may be threatened based on any of the following: information received from a member of a credit union, from a member of the public, or from a federal or a state agency; from the examination of filings, financial reports, or credit union business records; from an examination review, or from some other occurrence or fact. In a preliminary informal investigation, no process shall be issued or testimony compelled.

189—14.5(533) Nonpublic proceedings and transcripts of examination reviews or informal preliminary investigatory proceedings. Examination reviews and preliminary informal investigations shall be nonpublic. Transcripts of any examination review or informal investigatory proceeding may be officially recorded as provided for in subrule 14.6(4).

189—14.6(533) Formal investigations.

14.6(1) *Initiation of formal investigations.* Formal investigations shall begin only upon the issuance of a formal order of investigation signed by the superintendent. Subpoenas for testimony and documents may be issued only after a formal investigation has begun.

14.6(2) *Issuance of formal order.* A formal order of investigation may be issued by the superintendent, and a formal investigation may be made if the superintendent has a reasonable basis to believe that there may be a violation of Iowa Code chapter 533 or that the safety and soundness of a credit union may be threatened based on any of the following: information received from a member of a credit union, from a member of the public, from a federal or a state agency; from the examination of filings, financial reports, or credit union business records; from an examination review, or from some other occurrence or fact. A formal order of investigation shall set forth the possible violations of law as well as a general statement describing the factual basis for the violations. A formal order shall also specify the division officers authorized to issue subpoenas in the formal investigation.

14.6(3) *Presiding officers.* Formal investigatory proceedings may be held before the superintendent, a deputy superintendent, or any division officer so designated by the superintendent in the formal order of investigation.

14.6(4) *Transcripts.* Transcripts, if any, of formal investigative proceedings shall be recorded solely by the official reporter, or by any other person or means designated by the division officer conducting the investigation. Any witness, upon proper identification, shall have the right to inspect the official transcript of the witness's own testimony at the division's offices. A person who has submitted documentary evidence or has testified as a witness in a formal investigative proceeding shall be entitled, upon written request, and at the person's expense, to procure a copy of the documentary evidence produced by the witness or a transcript of the witness's testimony. However, the division may, for good cause, deny the request.

14.6(5) *Rights of witnesses.*

a. Any person who is compelled or requested to furnish documentary evidence or testimony at a formal investigative proceeding shall upon request be shown the division's formal order of investigation. Copies of formal orders of investigation shall not be furnished for their retention to those persons except with the express approval of the superintendent. The superintendent shall not grant approval unless the superintendent is satisfied that there exist reasons for approval which are consistent both with the protection of privacy of persons involved in the investigation and with the unimpeded conduct of the investigation.

b. Any person compelled to appear, or who appears by request or permission of the division, at a formal investigative proceeding may be accompanied, represented and advised by counsel. This means that a witness testifying shall have the right to have an attorney present with the witness during any formal investigative proceeding and to have the attorney:

- (1) Advise before, during, and after the conclusion of the examination,
- (2) Question the client/witness briefly at the conclusion of the examination to clarify any of the answers the client/witness has given, and
- (3) Make summary notes during the examination.

c. Witnesses shall be sequestered and, unless otherwise permitted in the discretion of the division officer conducting the investigation, no person other than the witness's counsel shall be permitted to be present during the witness's examination.

14.6(6) *Service of subpoenas.* Service of subpoenas issued in formal investigative proceedings shall be effected by personal service or by restricted certified mail.

14.6(7) *Nonpublic proceedings.* Except as otherwise provided by law, all formal investigative proceedings shall be nonpublic.

14.6(8) *Enforcement of subpoenas.* If a subpoenaed party fails to comply with a subpoena, the division may enforce the subpoena in district court.

189—14.7(533) Action following an examination, examination review or an informal or formal investigation. After an examination, an examination review, or an informal or formal investigation, the

division may take one or more of the following actions as consistent with Iowa Code chapter 533: issue a warning; conduct an examination review or an informal or formal investigation; institute a contested case hearing looking to the imposition of remedial sanctions; or refer the matter for criminal prosecution.

189—14.8(533) Voluntary submission of information. Any person who becomes involved in an examination review or in a preliminary or formal investigation may, on the person's own initiative, submit a written statement to the division which sets forth the person's interests and position with regard to the subject matter involved.

189—14.9(533) Effect of disposition and settlement on criminal proceedings. In the course of the division's examinations or investigations, contested cases, or lawsuits, the division staff, with the superintendent's authorization, may discuss the disposition of the matters with persons involved. A disposition may be by consent, by settlement, or in some other manner; however, it is the policy of the division that the disposition of any matter may not expressly or impliedly extend to any criminal charges that have been or may be brought against any person, and may not affect any recommendation with respect thereto. Accordingly, any person involved in an enforcement matter of the division who consents or agrees to consent to any judgment or order, does so solely for the purpose of resolving the claims against the person in a division's investigation, contested case, or civil suit, and not for the purpose of resolving any criminal charges that have been or might be brought against the person. This policy reflects the fact that neither the division nor its staff has the authority or responsibility for instituting, conducting, settling or otherwise disposing of criminal proceedings. This authority and responsibility are vested in the county attorneys, the attorney general, or representatives of the U.S. Department of Justice.

These rules are intended to implement Iowa Code chapter 533.

[Filed 2/2/90, Notice 11/15/89—published 2/21/90, effective 3/28/90]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 15
FOREIGN CREDIT UNION BRANCH OFFICES

189—15.1(17A) Definitions. The definition of terms included in Iowa Code section 17A.2 and 189—1.1(533) shall apply to such terms used in this chapter. In addition, as used in this chapter:

“*Account insurance*” means either the federal NCUA insurer or a state guaranty corporation which has been approved by the regulator who supervises the foreign credit union.

“*Foreign credit union*” means a credit union chartered by a state regulator other than the Iowa regulator.

“*Reciprocal state*” means a state whose statute allows Iowa’s state chartered credit unions to establish branch offices in that state.

189—15.2(533) Application of foreign credit union.

15.2(1) An application for a credit union organized and duly qualified as a credit union in a reciprocal state to establish a branch office in Iowa shall be submitted on a form furnished by the superintendent.

15.2(2) The application may be obtained by writing the Superintendent, Credit Union Division, 200 East Grand Avenue, Suite 370, Des Moines, Iowa 50309; or calling (515)281-6514.

189—15.3(533) Exhibits. Attached to the application submitted pursuant to 15.2(1) shall be the following exhibits:

15.3(1) Reserved.

15.3(2) A schedule of interest rates to be charged on loans to be made to the residents of this state, a statement that the applicant understands the provisions of Iowa Code chapter 537, and a copy of that portion of the applicable law under which the credit union operates establishing maximum interest rates.

15.3(3) Evidence that the credit union members’ share and deposit accounts are insured by Title II of the Federal Credit Union Act (12 U.S.C. Secs. 1781 et seq.) or other comparable insurance acceptable to the superintendent. (See rule 189—15.1(17A).)

15.3(4) Evidence that the credit union has obtained surety bond coverage and fidelity bond coverage as required by the laws of the state under which the credit union operates.

15.3(5) A letter from the supervisory agency indicating the credit union is in good standing in the state where the principal office is located.

15.3(6) A copy of the last report, audit or examination by the applicable regulatory or supervisory agency and response to that report, audit or examination, if such response was required.

15.3(7) If the credit union operates on a fiscal year different from the calendar year, a statement indicating the period covered by the credit union’s last fiscal year.

15.3(8) A copy of the audited balance sheet and income statement, prepared by an independent accountant or certified public accountant, for the most recently completed calendar or fiscal year.

15.3(9) A copy of the most recent month-end balance sheet and income statement.

15.3(10) Statistics indicating the present number of members in the credit union, the total number of persons eligible for membership, the number of persons eligible for membership in Iowa, and the number of members residing in Iowa.

15.3(11) A statement of exact present field of membership and the location of any branch offices in Iowa as well as any proposed field of membership, if a change is to be made concurrently with the establishment of the branch office.

15.3(12) Copy of articles of incorporation.

15.3(13) Copy of official bylaws.

15.3(14) An analysis of delinquent loans prepared as of the date of the most recent financial statements.

15.3(15) A report of the names, addresses and telephone numbers of the person(s) managing each branch office in this state.

15.3(16) The language to be used in connection with the credit union’s name in Iowa.

15.3(17) A copy of a resolution of the board of directors agreeing to keep the superintendent or the superintendent's duly designated representative advised at all times of the address at which the books, accounts, papers, records, files, safes and vaults are located in Iowa and the office hours of the credit union. (See 189—15.8(533)).

189—15.4 Reserved.

189—15.5(533) Annual reporting requirements. By resolution, a copy of which shall be furnished to the superintendent, the board of directors shall commit the credit union to furnish to the superintendent the following:

15.5(1) The names of the officers, within 15 days after the board of directors elects the officers of the credit union. At this time, the credit union shall also notify the superintendent of the names of the board of directors, the members and alternate members of the credit committee and the members of the supervisory committee. Such reporting may be done by providing copies of the oath of directors or whatever form the credit union uses to report such information to the regulator of their state.

15.5(2) The names of the directors, officers, members and alternate members of the credit committee and members of the supervisory committee within 15 days of any change. Such reporting shall be done as outlined in 15.5(1).

15.5(3) The names, addresses and telephone numbers of the person(s) managing each branch office in this state within 15 days of any change.

15.5(4) Reports of annual audits or examinations, on a continuing basis, performed by the applicable regulatory or supervisory agency within 30 days of receipt by the credit union and copies of any responses to those reports at the time they are sent to the agency.

15.5(5) All amendments to the articles of incorporation, bylaws and the field of membership within 30 days of adoption and approved by the applicable regulatory or supervisory agency.

15.5(6) Should the branch office be closed such action shall be reported to the superintendent at least 30 days prior to the actual closing.

189—15.6(533) Fees.

15.6(1) Each credit union operating a branch office in this state pursuant to these rules and Iowa Code section 533.115 shall pay an annual fee of \$250 to the superintendent on or before February 1 of each year.

15.6(2) If payment is not made to the superintendent by the due date, the certificate then in effect stating that the foreign credit union has been approved to operate a branch office in Iowa may by order be summarily suspended or revoked by the superintendent ten days after giving of notice by the superintendent that such amount is due and unpaid.

15.6(3) If, after such an order as described in subrule 15.6(2) is made, a request for hearing is filed in writing and a hearing is not held within 60 days thereafter, the order is rescinded as of its effective date.

189—15.7(533) Certificate of approval.

15.7(1) Within 60 days of the receipt of the application and all required exhibits the superintendent shall transmit in writing a decision granting or denying the application.

15.7(2) In the case of approval of the application the superintendent shall issue a Certificate of Approval for the foreign credit union to operate a branch office in the state of Iowa. Said certificate shall be suitable for framing and shall be displayed in the branch office.

189—15.8(533) Change of location of a branch office.

15.8(1) A foreign credit union desiring to move its branch office within the state of Iowa shall be required by 15.3(17) and this rule to notify the superintendent at least 60 days prior to the date the office is moved; except in the event of dissolution of the credit union the 60-day notice requirement shall be automatically waived by the superintendent.

15.8(2) Notification of the proposed change in location shall be submitted on an Application to Relocate a Branch Office. The rules governing the establishment of a branch office by a foreign credit union shall also govern the relocation of a branch office.

These rules are intended to implement Iowa Code section 533.115.

[Filed 2/22/85, Notice 11/7/84—published 3/13/85, effective 4/17/85]

[Filed emergency 8/21/86—published 9/10/86, effective 8/21/86]

[Filed 2/17/87, Notice 11/19/86—published 3/11/87, effective 4/15/87]

[Filed emergency 10/28/87—published 11/18/87, effective 11/18/87]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 16
DIRECTOR ELECTION—ABSENTEE BALLOT VOTING PROCEDURE

189—16.1(533) Authority for absentee ballots.

16.1(1) A credit union must have adopted the standard bylaws as revised by the credit union division in January 1985 in order to utilize absentee ballots.

16.1(2) The board of directors may consider utilizing absentee ballots when, in the opinion of the board, it is in the best interest of the credit union and its membership.

16.1(3) The board of directors must have established written policies setting forth the election rules.

189—16.2(533) Notice of voting members.

16.2(1) At least 30 days prior to the mailing of the annual meeting notice the membership must be informed that interested persons may submit their names to the nominating committee for consideration as candidates for election.

16.2(2) The membership must be informed that printed ballots will be used for the election and there will be no nominations from the floor.

16.2(3) The annual meeting notice shall be issued as authorized by bylaw section 4.1.

16.2(4) The notice must inform the membership that they may vote either in person at the annual meeting, or if they meet the criteria established by the board, by absentee ballot.

16.2(5) The notice must state the conditions which allow the member to vote by absentee ballot and how a ballot may be obtained.

189—16.3(533) Balloting procedure.

16.3(1) Ballots shall be mailed to those voting members who meet the criteria established by the board, and who contact the credit union office requesting an absentee ballot.

16.3(2) Voting members who meet the criteria established by the board shall be given the opportunity to vote in person at the credit union office prior to the day of the annual meeting.

16.3(3) An envelope marked “Ballot” shall be provided to the absentee voter and the voter shall sign in the appropriate location on the outside of the envelope and seal the envelope before mailing or delivering the ballot in person to the credit union office. The envelope shall be substantially in the following form:

From _____ _____ _____	<p style="margin: 0;">SAMPLE ENVELOPE</p> <p style="margin: 0; font-size: small; transform: rotate(30deg); position: absolute; top: 10px; right: 10px;">SAMPLE</p> <p style="margin: 10px 0 0 0;">CONTAINS ABSENTEE BALLOT</p> <p style="margin: 10px 0 0 0;">TO: Election Committee</p> <p style="margin: 5px 0 0 0;">ABC Credit Union</p> <p style="margin: 5px 0 0 0;">Anytown, IA 00000</p>
_____ Signature	

16.3(4) Ballots returned to the credit union office by mail must be received no later than the day of the annual meeting in order to be valid.

189—16.4(533) Ballot.

16.4(1) Ballots referred to in this chapter shall be substantially in the following form:

BALLOT	
Director Election	
___ Mary Adams	___ Jane Martin
___ Ben Benson	___ Sam Smith
___ Charles Cotson	___ Ann Tucker
___ John Jones	___ Pat Williams
Vote for 3 candidates only — Ballots cast for more than 3 persons will be invalid.	

16.4(2) Ballots used by absentee voters and those voting at the annual meeting shall be identical.

16.4(3) Absentee ballots shall be delivered to the election committee unopened.

189—16.5(533) Appointment of election committee.

16.5(1) The board shall appoint from the membership an election committee of not less than five members to be in charge of counting the ballots. The election committee shall elect a chairperson who shall be one of the appointed committee members. No member of the board may serve on the election committee.

16.5(2) The election committee shall verify that no eligible member voted more than once by maintaining a membership register indicating which members have voted. This membership register shall also be used at the annual meeting to ensure only qualified members are provided a ballot.

189—16.6(533) Confidentiality of ballots.

16.6(1) All ballots become the property and responsibility of the election committee.

16.6(2) No director or employee or member of the election committee shall reveal the manner in which any member voted on the election.

189—16.7(533) Counting of ballots.

16.7(1) If a substantial number of absentee ballots are received prior to the date of the annual meeting the election committee chairperson may set a time prior to the annual meeting for the purpose of counting the absentee ballots on hand.

16.7(2) In the event such a meeting as described in subrule 16.7(1) is held the election committee is bound by the confidentiality requirement of subrule 16.6(2). Additionally the election committee shall not in any manner reveal the status of the vote count at any time prior to the announcement of the final results.

189—16.8(533) Preservation of ballots.

16.8(1) Immediately upon certification of the election results by the election committee the ballots shall be sealed and appropriately labeled.

16.8(2) Ballots shall be retained in the credit union for a period of 60 days from the date of the annual meeting.

189—16.9(533) Reporting the results of the election to the membership.

16.9(1) The chairperson of the election committee shall inform the membership present at the annual meeting of the results of the election.

16.9(2) The board shall inform the rest of the membership of the results of the election by conspicuously posting notice in the credit union office for a period of 60 days and by one of the following methods:

- a. Include the results in the next mailing of the member's statement of account, or
- b. Include the results in the credit union newsletter, or

- c.* Include the results in the sponsor newsletter, or
- d.* A notice in a newspaper of general circulation within the credit union area of operation.

These rules are intended to implement Iowa Code section 533.204.

[Filed emergency after Notice 12/8/86—published 12/31/86, effective 1/1/87]

[Filed 2/17/87, Notice 11/19/86—published 3/11/87, effective 4/15/87]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 17
INVESTMENT AND DEPOSIT ACTIVITIES FOR CREDIT UNIONS

189—17.1(533) Authority and purpose.

17.1(1) These rules implement the authority of credit unions organized in accordance with Iowa Code chapter 533 to engage in investment and deposit activities which would be permitted if the credit union were federally chartered in accordance with Iowa Code sections 533.301(5) “j” and 533.301(25), and are promulgated under the authority of Iowa Code section 533.104.

17.1(2) These rules identify certain investments and deposit activities permissible under the Federal Credit Union Act, 12 U.S.C. Section 1757, and National Credit Union Administration (NCUA) rules and regulations, 12 CFR Part 703, and prescribe the rules governing those investments and deposit activities on the basis of safety and soundness concerns. Additionally, these rules identify and prohibit certain investments and deposit activities, which may or may not be permitted for federal credit unions and which are considered inconsistent with state law or unsafe or unsound investment for Iowa state-chartered credit unions. Finally, these rules address investment authority granted to Iowa state-chartered credit unions in Iowa Code chapter 533, which may or may not be permitted for federal credit unions.

17.1(3) Exceptions. These rules do not apply to:

- a. Investment in loans to members and other activities pursuant to Iowa Code sections 533.301(2), 533.301(3), 533.301(15) and 533.301(16);
- b. Investment in real estate-secured loans to members pursuant to Iowa Code section 533.315(4);
- c. Investment in credit union service organizations pursuant to Iowa Code section 533.301(5) “f”;
- d. Investment in fixed assets pursuant to Iowa Code section 533.301(10).

189—17.2(533) Definitions. The definition of terms included in Iowa Code section 17A.2 and 189—1.1(533) applies to such terms used in this chapter unless otherwise provided in this rule. In addition, the following definitions apply as used in these rules:

“Adjusted trading” means selling an investment to a counterparty at a price above its current fair value and simultaneously purchasing or committing to purchase from the counterparty another investment at a price above its current fair value.

“Associated personnel” means a person engaged in the investment banking or securities business who is directly or indirectly controlled by a National Association of Securities Dealers (NASD) member, whether or not the person is registered or exempt from registration with NASD. “Associated personnel” includes every sole proprietor, partner, officer, director, or branch manager of any NASD member.

“Banker’s acceptance” means a time draft that is drawn on and accepted by a bank and that represents an irrevocable obligation of the bank.

“Bank note” means a direct, unconditional, and unsecured general obligation of a bank that ranks equally with all other senior unsecured indebtedness of the bank, except deposit liabilities and other obligations that are subject to any priorities or preferences.

“Borrowing repurchase transaction” means a transaction in which the credit union agrees to sell a security to a counterparty and to repurchase the same or an identical security from that counterparty at a specified future date and at a specified price.

“Call” means an option that gives the holder the right to buy a specified quantity of a security at a specified price during a fixed time period.

“Collateralized mortgage obligation” means a multiclass mortgage-related security.

“Collective investment fund” means a fund maintained by a national bank under Comptroller of the Currency regulations, 12 CFR Part 9.

“Commercial mortgage-related security” means a mortgage-related security, as defined in this rule, except that it is collateralized entirely by commercial real estate, such as a warehouse or office building, or a multifamily dwelling consisting of more than four units.

“Commercial paper” means a debt obligation of a United States-chartered corporation with a maturity date of 270 days or less, which may be interest-bearing or discount-purchased.

“*Corporate bonds*” means a debt obligation of a United States-chartered corporation with a maturity date greater than 270 days, which may be interest-bearing or discount-purchased.

“*Counterparty*” means the party on the other side of the transaction.

“*Custodial agreement*” means a contract in which one party agrees to hold securities in safekeeping for others.

“*Delivery versus payment*” means payment for an investment must occur simultaneously with its delivery.

“*Deposit note*” means an obligation of a bank that is similar to a certificate of deposit but is rated.

“*Derivatives*” means any derivative instrument, as defined under generally accepted accounting principles (GAAP).

“*Embedded option*” means a characteristic of an investment that gives the issuer or holder the right to alter the level and timing of the cash flows of the investment. Embedded options include call and put provisions and interest rate caps and floors. Since a prepayment option in a mortgage is a type of call provision, a mortgage-backed security composed of mortgages that may be prepaid is an example of an investment with an embedded option.

“*Eurodollar deposit*” means a U.S. dollar-denominated deposit in a foreign branch of a United States depository institution.

“*European financial options contract*” means an option that can be exercised only on its expiration date.

“*Exchangeable collateralized mortgage obligation*” means a class of a collateralized mortgage obligation (CMO) that, at the time of purchase, represents beneficial ownership interests in a combination of two or more underlying classes of the same CMO structure. The holder of an exchangeable CMO may pay a fee and take delivery of the underlying classes of the CMO.

“*Fair value*” means the amount at which an instrument could be exchanged in a current, arm’s-length transaction between willing parties, as opposed to a forced or liquidation sale.

“*Financial options contract*” means an agreement to make or take delivery of a standardized financial instrument upon demand by the holder of the contract as specified in the agreement.

“*Immediate family member*” means a spouse or other family member living in the same household.

“*Industry-recognized information provider*” means an organization that obtains compensation by providing information to investors and receives no compensation for the purchase or sale of investments.

“*Investment*” means any security, obligation, account, deposit, or other item authorized for purchase by a federal credit union under the Federal Credit Union Act, 12 U.S.C. Section 1757(7), 1757(8), or 1757(15), or NCUA rules and regulations, 12 CFR Part 703, other than loans to members and the exceptions specified in 189—subrule 17.1(3).

“*Investment portfolio*” means the amount invested by a credit union pursuant to Iowa Code sections 533.301(5), 533.301(25), 533.304 and 533.305, excluding any investment in nonearning assets such as real estate, premises and equipment, the capitalization deposit in the National Credit Union Share Insurance Fund (NCUSIF), and any other investment which does not generate a regular dividend or interest or receive or accrue added value.

“*Investment repurchase transaction*” means a transaction in which an investor agrees to purchase a security from a counterparty and to resell the same or an identical security to that counterparty at a specified future date and at a specified price.

“*Maturity*” means the date the last principal amount of a security is scheduled to come due and does not mean the call date or the weighted average life of a security.

“*Mortgage-related security*” means a security as defined in Section 3(a)(41) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(41)), e.g., a privately issued security backed by first lien mortgages secured by real estate upon which is located a dwelling, mixed residential and commercial structure, residential manufactured home, or commercial structure, that is rated in one of the two highest rating categories by at least one nationally recognized statistical rating organization.

“*Mortgage servicing rights*” means a contractual obligation to perform mortgage servicing and the right to receive compensation for performing those services. Mortgage servicing is the administration of

a mortgage loan, including collecting monthly payments and fees, providing record-keeping and escrow functions, and, if necessary, curing defaults and foreclosing.

“Negotiable instrument” means an instrument that may be freely transferred from the purchaser to another person or entity by delivery, or endorsement and delivery, with full legal title becoming vested in the transferee.

“Net worth” means the retained earnings balance of the credit union at quarter end as determined under generally accepted accounting principles and as further defined in NCUA rules and regulations, 12 CFR Part 702.2(f).

“Official” means any member of a credit union’s board of directors, credit committee, auditing/supervisory committee, or investment-related committee.

“Ordinary care” means the degree of care that an ordinarily prudent and competent person engaged in the same line of business or endeavor should exercise under similar circumstances.

“Pair-off transaction” means an investment purchase transaction that is closed or sold on or before the settlement date. In a pair-off transaction, an investor commits to purchase an investment, but then pairs off the purchase with a sale of the same investment on or before the settlement date.

“Put” means an option that gives the holder the right to sell a specified quantity of a security at a specified price during a fixed time period.

“Registered investment company” means an investment company that is registered with the Securities and Exchange Commission under the Investment Company Act of 1940 (15 U.S.C. 80a). Examples of registered investment companies are mutual funds and unit investment trusts.

“Regular way settlement” means delivery of a security from a seller to a buyer within the time frame that the securities industry has established for immediate delivery of that type of security. For example, regular way settlement of a Treasury security includes settlement on the trade date (cash), the business day following the trade date (regular way), and the second business day following the trade date (skip day).

“Residual interest” means the remainder cash flows from collateralized mortgage obligations/real estate mortgage investment conduits (CMOs/REMICs), or other mortgage-backed security transaction, after payments due bondholders and trust administrative expenses have been satisfied.

“Securities lending” means lending a security to a counterparty, either directly or through an agent, and accepting collateral in return.

“Security” means a share, participation, or other interest in property or in an enterprise of the issuer or an obligation of the issuer that:

1. Either is represented by an instrument issued in bearer or registered form or, if not represented by an instrument, is registered in books maintained to record transfers by or on behalf of the issuer;
2. Is of a type commonly dealt in on securities exchanges or markets or, when represented by an instrument, is commonly recognized in any area in which it is issued or dealt in as a medium for investment; and
3. Either is one of a class or series or by its terms is divisible into a class or series of shares, participations, interests, or obligations.

“Senior management employee” means a credit union’s chief executive officer (typically this individual holds the title of president or manager), an assistant chief executive officer, and the chief financial officer.

“Small business-related security” means a security as defined in Section 3(a)(53) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(53)), e.g., a security that is rated in one of the four highest rating categories by at least one nationally recognized statistical rating organization, and represents an interest in one or more promissory notes or leases of personal property evidencing the obligation of a small business concern and originated by an insured depository institution, insured credit union, insurance company, or similar institution which is supervised and examined by a federal or state authority, or a finance company or leasing company. This definition does not include Small Business Administration securities permissible under the Federal Credit Union Act, 12 U.S.C. Section 1757(7).

“Superintendent” means the superintendent of credit unions appointed by the governor to direct and regulate credit unions pursuant to Iowa Code chapter 533.

“Weighted average life” means the weighted average time to the return of a dollar of principal, calculated by multiplying each portion of principal received by the time at which it is expected to be received (based on a reasonable and supportable estimate of that time) and then summing and dividing by the total amount of principal.

“When-issued trading of securities” means the buying and selling of securities in the period between the announcement of an offering and the issuance and payment date of the securities.

“Yankee dollar deposit” means a deposit in a United States branch of a foreign bank licensed to do business in the state in which it is located, or a deposit in a state-chartered, foreign-controlled bank.

“Zero coupon investment” means an investment that makes no periodic interest payments but instead is sold at a discount from its face value. The holder of a zero coupon investment realizes the rate of return through the gradual appreciation of the investment, which is redeemed at face value on a specified maturity date.

189—17.3(533) Investment policies. A state-chartered credit union’s board of directors must establish written investment policies consistent with Iowa Code chapter 533, the Federal Credit Union Act, these rules, and other applicable laws and regulations and must review the policies at least annually. These policies may be part of a broader, asset-liability management policy. Written investment policies must address, at a minimum, the following:

17.3(1) The purposes and objectives of the credit union’s investment activities;

17.3(2) The characteristics of the investments the credit union may make, including the issuer, maturity, index, cap, floor, coupon rate, coupon formula, call provision, average life, and interest rate risk;

17.3(3) How the credit union will manage interest rate risk;

17.3(4) How the credit union will manage liquidity risk;

17.3(5) How the credit union will manage credit risk including specifically listing institutions, issuers, and counterparties that may be used, or criteria for the credit union’s selection, and limits on the amounts that may be invested with each;

17.3(6) How the credit union will manage concentration risk, which can result from dealing with a single issuer or related issuers, lack of geographic distribution, holding obligations with similar characteristics like maturities and indexes, holding bonds having the same trustee, and holding securitized loans having the same originator, packager, or guarantor;

17.3(7) Who has investment authority and the extent of that authority. Those with authority must be qualified by education or experience to assess the risk characteristics of investments and investment transactions. Only officials or employees of the credit union may be voting members of an investment-related committee;

17.3(8) The name of the broker-dealer(s) the credit union may use;

17.3(9) The name of the safekeeper(s) the credit union may use;

17.3(10) How the credit union will handle an investment that, after purchase, is outside of board policy or fails a requirement of these rules; and

17.3(11) How the credit union will conduct investment trading activities, if applicable, including addressing:

a. Who has purchase and sale authority;

b. Limits on trading account size;

c. Allocation of cash flow to trading accounts;

d. Stop loss or sale provisions;

e. Dollar size limitations of specific types, quantity and maturity to be purchased;

f. Limits on the length of time an investment may be inventoried in a trading account; and

g. Internal controls, including segregation of duties.

189—17.4(533) Record keeping and documentation requirements.

17.4(1) All state-chartered credit unions must comply with generally accepted accounting principles (GAAP) applicable to reports or statements required to be filed with the superintendent. This contrasts

with only federal credit unions with assets of \$10 million or greater that must comply with GAAP in reports and statements filed with the NCUA.

17.4(2) A credit union must maintain documentation for each investment transaction for as long as it holds the investment and until the documentation has been audited in accordance with Iowa Code section 533.208 or NCUA rules and regulations, 12 CFR Part 701.12, or both, and examined by the superintendent or the NCUA, or both. The documentation should include, where applicable, bids and prices at purchase and sale and for periodic updates, relevant disclosure documents or a description of the security from an industry-recognized information provider, financial data, and tests and reports required by the credit union's investment policy and these rules.

17.4(3) A credit union must maintain documentation that its board of directors used to approve a broker-dealer or a safekeeper for as long as the broker-dealer or safekeeper is approved and until the documentation has been audited in accordance with Iowa Code section 533.208 or NCUA rules and regulations, 12 CFR Part 701.12, or both, and examined by the superintendent or the NCUA, or both.

17.4(4) A credit union must obtain an individual confirmation statement from each broker-dealer for each investment purchased or sold.

189—17.5(533) Discretionary control over investments and investment advisers.

17.5(1) Except as provided in 17.5(2), 17.5(3) and 17.5(4), a credit union must retain discretionary control over its purchase and sale of investments. A credit union has not delegated discretionary control to an investment adviser when the credit union reviews all recommendations from investment advisers and is required to authorize a recommended purchase or sale transaction before its execution.

17.5(2) A credit union may delegate discretionary control over the purchase and sale of investments to a person other than a credit union official or employee:

a. Provided the person is an investment adviser registered with the Securities and Exchange Commission under the Investment Advisers Act of 1940 (15 U.S.C. 80b); and

b. Provided the amount of investment authority does not exceed the greater of 10 percent of the credit union's total assets or 100 percent of its net worth, in the aggregate, at the time of delegation; and

c. Provided the amount of investment authority delegated is annually reviewed by the board of directors, within 30 days after the end of the credit union's fiscal year, so the amount of investment authority calculated under 17.5(2) "b" is determined by using the credit union's year-end fiscal total assets and net worth amount; and

d. Provided the amount of investment authority delegated is correspondingly reduced at such time as the total assets or net worth amount declines by 10 percent or more during a consecutive three-month period and the delegated investment authority exceeds the total assets or net worth cap established in this subrule.

17.5(3) At the annual reevaluation of delegated investment authority, the credit union must comply with the 10 percent of total assets or 100 percent of net worth cap. The credit union's board of directors must, no later than its next regularly scheduled monthly board meeting, be informed of the amount exceeding the total asset or net worth cap and must notify in writing the superintendent within five days after the board meeting of the exception to this rule. The credit union must develop a plan to comply with the cap within a reasonable period of time.

17.5(4) Before transacting business with an investment adviser, a credit union must analyze the investment adviser's background and information available from state or federal securities regulators, including any enforcement actions against the adviser, associated personnel, or the firm for which the adviser works.

17.5(5) A credit union may not compensate an investment adviser with discretionary control over the purchase and sale of investments on a per-transaction basis or based on capital gains, capital appreciation, net income, performance relative to an index, or any other incentive basis.

17.5(6) A credit union must obtain a report from its investment adviser at least monthly that details the investments under the adviser's control and the investments' performance.

189—17.6(533) Credit analysis. A credit union must conduct and document a credit analysis on an investment and the issuing entity before purchasing it, except for investments issued or fully guaranteed as to principal and interest by the U.S. government or its agencies, enterprises, or corporations or fully insured (including accumulated interest) by the National Credit Union Administration or the Federal Deposit Insurance Corporation. A credit union must update this analysis at least annually for as long as it holds the investment.

189—17.7(533) Notice of noncompliant investments. A credit union's board of directors must receive notice, no later than the next regularly scheduled monthly board meeting, of any investment that either is outside of board policy after purchase or has failed a requirement of these rules. The board of directors must document its action regarding the investment in the minutes of the board meeting, including a detailed explanation of any decision not to sell the investment. The credit union must notify the superintendent in writing of an investment that has failed a requirement of these rules within five days after the board meeting.

189—17.8(533) Broker-dealers.

17.8(1) A credit union may purchase and sell investments through a broker-dealer as long as the broker-dealer is registered as a broker-dealer with the Securities and Exchange Commission under the Securities Exchange Act of 1934 (15 U.S.C. 78a, et seq.) or is a depository institution whose broker-dealer activities are regulated by a federal or state regulatory agency.

17.8(2) Before purchasing an investment through a broker-dealer, a credit union must analyze and annually update the following:

- a.* The background of any sales representative with whom the credit union is doing business;
- b.* Information available from state or federal securities regulators and securities industry self-regulatory organizations, such as the National Association of Securities Dealers and the North American Securities Administrators Association, about any enforcement actions against the broker-dealer, its affiliates, or associated personnel; and
- c.* If the broker-dealer is acting as the credit union's counterparty, the ability of the broker-dealer and its subsidiaries or affiliates to fulfill commitments, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, reports of nationally recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information.

17.8(3) The requirements of 17.8(1) do not apply when the credit union purchases a certificate of deposit or share certificate directly from a bank, credit union, or other depository institution.

189—17.9(533) Safekeeping of investments.

17.9(1) A credit union's purchased investments and repurchase collateral must be in the credit union's possession, recorded as owned by the credit union through the Federal Reserve Book Entry System, or held by a board of directors-approved safekeeper under a written custodial agreement that requires the safekeeper to exercise, at least, ordinary care.

17.9(2) Any safekeeper used by a credit union must be regulated and supervised by either the Securities and Exchange Commission, a federal or state depository institution regulatory agency, or a state trust company regulatory agency.

17.9(3) A credit union must obtain and reconcile monthly a statement of purchased investments and repurchase collateral held in safekeeping.

17.9(4) Annually, the credit union must analyze the ability of the safekeeper to fulfill the safekeeper's custodial responsibilities, as evidenced by capital strength, liquidity, and operating results. The credit union should consider current financial data, annual reports, reports of nationally recognized statistical rating organizations, relevant disclosure documents, and other sources of financial information.

189—17.10(533) Monitoring nonsecurity investments.

17.10(1) At least quarterly, a credit union must prepare a written report listing all of its shares and deposits in banks, credit unions, and other depository institutions, that have one or more of the following features:

- a. Embedded options;
- b. Remaining maturities greater than three years; or
- c. Coupon formulas that are related to more than one index or are inversely related to, or are multiples of, an index.

17.10(2) The requirement of 17.10(1) does not apply to shares and deposits that are securities.

17.10(3) If a credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the report described in 17.10(1). If a credit union has an investment-related committee, then each member of the committee must receive a copy of the report, and each board member must receive a summary of the information in the report.

189—17.11(533) Valuing securities.

17.11(1) Before purchasing or selling a security, a credit union must obtain either price quotations on the security from at least two broker-dealers or a price quotation on the security from an industry-recognized information provider. This requirement to obtain price quotations does not apply to new issues purchased at par or at original issue discount.

17.11(2) At least monthly, a credit union must determine the fair value of each security it holds. It may determine fair value by obtaining a price quotation on the security from an industry-recognized information provider, a broker-dealer, or a safekeeper.

17.11(3) At least annually, the credit union's auditing/supervisory committee or its external auditor must independently assess the reliability of monthly price quotations received from a broker-dealer or safekeeper. The credit union's auditing/supervisory committee or external auditor must follow generally accepted auditing standards, which require either recomputation or reference to market quotations.

17.11(4) If a credit union is unable to obtain a price quotation required by this rule for a particular security, then it may obtain a quotation for a security with substantially similar characteristics.

189—17.12(533) Monitoring securities.

17.12(1) At least monthly, a credit union must prepare a written report setting forth, for each security held, the fair value and dollar change since the prior month end, with summary information for the entire portfolio.

17.12(2) At least quarterly, a credit union must prepare a written report setting forth the sum of the fair values of all fixed and variable rate securities held that have one or more of the following features:

- a. Embedded options;
- b. Remaining maturities greater than three years; or
- c. Coupon formulas that are related to more than one index or are inversely related to, or are multiples of, an index.

17.12(3) When the amount calculated in 17.12(2) is greater than a credit union's net worth, the report described in that subrule must provide a reasonable and supportable estimate of the potential impact, in percentage and dollar terms, of an immediate and sustained parallel shift in market interest rates of plus and minus 300 basis points on:

- a. The fair value of each security in the credit union's portfolio;
- b. The fair value of the credit union's portfolio as a whole; and
- c. The credit union's net worth.

17.12(4) If the credit union does not have an investment-related committee, then each member of its board of directors must receive a copy of the reports described in 17.12(1) through 17.12(3). If the credit union has an investment-related committee, then each member of the committee must receive copies of the reports, and each member of the board of directors must receive a summary of the information in the reports.

189—17.13(533) Permissible investment activities.

17.13(1) *Regular way settlement and delivery versus payment basis.* A credit union may only contract for the purchase or sale of a security as long as the delivery of the security is by regular way settlement and the transaction is accomplished on a delivery versus payment basis.

17.13(2) *Federal funds.* A credit union may sell federal funds to a national bank; or to a state bank, trust company or mutual savings bank operating in accordance with Iowa law or the laws of any state where it operates a credit union office; or in banks and institutions, the accounts of which are insured by the Federal Deposit Insurance Corporation; or to credit unions, the accounts of which are insured by the National Credit Union Administration; and as long as the interest or other consideration received from the financial institution is at the market rate for federal funds transactions.

17.13(3) *Investment repurchase transaction.* A credit union may enter into an investment repurchase transaction so long as:

a. Any securities the credit union receives are permissible investments for federal and Iowa credit unions; the credit union, or its agent, either takes physical possession or control of the repurchase securities or is recorded as owner of them through the Federal Reserve Book Entry Securities Transfer System; the credit union, or its agent, receives a daily assessment of the securities' market value, including accrued interest; and the credit union maintains adequate margins that reflect a risk assessment of the securities and the term of the transaction; and

b. The credit union has entered into signed contracts with all approved counterparties.

17.13(4) *Borrowing repurchase transaction.* A credit union may enter into a borrowing repurchase transaction so long as:

a. The transaction meets the requirements of 17.13(3);

b. Any cash the credit union receives, when aggregated with all other credit union borrowings, is subject to the borrowing limit in accordance with Iowa Code section 533.306 or to any lesser amount specified by policy of the board of directors, and any investments the credit union purchases with that cash are permissible for federal credit unions; and

c. The investments referenced in 17.13(4)“*b*” mature no later than the maturity of the borrowing repurchase transaction.

17.13(5) *Securities lending transaction.* A credit union may enter into a securities lending transaction so long as:

a. The credit union receives written confirmation of the loan;

b. Any collateral the credit union receives is a legal investment for federal credit unions; the credit union, or its agent, obtains a first priority security interest in the collateral by taking physical possession or control of the collateral, or is recorded as owner of the collateral through the Federal Reserve Book Entry Securities Transfer System; and the credit union, or its agent, receives a daily assessment of the market value of the collateral, including accrued interest; and maintains adequate margin that reflects a risk assessment of the collateral and the term of the loan;

c. Any cash the credit union receives, when aggregated with all other credit union borrowings, is subject to the borrowing limit in accordance with Iowa Code section 533.306 or to any lesser amount specified by policy of the board of directors, and any investments the credit union purchases with that cash are permissible for federal credit unions and mature no later than the maturity of the transaction; and

d. The credit union has executed a written loan and security agreement with the borrower.

17.13(6) *Trading securities.*

a. A credit union may trade securities, including engaging in when-issued trading and pair-off transactions, so long as the credit union can show that it has sufficient resources, knowledge, systems, and procedures to handle the risks.

b. A credit union must record any security it purchases or sells for trading purposes at fair value on the trade date. The trade date is the date the credit union commits, orally or in writing, to purchase or sell a security.

c. At least monthly, the credit union must give its board of directors or investment-related committee a written report listing all purchase and sale transactions of trading securities and the resulting gain or loss on an individual basis.

189—17.14(533) Permissible investments.

17.14(1) Variable rate investment. A credit union may invest in a variable rate investment, as long as the index is tied to domestic interest rates and not, for example, to foreign currencies, foreign interest rates, domestic or foreign commodity prices, equity prices, or inflation rates. For purposes of this subrule, the U.S. dollar-denominated London Interbank Offered Rate (LIBOR) is a domestic interest rate.

17.14(2) Corporate credit union shares or deposits. A credit union may purchase shares or deposits in a corporate credit union, except when the superintendent or the NCUA has notified it that the corporate credit union is not operating in compliance with NCUA rules and regulations, 12 CFR Part 704. A credit union's aggregate amount of paid-in capital and membership capital, as defined in NCUA rules and regulations, 12 CFR Part 704, in one corporate credit union is limited to 2 percent of its assets measured at the time of investment or adjustment. A credit union's aggregate amount of paid-in capital and membership capital in all corporate credit unions is limited to 4 percent of its assets measured at the time of investment or adjustment.

17.14(3) Registered investment company. A credit union may invest in a registered investment company or collective investment fund, as long as the prospectus of the company or fund restricts the investment portfolio to investments and investment transactions that are permissible for federal credit unions.

17.14(4) Collateralized mortgage obligation/real estate mortgage investment conduit. A credit union may invest in a fixed or variable rate collateralized mortgage obligation/real estate mortgage investment conduit.

17.14(5) Municipal security. A credit union may purchase and hold a municipal security, as defined in the Federal Credit Union Act, 12 U.S.C. Section 1757(7)(K), only if a nationally recognized statistical rating organization has rated it in one of the four highest rating categories.

17.14(6) Instruments issued by institutions described in the Federal Credit Union Act, 12 U.S.C. Section 1757(8). A credit union may invest in the following instruments issued by an institution described in Section 1757(8) of the Federal Credit Union Act:

- a. Yankee dollar deposits;
- b. Eurodollar deposits;
- c. Banker's acceptances;
- d. Deposit notes; and
- e. Bank notes with original weighted average maturities of less than 5 years.

17.14(7) European financial options contract. A credit union may purchase a European financial options contract or a series of European financial options contracts only to fund the payment of dividends on member share certificates or interest on member certificates of deposit when such dividend or interest rate is tied to an equity index provided:

- a. The option and dividend/interest rate are based on a domestic equity index;
- b. Proceeds from the options are used only to fund dividends/interest on the equity-linked certificates;
- c. Dividends or interest, or both, on the certificates are derived solely from the change in the domestic equity index over a specified period;
- d. The options' expiration dates are no later than the maturity date of the certificate;
- e. The certificate may be redeemed prior to the maturity date only upon the member's death or termination of the corresponding option;
- f. The total costs associated with the purchase of the option is known by the credit union prior to effecting the transaction;
- g. The options are purchased at the same time the certificate is issued to the member;
- h. The counterparty to the transaction is a domestic counterparty and has been approved by the credit union's board of directors;

- i.* The counterparty to the transaction:
- (1) Has a long-term, senior, unsecured debt rating from a nationally recognized statistical rating organization of AA- (or equivalent) or better at the time of the transaction, and the contract between the counterparty and the credit union specifies that if the long-term, senior, unsecured debt rating declines below AA- (or equivalent) then the counterparty agrees to post collateral with an independent party in an amount fully securing the value of the option; or
 - (2) Posts collateral with an independent party in an amount fully securing the value of the option if the counterparty does not have a long-term, senior, unsecured debt rating from a nationally recognized statistical rating organization;
- j.* Any collateral posted by the counterparty is a permissible investment for federal credit unions and is valued daily by an independent third party along with the value of the option;
- k.* The aggregate amount of equity-linked member certificates does not exceed the credit union's net worth;
- l.* The terms of the certificate include a guarantee that there can be no loss of principal to the member regardless of changes in the value of the option unless the certificate is redeemed prior to maturity; and
- m.* The credit union provides its board of directors with a monthly report detailing, at a minimum:
- (1) The dollar amount of outstanding equity-linked certificates;
 - (2) The certificates' maturities; and
 - (3) The fair value of the options as determined by an independent third party.
- 17.14(8) Debt obligations of U.S.-chartered corporations.** An Iowa state-chartered credit union may invest in unsecured notes and acceptances, commonly referred to as "commercial paper" and "corporate bonds," of U.S.-chartered corporations pursuant to Iowa Code section 533.301(5) "h" and "i" and this rule, only if:
- a.* The investment in a corporate bond debt obligation is rated in one of the two highest rating categories by a nationally recognized statistical rating organization and has a maturity of less than five years;
 - b.* The investment in a commercial paper debt obligation is rated in one of the four highest rating categories by a nationally recognized statistical rating organization and has a maturity of less than one year;
 - c.* An investment in a nonrated equivalent value issue of a commercial paper debt obligation shall otherwise adhere to the limitations of rated issues. In lieu of the required rating by a nationally recognized statistical rating organization, a credit union shall retain documentation supporting the method used in determining the equivalent rating and the current and previous two years of year-end financial statements which indicate acceptable operating performance of the issuing U.S. corporation;
 - d.* Subsequent to the date of purchase but prior to the date of maturity, the rating is downgraded two or more categories by the same nationally recognized statistical rating organization used when the investment was purchased, and the investment exceeds the credit union's net worth by 5 percent or more, the credit union shall have no more than 30 days to divest of the security unless the credit union seeks and receives a waiver from the superintendent as provided by rule;
 - e.* The total investment by a credit union in debt obligations in a lone U.S. corporation and its subsidiaries shall not exceed 25 percent of the credit union's net worth;
 - f.* The total aggregate investment by a credit union in debt obligations of U.S. corporations and their subsidiaries shall not exceed the lesser of 100 percent of the credit union's net worth or 20 percent of the credit union's investment portfolio;
 - g.* An investment will be considered speculative and unauthorized if it contains any of the following characteristics, and the credit union shall be required to divest of the security in accordance with 17.14(8) "d" without an opportunity of waiver:
 - (1) It is issued by a business entity not recognized in the market place or by other than a U.S.-chartered corporation, or by both;
 - (2) It has a maturity that exceeds that established in this subrule; or

(3) It is issued to cover or underwrite foreign market operations, or for new-line products or services, or both, which exceed 25 percent of the investment offering;

h. If the net worth level of a credit union falls or remains below an amount which causes the limitations of this subrule to be exceeded for two consecutive quarters, and the amount of difference is 5 percent or more of the net worth, the credit union shall divest of a sufficient amount of debt obligations so the credit union no longer exceeds the limitations or seek a waiver from the superintendent as provided by rule;

i. A corporate credit union chartered in accordance with Iowa Code chapter 533 is exempt from the provisions and limitations of this subrule and, instead, shall have the powers, restrictions and obligations contained in NCUA rules and regulations, 12 CFR Part 704, for federally insured corporate credit unions.

189—17.15(533) Prohibited investment activities. A credit union may not engage in adjusted trading or short sales.

189—17.16(533) Prohibited investments.

17.16(1) Derivatives. A credit union may not purchase or sell financial derivatives, such as futures, options, interest rate swaps, or forward rate swaps. This prohibition does not apply to:

a. Any derivatives permitted under NCUA rules and regulations, 12 CFR 701.21(i) and 189—subrule 17.14(7);

b. Embedded options not required under GAAP to be accounted for separately from the host contract; and

c. Interest rate lock commitments or forward sales commitments made in connection with a loan originated by the credit union.

17.16(2) Zero coupon investments. A credit union may not purchase a zero coupon investment with a maturity date that is more than ten years from the settlement date.

17.16(3) Mortgage servicing rights. A credit union may not purchase mortgage servicing rights as an investment but may perform mortgage servicing functions as a financial service for a member as long as the mortgage loan is owned by a member.

17.16(4) Commercial mortgage-related security. A credit union may not purchase a commercial mortgage-related security that is not otherwise permitted by the Federal Credit Union Act, 12 U.S.C. Section 1757(7)(E).

17.16(5) Stripped mortgage-backed securities. A credit union may not invest in stripped mortgage-backed securities (SMBS) or securities that represent interests in SMBS except as described in 17.16(5)“a” and “c.”

a. A credit union may invest in and hold exchangeable collateralized mortgage obligations (exchangeable CMOs) representing beneficial ownership interests in one or more interest-only classes of a CMO (IO CMOs) or principal-only classes of a CMO (PO CMOs), but only if:

(1) At the time of purchase, the ratio of the market price to the remaining principal balance is between .8 and 1.2, meaning that the discount or premium of the market price to par must be less than 20 points;

(2) The offering circular or other official information available at the time of purchase indicates that the notional principal on each underlying IO CMO declines at the same rate as the principal on one or more of the underlying non-IO CMOs, and the principal on each underlying PO CMO declines at the same rate as the principal, or notional principal, on one or more of the underlying non-PO CMOs; and

(3) The credit union staff has the expertise dealing with exchangeable CMOs to apply the conditions in 17.16(5)“a”(1) and 17.16(5)“a”(2).

b. A credit union that invests in an exchangeable CMO may exercise the exchange option only if all of the underlying CMOs are permissible investments for that credit union.

c. A credit union may accept an exchangeable CMO representing beneficial ownership interests in one or more IO CMOs or PO CMOs as an asset associated with an investment repurchase transaction

or as collateral in a securities lending transaction. When the exchangeable CMO is associated with one of these two transactions, it need not conform to the conditions in 17.16(5) “a”(1) and 17.16(5) “a”(2).

17.16(6) Insurance company annuity product. A credit union may not purchase an insurance company annuity product as an investment of the credit union. However, a credit union, in its capacity as an employer, may establish retirement or defined employee benefit programs, which may include the purchase of an annuity for the specific purpose of funding an employee benefit plan, provided that:

a. The plan is usually entirely funded by the credit union and the underlying investments are owned by the credit union;

b. There is a direct connection between the purchase of the investment and the employee benefit obligation;

c. If an employee leaves the credit union before the specified time, fails to exercise an option or to vest in the plan, dies, or in some manner forfeits the right to the planned benefit, the credit union must take the steps necessary to dispose of any investment(s) not needed to meet an actual or potential obligation under the employee benefit plan; and

d. A credit union may, under certain circumstances, hold an otherwise impermissible investment purchased to fund an employee benefit plan after an employee retires or separates from the credit union. For example, when a qualified employee is allowed to exercise an investment option following separation, the investment may be held in order to satisfy this benefit plan provision. In most cases this is an acceptable practice provided the option period is reasonable. Upon the employee’s exercise of the option or the expiration of the exercise period, the credit union must divest itself of any remaining impermissible investment(s).

17.16(7) Other prohibited investments. A credit union may not purchase residual interests in collateralized mortgage obligations, real estate mortgage investment conduits, or small business-related securities.

189—17.17(533) Conflicts of interest.

17.17(1) A credit union’s officials and senior management employees, and their immediate family members, may not receive anything of value in connection with their investment transactions. This prohibition also applies to any other employee, such as an investment officer, if the employee is directly involved in investments, unless the credit union’s board of directors determines that the employee’s involvement does not present a conflict of interest. This prohibition does not include compensation for employees.

17.17(2) A credit union’s officials and employees must conduct all transactions with business associates or family members that are not specifically prohibited by 17.17(1) at arm’s length and in the credit union’s best interest.

189—17.18 Reserved.

189—17.19(533) Investment pilot program.

17.19(1) Under an investment pilot program, the credit union division will permit a limited number of credit unions to engage in investment activities prohibited by this rule but otherwise permitted by the Federal Credit Union Act, 12 U.S.C. Section 1757.

17.19(2) Except as provided in 17.19(4), before a credit union may engage in an additional activity it must obtain written approval from the superintendent. To obtain approval, a credit union must submit its written request to the superintendent that addresses the following items:

a. Certification that the credit union is “well-capitalized” under NCUA rules and regulations, 12 CFR Part 702;

b. Board policies approving the activities and establishing limits on them;

c. A complete description of the activities, with specific examples of how they will benefit the credit union and how they will be conducted;

d. A demonstration of how the activities will affect the credit union’s financial performance, risk profile, and asset-liability management strategies;

- e.* Examples of reports the credit union will generate to monitor the activities;
- f.* Projections of the associated costs of the activities, including personnel, computer, and audit;
- g.* Descriptions of the internal systems that will measure, monitor, and report the activities;
- h.* Qualifications of the staff and officials responsible for implementing and overseeing the activities; and
- i.* Internal control procedures that will be implemented, including audit requirements.

17.19(3) If the superintendent supports the credit union's request to engage in the additional activity as provided in 17.19(2), the superintendent will forward the request to the NCUA regional director for review and nonobjection. If the regional director determines that the additional activity would be approved for the credit union if it were federally chartered and does not object otherwise, the superintendent may approve the credit union's request.

17.19(4) Subsequent to the publication date of these rules, a credit union will not need to seek written approval of the superintendent to engage in an investment activity prohibited by the rules but permitted by the Federal Credit Union Act if the activity is part of a third-party investment program the NCUA approves for federal credit unions after the third party submits a request to the NCUA Director of the Office of Strategic Program Support and Planning that addresses the following items:

- a.* A complete description of the activities with specific examples of how a federal credit union will conduct and account for them, and how the activities will benefit a federal credit union;
- b.* A description of any risks to a federal credit union from participating in the program; and
- c.* Contracts that must be executed by the federal credit union.

189—17.20(533) Responsibility placed upon the credit union to show cause.

17.20(1) A state-chartered credit union that engages in an investment activity that it believes to be permissible for federal credit unions, whether or not addressed by these rules, must provide the superintendent, when requested, satisfactory documentation that the activity is not prohibited by the Iowa Code or by the NCUA, or both.

17.20(2) If a credit union engages in an investment activity, whether expressly permitted by these rules or an investment activity that the credit union believes, in good faith, is permitted, and which at the time of engagement is not or thought not to be prohibited by the Iowa Code or the NCUA, or both, but subsequently becomes or is found to have been prohibited, the credit union must develop a plan to become compliant within a reasonable period of time.

17.20(3) Although automatic authority is granted to Iowa credit unions by Iowa Code sections 533.301(5)“j” and 533.301(25) and these rules, such authority may be withheld or withdrawn by the superintendent for safety and soundness concerns or for blatant disregard for these rules, in whole or in part, by a credit union.

These rules are intended to implement Iowa Code section 533.301(5).

[Filed 2/5/88, Notice 11/18/87—published 2/24/88, effective 3/30/88]

[Filed 1/31/03, Notice 12/25/02—published 2/19/03, effective 3/26/03]

[Filed 11/4/04, Notice 9/15/04—published 11/24/04, effective 12/29/04]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 19
AMEND, MODIFY OR REVERSE ACTS OF THE BOARD OF DIRECTORS—
MAILED BALLOT VOTING PROCEDURE

189—19.1(533) Definitions. Reserved.

189—19.2(533) Authority for mailed ballots.

19.2(1) The members present at any annual or special meeting of the membership may vote to amend, modify or reverse an act of the board of directors or to instruct the board to take action not inconsistent with the bylaws or Iowa Code chapter 533.

19.2(2) In order to be binding upon the board, any vote so taken by the membership at any meeting to amend, modify or reverse an act of the board or to instruct the board to take action requires an affirmative vote of a simple majority of all eligible members of the credit union after submitting the action to the membership by mailed ballot.

189—19.3(533) Notice to voting members.

19.3(1) Within 60 days of an annual or special meeting of the membership where it was voted to amend, modify or reverse an act of the board of directors or to instruct the board to take action not inconsistent with the bylaws or Iowa Code chapter 533, the board of directors shall submit the issue to all eligible voters of record as of the date of such annual or special meeting.

19.3(2) The proposed amendment, modification, reversal or instruction to take action shall be set forth in its entirety in a notice mailed to all members eligible to vote at least 20 days but not more than 30 days prior to the closing date of balloting by mail. The only items included in the mailing of the notice shall be pertinent to the proposed amendment, modification, reversal or instruction to take action, and the notice shall not be included as part of any general mailing to the members.

19.3(3) The notice shall set forth the rules and procedures of voting, the date of the close of balloting, the name of the election committee chairperson, and an announcement that balloting on the action(s) specified in the notice are subject to an affirmative vote of a simple majority of all members eligible to vote and that no other vote on the action(s) will be taken after the specified closing date of balloting.

19.3(4) The notice shall contain a summary of the board's reasons for their actions which were subsequently voted amended, modified or reversed, as well as a summary of the reasons, if known, for the vote to amend, modify or reverse the board action.

189—19.4(533) Balloting procedures.

19.4(1) A ballot and envelope shall be included with the notice to all eligible voting members of the credit union. The ballot shall be substantially in the form specified in this rule.

19.4(2) An envelope marked "BALLOT" shall be provided to all eligible voters and the voter shall sign in the appropriate location on the outside of the envelope and seal the envelope before mailing or delivering the ballot in person to the credit union office. The use of a return envelope with postage affixed is not required and the envelope shall be substantially in the form specified by this rule.

19.4(3) Ballots must be returned to the credit union by the date of the closing of the balloting as specified in the notice to members. Ballots hand-delivered to the credit union must be received prior to the close of normal credit union business hours of the closing date of balloting in order to be considered valid. Ballots mailed to the credit union must be postmarked no later than the closing date of balloting and received within five business days after such closing date in order to be considered valid.

19.4(4) Ballots shall be delivered to the election committee in envelopes unopened. Ballots received by the election committee not in compliance with this subrule shall be considered invalid.

189—19.5(533) Ballot and envelope.

19.5(1) Ballots referred to by this rule shall be substantially in the following form:

SAMPLE BALLOT:

<p>It has been voted at an annual or special meeting of the membership that action previously taken by the Board of Directors of the credit union should be (amended) (modified) (reversed).</p> <p>In accordance with Iowa Code section 533.7 and 189 Iowa Administrative Code Chapter 19, the enclosed notice advises you that you have the right to vote on this matter, provides you important information concerning this issue and sets forth the procedures and rules for voting.</p> <p>ON THE ISSUE AT HAND: _____</p> <p>_____</p> <p>_____</p> <p>SHALL THE ABOVE ACTION, PREVIOUSLY TAKEN BY THE BOARD OF DIRECTORS, BE (AMENDED) (MODIFIED) (REVERSED) AS WAS VOTED AT AN ANNUAL OR SPECIAL MEETING OF THE MEMBERSHIP AND AS SET FORTH IN ITS ENTIRETY IN THE NOTICE ENCLOSED WITH THIS BALLOT?</p> <p>YES _____ NO _____</p>

19.5(2) Envelopes referred to by this rule shall be substantially in the following form:

SAMPLE ENVELOPE:

<p>FROM:</p> <p>_____</p> <p>_____</p> <p>_____</p> <p>"BALLOT ENCLOSED"</p> <p>_____</p> <p>Signature</p>	<p>TO: Election Committee (Name) Credit Union (Address) (City, State & Zip)</p>
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19.5(3) Each proposed amendment, modification, reversal or instruction to take action must be listed separately on the ballot so that the member has the opportunity to vote on each proposal.

189—19.6(533) Confidentiality of ballots.

19.6(1) The board of directors shall appoint from the credit union membership an election committee of not less than five members to be in charge of counting of the ballots and verifying that no eligible member voted more than once. No more than two members of the election committee shall be from the board of directors.

19.6(2) All returned ballots become the property and responsibility of the election committee.

19.6(3) No director, employee, agent or member of the election committee shall reveal the manner in which any member voted on the proposed amendment, modification, reversal or instruction to take action.

189—19.7(533) Counting of ballots and reporting results of the vote to the membership.

19.7(1) No sooner than 10 nor later than 20 calendar days after the closing date of balloting, the election committee shall meet and open the ballot envelopes and count or cause to be counted the ballots.

19.7(2) If a simple majority of all eligible members voted in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting shall be considered affirmed, and the board of directors shall take immediate action to comply with the directions of the membership.

19.7(3) If a simple majority of all eligible members failed to vote in favor of the amendment, modification, reversal or instruction to take action, the vote of the members taken at the annual or special meeting is not affirmed, and the prior action of the board of directors shall be considered upheld.

19.7(4) The election committee shall submit to the board of directors a certified statement as to the results of the election, including the number of members eligible to vote on the proposed amendment, modification, reversal or instruction to take action, the actual number of members voting on the proposal, and the vote count of the eligible members voting in favor of the proposed amendment, modification, reversal or instruction to take action. The certified statement shall be submitted to the board of directors within 30 days after the closing date of balloting.

19.7(5) Within five calendar days after certification by the election committee to the board of directors, the board of directors shall inform the members of the results of the vote and whether the amendment, modification, reversal or instruction to take action was or was not affirmed by the membership by conspicuously posting a notice in the credit union office for a period of 60 days and by one of the following methods:

- a.* Include the results in a notice in the next general mailing of the members' statements of account;
- or
- b.* Include the results in a notice in the next issue of the credit union newsletter; or
- c.* Include the results in a notice in a newspaper of general circulation within the credit union's area of operation.

189—19.8(533) Preservation of ballots.

19.8(1) Immediately upon certification of the vote by the election committee, the ballots shall be sealed and appropriately labeled.

19.8(2) Ballots shall be retained in the credit union for a period of 60 days after the date of the latest notice method used in providing the voting results to the members as specified in subrule 19.7(5) before being destroyed.

These rules are intended to implement Iowa Code section 533.203(3).

[Filed 11/10/92, Notice 8/19/92—published 11/25/92, effective 12/30/92]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 23
UNIFORM WAIVER AND VARIANCE RULES

189—23.1(17A,ExecOrd11) Scope of chapter. This chapter outlines a uniform process for the granting of waivers or variances from rules adopted by the board or the superintendent in situations where no other more specifically applicable law provides for waivers. The intent of this chapter is to allow persons to seek exceptions to the application of rules issued by the board or the superintendent. This chapter shall not apply to rules that merely define the meaning of a statute or other provision of law or precedent if the division does not possess delegated authority to bind the courts to any extent with its definition. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

23.1(1) Definitions.

“*Board*” means the credit union review board created by Iowa Code section 533.107.

“*Person*” means an individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any legal entity.

“*Superintendent*” means the superintendent of credit unions appointed by the governor to direct and regulate credit unions pursuant to Iowa Code chapter 533.

“*Waiver or variance*” means an agency action which suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person.

23.1(2) Applicability.

a. The superintendent may grant a waiver or variance from a rule adopted by the board or superintendent only if (1) the board or superintendent has jurisdiction over the rule; (2) no statute or rule otherwise controls the granting of a waiver or variance from the rule from which waiver or variance is requested; and (3) the requested waiver or variance is consistent with applicable statutes, constitutional provisions, or other provisions of law.

b. No waiver or variance may be granted from a requirement which is imposed by statute.

189—23.2(17A,ExecOrd11) Superintendent discretion. The decision on whether the circumstances justify the granting of a waiver or variance shall be made at the discretion of the superintendent upon consideration of all relevant factors. Each petition for a waiver or variance shall be evaluated by the superintendent based on the unique, individual circumstances set out in the petition.

23.2(1) Criteria for waiver or variance. The superintendent may, in response to a completed petition or on the superintendent’s own motion, grant a waiver or variance from a rule, in whole or in part, as applied to the circumstances of a specified situation if the superintendent finds all of the following:

a. The application of the rule would result in an undue hardship on the person for whom the waiver or variance is requested;

b. The waiver or variance from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;

c. The provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and

d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

In determining whether a waiver or variance should be granted, the superintendent shall consider the public interest, policies and legislative intent of the statute on which the rule is based. When the rule from which a waiver or variance is sought establishes administrative deadlines, the superintendent shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

23.2(2) Special waiver or variance rules not precluded. These uniform waiver and variance rules shall not preclude the superintendent from granting waivers or variances in other contexts including, without limitation, those described in Iowa Code sections 533.303 and 533.401 or on the basis of other

standards if a statute or other rule authorizes the superintendent to do so and the superintendent deems it appropriate to do so.

189—23.3(17A,ExecOrd11) Requester’s responsibilities in filing a waiver or variance petition.

23.3(1) Application. All petitions for waiver or variance must be submitted in writing to the Credit Union Division, 200 East Grand, Suite 370, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

23.3(2) Content of petition. A petition for waiver or variance shall include the following information where applicable and known to the requester (for an example of a petition for waiver or variance, see Exhibit A at the end of this chapter):

- a. A description and citation of the specific rule from which a waiver or variance is requested.
- b. The specific waiver or variance requested, including the precise scope and operative period that the waiver or variance will extend.
- c. The relevant facts that the petitioner believes would justify a waiver or variance under each of the four criteria specified in subrule 23.2(1).
- d. A signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver or variance.
- e. A history of any prior contacts between the superintendent and the petitioner relating to the regulated activity, license, grant, loan or other financial assistance affected by the proposed waiver or variance, including a description of each affected license, grant, loan or other financial assistance held by the requester, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
- f. Any information known to the requester regarding the treatment of similar cases by the superintendent.
- g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver or variance.
- h. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition.
- i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver or variance.
- j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the superintendent with information relevant to the waiver or variance.

23.3(3) Burden of persuasion. When a petition is filed for a waiver or variance from a rule, the burden of persuasion shall be on the petitioner to demonstrate by clear and convincing evidence that the superintendent should exercise the superintendent’s discretion to grant the petitioner a waiver or variance.

189—23.4(17A,ExecOrd11) Notice. The superintendent shall acknowledge a petition upon receipt. The superintendent shall ensure that, within 30 days of the receipt of the petition, notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law. In addition, the superintendent may give notice to other persons. To accomplish this notice provision, the superintendent may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law and provide a written statement to the superintendent attesting that notice has been provided.

189—23.5(17A,ExecOrd11) Superintendent’s responsibilities regarding petition for waiver or variance.

23.5(1) Additional information. Prior to issuing an order granting or denying a waiver or variance, the superintendent may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the superintendent may, on the superintendent’s own motion or at the petitioner’s request, schedule a telephonic or in-person meeting between the petitioner and the superintendent or the superintendent’s designee.

23.5(2) *Hearing procedures.* The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply in three situations: (a) to any petition for a waiver or variance of rule filed within a contested case; (b) when the board or superintendent so provides by rule or order; or (c) when a statute so requires.

23.5(3) *Ruling.* An order granting or denying a waiver or variance shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and operative period of the waiver if one is issued.

23.5(4) *Conditions.* The superintendent may place any condition on a waiver or variance that the board or superintendent finds desirable to protect the public health, safety, and welfare.

23.5(5) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

23.5(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the superintendent a waiver may be renewed if the superintendent finds that grounds for a waiver continue to exist.

23.5(7) *Time for ruling.* The superintendent shall grant or deny a petition for a waiver or variance as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the superintendent shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

23.5(8) *When deemed denied.* Failure of the superintendent to grant or deny a petition within the required time period shall be deemed a denial of that petition by the superintendent.

23.5(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

189—23.6(17A,ExecOrd11) *Public availability.* All orders granting or denying waivers and variances under this chapter shall be indexed, filed and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver or variance and orders granting or denying a waiver or variance petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the superintendent is authorized or required to keep confidential. The superintendent may accordingly redact confidential information from petitions or orders prior to public inspection.

189—23.7(17A,ExecOrd11) *Voiding or cancellation.* A waiver or variance is void if the material facts upon which the request or petition is based are not true or if material facts have been withheld. A waiver or variance issued by the superintendent pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and opportunity for hearing, the superintendent issues an order finding any of the following:

1. The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The alternative means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order has been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with any conditions contained in the order.

189—23.8(17A,ExecOrd11) *Violations.* Violation of conditions in the waiver or variance order is the equivalent of violation of the particular rule for which the waiver or variance is granted and is subject to the same remedies or penalties.

189—23.9(17A,ExecOrd11) *Defense.* After the superintendent issues an order granting a waiver or variance, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

189—23.10(17A,ExecOrd11) Appeals. Granting or denying a request for waiver or variance is final agency action under Iowa Code chapter 17A. An appeal to district court shall be taken within 30 days of the issuance of the order in response to the request unless a contrary time is provided by rule or statute.

189—23.11(17A,ExecOrd11) Summary reports. Semiannually, the superintendent shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the superintendent's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

Exhibit A

Sample Petition (Request) for Waiver/Variance

BEFORE THE SUPERINTENDENT OF CREDIT UNIONS

Petition by (insert name of petitioner) for the waiver of (insert rule citation) relating to (insert the subject matter).		PETITION FOR WAIVER
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A request for waiver or variance from a rule adopted by the superintendent shall include the following information in the petition for waiver or variance where applicable and known:

- a.* Provide the petitioner's (person asking for a waiver or variance) name, address, and telephone number.
- b.* Describe and cite the specific rule from which a waiver or variance is requested.
- c.* Describe the specific waiver or variance requested; include the exact scope and operative time period that the waiver or variance will extend.
- d.* Explain the important facts that the petitioner believes justify a waiver or variance. Include in your answer (1) why applying the rule will result in undue hardship on the petitioner; and (2) how granting the waiver or variance will not prejudice the substantial legal rights of any person; and (3) that the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (4) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.
- e.* Provide a history of prior contacts between the superintendent and petitioner relating to the regulated activity, license, grant, loan or other financial assistance that would be affected by the waiver or variance; include a description of each affected license, grant, loan or other financial assistance held by the petitioner, any notices of violation, contested case hearings, or investigative or examination reports relating to the regulated activity, license, grant or loan within the past five years.
- f.* Provide information known to the petitioner regarding the treatment by the superintendent of similar cases.
- g.* Provide the name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver or variance.
- h.* Provide the name, address, and telephone number of any person or entity that would be adversely affected or disadvantaged by the granting of the waiver or variance.
- i.* Provide the name, address, and telephone number of any person with knowledge of the relevant or important facts relating to the requested waiver or variance.
- j.* Provide signed releases of information authorizing persons with knowledge regarding the request to furnish the superintendent with information relevant to the waiver or variance.

I hereby attest to the accuracy and truthfulness of the above information.

Petitioner's signature

Date

Petitioner should note the following when requesting or petitioning for a waiver or variance:

1. The petitioner has the burden of proving to the superintendent, by clear and convincing evidence, the following: (a) application of the rule to the petitioner would result in an undue hardship on the petitioner; and (b) waiver or variance in the specific case would not prejudice the substantial legal rights of any person; and (c) the provisions of the rule subject to the petition for waiver are not specifically mandated by statute or another provision of law; and (d) where applicable, how substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver or variance is requested.

2. The superintendent may request additional information from or request an informal meeting with the petitioner prior to issuing a ruling granting or denying a request for waiver or variance.

3. All petitions for waiver or variance must be submitted in writing to the Credit Union Division, 200 East Grand, Suite 370, Des Moines, Iowa 50309. If the petition relates to a pending contested case, a copy of the petition shall also be filed in the contested case proceeding.

These rules are intended to implement Executive Order Number 11 and Iowa Code section 17A.9A.

[Filed 6/21/01, Notice 5/16/01—published 7/11/01, effective 8/15/01]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 25
PUBLIC RECORDS AND
FAIR INFORMATION PRACTICES

The credit union division hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules of Agency Procedure relating to public records and fair information practices which are printed in the first Volume of the Iowa Administrative Code.

189—25.1(17A,22) Definitions. As used in this chapter:

"Agency" in these rules means the Iowa credit union division.

189—25.3(17A,22) Requests for access to records.

25.3(1) Location of record. In lieu of the words "(insert agency head)", insert "superintendent". In lieu of the words "(insert agency name and address)", insert "Iowa Credit Union Division, 200 E. Grand, Suite 370, Des Moines, Iowa 50309".

25.3(2) Office hours. In lieu of the words "insert customary office hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

25.3(7) Fees.

c. Supervisory fee. In lieu of "(specify time period)", insert "one-half hour".

189—25.6(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records. In lieu of the words "(designate office)", insert "Iowa credit union division".

189—25.9(17A,22) Disclosure without the consent of the subject.

25.9(1) Open records are routinely disclosed without the consent of the subject.

25.9(2) To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

a. For a routine use as defined in rule 25.10(17A,22) or in any notice given for a particular record system.

b. To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

c. To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if the head of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

d. To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

e. To the legislative services agency under Iowa Code section 2A.3.

f. Disclosures in the course of employee disciplinary proceedings.

g. In response to a court order or subpoena.

189—25.10(17A,22) Routine use.

25.10(1) "Routine use" means the disclosure of a record without the consent of the subject or subjects for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

25.10(2) To the extent allowed by law, the following uses are considered routine uses of all agency records:

a. Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request, of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record was collected or maintained.

189—25.11(17A,22) Consensual disclosure of confidential records.

25.11(1) *Consent to disclosure by a subject individual.* To the extent permitted by law, the subject may consent in writing to agency disclosure of confidential records as provided in rule 189—25.7(17A,22).

25.11(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may, to the extent permitted by law, be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

189—25.12(17A,22) Release to subject.

25.12(1) The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 25.6(17A,22). However, the agency need not release the following records to the subject:

a. The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code subsection 22.7(18) or other provision of law.

b. Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

c. Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code subsection 22.7(5))

d. As otherwise authorized by law.

25.12(2) Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

189—25.13(17A,22) Availability of records.

25.13(1) *Open records.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

25.13(2) *Confidential records.* The following records may be withheld from public inspection. Records are listed by category, according to the legal basis for withholding them from public inspection.

a. Tax records made available to the agency. (Iowa Code sections 422.72 and 422.20)

b. Records which are exempt from disclosure under Iowa Code section 22.7.

c. Minutes of closed meetings of a government body. (Iowa Code subsection 21.5(4))

d. Identifying details in final orders, decisions, and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code subsection 17A.3(1) "d."

e. Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements, or in the selection or handling of cases, such as operational tactics or allowable tolerances or criteria for the defense, prosecution or settlement of cases, when disclosure of these statements would:

- (1) Enable law violators to avoid detection;
- (2) Facilitate disregard of requirements imposed by law; or
- (3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2 and 17A.3)

f. All papers, documents, reports, reports of examinations and other writings relating specifically to the supervision and regulation of any state credit union or other person by the superintendent of credit unions pursuant to the laws of this state. (Iowa Code section 533.108)

g. Reports of examinations conducted by the superintendent of credit unions and reports of examinations received by or furnished to the superintendent of credit unions pursuant to Iowa Code section 533.113.

h. Information and material in the public file of applications filed with the superintendent pursuant to rule 2.12(17A) deemed by the superintendent to be confidential.

i. All information obtained by examiners and described in Iowa Code section 533.108.

j. All applications, reports, materials, documents, information and other writings obtained from the National Credit Union Administration or authorized account insurer (Iowa Code section 533.307), Federal Reserve Bank, Comptroller of the Currency or any agency of the United States government which would cause the denial of services or information to the agency. (Iowa Code section 22.9; the Privacy Act of 1974 (U.S.C. 522a); and Part 790 of the National Credit Union Administration Rules and Regulations, 12 CFR 790, August 1987)

k. Those personnel records which are confidential under Iowa Code sections 22.7(11), 19A.9 and 19A.15.

l. Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, Iowa R.C.P. 122(c), Fed. R. Civ. P. 26(b)(3), and case law. Attorney-client communications are confidential under Iowa Code sections 622.10 and 622.11, the rules of evidence, the Code of Professional Responsibility, and case law.

m. Any other information made confidential by law.

25.13(3) Authority to release confidential records. The agency may have discretion to disclose some confidential records which are exempt from disclosure under Iowa Code section 22.7 or other law. Any person may request permission to inspect records withheld from inspection under a statute which authorizes limited or discretionary disclosure as provided in rule 25.4(17A,22). If the agency initially determines that it will release such records, the agency may, where appropriate, notify interested parties and withhold the records from inspection as provided in subrule 25.4(3).

189—25.14(17A,22) Personally identifiable information. This rule describes the nature and extent of personally identifiable information that is collected, maintained, and retrieved by the agency by personal identifier in record systems as defined in rule 189—25.1(17A,22). The credit union division does not currently have a data processing system which matches, collates, or permits the comparison of personally identifiable information in another record system. The record systems maintained by the agency which may contain personally identifiable information are the files of current and former agency employees. This information is collected pursuant to Iowa Code section 533.106.

189—25.15(17A,22) Other groups of records routinely available for public inspection. This rule describes groups of records maintained by the agency other than record systems as defined in rule 189—25.1(17A,22). These records are routinely available to the public. However, the agency's files of these records may contain confidential information as discussed in rule 25.13(17A,22). In addition, the

records listed in subrules 25.15(1) to 25.15(4) may contain information about individuals. All records are stored on paper.

25.15(1) *Rule making.* Rule-making records may contain information about individuals making written or oral comments on proposed rules. This information is collected pursuant to Iowa Code section 17A.4. This information is not stored in an automated data processing system.

25.15(2) *Credit union review board records.* Agendas, minutes, and materials presented to the credit union review board are available from the office of the credit union division, except those records concerning closed sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Credit union review board records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.3. This information is not retrieved by individual identifier and is not stored in an automated data processing system.

25.15(3) *Publications.* News releases, annual reports, project reports, agency newsletters, etc., are available from the office of the credit union division.

Agency news releases, project reports, and newsletters may contain information about individuals, including agency staff or members of agency councils or committees. This information is not retrieved by individual identifier and is not stored in an automated data processing system.

25.15(4) *Orders issued by the superintendent.* All findings of fact, conclusions of law, and orders issued by the superintendent of credit unions subsequent to a public hearing under the provisions of Iowa Code chapter 17A. These records may contain information about individuals making written or oral comments at the public hearing.

25.15(5) *Published materials.* The agency uses many legal and technical publications in its work. The public may inspect these publications upon request. Some of these materials may be protected by copyright law.

25.15(6) *Policy manuals.* The agency's employees' manual, containing the policies and procedures for programs administered by the agency, is available in the office of the agency. Subscriptions to all or part of the employees' manual are available at the cost of production and handling. Requests for subscription information should be addressed to Iowa Credit Union Division, 200 E. Grand Avenue, Suite 370, Des Moines, Iowa 50309. Policy manuals do not contain information about individuals.

25.15(7) *Reports to superintendent.* Reports obtained by the superintendent of credit unions pursuant to the provisions of Iowa Code section 533.330. These reports are considered open reports.

25.15(8) *Officers, directors and shareholders.* Lists filed with the superintendent of credit unions pursuant to the provisions of Iowa Code section 533.204. These reports are considered open records.

25.15(9) *Other records.* All other records that are not exempted from disclosure by law.

These rules are intended to implement Iowa Code section 22.11.

[Filed 8/5/88, Notice 5/18/88—published 8/24/88, effective 9/30/88]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

CHAPTER 12
LOW-INCOME HOUSING TAX CREDITS

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program 2009 Second Amended Qualified Allocation Plan shall be the qualified allocation plan for the allocation of 2009 low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2). The qualified allocation plan does not include any amendments or editions created subsequent to September 3, 2008.

265—12.2(16) Location of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority's Web site at <http://www.iowafinanceauthority.gov>. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library and shall be available on the authority's Web site. The plan incorporates by reference IRC Section 42 and the regulations in effect as of September 3, 2008. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's Web site.

265—12.3(16) Compliance manual. The compliance manual for all low-income housing tax credit projects monitored by the authority for compliance with IRC Section 42, effective March 5, 2008, is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

265—12.4(16) Location of copies of the manual. The compliance manual can be reviewed and copied in its entirety on the authority's Web site at www.iowafinanceauthority.gov. Copies of the compliance manual shall be deposited with the administrative rules coordinator and at the state law library. The compliance manual incorporates by reference IRC Section 42 and the regulations in effect as of March 5, 2008. Additionally, the compliance manual incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and links to these statutes, regulations and rules are on the authority's Web site. Copies are available from the authority upon request at no charge.

These rules are intended to implement Iowa Code section 16.52.

[Filed 6/23/88, Notice 12/30/87—published 7/13/88, effective 8/17/88]

[Filed 3/19/91, Notice 10/17/90—published 4/3/91, effective 5/8/91]

[Filed emergency 10/6/99 after Notice 8/11/99—published 11/3/99, effective 10/6/99]

[Filed emergency 7/14/00 after Notice 5/3/00—published 8/9/00, effective 7/14/00]

[Filed 10/12/00, Notice 8/23/00—published 11/1/00, effective 12/6/00]

[Filed 10/12/01, Notice 6/27/01—published 10/31/01, effective 12/5/01]

[Filed 8/15/02, Notice 6/26/02—published 9/4/02, effective 10/9/02]

[Filed 8/13/03, Notice 6/25/03—published 9/3/03, effective 10/8/03]

[Filed 9/9/04, Notice 8/4/04—published 9/29/04, effective 11/3/04]

[Filed 8/12/05, Notice 6/22/05—published 8/31/05, effective 10/5/05]

[Filed 8/23/06, Notice 7/5/06—published 9/13/06, effective 10/18/06]

[Filed 8/9/07, Notice 7/4/07—published 8/29/07, effective 10/3/07]

[Filed 5/13/08, Notice 3/26/08—published 6/4/08, effective 7/9/08]

[Filed 7/10/08, Notice 6/4/08—published 7/30/08, effective 9/3/08]

[Filed emergency 8/19/08—published 9/10/08, effective 9/3/08]

[Filed emergency 10/14/08—published 11/5/08, effective 10/14/08]

[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

ELDER AFFAIRS DEPARTMENT[321]

Prior to 5/20/87, see Commission on the Aging[20]

Delay: Effective date (June 24, 1987) of Chapters 1 to 18 delayed 70 days pursuant to Iowa Code section 17A.4(5) by the Administrative Rules Review Committee at their June 9, 1987, meeting.

CHAPTER 1**INTRODUCTION, ABBREVIATIONS AND DEFINITIONS**

- 1.1(231) Authority and purpose
- 1.2(231) Other regulations and order of precedence
- 1.3(231) Applicability
- 1.4(231) Abbreviations
- 1.5(231) Definitions

CHAPTER 2**DEPARTMENT OF ELDER AFFAIRS**

- 2.1(231) Mission statement
- 2.2(231) Definitions
- 2.3(231) Department established
- 2.4(231) Director
- 2.5(231) Organizational units of the department
- 2.6(231) Staffing
- 2.7(231) Discrimination
- 2.8(231) Affirmative action plans
- 2.9(231) Department complaint and appeal procedures
- 2.10(231) Severability

CHAPTER 3**COMMISSION OF ELDER AFFAIRS**

- 3.1(231) Definitions
- 3.2(231) Purpose of the commission
- 3.3(21,231) Organization of the commission and proceedings
- 3.4(231) Commission duties and authority

CHAPTER 4**DEPARTMENT PLANNING RESPONSIBILITIES**

- 4.1(231) Definitions
- 4.2(231) State plan on aging
- 4.3(231) Designation of PSA
- 4.4(231) Designation of AAA
- 4.5(231) Types of entities that qualify as an AAA
- 4.6(231) Multipurpose entity
- 4.7(231) Request for waiver
- 4.8(231) Applicant qualification and preference
- 4.9(231) Procedure for designation of an AAA
- 4.10(231) Withdrawal of AAA designation
- 4.11(231) Procedures for withdrawal of AAA designation
- 4.12(231) Department action subsequent to withdrawal
- 4.13(231) Technical assistance
- 4.14(231) Severability

CHAPTER 5
DEPARTMENT FISCAL POLICY

- 5.1(231) Definitions
- 5.2(231) Grants to area agencies on aging
- 5.3(231) Limitations on use
- 5.4(231) Expenditures in rural areas
- 5.5(231) Funding formulas
- 5.6(231) State appropriations and case management allotments
- 5.7(231) Program allotment calculations
- 5.8(231) Funding estimates
- 5.9(231) Matching funds
- 5.10(231) Allowable use of federal and state funds for multiyear area plan administration
- 5.11(231) Reallotment
- 5.12(231) Restriction on delegation of authority to other agencies
- 5.13(231) Records and reports
- 5.14(231) State reviews and audits
- 5.15(231) Acquisition of goods and services
- 5.16(231) Restrictions for multipurpose agencies designated as AAA
- 5.17(231) Records—contract administration
- 5.18(231) Recapture of funds for facilities
- 5.19(231) Property management

CHAPTER 6
AREA AGENCY ON AGING PLANNING AND ADMINISTRATION

- 6.1(231) Definitions
- 6.2(231) Area plan
- 6.3(231) Area agency administration
- 6.4(231) Confidentiality and disclosure of AAA information
- 6.5(231) AAA contact information
- 6.6(231) Duties of AAA
- 6.7(231) AAA board of directors
- 6.8(231) AAA advisory council
- 6.9(231) Emergency situations
- 6.10(231) AAA procedures manual
- 6.11(231) Contracts and subgrants
- 6.12(231) Direct service
- 6.13(231) Noncompliance
- 6.14(231) Priority service expenditures
- 6.15(231) Waivers of priority service expenditures
- 6.16(231) Requirements for service providers
- 6.17(231) Entrepreneurial activities of AAA
- 6.18(231) Severability

CHAPTER 7
AREA AGENCY ON AGING SERVICE DELIVERY

- 7.1(231) Definitions
- 7.2(231) Service delivery
- 7.3(231) Outreach for greatest need
- 7.4(231) Delivery of service
- 7.5(231) Funding for services and program facilities
- 7.6(231) Compliance with health, safety and construction requirements
- 7.7(231) Term of use of an acquired or constructed facility

7.8(231)	Restrictions
7.9(231)	Information and assistance services
7.10(231)	Legal assistance requirements
7.11(231)	Disease prevention and health promotion under Title III-D of the Act
7.12(231)	Nutrition services
7.13(231)	AOA NSIP programs
7.14(231)	Nutrition performance standards
7.15(231)	Food standards
7.16(231)	Food-borne illness
7.17(231)	Menus
7.18(231)	Special dietary needs
7.19(231)	Congregate nutrition services
7.20(231)	Eligibility for meals at congregate nutrition sites
7.21(231)	Home-delivered meals
7.22(231)	Noncompliance
7.23(231)	Requirements for opening or closing congregate nutrition sites
7.24(231)	Evaluation of sites

CHAPTER 8

LONG-TERM CARE RESIDENT'S ADVOCATE/OMBUDSMAN

8.1(231)	Definitions
8.2(231)	Purpose
8.3(231)	Long-term care resident's advocate/ombudsman duties
8.4(231)	Access requirements
8.5(231)	Authority and responsibilities of the department
8.6(231)	Volunteer long-term care ombudsman program

CHAPTER 9

RESIDENT ADVOCATE COMMITTEES

9.1(231)	Definitions
9.2(231)	Resident advocate committees established
9.3(231)	Application for committee membership
9.4(231)	Appointment to resident advocate committees
9.5(231)	Objection to and termination of appointments to resident advocate committees
9.6(231)	Request for reconsideration of appointment or termination of appointment
9.7(231)	Resident advocate committee structure and procedures
9.8(231)	Duties of the committee
9.9(231)	Committee access and assistance
9.10(231)	Confidentiality
9.11(231)	Committee response to complaints and grievances
9.12(231)	Complaints referred from the department of inspections and appeals
9.13(231)	Accountability measures
9.14(231)	Reporting statistics
9.15(231)	Severability

CHAPTER 10

SENIOR INTERNSHIP PROGRAM (SIP)

10.1(231)	Scope and purpose
10.2(231)	Definitions
10.3(231)	Eligibility for service
10.4(231)	Funding
10.5(231)	Program requirements
10.6(231)	Funding criteria

- 10.7(231) Monitoring and record keeping
- 10.8(231) Severability

CHAPTER 11

WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

- 11.1(17A,231,ExecOrd11) Definitions
- 11.2(17A,231,ExecOrd11) Scope of chapter
- 11.3(17A,231,ExecOrd11) Applicability of chapter
- 11.4(17A,231,ExecOrd11) Criteria for waiver or variance
- 11.5(17A,231,ExecOrd11) Filing of petition
- 11.6(17A,231,ExecOrd11) Content of petition
- 11.7(17A,231,ExecOrd11) Additional information
- 11.8(17A,231,ExecOrd11) Notice
- 11.9(17A,231,ExecOrd11) Hearing procedures
- 11.10(17A,231,ExecOrd11) Ruling
- 11.11(17A,22,231,ExecOrd11) Public availability
- 11.12(17A,22,231,ExecOrd11) Summary reports
- 11.13(17A,231,ExecOrd11) Cancellation of a waiver
- 11.14(17A,231,ExecOrd11) Violations
- 11.15(17A,231,ExecOrd11) Defense
- 11.16(17A,231,ExecOrd11) Judicial review
- 11.17(17A,231,ExecOrd11) Severability

CHAPTER 12

ELDER ABUSE, NEGLECT OR EXPLOITATION PREVENTION AND AWARENESS AND MANDATORY REPORTER TRAINING

- 12.1(231) Authority
- 12.2(231) Purpose
- 12.3(231) Elder Abuse, neglect, or exploitation prevention and public awareness
- 12.4(231,235B) Dependent adult abuse mandatory reporter training

CHAPTER 13

RULES AND PRACTICES IN CONTESTED CASES

- 13.1(17A) Scope and applicability
- 13.2(17A) Definitions
- 13.3(17A) Time requirements
- 13.4(17A) Requests for contested case proceeding
- 13.5(17A) Notice of hearing
- 13.6(17A) Presiding officer
- 13.7(17A) Waiver of procedures
- 13.8(17A) Telephone proceedings
- 13.9(17A) Disqualification
- 13.10(17A) Consolidation—severance
- 13.11(17A) Pleadings
- 13.12(17A) Service and filing of pleadings and other papers
- 13.13(17A) Discovery
- 13.14(17A) Subpoenas
- 13.15(17A) Motions
- 13.16(17A) Prehearing conference
- 13.17(17A) Continuances
- 13.18(17A) Withdrawals
- 13.19(17A) Intervention
- 13.20(17A) Hearing procedures

13.21(17A)	Evidence
13.22(17A)	Default
13.23(17A)	Ex parte communication
13.24(17A)	Recording costs
13.25(17A)	Interlocutory appeals
13.26(17A)	Final decision
13.27(17A)	Appeals and review
13.28(17A)	Applications for rehearing
13.29(17A)	Stays of department actions
13.30(17A)	No factual dispute contested cases
13.31(17A)	Emergency adjudicative proceedings
13.32(17A)	Informal settlement

CHAPTER 14

Reserved

CHAPTER 15

ELDER ABUSE INITIATIVE, EMERGENCY SHELTER AND SUPPORT SERVICES PROJECTS

15.1(231)	Authority
15.2(231)	Purpose
15.3(231)	Definitions
15.4(231,249H)	Funding
15.5(231)	Eligibility
15.6(231)	Application process
15.7(231)	Reporting and monitoring

CHAPTER 16

SENIOR LIVING COORDINATING UNIT

16.1(231,249H)	Definitions
16.2(231,249H)	Organization of the unit and proceedings
16.3(231,249H)	Chairperson and vice-chairperson duties
16.4(21,231,249H)	Meetings
16.5(231,249H)	Communications

CHAPTER 17

PETITION FOR RULE MAKING

(Uniform Rules)

17.1(17A)	Petition for rule making
17.3(17A)	Inquiries

CHAPTER 18

DECLARATORY ORDERS

18.1(17A)	Petition for declaratory order
18.2(17A)	Notice of petition
18.3(17A)	Intervention
18.4(17A)	Briefs
18.5(17A)	Inquiries
18.6(17A)	Service and filing of petitions and other papers
18.7(17A)	Consideration
18.8(17A)	Action on petition
18.9(17A)	Refusal to issue order
18.10(17A)	Contents of declaratory order—effective date

- 18.11(17A) Copies of orders
- 18.12(17A) Effect of a declaratory order

CHAPTER 19

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

- 19.1(17A,22) Definitions
- 19.3(17A,22) Requests for access to records
- 19.9(17A,22) Disclosures without consent of the subject
- 19.10(17A,22) Routine use
- 19.11(17A,22) Consensual disclosure of confidential records
- 19.12(17A,22) Release to subject
- 19.13(17A,22) Availability of records
- 19.14(17A,22) Personally identifiable information
- 19.15(17A,22) Other groups of records
- 19.16(17A,22) Data processing systems
- 19.17(17A,22) Applicability

CHAPTER 20

Reserved

CHAPTER 21

CASE MANAGEMENT PROGRAM FOR FRAIL ELDERLY

- 21.1(231) Authority
- 21.2(231) Purpose
- 21.3(231) Definitions
- 21.4(231) Program administration
- 21.5(231) Eligibility for CMPFE services
- 21.6(231) Admission into the case management program
- 21.7(231) Discharge from CMPFE
- 21.8(231) Organizational requirements
- 21.9(231) Personnel qualifications
- 21.10(231) Covered services
- 21.11(231) Assessment of consumer needs
- 21.12(231) Service plan development
- 21.13(231) Monitoring
- 21.14(231) Reassessment
- 21.15(231) Confidentiality
- 21.16(231) Contracting for case management services
- 21.17(231) Severability

CHAPTER 22

OFFICE OF SUBSTITUTE DECISION MAKER

- 22.1(231E,633) Purpose
- 22.2(231E,633) Definitions
- 22.3(231E,633) Substitute decision maker qualifications
- 22.4(231E,633) Ethics and standards of practice
- 22.5(231E,633) Staffing ratio
- 22.6(231E,633) Conflict of interest—state office
- 22.7(231E,633) Consumers eligible for services
- 22.8(231E,633) Application and intake process—guardianship, conservatorship, representative payee and personal representative
- 22.9(231E,633) Application and intake process—power of attorney

- 22.10(231E,633) Case records
- 22.11(231E,633) Confidentiality
- 22.12(231E,633) Termination or limitation
- 22.13(231E,633) Service fees
- 22.14(231E,633) Fee schedule
- 22.15(231E,633) Denial of services—appeal
- 22.16(231E,633) Contesting the actions of a guardian or conservator
- 22.17(231E,633) Contesting the actions of an attorney-in-fact
- 22.18(231E,633) Severability

CHAPTER 23

Reserved

CHAPTER 24

ADULT DAY SERVICES PROGRAMS

- 24.1(231D) Definitions
- 24.2(231D) Program certification
- 24.3(231D) Certification of a nonaccredited program
- 24.4(231D) Nonaccredited program application content
- 24.5(231D) Initial certification process for nonaccredited program
- 24.6(231D) Recertification of nonaccredited program
- 24.7(231D) Recertification process for nonaccredited program
- 24.8(231D) Notification of recertification
- 24.9(231D) Certification and recertification process for an accredited program
- 24.10(231D) Accredited program certification or recertification application content
- 24.11(231D) Initial certification process for accredited program
- 24.12(231D) Recertification for accredited program
- 24.13(231D) Duration of certification for all programs
- 24.14(231D) Recognized accrediting entity
- 24.15(231D) Requirements for accredited adult day services programs
- 24.16(231D) Maintenance of program accreditation
- 24.17(231D) Transfer of certification
- 24.18(231D) Structural and life safety reviews for a new program
- 24.19(231D) Structural and life safety reviews for existing programs
- 24.20(231D) Structural and life safety review prior to the remodeling of a building for certified programs
- 24.21(231D) Emergency response policies and procedures review
- 24.22(231D) Program alteration
- 24.23(231D) Cessation of program operation
- 24.24(231D) Contractual agreement
- 24.25(231D) Admission to and transfer from a program
- 24.26(231D) Waiver of admission and retention criteria
- 24.27(231D) Criteria for granting admission and retention waivers
- 24.28(231D) Participant documents
- 24.29(231D) Service plan
- 24.30(231D) Medications
- 24.31(231D) Nurse review
- 24.32(231D) Nursing assistant work credit
- 24.33(231D) Food service
- 24.34(231D) Staffing
- 24.35(231D) Dementia-specific education for personnel
- 24.36(231D) Another business or activity in an adult day services program

24.37(231D)	Managed risk statement
24.38(231D)	Life safety—emergency policies and procedures and structural safety requirements
24.39(231D)	Transportation
24.40(231D)	Activities
24.41(231D)	Structural requirements
24.42(231D)	Interpretive guidelines

CHAPTER 25
ASSISTED LIVING PROGRAMS

25.1(231C)	Definitions
25.2(231C)	Program certification
25.3(231C)	Certification of a nonaccredited program
25.4(231C)	Nonaccredited program application content
25.5(231C)	Initial certification process for a nonaccredited program
25.6(231C)	Recertification of a nonaccredited program
25.7(231C)	Recertification process for a nonaccredited program
25.8(231C)	Notification of recertification for a nonaccredited program
25.9(231C)	Certification and recertification process for an accredited program
25.10(231C)	Accredited program certification or recertification application content
25.11(231C)	Initial certification process for an accredited program
25.12(231C)	Recertification process for an accredited program
25.13(231C)	Duration of certification for all programs
25.14(231C)	Recognized accrediting entity
25.15(231C)	Requirements for an accredited program
25.16(231C)	Maintenance of program accreditation
25.17(231C)	Transfer of certification
25.18(231C)	Structural and life safety reviews for a new program
25.19(231C)	Structural and life safety review prior to the remodeling of a building for a certified program
25.20(231C)	Emergency response policies and procedures review
25.21(231C)	Cessation of program operation
25.22(231C)	Occupancy agreement
25.23(231C)	Occupancy in and transfer from a program
25.24(231C)	Waiver of occupancy and retention criteria
25.25(231C)	Criteria for granting occupancy and retention waivers
25.26(231C)	Involuntary transfer
25.27(231C)	Tenant documents
25.28(231C)	Service plan
25.29(231C)	Medications
25.30(231C)	Nurse review
25.31(231C)	Nursing assistant work credit
25.32(231C)	Food service
25.33(231C)	Staffing
25.34(231C)	Dementia-specific education for program personnel
25.35(231C)	Another business or activity in an assisted living program
25.36(231C)	Managed risk statement
25.37(231C)	Life safety—emergency policies and procedures and structural safety requirements
25.38(231C)	Transportation
25.39(231C)	Activities
25.40(231C)	Structural requirements
25.41(231C)	Dwelling units in dementia-specific programs

- 25.42(231C) Landlord and tenant Act
- 25.43(231C) Interpretive guidelines

CHAPTER 26

MONITORING, CIVIL PENALTIES, COMPLAINTS AND INVESTIGATION FOR ELDER GROUP HOMES, ADULT DAY SERVICES AND ASSISTED LIVING PROGRAMS

- 26.1(17A,231B,231C,231D) Monitoring
- 26.2(17A,231B,231C,231D) Complaint procedure
- 26.3(17A,231B,231C,231D) Enforcement action
- 26.4(17A,231B,231C,231D) Notice—hearings
- 26.5(17A,231C,231D) Appeals
- 26.6(17A,231B,231C,231D) Judicial review
- 26.7(17A,21,231B,231C,231D) Public disclosure of findings
- 26.8(17A,231C,231D) Discrimination or retaliation
- 26.9(17A,231C,231D) Emergency removal of adult day services participants or assisted living tenants
- 26.10(231C,231D) Notification of casualties

CHAPTER 27

FEES FOR ADULT DAY SERVICES AND ASSISTED LIVING PROGRAMS

- 27.1(231D) Adult day services program fees
- 27.2(231C) Assisted living program fees

CHAPTER 28

IOWA SENIOR LIVING PROGRAM—HOME- AND COMMUNITY-BASED SERVICES FOR SENIORS

- 28.1(231,249H) Purpose
- 28.2(231,249H) Use of funds
- 28.3(231,249H) Definitions
- 28.4(231,249H) Disbursement of funds
- 28.5(231,249H) Eligible use of funds
- 28.6(231,249H) Client participation
- 28.7(231,249H) Reallotment of unobligated funds
- 28.8(231,249H) Prohibited use of senior living trust fund moneys
- 28.9(231,249H) Disbursement of SLTF funds to AAA subcontractors
- 28.10(231,249H) Reporting requirements
- 28.11(231,249H) Severability

CHAPTER 29

ELDER GROUP HOMES

- 29.1(231B) Definitions
- 29.2(231B) Application content
- 29.3(231B) Initial certification process
- 29.4(231B) Renewal of certification
- 29.5(231B) Denial, suspension, or revocation of certification
- 29.6(231B) Notice, hearing, appeal and judicial review
- 29.7(231B) Tenant admission requirements
- 29.8(231B) Service plan required
- 29.9(231B) Medications
- 29.10(231B) Occupancy agreement
- 29.11(231B) Waiver of the level of care requirements
- 29.12(231B) Resident advocate committees
- 29.13(231B) Requirements for and qualifications of staff

29.14(231B)	Tenant documents
29.15(231B)	EGH facility standards
29.16(231B)	Records
29.17(231B)	Classes of information
29.18(231B)	Landlord and tenant Act

CHAPTER 16
SENIOR LIVING COORDINATING UNIT

321—16.1(231,249H) Definitions. Words and phrases used in this chapter shall be as defined in 321 IAC 1 unless the context of the rule indicates otherwise. The following definition also applies to this chapter:

“Unit” means the senior living coordinating unit established in Iowa Code section 231.58.

321—16.2(231,249H) Organization of the unit and proceedings.

16.2(1) The senior living coordinating unit is created within the department of elder affairs by Iowa Code section 231.58.

16.2(2) The director of the department of elder affairs shall serve as chairperson.

16.2(3) The voting members of the unit shall elect a vice-chairperson from its membership at the first meeting following July 1 of each year.

16.2(4) Four voting members of the unit constitute a quorum.

16.2(5) The unit shall be governed in accordance with Iowa Code chapter 21, and the unit’s proceedings shall be conducted in accordance with Robert’s Rules of Order, Revised.

16.2(6) The technical and administrative functions of the unit shall be performed by staff of the department of elder affairs.

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

321—16.3(231,249H) Chairperson and vice-chairperson duties.

16.3(1) The chairperson’s duties include:

- a. Ensuring that tentative agendas for meetings are prepared and distributed;
- b. Ensuring that all notices to the public required by Iowa Code section 21.4 are given;
- c. Convening and chairing unit meetings;
- d. Ensuring that unit proceedings are recorded; and
- e. Ensuring that minutes of meetings are prepared and distributed.

16.3(2) The vice-chairperson shall assume the chairperson’s duties in the chairperson’s absence.

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

321—16.5(231,249H) Communications. Communications to the unit may be addressed to the Department of Elder Affairs, Jessie Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319.

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

[Filed 5/1/87, Notice 2/25/87—published 5/20/87, effective 6/24/87]¹

[Filed 4/26/90, Notice 2/21/90—published 5/16/90, effective 6/20/90]

[Filed 8/17/01, Notice 7/11/01—published 9/5/01, effective 10/10/01]

[Filed 3/26/04, Notice 2/4/04—published 4/14/04, effective 5/19/04]

[Filed 2/21/06, Notice 11/23/05—published 3/15/06, effective 5/1/06]

[Filed 12/4/08, Notice 9/10/08—published 12/31/08, effective 2/4/09]

¹ Effective date of Chapter 16 delayed 70 days by the Administrative Rules Review Committee.

CHAPTER 22
OFFICE OF SUBSTITUTE DECISION MAKER

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

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

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

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

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

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

“Court” means the probate court having jurisdiction over the consumer.

“Department” means the department of elder affairs established in Iowa Code section 231.21.

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

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

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

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

“Inventory” means a detailed list of the estate.

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

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

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

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

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

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

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

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

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

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

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

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

22.6(1) The assigned SDM shall not:

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

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

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

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

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

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

- a. Those involving abuse, neglect or exploitation;

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

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

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

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

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

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

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

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

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

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

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

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

321—22.10(231E,633) Case records.

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

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

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

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

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

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

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

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

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

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

22.11(7) Release for judicial and administrative proceedings.

a. Information shall be released to the court as required by law.

b. The state office shall disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal. The state office shall disclose only the protected health information expressly authorized by the order and when the court makes the order knowing that the information is confidential.

c. If a court subpoenas other information that the state office is prohibited from releasing, the state office shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

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

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

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

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

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

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

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

321—22.13(231E,633) Service fees.

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

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

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

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

22.13(4) Monthly fees.

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

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

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

22.13(5) Additional fees.

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

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

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

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

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

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

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

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

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

Action or Responsibility	Fee
One-time case opening:	
Guardianship	\$200
Conservatorship	\$300
Guardianship and conservatorship	\$500
Durable power of attorney for health care	\$ 60
Durable power of attorney for financial matters	\$100
Power of attorney for health care and financial matters	\$160
Monthly SDM services for conservator, durable power of attorney for health care and general power of attorney for financial matters.	
Total value of liquid assets:	
\$ 6,500 – \$ 9,999	\$100
\$10,000 – \$19,999	\$125
\$20,000 – \$29,999	\$150
\$30,000 – \$39,999	\$175
\$40,000 – \$49,999	\$200
\$50,000 – \$59,999	\$225
\$60,000 – \$69,999	\$250
\$70,000 – \$79,999	\$275
\$80,000 – \$89,999	\$300
\$90,000 – \$99,999	\$325
\$100,000 or above	\$350
Personal representative	As determined by Iowa Code section 633.197
Preparation and filing of income tax returns:	
Each federal return	\$ 50
Each state return	\$ 25
Settlement of a personal injury cause of action:	
Each cause of action approved by the probate court	\$250
Establishment of a recognized trust for the consumer's financial estate:	
Each trust	\$250
Representative payee—monthly fee	As determined by the federal governmental agency that appoints the representative payee

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

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

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

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

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

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

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

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

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

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

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

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

[Filed 12/4/08, Notice 9/10/08—published 12/31/08, effective 2/4/09]

CHAPTER 23
REPRESENTATIVE PAYEE PROGRAM (RPP) AND BILL PAYER PROGRAM (BPP)

Rescinded IAB 4/14/04, effective 5/19/04

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

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

CHAPTER 1

IOWA ETHICS AND CAMPAIGN DISCLOSURE BOARD

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

CHAPTER 2

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

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

CHAPTER 3

IOWA ELECTION CAMPAIGN FUND

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

CHAPTER 4
CAMPAIGN DISCLOSURE PROCEDURES

DIVISION I
ORGANIZATIONAL REQUIREMENTS

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

DIVISION II
REPORTING AND FINANCIAL TRANSACTION REQUIREMENTS

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

DIVISION III

POLITICAL MATERIAL—ATTRIBUTION STATEMENTS

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

DIVISION IV

CORPORATE POLITICAL ACTIVITY

- 4.44(68A,68B) Use of corporate property prohibited
- 4.45(68A,68B) Corporate-sponsored political committee
- 4.46(68A) Voter education
- 4.47(68A,68B) Permitted activity—reimbursement required
- 4.48 Reserved
- 4.49(68A,68B) Individual property
- 4.50(68A) Political corporations
- 4.51(68A) Candidate debate—media organization; debate structure; debate funding; contribution reporting inapplicable
- 4.52(68A,68B) Corporate involvement with political committee funds

DIVISION V

INDEPENDENT EXPENDITURES AND IN-KIND CONTRIBUTIONS

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

DIVISION VI

COMMITTEE DISSOLUTION

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

DIVISION VII

CIVIL PENALTIES FOR LATE REPORTS

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

CHAPTER 5

USE OF PUBLIC RESOURCES FOR A POLITICAL PURPOSE

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

CHAPTER 6
EXECUTIVE BRANCH ETHICS

DIVISION I
GENERAL PROVISIONS

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

DIVISION II
CONFLICT OF INTEREST AND MISUSE OF PROPERTY

- 6.5 to 6.7 Reserved
6.8(68B) Misuse of public property
6.9(68B) Use of confidential information

DIVISION III
SALES OR LEASES OF GOODS OR SERVICES

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

DIVISION IV
EMPLOYMENT RESTRICTIONS

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

DIVISION V
GIFTS AND OFFERS

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

CHAPTER 7
PERSONAL FINANCIAL DISCLOSURE

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

CHAPTER 8
EXECUTIVE BRANCH LOBBYING

- 8.1(68B) Executive branch lobbying defined
8.2(68B) Executive branch lobbyist defined
8.3(68B) Individuals not considered executive branch lobbyists
8.4(68B) Executive branch lobbyist client defined
8.5(68B) Lobbyist compensation defined; contingency fee lobbying prohibited
8.6(68B) Executive branch lobbying expenditures
8.7(68B) Lobbyist registration required
8.8(68B) Executive branch periodic lobbyist reports

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

CHAPTER 9

COMPLAINT, INVESTIGATION, AND RESOLUTION PROCEDURES

9.1(68B)	Complaints
9.2(68B)	Investigations—board action
9.3(68B)	Grounds for disciplinary action
9.4(68B)	Disciplinary remedies; administrative resolution of enforcement matters
9.5(68B)	Settlements
9.6(68B)	Whistle-blower protection

CHAPTER 10

Reserved

CHAPTER 11

CONTESTED CASE PROCEDURES

11.1(17A,68B)	Scope and applicability
11.2(17A,68B)	Definitions
11.3(17A,68B)	Time requirements
11.4(17A,68B)	Requests for contested case proceeding
11.5(17A,68B)	Notice of hearing
11.6(17A,68B)	Waiver of procedures
11.7(17A,68B)	Telephone proceedings
11.8(17A,68B)	Disqualification; request for administrative law judge
11.9(17A,68B)	Consolidation—severance
11.10(17A,68B)	Pleadings
11.11(17A,68B)	Service and filing of pleadings and other papers
11.12(17A,68B)	Discovery
11.13(17A,68B)	Subpoenas
11.14(17A,68B)	Motions
11.15(17A,68B)	Prehearing conference
11.16(17A,68B)	Continuances
11.17(17A,68B)	Withdrawals
11.18(17A,68B)	Intervention
11.19(17A,68B)	Hearing procedures
11.20(17A,68B)	Evidence
11.21(17A,68B)	Default
11.22(17A,68B)	Ex parte communication
11.23(17A,68B)	Recording costs
11.24(17A,68B)	Interlocutory appeals
11.25(17A,68B)	Final decision

- 11.26(17A,68B) Board review
- 11.27(17A,68B) Application for rehearing
- 11.28(17A,68B) Stay of agency actions
- 11.29(17A,68B) No factual dispute contested cases

CHAPTER 12 DECLARATORY ORDERS

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

CHAPTER 13 PETITIONS FOR RULE MAKING

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

CHAPTER 14 BOARD PROCEDURE FOR RULE MAKING

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

CHAPTER 15 WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

- 15.1(17A) Definition
- 15.2(17A,68A,68B) Scope of chapter
- 15.3(17A,68A,68B) Applicability
- 15.4(17A) Criteria for waiver

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

CHAPTER 4
CAMPAIGN DISCLOSURE PROCEDURES

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

DIVISION I
ORGANIZATIONAL REQUIREMENTS

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

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

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

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

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

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

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

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

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

4.1(2) *Place of filing.* Statements of organization shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Statements may also be filed by fax at (515)281-3701 or filed electronically through the board's Web site at www.iowa.gov/ethics.

4.1(3) *Time of filing.* A statement of organization shall be filed with the board within ten days after the financial filing threshold in subrule 4.1(1) has been exceeded. A statement must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the report due date. Faxed or electronically filed statements must be submitted on or before 11:59 p.m. of the tenth day after the organization of the committee is required. If the tenth day falls on a Saturday, Sunday, or holiday on which the board office is closed, the filing deadline is extended to the next working day when the board office is open.

4.1(4) *Candidate defined.* For purposes of Iowa Code chapters 68A and 68B and the rules of the board, "candidate" means an individual who takes affirmative action to seek nomination or election to a state or local public office. For purposes of Iowa Code chapter 68A and any rules of the board on

campaigning for public office, “candidate” includes any judge or judicial employee who is required by law to stand for retention. “Takes affirmative action” includes making a public announcement of intention to seek nomination or election, making any expenditure or accepting any contribution for nomination or election, distributing petitions for signatures for nomination, filing nomination papers or an affidavit of candidacy, or being nominated by any convention process set out by law.

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

This rule is intended to implement Iowa Code Supplement sections 68A.201 and 68A.401.

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

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

4.2(2) *Duplication of name prohibited.* The committee name shall not substantially duplicate the name of another committee organized under Iowa Code Supplement chapter 68A. The board shall determine whether two committee names are in substantial duplication in violation of Iowa Code Supplement section 68A.201(2) “a.” A committee substantially duplicating the name of another organized committee shall choose a new committee name upon notification from the board. A candidate who files an amended statement of organization to reflect a change in office sought shall not be required to change the name of the candidate’s committee unless the committee’s name substantially duplicates the name of another organized committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Type 11 - A political committee that expressly advocates for the passage or defeat of a ballot issue, franchise election, or referendum conducted for a county, city, school, or other political subdivision ballot question. This type of committee is referred to as a local ballot issue committee.

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

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

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

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

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

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

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

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

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

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

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

accounts in which committee funds are maintained, and the name of any such account shall be the same as the committee name on the statement of organization.

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

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

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

4.6(1) Amendment within 30 days. If there is a change in any of the information disclosed on a statement of organization, the committee shall file an amended statement within 30 days of the change. An amended statement of organization shall be filed with the board and the board shall make available to the appropriate county commissioner of elections an amended statement filed by a county, city, school, or other political subdivision committee.

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

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

DIVISION II
REPORTING AND FINANCIAL TRANSACTION REQUIREMENTS

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

4.7(1) Disclosure reporting required. Every committee that has filed a statement of organization under Iowa Code section 68A.201 and rule 351—4.1(68A,68B) or has exceeded the financial activity threshold set out in Iowa Code section 68A.102(5) or (18) prior to the cutoff date for reporting campaign transactions shall file a campaign disclosure report pursuant to Iowa Code section 68A.402.

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

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

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

4.7(5) No financial activity during reporting period. A committee that did not have any financial activity during the relevant reporting period for which a disclosure report is due shall be required to file

only Form DR-2. However, if the committee had previously disclosed debts or loans, those obligations shall again be disclosed on either Schedule D - Incurred Indebtedness or Schedule F - Loans Received and Repaid, as appropriate, and the schedule or schedules shall be included with Form DR-2. A candidate's committee that has reportable campaign property under Iowa Code Supplement section 68A.304 shall disclose the property on Schedule H - Campaign Property and the schedule shall be included with Form DR-2.

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

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

4.8(1) *Place of filing.* Disclosure reports shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. Reports may also be filed by fax at (515)281-4073, as an E-mail attachment, or electronically through the board's Web site at www.iowa.gov/ethics.

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

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

This rule is intended to implement Iowa Code section 68A.401 as amended by 2007 Iowa Acts, Senate File 39, section 5, and 2007 Iowa Acts, House File 413, section 1.

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

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

a. Election year.

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

b. Supplementary report.

<u>Report due</u>	<u>Covering period</u>
Friday preceding primary election*	May 15 through Tuesday preceding primary election*
Friday preceding general election*	October 15 through Tuesday preceding general election*

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

c. Nonelection year.

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

d. Special election.

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

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

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

applicable, through the Tuesday preceding the primary or general election equal or exceed the following thresholds:

<u>Office sought</u>	<u>Contribution threshold</u>
Governor	\$10,000 or more
Other statewide office	\$5,000 or more
General assembly	\$1,000 or more

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

a. Election year.

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

b. Nonelection year.

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

c. Special election.

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

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

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

a. Election year.

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

*If a runoff election is held.

b. Nonelection year.

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

c. Special election.

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

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

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

a. Election year.

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

b. Nonelection year.

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

c. Special election.

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

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

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

a. Election year.

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

b. Nonelection year.

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

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

a. Election year.

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

b. Nonelection year.

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

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

a. Election year.

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

b. Nonelection year.

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

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

a. Election year.

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

b. Nonelection year.

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

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

a. Election year.

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

*If a runoff election is held.

b. Nonelection year.

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

4.9(11) School board or other political subdivision political committee (school board or other local PAC). A political committee expressly advocating the nomination, election, or defeat of candidates

for school board or other political subdivision office, except for county office or city office, shall file campaign disclosure reports as follows:

a. Election year.

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

b. Nonelection year.

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

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

a. Election year.

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

b. Nonelection year.

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

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

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

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

351—4.10(68A,68B) Time of filing. A report must be physically received by the board or, if mailed, shall bear a United States Postal Service postmark dated on or before the report due date. Faxed, E-mailed, or electronically filed reports must be submitted on or before 11:59 p.m. of the report due date. However, as provided in Iowa Code Supplement section 68A.402 as amended by 2008 Iowa Acts, Senate File 2400, sections 24 and 28, any report that is required to be filed five days or less prior to an election must be physically received by the board prior to 4:30 p.m. on the report due date. If the due

date falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date is extended to the first working day when the board office is open.

This rule is intended to implement Iowa Code Supplement section 68A.402 as amended by 2008 Iowa Acts, Senate File 2400, sections 24 and 28.

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

4.11(1) *Persons voluntarily registering a committee.* A person that has not exceeded the \$750 financial filing threshold may file Form DR-SFA for purposes of using the short form “paid for by” attribution statement under Iowa Code section 68A.405 and rule 351—4.38(68A). A person using the short form “paid for by” attribution statement shall file Form DR-SFA with the board prior to distributing the political material containing the short form “paid for by” attribution statement.

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

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

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

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

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

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

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

4.13(2) *Computer-generated reports.* Committees may generate a disclosure report in lieu of using a board-approved paper report or the board’s electronic filing system so long as the generated report contains the same information and is in the same basic format as a board-approved paper report. Committees generating their own reports must submit the reports for prior board approval before use.

4.13(3) *Typewritten or legible ink reports required.* Information which is provided on all forms shall be either typewritten or printed legibly in black ink. Approved computer-generated reports satisfy this requirement.

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

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

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

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

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

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

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

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

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

(second degree); grandparents (second degree); grandchildren (second degree); aunts and uncles (third degree); nieces and nephews (third degree); great-grandparents (third degree) and great-grandchildren (third degree), all irrespective of whether the blood relationship is to the candidate or to the candidate's spouse.

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

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

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

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

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

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

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

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

4.15(3) Purpose of expenditure. The schedule shall include a description of the purpose of each disbursement. The description shall be a clear and concise statement that specifically describes the transaction which has occurred. The following general terms are examples of descriptions which are not acceptable: "expenses," "reimbursement," "candidate expense," "services," "supplies," and "miscellaneous expense." The following are examples of acceptable descriptions: "printing—candidate yard signs," "printing—PAC membership solicitation letter," "mailing—candidate brochures," "reimbursement for candidate lodging to attend campaign event," or "mileage reimbursement—150 miles @ 25¢ per mile." A combined description is not acceptable unless sufficient information is provided so that the cost of separate purposes can be discerned, for example, "printing and mailing of 1,000 brochures."

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

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

4.15(6) Check transactions required. All disbursements, including all expenditures and any other withdrawals from committee funds, shall be by check. Cash withdrawals and "petty cash" accounts are

not permitted. Committees' activities which necessitate cash drawers or other cash transactions shall be conducted and reported as provided by rule 351—4.36(68A,68B).

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

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

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

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

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

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

4.16(3) Name and address of person to whom the debt or obligation is owed. The schedule shall contain the name and address of each person to whom an obligation is owed, including both those obligations which were incurred during the reporting period and those outstanding obligations which are being carried forward from prior reports. If the obligation is owed to an individual who initially personally paid for the good or service on behalf of the committee with the expectation of ultimately receiving reimbursement from the committee, the original nature of the obligation shall be provided; the name and address of the original provider of the good or service shall also be provided, unless the nature of the obligation indicates that the obligation is for the anticipated reimbursement for mileage or postage stamps.

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

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

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

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

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

4.17(2) *Date of contribution—date received.* The schedule shall include the complete date (month/day/year) on which the in-kind contribution was physically received by a person on behalf of the committee.

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

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

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

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

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

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

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

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

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

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

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

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

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

4.18(4) *Date paid.* The schedule shall include the complete date (month/day/year) a full or partial loan repayment is made by the committee. The date of the repayment is the date the check is issued.

Full or partial loan repayments shall be shown on this schedule and should not be reported on Schedule B. However, loan interest payments shall be reported on Schedule B (see rule 351—4.15(68A,68B)) and not on Schedule F. Loans which may be and are forgiven in full or in part are considered in-kind contributions and shall be itemized on Schedule E, with a cross-reference entry in the space provided on Schedule F.

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

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

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

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

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

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

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

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

estimated fair market value of property received as an in-kind contribution, as well as the actual or estimated current fair market value of the property at the end of the current reporting period.

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

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

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

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

4.21(2) A committee that participates in an election at the county, city, school, or other political subdivision level and that is required by Iowa Code Supplement section 68A.402 to file a disclosure report on or before January 19 of each year is not required to attach or submit a copy of the committee's bank statement unless requested to do so by the board. If such a committee is requested to file the bank statement, the committee shall comply with the requirements of rule 351—4.21(68A).

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

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

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

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

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

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

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

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

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

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

only the information which is being added, deleted or changed from a previously filed statement of organization or notice of dissolution.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- a.* Electronic media advertising, such as radio, cable television and commercial television.
- b.* Published advertising, such as newspaper, magazine, newsletter and shopper advertising.
- c.* Printed promotional materials, such as brochures, leaflets, flyers, invitations, stationery, envelopes, reply cards, return envelopes, campaign business cards, direct mailings, postcards and “cowboy” political cards.
- d.* Political signs, such as yard signs, car signs, portable outdoor advertising, stationary outdoor advertising and billboards.
- e.* Political advertising specialty items, such as campaign buttons, campaign stickers, bumper stickers, campaign pins, pencils, pens, matchbooks, balloons, scratch pads, calendars, magnets, key chains, campaign caps and T-shirts.
- f.* Travel and lodging expenses of the campaign workers for campaign purposes and political party activities. Travel and lodging expenses for a candidate to attend a national political party convention are also permitted.
- g.* Contributions to political party committees.
- h.* The purchase of tickets to a meal for the candidate and one guest so long as the attendance at the meal by the candidate and guest is for the sole purpose of enhancing the candidacy of any person.
- i.* General campaign expenditures, such as printing, copy machine charges, office supplies, campaign photographs, gambling permits, fund-raiser prizes, postage stamps, postage meter costs, bulk mail permits, telephone installation and service, facsimile charges, and computer services. However, the purchase or rental of formal wear to attend a political event is not a permissible general campaign expenditure.
- j.* Purchase or lease of campaign equipment, such as copy machines, telephones, facsimile machines, computer hardware, software and printers.
- k.* Purchase or lease of campaign office space, parking lots or storage space and the payment for campaign office utilities and maintenance.
- l.* Payment of salaries, fringe benefits, bonuses, and payroll taxes of paid campaign staff. Family members who perform actual work or services for a campaign may be compensated for such work or services.
- m.* Payment for check printing and financial institution banking service charges.
- n.* Lease or rental of a campaign vehicle, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that noncampaign miles are reimbursed to the committee at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code. However, the purchase of a campaign vehicle is prohibited.
- o.* Reimbursement to candidates and campaign workers for mileage driven for campaign purposes in a personal vehicle, provided that a detailed trip log which provides dates, miles driven, destination and purpose is maintained, and that reimbursement is paid at an amount not to exceed the current rate of reimbursement allowed under the standard mileage rate for computations of business expenses pursuant to the Internal Revenue Code.
- p.* Payment for food expenses and supplies for campaign-related activities, such as the purchase of food, beverages and table service for fund-raising events or campaign volunteers. However, except as provided in paragraph “*h*,” the purchase of tickets for meals or fund-raising events for other candidates is prohibited, and the purchase of groceries for the candidate or candidate’s family is also prohibited. Payment for meals for the candidate (other than those involving tickets for fund-raiser events as addressed in paragraph “*h*”) is permitted as an allowable expenditure for campaign purposes if the meal was associated with campaign-related activities.
- q.* Payment of civil penalties and hearing costs assessed by the board.
- r.* Payment for the services of attorneys, accountants, consultants or other professional persons when those services relate to campaign activities.

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

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

u. Repayment of campaign loans made to the committee. Candidates who make loans to their own committees shall not charge interest on the loans in excess of 5 percent.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

a. Mailings and newsletters sent to constituents.

b. Polls and surveys conducted to determine constituent opinions.

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

Revenue Code. However, meal expenses are not allowable as expenses associated with constituency services under any circumstances.

d. Holiday and other greeting cards sent to constituents.

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

351—4.26(68A) Transfers between candidates.

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

4.26(2) *Transfer of assets for same candidate.* A candidate's committee may transfer funds, assets, loans, and debts to a committee established for a different office when the same candidate established both committees.

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

351—4.27(68A) Filing of independent expenditure statement. Pursuant to Iowa Code section 68A.404 as amended by 2008 Iowa Acts, House File 2700, sections 116 and 117, any person except a candidate or a registered committee that makes one or more independent expenditures in excess of \$100 in the aggregate shall file an independent expenditure statement.

4.27(1) *Independent expenditure defined.* "Independent expenditure" means an expenditure for a communication that expressly advocates the nomination, election, or defeat of a candidate or that expressly advocates the passage or defeat of a ballot issue when the expenditure is made without the prior approval of or coordination with a candidate, candidate's committee, or a ballot issue committee. "Independent expenditure" also means "independent expenditure" as defined in subrule 4.53(3).

4.27(2) *Independent expenditure statement.* The following information shall be disclosed on the independent expenditure statement:

a. The name, mailing address, and telephone number of the person that files the statement, including the name, mailing address, and telephone number of a contact person, if applicable.

b. A description of the position that is advocated by the person that files the statement such as whether the communication was for a particular candidate or was against a particular candidate.

c. The name and address of the committee that benefits from the expenditure.

d. The dates on which the expenditure or expenditures took place.

e. A description of the nature of the action taken that resulted in the expenditure or expenditures such as a newspaper advertisement, direct mailing, or brochure.

f. The actual cost or fair market value of the expenditure or expenditures.

4.27(3) *Place of filing.* An independent expenditure statement shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, or by fax at (515)281-4073. The board shall immediately make the independent expenditure statement available for public viewing via the board's Web site at www.iowa.gov/ethics.

4.27(4) *Time of filing.* An independent expenditure statement shall be filed within 48 hours of the making of an independent expenditure exceeding \$100 or independent expenditures exceeding \$100 in the aggregate. An independent expenditure is deemed made at the time that the cost is incurred.

4.27(5) *Failure to file.* A person that fails to timely file an independent expenditure statement shall be subject to the imposition of civil penalties pursuant to 351—subrule 4.59(7).

4.27(6) *Attribution statement applicable.* Any person that makes an independent expenditure in any amount shall comply with the appropriate "paid for by" attribution statement pursuant to rule 351—4.38(68A,68B).

4.27(7) *Other filings not required.* A person that properly files an independent expenditure statement shall not be required to file a statement of organization registering a committee or file public disclosure reports.

4.27(8) Campaign committees. A committee that makes an independent expenditure shall disclose the transaction on the committee's appropriate disclosure report and shall not file an independent expenditure statement.

This rule is intended to implement Iowa Code section 68A.404 as amended by 2008 Iowa Acts, House File 2700, sections 116 and 117.

351—4.28(68A) Prohibition on contributions and independent expenditures by foreign nationals. As provided in Federal Election Commission regulation 11 CFR 110.20, a foreign national shall not, directly or indirectly, make a contribution or expenditure of money or other thing of value, or specifically promise to make a contribution, in connection with a state or local campaign or election in Iowa. A foreign national shall not, directly or indirectly, make a contribution to a campaign committee organized under Iowa Code Supplement chapter 68A. Foreign nationals are also prohibited from making independent expenditures in relation to any state or local campaign or election in Iowa.

4.28(1) Foreign national defined. "Foreign national" means a person who is not a citizen of the United States and who is not lawfully admitted for permanent residence. "Foreign national" also includes a "foreign principal," such as a government of a foreign country or a foreign political party, partnership, association, corporation, organization, or other combination of persons that has its primary place of business in or is organized under the laws of a foreign country. "Foreign national" shall not include any person who is a citizen of the United States or who is a national of the United States.

4.28(2) Acceptance of contributions and independent expenditures from foreign nationals. No person shall knowingly accept or receive any contribution from a foreign national with regard to such person's election-related activities.

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

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

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

1. The decision to contribute is made knowingly and voluntarily by the minor;
2. The funds, goods, or services contributed are owned or controlled exclusively by the minor, such as income earned by the minor, the proceeds of a trust for which the minor is the beneficiary, or a savings account opened and maintained exclusively in the minor's name; and
3. The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another person.

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

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

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

4.30(2) Escheat to the state. Any contribution in excess of \$10 from an unknown source or campaign funds in excess of \$10 that cannot be accounted for and reconciled shall escheat to the state of Iowa as required by Iowa Code section 68A.501 as amended by 2007 Iowa Acts, Senate File 39, section 8. A committee required to escheat shall escheat such funds by depositing the funds into the committee's campaign account and issuing a committee check to the general fund in the same amount. The committee

check shall be sent to the board office at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319, for transmittal to the office of treasurer of state.

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

- a. The committee has not dissolved;
- b. Documentation of the name and address of the source is provided;
- c. The amount requested to be returned is in excess of \$100; and
- d. The application is made within 90 days of the date of the deposit in the general fund of the state of Iowa.

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

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

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

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

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

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

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

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

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

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

- a. The complete name, address and telephone number of the out-of-state committee;
- b. The state or federal agency with which the out-of-state committee is registered;
- c. All parent entities or other affiliates or sponsors of the out-of-state committee;
- d. The purpose of the out-of-state committee;
- e. The name, address and telephone number of an Iowa resident authorized to receive service on behalf of the out-of-state committee;
- f. The name and address of the Iowa recipient committee;

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

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

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

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

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

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

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

351—4.33(68A,68B) Reporting of earmarked contributions. A political committee is permitted to receive contributions from its contributors which are earmarked to be donated to a specific candidate's committee or another political committee. A political committee receiving and transmitting earmarked contributions is required to list on its disclosure report the name of the contributor and the name of the candidate or committee for which the contribution was earmarked. The political committee is further required to inform the treasurer of the recipient committee in writing of the name of the individual contributor, as well as the name of the committee which has collected the contribution. The committee receiving the earmarked contribution is required to disclose on its report both the name of the individual contributor and the sponsoring committee.

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

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

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

351—4.35(68A) Permanent organizations forming temporary political committees; one-time contributor filing Form DR-OTC. Pursuant to Iowa Code section 68A.402(9), a permanent organization temporarily engaging in activity that exceeds the \$750 financial filing threshold described

in rule 351—4.1(68A,68B) is required to organize and register a political committee (PAC), file disclosure reports, and, upon completion of activity, file a notice of dissolution. A permanent organization that is temporarily a political committee shall comply with all of the campaign laws in Iowa Code chapter 68A and this chapter. A permanent organization that makes loans to a candidate or committee or that is owed debts from a candidate or committee is not deemed to be engaging in political activity requiring registration.

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

- a. The name and address of the organization making the contribution.
- b. The name and address of a contact person for the organization making the contribution.
- c. The name and address of the campaign committee receiving the contribution. If the contribution is to a candidate or a candidate's committee, the source of the original funds used to make the contribution shall be disclosed.
- d. The date and amount of the contribution. If the contribution is an in-kind contribution, a description of the provided goods or services must be included.
- e. The date of election and the county in which the recipient committee is located if the committee is a county or local committee.
- f. The date and signature of the person filing Form DR-OTC. A Form DR-OTC that is filed electronically using the board's Web site is deemed signed when filed.

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

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

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

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

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

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

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

Schedule B as a “redeposit of cash advance for (describe activity).” The proceeds of the fundraising activity (excluding the cash advance) shall be reported on Schedule A - Contributions Received.

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

351—4.37(68A,68B) Record keeping.

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

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

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

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

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

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

e. Copies of bills or receipts for committee expenditures.

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

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

DIVISION III
POLITICAL MATERIAL—ATTRIBUTION STATEMENTS

351—4.38(68A) Political attribution statement—contents. Published material that expressly advocates the election or defeat of a candidate or that expressly advocates the passage or defeat of a ballot issue shall contain a statement identifying the person paying for the published material. This statement is referred to as the “attribution statement.” The term “published material” means any newspaper, magazine, shopper, outdoor advertising facility, poster, direct mailing, brochure, Internet Web site, campaign sign, or any other form of printed general public political advertising.

4.38(1) Registered committee. If the person paying for the published material is a committee that has filed a statement of organization, the words “paid for by” and the name of the committee shall appear on the material.

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

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

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

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

This rule is intended to implement Iowa Code Supplement section 68A.405 as amended by 2004 Iowa Acts, House File 2319, section 4.

351—4.39(68A) Specific items exempted from or subject to attribution statement requirement; multiple pages. Iowa Code Supplement section 68A.405 requires the placement of a “paid for by” attribution statement on political advertising and political material, with certain exceptions.

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

- a. Editorials or news articles of a newspaper or magazine that are not political advertisements.
- b. Small items upon which the inclusion of the attribution statement would be impracticable, such as yard signs, bumper stickers, pins, buttons, pens, pencils, emery boards, matchbooks and, except as set out in subrule 4.39(2), items that are smaller than 2 inches by 4 inches.
- c. T-shirts, caps, and other articles of clothing.
- d. Means of communication such as television and radio that are subject to federal regulations regarding an attribution requirement.
- e. Political advertising or political material placed by an individual who acts independently and spends \$100 or less of the individual’s own money to expressly advocate the passage or defeat of a ballot issue.

For purposes of this subrule, “yard sign” means a political sign with a total dimension of 32 square feet or less, regardless of whether both sides of the sign are used, that has been placed or posted on real property.

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

- a. Advertising such as yard signs larger than 32 square feet, billboards, posters, portable sign carriers, and signs affixed or painted to the side or top of a building or vehicle.
- b. Advertisements in a newspaper, magazine, shopper, or other periodical regardless of the size of the advertisement.
- c. Direct mailings, flyers, brochures, postcards, or any other form of printed general public advertising that is larger than 2 inches by 4 inches.
- d. Campaign Web sites.

4.39(3) Multiple pages. If the political advertising or political material consists of more than one page, the “paid for by” attribution statement need only appear on one page of the advertising or material. For a campaign Web site, the attribution statement need only appear on the home page of the site.

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

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

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

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

4.41(1) Administrative resolution. In an effort to informally resolve apparent violations of the requirement to place a “paid for by” attribution statement, the board may order administrative resolution of the matter. The board may direct the person responsible for placing the original published political

material that did not include the attribution statement to place a correction notice in a local newspaper that reaches the same or substantially the same portion of the public that received the original published political material. A person may also resolve a violation of the “paid for by” attribution statement by resending corrected published political material to the same portion of the public that received the original published political material and by filing a copy of the corrected material with the board.

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

4.41(3) *Board notice.* The board shall notify the person who paid for the original published political material of the requirements of this rule.

4.41(4) *Refusal to place correction notice.* The board may initiate a contested case proceeding and impose discipline against any person who refuses to place a correction notice under this rule.

This rule is intended to implement Iowa Code section 68A.405 and Iowa Code Supplement section 68B.32A(8) as amended by 2006 Iowa Acts, House File 2512, section 3.

351—4.42(56,68B) Specific items exempted from or subject to attribution statement requirement. Rescinded IAB 2/4/04, effective 3/10/04.

351—4.43(56,68B) Apparent violations; remedial actions. Rescinded IAB 2/4/04, effective 3/10/04.

DIVISION IV
CORPORATE POLITICAL ACTIVITY

351—4.44(68A,68B) Use of corporate property prohibited. It is unlawful for a candidate’s committee or other political committee to use any property of a corporate entity, and it is unlawful for a corporate entity to knowingly permit the use of its property by a candidate’s committee or other political committee. “Corporate entity” as used in these rules means any profit or nonprofit corporation, and includes, but is not limited to, farm corporations, professional corporations (P.C.s), banks, savings and loan institutions, credit unions and insurance companies. For the purpose of these rules, the prohibited use of the property of a corporate entity shall include, but not be limited to, the following:

4.44(1) The physical placement of campaign materials on corporate property except as permitted under Iowa Code sections 68A.406 and 68A.503.

4.44(2) The use of motor vehicles, telephone equipment, long-distance lines, computers, typewriters, office space, duplicating equipment and supplies, stationery, envelopes, labels, postage, postage meters or communication systems of corporate entities.

4.44(3) The use of corporate entity facilities, premises, recreational facilities and housing that are not ordinarily available to the general public.

4.44(4) The furnishing of beverages and other refreshments that cost in excess of \$50 and that are not ordinarily available to the general public.

4.44(5) The contributing of money of the corporate entity.

4.44(6) Any other transaction conducted between a corporation and a candidate’s committee or political committee is presumed to be a corporate contribution unless the candidate’s committee or political committee establishes to the contrary.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.45(68A,68B) Corporate-sponsored political committee. These rules do not prevent a corporate entity from soliciting eligible members to join or contribute to its own corporate-sponsored political committee (PAC), so long as the corporate entity adheres to the provisions of Iowa Code Supplement section 68A.503.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.46(68A) Voter education. These rules do not prevent a corporate entity from providing or publicizing voter registration procedures, election day information, voting procedures or other voter

education information, so long as the information provided does not expressly advocate the election or defeat of a clearly identified candidate. Also, these rules do not prevent a candidate's committee from using a corporate computer to generate and file a campaign disclosure report so long as the report does not expressly advocate the election or defeat of a clearly identified candidate.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.47(68A,68B) Permitted activity—reimbursement required. The prohibitions against certain transactions between corporate entities and candidates or committees expressly advocating the election or defeat of candidates contained in Iowa Code Supplement section 68A.503 and in rule 4.44(68A,68B) are not construed to prohibit activity that occurs consistent with this rule.

4.47(1) *Purchase or rental of office facility.* A candidate's committee or any other committee that expressly advocates the election or defeat of a candidate may purchase or rent property belonging to a corporate entity, so long as the purchase or rental is at fair market value. For the purpose of this subrule, "fair market value" means the amount that a member of the general public would expect to pay to purchase or rent a similar property within the community in which the property is located.

4.47(2) *Use of corporate facilities to produce or mail materials.* Any person who uses the facilities of a corporate entity to produce or mail materials in connection with a candidate election is required to reimburse the corporate entity within a commercially reasonable time for the normal and usual charge for producing or mailing such materials in the commercial market. For example, if it would otherwise cost 10 cents per page to have a brochure copied at a commercial printer, the corporate entity must be reimbursed at 10 cents per page even if the overhead and operating cost is only 5 cents per page. Likewise, the corporate entity must be reimbursed at the first-class mail rate even if the direct cost to the corporate entity is less through the use of its bulk mail permit. This subrule does not affect the ability of a commercial vendor to charge an amount for postage which is less than for first-class mail where the reduced or bulk mail charge is available to all similarly situated customers without respect to the political identity of the customer.

4.47(3) *Use or rental of corporate facilities by other persons.* Persons other than stockholders, administrative officers or employees of a corporate entity who make any use of corporate facilities, such as using telephones, facsimile machines, typewriters or computers or borrowing office furniture for activity in connection with a candidate election, are required to reimburse the corporate entity within a commercially reasonable time in the amount of the normal and usual rental charge. If one or more telephones of a corporate entity are used as a telephone bank, a rebuttable presumption is established that \$3 per telephone per hour, plus any actual long distance charges, is acceptable as a normal and usual rental charge.

4.47(4) *Use of airplanes and other means of transportation.*

a. Air travel. A candidate, candidate's agent, or person traveling on behalf of a candidate who uses noncommercial air transportation made available by a corporate entity shall, in advance, reimburse the corporate entity as follows:

(1) Where the destination is served by regularly scheduled commercial service, the coach class airfare (without discounts).

(2) Where the destination is not served by a regularly scheduled commercial service, the usual charter rate.

b. Other transportation. A candidate, candidate's agent, or person traveling on behalf of a candidate who uses other means of transportation made available by a corporate entity shall, within a commercially reasonable time, reimburse the corporate entity at the normal and usual rental charge.

4.47(5) *Equal access not required.* For the purpose of this rule, it is not necessary that the corporate entity be in the business of selling or renting the property, good or service to the general public; further, it is not necessary that the corporate entity provide access to the same property, good or service to other candidates or committees.

4.47(6) *Commercially reasonable time.* For the purpose of this rule, a rebuttable presumption is established that reimbursement to the corporate entity within ten business days is acceptable as within a commercially reasonable time.

4.47(7) Loans and debts. A financial institution may make a loan to a candidate or candidate's committee so long as the loan is repaid and all proper public disclosure of the transaction is made pursuant to rule 351—4.18(68A,68B). A candidate or candidate's committee may owe a debt to an insurance company, financial institution, or corporation so long as the debt is repaid and all proper public disclosure of the transaction is made pursuant to rule 351—4.16(68A,68B). The repayment of a loan or debt under this subrule shall be made prior to the dissolution of the committee pursuant to rule 351—4.57(68A,68B).

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.48(68A,68B) Use of corporate facilities for individual volunteer activity by stockholders, administrative officers and employees. Rescinded IAB 8/2/06, effective 9/6/06.

351—4.49(68A,68B) Individual property. These rules do not apply to the personal or real property of corporate officers or of individuals employed or associated with a corporate entity and shall not abridge the free-speech rights and privileges of individuals.

This rule is intended to implement Iowa Code Supplement section 68A.503.

351—4.50(68A) Political corporations. The prohibitions in Iowa Code Supplement section 68A.503 on corporations that make expenditures to expressly advocate for or against a clearly identified candidate do not apply to a nonprofit advocacy corporation that has received certification as a political corporation pursuant to this rule.

4.50(1) Applicability. A political corporation may make an independent expenditure as defined in Iowa Code Supplement section 68A.404(1) to expressly advocate for or against a clearly identified candidate. However, a political corporation may not make direct contributions to a candidate's committee, state statutory political committee, county statutory political committee, or any political committee (PAC) that is established to expressly advocate for or against a clearly identified candidate.

4.50(2) Criteria. A corporate entity applying for certification as a political corporation shall meet all of the following criteria:

a. The corporation was organized solely for political purposes and engages in minor business activities that generate minimal income and that are incidental to its political purposes.

b. The corporation is not sponsored by a business corporation and has a policy of accepting only an insignificant and insubstantial amount of income from business corporations.

c. The corporation has no shareholders or others that have claims on its assets or earnings.

4.50(3) Application. A corporate entity seeking certification as a political corporation shall submit a letter affirming that the corporate entity meets all of the criteria set out in subrule 4.50(2). The application letter shall also include all other pertinent details of the corporate entity's activities and shall be signed by a corporate officer.

4.50(4) Board review. The board shall review an application letter from a corporate entity seeking status as a political corporation and shall issue a letter of approval or denial.

4.50(5) Denial or failure to seek certification. It shall be deemed a violation of Iowa Code Supplement section 68A.503 for a corporate entity that is denied certification as a political corporation to make an independent expenditure that expressly advocates for or against a clearly identified candidate. It shall be deemed a violation of Iowa Code Supplement section 68A.503 for a corporation to make an independent expenditure that expressly advocates for or against a clearly identified candidate without first seeking certification as a political corporation.

4.50(6) Filing. As required by Iowa Code Supplement section 68A.404, a corporate entity granted political corporation status that makes an independent expenditure in excess of \$750 in the aggregate shall file an independent expenditure statement within 48 hours after the making of the expenditure.

4.50(7) Campaign committee incorporation. An Iowa committee organized under Iowa Code Supplement chapter 68A that chooses to incorporate may do so without applying for certification as

a political corporation. A committee that chooses to incorporate is not a prohibited contributor under Iowa Code Supplement section 68A.503.

This rule is intended to implement Iowa Code Supplement sections 68A.404 and 68A.503.

351—4.51(68A) Candidate debate—media organization; debate structure; debate funding; contribution reporting inapplicable. Iowa Code Supplement section 68A.503 prohibits corporations from making contributions to state or local candidates in Iowa. This prohibition does not apply to incorporated media organizations that host candidate debates described in this rule.

4.51(1) Media organization defined. “Media organization” means a broadcaster, cable television operator, television programmer, television producer, bona fide newspaper, magazine, or any other periodical publication. The media organization shall not be owned or controlled by a political party, political committee, or candidate.

4.51(2) Debate structure. The structure of the debate shall be left to the discretion of the media organization provided that at least two or more candidates for the particular office are invited to participate. The debate shall not be structured to promote or advance one candidate over another. In choosing which candidates to invite to a debate, the media organization shall use good faith editorial judgment that is reasonable and viewpoint-neutral.

4.51(3) Funding debates. A media organization may use its own funds and may accept funds donated by corporations to defray costs incurred in staging a candidate debate under this rule.

4.51(4) Contribution reporting inapplicable. The costs of a debate under this rule are not a reportable monetary or in-kind contribution under Iowa Code Supplement section 68A.402.

This rule is intended to implement Iowa Code Supplement sections 68A.402 and 68A.503.

351—4.52(68A,68B) Corporate involvement with political committee funds.

4.52(1) Corporate payroll deductions. For purposes of interpretation of Iowa Code Supplement section 68A.503, the administrative functions performed by a corporation (profit or nonprofit corporation including, but not limited to, a bank, savings and loan institution, credit union or insurance company) to make payroll deductions for an employee organization’s political committee and to transmit the deductions in lump sum to the treasurer of the political committee shall not be a prohibited corporate activity so long as the corporate entity is serving only as a conduit for the contributions.

4.52(2) Electronic transfer of deposits. A corporation, financial institution, or insurance company may receive and deposit checks that include both dues and PAC contributions. Contributions for the PAC shall be transferred as soon as possible into the PAC checking account and all disclosure, record-keeping, and record-retention requirements of Iowa Code chapter 68A shall be followed.

4.52(3) Allowable costs of administration. For the purposes of interpreting Iowa Code Supplement section 68A.503, subsection 3, which permits an entity otherwise forbidden from contributing to a candidate or a candidate’s committee for “financing the administration of a committee sponsored by that entity,” the following are considered to be allowable costs of administration:

a. Full or partial compensation for political committee staff, which may include both wages and benefits.

b. Expenses of transportation and travel incurred by political committee staff; however, this does not include expenses of transportation or travel if provided by a political committee or a staff member to a candidate, nor does this include expenses of meals or events held on behalf of a candidate.

c. Printing and office supplies related to routine office administration so long as the printing and supplies are not used to expressly advocate for or against any candidate.

d. Postage and stationery, including that necessary for mailing contributions to specific candidates. Postage and stationery necessary for distributing political material expressly advocating a specific candidate to persons other than the committee membership are not permitted.

e. Expenses of maintaining committee records and preparing financial disclosure reports, including costs associated with services provided by an accountant or other professional.

f. Promotional materials, such as stickers, pens, and coffee cups, so long as the items promote the political committee itself, but not a specific candidate.

An item which is excluded by this subrule from being an allowable cost of administration may still be provided by the committee, so long as that cost is paid for from contributions or other sources of funds other than the parent entity.

This rule is intended to implement Iowa Code Supplement section 68A.503.

DIVISION V
INDEPENDENT EXPENDITURES AND IN-KIND CONTRIBUTIONS

351—4.53(68A,68B) Express advocacy; in-kind contributions; independent expenditures—definitions. For the purposes of Iowa Code Supplement chapter 68A, the following definitions apply.

4.53(1) Express advocacy. “Express advocacy” means any communication as defined in Iowa Code Supplement section 68A.102(14). “Express advocacy” includes a communication that uses any word, term, phrase, or symbol that exhorts an individual to vote for or against a clearly identified candidate or for the passage or defeat of a clearly identified ballot issue.

4.53(2) In-kind contribution. “In-kind contribution” means the provision of any good or service to a committee without charge or at a charge that is less than the usual and normal charge for such good or service. If a good or service is provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the good or service at the time of the contribution and the amount charged the committee. An in-kind contribution also includes any expenditure that meets the definition of a coordinated expenditure in subrule 4.53(4).

4.53(3) Independent expenditure. “Independent expenditure” means an expenditure by a person for goods or services, including express advocacy communication, on behalf of a candidate or a ballot issue which is not made with the knowledge and approval of a candidate or a ballot issue committee. “Independent expenditure” does not include incidental expenses (expenses of \$25 or less per incident absorbed by the volunteer which result from or arise out of the volunteer work) incurred by an individual in performing volunteer work.

4.53(4) Coordinated expenditure. “Made with the knowledge and approval of a candidate or ballot issue committee” means that there has been arrangement, coordination, or direction by the candidate or an agent or officer of the candidate’s committee or a ballot issue committee prior to the procurement or purchase of the good or service, or the publication, distribution, display, or broadcast of an express advocacy communication. This may also be referred to as a “coordinated expenditure.” An expenditure will be presumed to be coordinated when it is:

a. Based on information provided to the expending person by the candidate, the candidate’s committee, or the ballot issue committee with a view toward having an expenditure made; or

b. Made by or through any person who is or has been authorized to raise or expend funds; who is or has been an officer of the candidate’s committee or the ballot issue committee; or who is or has been receiving any form of compensation or reimbursement from the candidate, the candidate’s committee, or the ballot issue committee.

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

DIVISION VI
COMMITTEE DISSOLUTION

351—4.54(68A) Committee dissolution; disposition of property; resolution of loans or debts. A committee shall not dissolve until all loans and debts are paid, forgiven, or transferred, and the remaining funds in the committee’s campaign account are distributed according to Iowa Code sections 68A.302 and 68A.303 and rule 351—4.25(68A,68B). In the case of a candidate’s committee, the disposition of all campaign property with a residual value of \$100 or more must be accomplished before dissolution.

4.54(1) Manner of disposition—candidates’ committees. A candidate’s committee shall dispose of campaign property with a residual value of \$100 or more through a sale of the property at fair market value, with proceeds treated as any other campaign funds, or through donation of the property as set out in Iowa Code section 68A.303(1). The candidate’s committee shall disclose on the committee’s campaign report the manner of disposition.

4.54(2) Resolution of loans and debts. The loans and debts of a committee may be transferred, assumed, or forgiven except that a loan or debt owed to a financial institution, insurance company, or corporation may not be forgiven unless the committee is a ballot issue committee. The committee shall disclose on the committee's campaign report the transfer, assumption, or forgiveness of a loan or debt on the appropriate reporting schedules.

4.54(3) Settlement of disputed loans and debts. A dispute concerning a loan or debt may be resolved for less than the original amount if the committee discloses on the committee's campaign report the resolution of the dispute. If the dispute is between a candidate's committee and a financial institution, insurance company, or corporation, the candidate's committee shall submit a written statement to the board describing the loan or debt, the controversy, and the steps taken to settle or collect the loan or debt. The board will review the statement and determine whether to permit the candidate's committee to report the loan or debt as discharged.

4.54(4) Unavailable creditor. If the committee cannot locate a person to whom it owes a loan or debt, the committee shall provide the board with a written statement describing the steps the committee has taken to locate the creditor and shall request direction from the board as to what additional steps, if any, should be taken. If a candidate's committee owes a loan or debt to a financial institution, insurance company, or corporation, resolution of the matter shall include payment to a charitable organization or the general fund of the state of Iowa.

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

351—4.55(68A) Statement of dissolution; final report; final bank statement.

4.55(1) Statement of dissolution. A statement of dissolution (Form DR-3) shall be filed after the committee terminates its activity, disposes of its funds and assets, and has discharged all of its loans and debts. The statement shall be either typewritten or printed legibly in black ink and shall be signed by the person filing the statement. A statement of dissolution filed electronically using the board's Web site is deemed signed when filed.

4.55(2) Place of filing. Statements of dissolution shall be filed with the board at 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Statements may also be filed by fax at (515)281-3701 or filed electronically through the board's Web site at www.iowa.gov/ethics.

4.55(3) Time of filing. A committee seeking dissolution shall file a statement of dissolution within 30 days of terminating activity, disposing of funds and assets, and discharging all loans and debts. A statement must be physically received by the board or, if mailed, must bear a United States Postal Service postmark dated on or before the required due date. Faxed or electronically filed statements must be submitted at or before 11:59 p.m. on the required due date. If the due date falls on a Saturday, Sunday, or holiday on which the board office is closed, the due date is extended to the next working day.

4.55(4) Final report. The committee shall file a final report disclosing the committee's closing transactions. Once the board staff reviews the report and determines that the committee has complied with all of the requirements of Iowa Code chapter 68A, the committee is no longer required to file campaign reports. If the board staff determines that the committee has not complied with all of the requirements of Iowa Code chapter 68A, the committee, prior to being dissolved, shall resolve all issues.

4.55(5) Final bank statement. A copy of the committee's final bank statement showing the committee's closing transactions and a zero balance shall be attached to or submitted with the committee's final report. A committee participating in an election at the county, city, school, or other political subdivision level is not required to file a final bank statement unless requested to do so by the board. A committee seeking a waiver from the requirements of this subrule may do so in accordance with 351—Chapter 15.

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

351—4.56(68A,68B) Disposition of property for dissolution of committee. Rescinded IAB 6/22/05, effective 7/27/05.

351—4.57(68A,68B) Assumption or settlement of debts and obligations. Rescinded IAB 6/22/05, effective 7/27/05.

DIVISION VII
CIVIL PENALTIES FOR LATE REPORTS

351—4.58(68B) Late-filed campaign disclosure reports.

4.58(1) *Late reports.* A campaign disclosure report is deemed filed late if it is not received on or before the applicable due date as set out in rule 351—4.9(68A).

4.58(2) *Methods of filing.* A campaign disclosure report may be filed by any of the following methods: hand-delivered, mailed, faxed, sent as an E-mail attachment, or sent electronically via the Internet. The location for filing reports is set out in rule 351—4.8(68A,68B).

4.58(3) *Physical receipt.* A report must be physically received by the board as set out in rule 351—4.10(68A,68B).

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.59(68B) Routine civil penalty assessment for late-filed disclosure reports.

4.59(1) *Administrative resolution.* In administrative resolution of violations for late-filed disclosure reports, the board shall assess and collect monetary penalties for all late-filed disclosure reports. The board shall notify any person assessed a penalty of the amount of the assessment and the person's ability to request a waiver under rule 351—4.60(68B). A committee using the board's electronic filing system shall not be assessed a civil penalty if the board's electronic filing system is not properly functioning and causes the committee to be unable to timely file the report.

4.59(2) *County and local committee assessments.* County, city, school, other political subdivision, and local ballot issue committees shall be assessed civil penalties for late-filed reports in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same treasurer of a committee in 12-month period
1 to 14 consecutive days delinquent	\$20	\$50
15 to 30 consecutive days delinquent	\$50	\$100
31 to 45 consecutive days delinquent	\$100	\$200

4.59(3) *State committee assessments.* Statewide, general assembly, state statutory, and state political committees, and a judge standing for retention shall be assessed civil penalties for late-filed reports, except for supplementary and special election reports, in accordance with the following schedule:

Date report received	First-time delinquency	Repeat delinquency by same treasurer of a committee in 12-month period
1 to 14 consecutive days delinquent	\$50	\$100
15 to 30 consecutive days delinquent	\$100	\$200
31 to 45 consecutive days delinquent	\$200	\$300

4.59(4) *Supplementary report assessments.* General assembly candidates' committees required to file supplementary disclosure reports shall be assessed a \$200 civil penalty for filing a supplementary report one or more days late. Statewide committees required to file supplementary disclosure reports shall be assessed a \$400 civil penalty for filing a supplementary report one or more days late.

4.59(5) *Special election assessments.* The committees of general assembly candidates to fill vacancies in special elections shall be assessed a \$100 civil penalty for filing a special election report one or more days late. The committees of statewide candidates to fill vacancies in special elections shall be assessed a \$200 civil penalty for filing a special election report one or more days late.

4.59(6) *Verified statement of registration assessments.* An out-of-state committee that chooses to file a verified statement of registration (VSR) as provided in Iowa Code Supplement section 68A.201 and rule

351—4.32(68A), but fails to file the VSR on or before the fifteenth day after the date of the contribution, shall be assessed a \$25 civil penalty per late-filed VSR. However, if there is a repeat delinquency by the committee in a 12-month period, the penalty shall be \$50.

For purposes of this subrule, “date of the contribution” means the day, month and year the contribution check is dated.

4.59(7) Independent expenditure assessment. A person that is delinquent in filing an independent expenditure statement shall be assessed a \$25 civil penalty for filing the statement one or more days delinquent, except that if there is a repeat delinquency by the person in timely filing an independent expenditure statement within a 12-month period, the penalty shall be \$50.

4.59(8) Form DR-OTC assessment. A permanent organization that has not previously made a contribution in excess of \$750 and that fails to file Form DR-OTC within ten days of notice to do so by the board shall be assessed a \$20 civil penalty. A permanent organization that has previously made a contribution in excess of \$750 and that fails to file Form DR-OTC within ten days of the date on which the contribution check is issued shall be assessed a \$20 civil penalty.

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.60(68B) Requests for waiver of penalties. If a person believes that there are mitigating circumstances that prevented the timely filing of a report, the person may make a written request to the board for waiver of the penalty. A person seeking a waiver must submit the request to the board within 30 days of receiving a civil penalty assessment order. Waivers may be granted only under exceptional or very unusual circumstances. The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty is waived based on the circumstances. If a denial or partial waiver is issued, the person shall promptly pay the assessed penalty or seek a contested case proceeding pursuant to rule 351—4.61(68B).

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.61(68B) Contested case challenge.

4.61(1) Request. If the person accepts administrative resolution of a matter through the payment of the assessed penalty, the matter shall be closed. If the person chooses to contest the board’s decision to deny the request or grant a partial waiver of an assessed penalty, the person shall make a written request for a contested case proceeding within 30 days of being notified of the board’s decision.

4.61(2) Procedure. Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The hearing shall be conducted in accordance with the provisions of Iowa Code section 68B.32C and the board’s rules. The burden shall be on the board’s legal counsel to prove that a violation occurred.

4.61(3) Failure to request hearing. Failure to request a contested case proceeding to appeal the board’s decision on a waiver request is failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A and Iowa Code section 68B.33.

This rule is intended to implement Iowa Code Supplement section 68B.32A(8).

351—4.62(68B) Payment of penalty.

4.62(1) Where payment made. Checks or money orders shall be made payable and forwarded to: Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Such funds shall be deposited in the general fund of the state of Iowa.

4.62(2) Who may make payment. Payment may be made at the person’s discretion, including from funds of a committee or from personal funds of an officer of a committee. Payments from corporate entities as described in Iowa Code Supplement section 68A.503 are prohibited, except in the case of a ballot issue committee.

4.62(3) Disclosure of payment. If payment is made from a source other than committee funds and is for payment of an assessment to the committee, the payment shall be publicly disclosed as an in-kind contribution to the committee.

This rule is intended to implement Iowa Code Supplement sections 68A.503 and 68B.32A(8).

- [Filed 10/17/95, Notice 8/25/75—published 11/3/75, effective under emergency provision 11/21/75]
- [Filed 10/28/75, Notice 8/25/75—published 11/17/75, effective 12/22/75]
- [Filed 11/26/75, Notice 8/25/75—published 12/15/75, effective 2/1/76]
- [Amendment filed without notice 11/26/75—published 12/15/75]
- [Filed emergency 2/11/76—published 3/8/76, effective 2/11/76]
- [Filed 2/19/76, Notice 11/17/75—published 3/8/76, effective 4/12/76]
- [Filed 4/1/76, Notice 11/17/75—published 4/19/76, effective 5/24/76]
- [Filed 6/4/76—published 6/28/76, effective 8/2/76]
- [Filed emergency 7/14/76—published 8/9/76, effective 7/14/76]
- [Filed 1/7/77, Notice 12/1/76—published 1/26/77, effective 3/2/77]
- [Filed 4/30/79, Notice 3/21/79—published 5/30/79, effective 7/4/79]¹
- [Filed 8/29/80, Notice 5/28/80—published 9/17/80, effective 10/22/80]
- [Filed 11/6/81, Notice 9/3/81—published 11/25/81, effective 1/1/82]
- [Filed 11/4/83, Notice 8/3/83—published 11/23/83, effective 1/1/84]
- [Filed 5/16/86, Notice 3/12/86—published 6/4/86, effective 9/3/86]
- [Filed 8/21/87, Notice 6/17/87—published 9/9/87, effective 10/14/87]
- [Filed 4/26/89, Notice 2/22/89—published 5/17/89, effective 6/21/89]
- [Filed 4/23/92, Notice 2/19/92—published 5/13/92, effective 6/17/92]
- [Filed 11/17/92, Notice 9/16/92—published 12/9/92, effective 1/13/93]
- [Filed emergency 1/15/93—published 2/3/93, effective 1/15/93]
- [Filed 9/23/93, Notice 4/28/93—published 10/13/93, effective 11/17/93]
- [Filed 3/11/94, Notice 1/5/94—published 3/30/94, effective 5/4/94]
- [Filed emergency 6/16/94—published 7/6/94, effective 6/16/94]
- [Filed 7/29/94, Notice 5/25/94—published 8/17/94, effective 9/21/94]
- [Filed 12/16/94, Notice 8/17/94—published 1/4/95, effective 2/8/95][◇]
- [Filed 7/28/95, Notice 5/24/95—published 8/16/95, effective 9/20/95]
- [Filed 7/28/95, Notice 6/21/95—published 8/16/95, effective 9/20/95][◇]
- [Filed 10/6/95, Notice 7/19/95—published 10/25/95, effective 11/29/95]
- [Filed 7/12/96, Notice 4/24/96—published 7/31/96, effective 9/4/96][◇]
- [Filed 10/18/96, Notice 8/28/96—published 11/6/96, effective 12/11/96]
- [Filed 12/24/96, Notice 11/6/96—published 1/15/97, effective 2/19/97]
- [Filed 6/13/97, Notice 5/7/97—published 7/2/97, effective 8/6/97]
- [Filed 5/15/98, Notice 3/11/98—published 6/3/98, effective 7/8/98][◇]
- [Filed 7/10/98, Notice 6/3/98—published 7/29/98, effective 9/2/98]
- [Filed 3/3/99, Notice 1/13/99—published 3/24/99, effective 4/28/99]
- [Filed emergency 6/9/99—published 6/30/99, effective 6/9/99]
- [Filed 6/21/02, Notice 5/15/02—published 7/10/02, effective 8/14/02][◇]
- [Filed 8/1/02, Notice 6/12/02—published 8/21/02, effective 9/25/02][◇]
- [Filed 8/1/02, Notice 6/26/02—published 8/21/02, effective 9/25/02]
- [Filed 8/30/02, Notice 7/10/02—published 9/18/02, effective 10/23/02]
- [Filed 11/1/02, Notice 8/21/02—published 11/27/02, effective 1/1/03][◇]
- [Filed 11/1/02, Notice 9/4/02—published 11/27/02, effective 1/1/03][◇]
- [Filed 4/23/03, Notice 3/5/03—published 5/14/03, effective 7/1/03]
- [Filed 8/28/03, Notice 7/9/03—published 9/17/03, effective 10/22/03][◇]
- [Filed 8/28/03, Notice 7/23/03—published 9/17/03, effective 10/22/03]
- [Filed 10/9/03, Notice 8/20/03—published 10/29/03, effective 12/3/03][◇]
- [Filed 11/6/03, Notice 10/1/03—published 11/26/03, effective 12/31/03][◇]
- [Filed 1/14/04, Notice 11/26/03—published 2/4/04, effective 3/10/04][◇]
- [Filed 2/6/04, Notice 12/24/03—published 3/3/04, effective 4/7/04][◇]
- [Filed 4/23/04, Notice 3/3/04—published 5/12/04, effective 6/16/04][◇]
- [Filed without Notice 4/29/04—published 5/26/04, effective 7/1/04]

[Filed without Notice 5/3/04—published 5/26/04, effective 7/1/04]
 [Filed without Notice 5/4/04—published 5/26/04, effective 7/1/04]
 [Filed 6/24/04, Notice 5/12/04—published 7/21/04, effective 8/25/04][◇]
 [Filed 8/26/04, Notice 7/21/04—published 9/15/04, effective 10/20/04]
 [Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]
 [Filed 1/28/05, Notice 11/10/04—published 2/16/05, effective 3/23/05][◇]
 [Filed 1/28/05, Notice 12/22/04—published 2/16/05, effective 3/23/05]
 [Filed 5/23/05, Notice 3/16/05—published 6/22/05, effective 7/27/05][◇]
 [Filed without Notice 5/24/05—published 6/22/05, effective 7/27/05][◇]
 [Filed 8/17/05, Notice 5/11/05—published 9/14/05, effective 10/19/05]
 [Filed 12/2/05, Notice 9/14/05—published 12/21/05, effective 1/25/06]
 [Filed 12/2/05, Notice 10/26/05—published 12/21/05, effective 1/25/06]
 [Filed 2/8/06, Notice 12/21/05—published 3/1/06, effective 4/5/06][◇]
 [Filed 7/13/06, Notice 4/26/06—published 8/2/06, effective 9/6/06][◇]
 [Filed 9/25/06, Notice 8/2/06—published 10/25/06, effective 11/29/06][◇]
 [Filed 3/7/07, Notice 1/17/07—published 3/28/07, effective 5/2/07]
 [Filed without Notice 7/11/07—published 8/1/07, effective 9/5/07][◇]
 [Filed without Notice 7/12/07—published 8/1/07, effective 9/5/07][◇]
 [Filed 4/2/08, Notice 2/13/08—published 4/23/08, effective 5/28/08]
 [Filed 9/2/08, Notice 6/18/08—published 9/24/08, effective 10/29/08]
 [Filed without Notice 9/5/08—published 9/24/08, effective 10/29/08][◇]
 [Filed without Notice 11/11/08—published 12/3/08, effective 1/7/09][◇]
 [Filed 12/8/08, Notice 9/24/08—published 12/31/08, effective 2/4/09][◇]

[◇] Two or more ARCs

¹ Effective date of rule 4.16 delayed by the Administrative Rules Review Committee 45 days after convening of the next General Assembly pursuant to §17A.8(9).

CHAPTER 7
PERSONAL FINANCIAL DISCLOSURE
[Prior to 7/9/03, see 351—Ch 11]

351—7.1(68B) Filing requirements and procedures.

7.1(1) *Time of filing.* All persons who are required to file a personal financial disclosure statement (Form PFD) with the board pursuant to Iowa Code section 68B.35(2) shall file the statements with the board on or before April 30 of each year following a year during which the person holds a designated position, without regard to the length of time the position was occupied by the person. A person who held a designated position who leaves that position or state employment shall have a continuing obligation to file the statement for any year or portion of a year in which the position was held prior to termination.

7.1(2) *Place of filing.* Form PFD shall be filed with the board at 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. The form may also be filed by fax at (515)281-4073 or electronically using the board's Web site at www.iowa.gov/ethics.

7.1(3) *Persons holding more than one designated position.* A person who is required to file a personal financial disclosure statement for more than one position shall be required to file only one statement for the reporting year. A member of the general assembly who files a form with the secretary of the senate or the chief clerk of the house shall not be required to file the form with the board for any designated position held in the executive branch.

7.1(4) *Physical receipt.* The board must physically receive a filed Form PFD on or before April 30 of each year. If mailed, the form must bear a United States Postal Service postmark dated on or before April 30. Faxed or electronically filed forms must be submitted on or before 11:59 p.m. on the required due date. If the due date falls on a weekend or holiday, the filing deadline shall be extended to the first working day following the deadline.

7.1(5) *Period covered.* Information shall be filed on Form PFD as designated by the board and shall cover the calendar year immediately preceding the year due. However, a statement filed by a person who has left a designated position during the course of a year need only contain information covering the portion of that year that has elapsed prior to the person's leaving the position.

7.1(6) *Public record.* Rescinded IAB 9/15/04, effective 10/20/04.

This rule is intended to implement Iowa Code sections 68B.32A(4), 68B.35 and 68B.35A.

351—7.2(68B) Information disclosed on form.

7.2(1) *Definitions.* For the purpose of completing Form PFD, "income sources" includes those sources which are held jointly with one or more persons and which in total generate more than \$1000 of income. "Jointly" means that the ownership of the income source is undivided among the owners and that all owners have one and the same interest in an undivided possession, each with full rights of use and enjoyment of the total income. Sources of income that are co-owned but with ownership interests that are legally divisible, without full rights of use or enjoyment of the total income, need not be reported unless the person's portion of the income from that source exceeds \$1000.

7.2(2) *Spousal income.* For purposes of completing Form PFD, income earned solely by the spouse of a person subject to reporting is not income to that person and need not be reported as an income source.

This rule is intended to implement Iowa Code section 68B.35.

351—7.3(68B) Procedure for determining persons required to file with the board—distribution of forms.

7.3(1) *Persons required by statute.* In order to determine which persons in the executive branch are required by Iowa Code Supplement section 68B.35(2) as amended by 2004 Iowa Acts, Senate File 2179, section 11, to file Form PFD, the board shall contact each agency on an annual basis and provide notification of the statutory requirement. This notification shall include the name and position title of each person in the agency who filed Form PFD the previous year. Each agency, in consultation with the board, shall then determine which persons are required to file Form PFD for the next filing period and

shall provide the board with the appropriate names and position titles. The board shall have the final authority to determine whether a position requires that a Form PFD be filed.

7.3(2) Boards, commissions, or authorities not named in statute. Pursuant to Iowa Code Supplement section 68B.35(2)“e” as amended by 2004 Iowa Acts, Senate File 2179, section 11, on an annual basis the board shall conduct a review to determine if a member of any other board, commission, or authority not specifically named in Iowa Code Supplement section 68B.35(2)“e” as amended by 2004 Iowa Acts, Senate File 2179, section 11, should file Form PFD. If the board determines that Form PFD should be filed, the board shall by rule require a Form PFD to be filed.

7.3(3) Statewide candidates. A person who is a candidate for statewide office shall file Form PFD with the board no later than 30 days after the date on which a person is required to file nomination papers for state office under Iowa Code section 43.11. Once nomination papers or an affidavit of candidacy is filed, the board shall notify the person of the requirement to file Form PFD. The notification shall be sent by first-class mail and shall include a blank form or information on how to obtain a blank form for filing.

7.3(4) Statewide candidates in a special election. Pursuant to Iowa Code Supplement section 68B.35(5) a person who is a candidate for statewide office in a special election shall file Form PFD with the board within seven days after the certification of the candidate’s name as the nominee under Iowa Code section 43.88.

7.3(5) Distribution of forms. The board shall provide each agency with blank forms for distribution to the designated persons and shall make blank forms available via the board’s Web site at www.iowa.gov/ethics. The board shall provide each agency with the link on the board’s Web site where forms may be filed electronically. The board shall also make blank forms available via the board’s Web site.

This rule is intended to implement Iowa Code Supplement section 68B.32A(4) and Iowa Code Supplement section 68B.35 as amended by 2004 Iowa Acts, Senate File 2179, section 11.

351—7.4(68B) Delinquent forms. Rescinded IAB 9/15/04, effective 10/20/04.

351—7.5(68B) Penalties.

7.5(1) Penalties for late personal financial disclosure statements. An individual holding a designated position in the executive branch who fails to timely file Form PFD shall be subject to an automatic civil penalty according to the following schedule:

Days Delinquent	Penalty Amount
1 to 14	\$25
15 to 30	\$50
31 and over	\$100

7.5(2) Additional penalty. If an individual holding a designated position in the executive branch fails to file a personal financial disclosure statement within 45 days of the required filing date, a contested case proceeding may be held to determine whether or not a violation has occurred. If after a contested case proceeding it is determined that a violation occurred, the board may impose any of the actions under Iowa Code section 68B.32D. Any action imposed under Iowa Code section 68B.32D would be in addition to an automatically assessed penalty in subrule 7.5(1).

7.5(3) Failure to file true statement. It shall be considered a violation of Iowa Code section 68B.35 for an individual holding a designated position in the executive branch to file a disclosure statement containing false or fraudulent information. Complaints concerning the filing of a false or fraudulent disclosure statement shall be handled by the procedures in Iowa Code section 68B.32B. If it is determined after a contested case proceeding that a false or fraudulent disclosure statement was filed, the board may impose any of the actions under Iowa Code section 68B.32D.

This rule is intended to implement Iowa Code sections 68B.32A(8) and 68B.35.

351—7.6(68B) Requests for waiver of penalties. If an individual holding a designated position in the executive branch believes that mitigating circumstances prevented the timely filing of Form PFD, the individual may make a written request to the board for waiver of the penalty. The request for waiver must be received by the board within 30 days of notification to the individual of the civil penalty assessment. Waivers may be granted only under exceptional or very unusual circumstances. The board will review the request and issue a waiver or denial of the request. If a waiver is granted, the board will determine how much of the penalty may be waived based on the circumstances.

This rule is intended to implement Iowa Code section 68B.32A(8).

351—7.7(68B) Contested case challenge.

7.7(1) Request. If the individual accepts administrative resolution concerning a late-filed Form PFD through the payment of the assessed penalty, the matter shall be closed. If the individual chooses to contest the board's decision to deny the request or grant a partial waiver of an assessed penalty, the individual shall make a written request for a contested case proceeding within 30 days of being notified of the board's decision.

7.7(2) Procedure. Upon timely receipt of a request for a contested case proceeding, the board shall provide for the issuance of a statement of charges and notice of hearing. The contested case shall be conducted in accordance with the provisions of 351—Chapter 11. The burden shall be on the board's legal counsel to prove that a violation occurred.

7.7(3) Failure to request proceeding. The failure to request a contested case proceeding to contest the board's decision on a waiver request is a failure to exhaust administrative remedies for purposes of seeking judicial review in accordance with Iowa Code chapter 17A.

This rule is intended to implement Iowa Code sections 68B.32A(8) and 68B.33.

351—7.8(68B) Payment of penalty. The remittance shall be made payable to the "State of Iowa General Fund" and forwarded to Iowa Ethics and Campaign Disclosure Board, 510 East 12th Street, Suite 1A, Des Moines, Iowa 50319. The remittance shall be deposited in the general fund of the state of Iowa.

This rule is intended to implement Iowa Code section 68B.32A(8).

351—7.9(68B) Retention and availability of filed forms.

7.9(1) Public record. Forms filed with the board are a public record and shall be available for inspection and copying.

7.9(2) Internet access. Pursuant to Iowa Code section 68B.35A as amended by 2004 Iowa Acts, Senate File 2179, section 12, the board shall record a filed Form PFD on the board's Web site at www.iowa.gov/ethics. Filed forms shall be accessible via the board's Web site for a period of at least five years from the reporting due date.

This rule is intended to implement Iowa Code Supplement section 68B.35 as amended by 2004 Iowa Acts, Senate File 2179, section 11, and Iowa Code section 68B.35A as amended by 2004 Iowa Acts, Senate File 2179, section 12.

[Filed emergency 3/11/94 after Notice 2/2/94—published 3/30/94, effective 4/1/94]

[Filed 2/29/96, Notice 12/20/95—published 3/27/96, effective 5/1/96]

[Filed 3/3/99, Notice 1/13/99—published 3/24/99, effective 4/28/99]

[Filed 6/21/02, Notice 5/15/02—published 7/10/02, effective 8/14/02]

[Filed 8/1/02, Notice 6/12/02—published 8/21/02, effective 9/25/02][◇]

[Filed 8/30/02, Notice 7/10/02—published 9/18/02, effective 10/23/02]

[Filed 6/19/03, Notice 5/14/03—published 7/9/03, effective 8/13/03]

[Filed 8/26/04, Notice 7/21/04—published 9/15/04, effective 10/20/04]

[Filed 12/8/08, Notice 9/24/08—published 12/31/08, effective 2/4/09]

[◇] Two or more ARCs

CHAPTER 51
ELIGIBILITY

[Prior to 7/1/83, Social Services[770] Ch 51]

[Prior to 2/11/87, Human Services[498]]

441—51.1(249) Application for other benefits. An applicant or any other person whose needs are included in determining the state supplementary assistance payment must have applied for or be receiving all other benefits, including supplemental security income or the family investment program, for which the person may be eligible. The person must cooperate in the eligibility procedures while making application for the other benefits. Failure to cooperate shall result in ineligibility for state supplementary assistance.

This rule is intended to implement Iowa Code section 249.3.

441—51.2(249) Supplementation. Any supplemental payment made on behalf of the recipient from any source other than a nonfederal governmental entity shall be considered as income, and the payment shall be used to reduce the state supplementary assistance payment.

441—51.3(249) Eligibility for residential care.

51.3(1) Licensed facility. Payment for residential care shall be made only when the facility in which the applicant or recipient is residing is currently licensed by the department of inspections and appeals pursuant to laws governing health care facilities.

51.3(2) Physician's statement. Payment for residential care shall be made only when there is on file an order written by a physician certifying that the applicant or recipient being admitted requires residential care but does not require nursing services. The certification shall be updated whenever a change in the recipient's physical condition warrants reevaluation, but no less than every 12 months.

51.3(3) Income eligibility. The resident shall be income eligible when the income according to 52.1(3) "a" is less than 31 times the per diem rate of the facility. Partners in a marriage who both enter the same room of the residential care facility in the same month shall be income eligible for the initial month when their combined income according to 52.1(3) "a" is less than twice the amount of allowed income for one person (31 times the per diem rate of the facility).

51.3(4) Diversion of income. Rescinded IAB 5/1/91, effective 7/1/91.

51.3(5) Resources. Rescinded IAB 5/1/91, effective 7/1/91.

This rule is intended to implement Iowa Code section 249.3.

441—51.4(249) Dependent relatives.

51.4(1) Income. Income of a dependent relative shall be less than \$344. When the dependent's income is from earnings, an exemption of \$65 shall be allowed to cover work expense.

51.4(2) Resources. The resource limitation for a recipient and a dependent child or parent shall be \$2,000. The resource limitation for a recipient and a dependent spouse shall be \$3,000. The resource limitation for a recipient, spouse, and dependent child or parent shall be \$3,000.

51.4(3) Living in the home. A dependent relative shall be eligible until out of the recipient's home for a full calendar month starting at 12:01 a.m. on the first day of the month until 12 midnight on the last day of the same month.

51.4(4) Dependency. A dependent relative may be the recipient's ineligible spouse, parent, child, or adult child who is financially dependent upon the recipient. A relative shall not be considered to be financially dependent upon the recipient when the relative is living with a spouse who is not the recipient.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

441—51.5(249) Residence. A recipient of state supplementary assistance shall be living in the state of Iowa.

This rule is intended to implement Iowa Code section 249.3.

441—51.6(249) Eligibility for supplement for Medicare and Medicaid eligibles. The following eligibility requirements are specific to the supplement for Medicare and Medicaid eligibles:

51.6(1) Medicaid eligibility. The recipient must be eligible for and receiving full medical assistance benefits under Iowa Code chapter 249A without regard to eligibility based on receipt of state supplementary assistance under this rule, and without being required to meet a spenddown or pay a premium to be eligible for medical assistance benefits.

51.6(2) SSI eligibility. The recipient shall meet all eligibility requirements for supplemental security income benefits other than limits on substantial gainful activity and income.

51.6(3) Not otherwise eligible. The recipient must not be eligible for benefits under another state supplementary assistance group.

51.6(4) Medicare eligibility. The recipient must be currently eligible for Medicare Part B.

51.6(5) Living arrangement. A recipient may live in one of the following:

- a. The person's own home.
- b. The home of another person.
- c. A group living arrangement.
- d. A medical facility.

51.6(6) Income. Income of a recipient shall be within the income limit for the person's Medicaid eligibility group, but must exceed 120 percent of the federal poverty level.

This rule is intended to implement Iowa Code section 249.3 as amended by 2005 Iowa Acts, House File 825, section 108.

441—51.7(249) Income from providing room and board. In determining profit from furnishing room and board or providing family life home care, \$344 per month shall be deducted to cover the cost, and the remaining amount treated as earned income.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

441—51.8(249) Furnishing of social security number. As a condition of eligibility applicants or recipients of state supplementary assistance must furnish their social security account numbers or proof of application for the numbers if they have not been issued or are not known and provide their numbers upon receipt.

Assistance shall not be denied, delayed, or discontinued pending the issuance or verification of the numbers when the applicants or recipients are cooperating in providing information necessary for issuance of their social security numbers.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

441—51.9(249) Recovery.

51.9(1) Definitions.

“Administrative overpayment” means assistance incorrectly paid to or for the client because of continuing assistance during the appeal process.

“Agency error” means assistance incorrectly paid to or for the client because of action attributed to the department as the result of one or more of the following circumstances:

1. Misfiling or loss of forms or documents.
2. Errors in typing or copying.
3. Computer input errors.
4. Mathematical errors.
5. Failure to determine eligibility correctly or to certify assistance in the correct amount when all essential information was available to the local office.
6. Failure to make prompt revisions in payment following changes in policies requiring the changes as of a specific date.

“Client” means a current or former applicant or recipient of state supplementary assistance.

“Client error” means assistance incorrectly paid to or for the client because the client or client's representative failed to disclose information, or gave false or misleading statements, oral or written,

regarding the client's income, resources, or other eligibility and benefit factors. It also means assistance incorrectly paid to or for the client because of failure by the client or client's representative to timely report as defined in rule 441—76.10(249A).

"Department" means the department of human services.

51.9(2) Amount subject to recovery. The department shall recover from a client all state supplementary assistance funds incorrectly expended to or on behalf of the client, or when conditional benefits have been granted.

a. The department also shall seek to recover the state supplementary assistance granted during the period of time that conditional benefits were correctly granted the client under the policies of the supplemental security income program.

b. The incorrect expenditures may result from client or agency error, or administrative overpayment.

51.9(3) Notification. All clients shall be promptly notified when it is determined that assistance was incorrectly expended. Notification shall include for whom assistance was paid; the time period during which assistance was incorrectly paid; the amount of assistance subject to recovery, when known; and the reason for the incorrect expenditure.

51.9(4) Source of recovery. Recovery shall be made from the client or from parents of children under the age of 21 when the parents completed the application and had responsibility for reporting changes. Recovery must come from income, resources, the estate, income tax refunds, and lottery winnings of the client.

51.9(5) Repayment. The repayment of incorrectly expended state supplementary assistance funds shall be made to the department.

51.9(6) Appeals. The client shall have the right to appeal the amount of funds subject to recovery under the provisions of 441—Chapter 7.

This rule is intended to implement Iowa Code sections 249.3 and 249.4.

[Filed 2/19/76, Notice 1/12/76—published 3/8/76, effective 4/12/76]

[Filed 6/25/76, Notice 5/17/76—published 7/12/76, effective 8/16/76]

[Filed 12/17/76, Notice 11/3/76—published 1/12/77, effective 3/1/77]

[Filed emergency 5/24/77—published 6/15/77 effective 7/1/77]

[Filed 3/27/78, Notice 2/8/78—published 4/19/78, effective 5/24/78]

[Filed emergency 6/28/78—published 7/26/78, effective 7/1/78]

[Filed 7/17/78, Notice 5/31/78—published 8/9/78, effective 9/13/78]

[Filed emergency 6/26/79—published 7/25/79, effective 7/1/79]

[Filed emergency 6/30/80—published 7/23/80, effective 7/1/80]

[Filed emergency 6/30/81—published 7/22/81, effective 7/1/81]

[Filed 6/30/81, Notice 4/29/81—published 7/22/81, effective 9/1/81]

[Filed 10/23/81, Notice 9/2/81—published 11/11/81, effective 1/1/82]

[Filed 11/20/81, Notice 9/30/81—published 12/9/81, effective 2/1/82]

[Filed emergency 9/23/82—published 10/13/82, effective 9/23/82]

[Filed emergency 6/17/83—published 7/6/83, effective 7/1/83]

[Filed emergency 11/18/83, after Notice 10/12/83—published 12/7/83, effective 1/1/84]

[Filed emergency 12/11/84—published 1/2/85, effective 1/1/85]

[Filed without Notice 1/22/85—published 2/13/85, effective 4/1/85]

[Filed 3/22/85, Notice 2/13/85—published 4/10/85, effective 6/1/85]

[Filed emergency 12/2/85—published 12/18/85, effective 1/1/86]

[Filed 4/29/86, Notice 3/12/86—published 5/21/86, effective 8/1/86]

[Filed emergency 12/22/86—published 1/14/87, effective 1/1/87]

[Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]

[Filed emergency 12/10/87—published 12/30/87, effective 1/1/88]

[Filed emergency 12/8/88—published 12/28/88, effective 1/1/89]

[Filed emergency 11/16/89—published 12/13/89, effective 1/1/90]

[Filed 2/16/90, Notice 12/13/89—published 3/7/90, effective 5/1/90]

- [Filed emergency 12/13/90—published 1/9/91, effective 1/1/91]
- [Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]
- [Filed 2/14/91, Notice 1/9/91—published 3/6/91, effective 5/1/91]
- [Filed 4/11/91, Notice 3/6/91—published 5/1/91, effective 7/1/91]
- [Filed emergency 12/11/91—published 1/8/92, effective 1/1/92]
- [Filed 2/13/92, Notices 12/25/91, 1/8/92—published 3/4/92, effective 5/1/92]
- [Filed emergency 12/1/92—published 12/23/92, effective 1/1/93]
- [Filed 2/10/93, Notice 12/23/92—published 3/3/93, effective 5/1/93]
- [Filed emergency 12/16/93—published 1/5/94, effective 1/1/94]
- [Filed 12/16/93, Notice 10/27/93—published 1/5/94, effective 3/1/94]
- [Filed 2/10/94, Notice 1/5/94—published 3/2/94, effective 5/1/94]
- [Filed emergency 12/15/94—published 1/4/95, effective 1/1/95]
- [Filed 2/16/95, Notice 1/4/95—published 3/15/95, effective 5/1/95]
- [Filed emergency 12/12/95—published 1/3/96, effective 1/1/96]
- [Filed 2/14/96, Notice 1/3/96—published 3/13/96, effective 5/1/96]
- [Filed emergency 12/12/96—published 1/1/97, effective 1/1/97]
- [Filed 2/12/97, Notice 1/1/97—published 3/12/97, effective 5/1/97]
- [Filed emergency 12/10/97—published 12/31/97, effective 1/1/98]
- [Filed 2/11/98, Notice 12/31/97—published 3/11/98, effective 5/1/98]
- [Filed emergency 12/9/98—published 12/30/98, effective 1/1/99]
- [Filed 2/10/99, Notice 12/30/98—published 3/10/99, effective 4/15/99]
- [Filed emergency 12/8/99—published 12/29/99, effective 1/1/00]
- [Filed 2/9/00, Notice 12/29/99—published 3/8/00, effective 5/1/00]
- [Filed emergency 12/14/00—published 1/10/01, effective 1/1/01]
- [Filed 2/14/01, Notice 1/10/01—published 3/7/01, effective 5/1/01]
- [Filed emergency 12/12/01—published 1/9/02, effective 1/1/02]
- [Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 5/1/02]
- [Filed emergency 5/9/02—published 5/29/02, effective 6/1/02]
- [Filed 7/15/02, Notice 5/29/02—published 8/7/02, effective 10/1/02]
- [Filed emergency 12/12/02—published 1/8/03, effective 1/1/03]
- [Filed emergency 11/19/03—published 12/10/03, effective 1/1/04]
- [Filed emergency 8/12/04 after Notice 6/23/04—published 9/1/04, effective 8/12/04]
- [Filed emergency 12/14/04—published 1/5/05, effective 1/1/05]
- [Filed 2/10/05, Notice 1/5/05—published 3/2/05, effective 4/6/05]
- [Filed emergency 6/17/05—published 7/6/05, effective 7/1/05]
- [Filed 10/21/05, Notice 7/6/05—published 11/9/05, effective 12/14/05]
- [Filed emergency 12/14/05—published 1/4/06, effective 1/1/06]
- [Filed 2/10/06, Notice 1/4/06—published 3/1/06, effective 4/5/06]
- [Filed emergency 12/13/06—published 1/3/07, effective 1/1/07]
- [Filed 3/14/07, Notice 1/3/07—published 4/11/07, effective 5/16/07]
- [Filed emergency 12/12/07—published 1/2/08, effective 1/1/08]
- [Filed 3/12/08, Notice 1/2/08—published 4/9/08, effective 5/14/08]
- [Filed emergency 12/10/08—published 12/31/08, effective 1/1/09]

CHAPTER 52
PAYMENT

[Prior to 7/1/83, Social Services[770] Ch 52]
[Prior to 2/11/87, Human Services[498]]

441—52.1(249) Assistance standards. Assistance standards are the amounts of money allowed on a monthly basis to recipients of state supplementary assistance in determining financial need and the amount of assistance granted.

52.1(1) Protective living arrangement. The following assistance standards have been established for state supplementary assistance for persons living in a family life home certified under rules in 441—Chapter 111.

\$742	Care allowance
\$94	Personal allowance
\$836	Total

52.1(2) Dependent relative. The following assistance standards have been established for state supplementary assistance for dependent relatives residing in a recipient’s home.

- a. Aged or disabled client and a dependent relative \$1018
- b. Aged or disabled client, eligible spouse, and a dependent relative \$1355
- c. Blind client and a dependent relative \$1040
- d. Blind client, aged or disabled spouse, and a dependent relative \$1377
- e. Blind client, blind spouse, and a dependent relative \$1399

52.1(3) Residential care. Payment to a recipient in a residential care facility shall be made on a flat per diem rate of \$17.86 or on a cost-related reimbursement system with a maximum per diem rate of \$28.14. The department shall establish a cost-related per diem rate for each facility choosing this method of payment according to rule 441—54.3(249).

The facility shall accept the per diem rate established by the department for state supplementary assistance recipients as payment in full from the recipient and make no additional charges to the recipient.

a. All income of a recipient as described in this subrule after the disregards described in this subrule shall be applied to meet the cost of care before payment is made through the state supplementary assistance program.

Income applied to meet the cost of care shall be the income considered available to the resident pursuant to supplemental security income (SSI) policy plus the SSI benefit less the following monthly disregards applied in the order specified:

- (1) When income is earned, impairment related work expenses, as defined by SSI plus \$65 plus one-half of any remaining earned income.
- (2) An allowance of \$94 to meet personal expenses and Medicaid copayment expenses.
- (3) When there is a spouse at home, the amount of the SSI benefit for an individual minus the spouse’s countable income according to SSI policies. When the spouse at home has been determined eligible for SSI benefits, no income disregard shall be made.
- (4) When there is a dependent child living with the spouse at home who meets the definition of a dependent according to the SSI program, the amount of the SSI allowance for a dependent minus the dependent’s countable income and the amount of income from the parent at home that exceeds the SSI benefit for one according to SSI policies.
- (5) Established unmet medical needs of the resident, excluding private health insurance premiums and Medicaid copayment expenses. Unmet medical needs of the spouse at home, exclusive of health insurance premiums and Medicaid copayment expenses, shall be an additional deduction when the countable income of the spouse at home is not sufficient to cover those expenses. Unmet medical needs of the dependent living with the spouse at home, exclusive of health insurance premiums and Medicaid copayment expenses, shall also be deducted when the countable income of the dependent and the income of the parent at home that exceeds the SSI benefit for one is not sufficient to cover the expenses.

(6) The income of recipients of state supplementary assistance or Medicaid needed to pay the cost of care in another residential care facility, a family life home, an in-home health-related care provider, a home- and community-based waiver setting, or a medical institution is not available to apply to the cost of care. The income of a resident who lived at home in the month of entry shall not be applied to the cost of care except to the extent the income exceeds the SSI benefit for one person or for a married couple if the resident also had a spouse living in the home in the month of entry.

b. Payment is made for only the days the recipient is a resident of the facility. Payment shall be made for the date of entry into the facility, but not the date of death or discharge.

c. Payment shall be made in the form of a grant to the recipient on a post payment basis.

d. Payment shall not be made when income is sufficient to pay the cost of care in a month with less than 31 days, but the recipient shall remain eligible for all other benefits of the program.

e. Payment will be made for periods the resident is absent overnight for the purpose of visitation or vacation. The facility will be paid to hold the bed for a period not to exceed 30 days during any calendar year, unless a family member or legal guardian of the resident, the resident's physician, case manager, or department service worker provides signed documentation that additional visitation days are desired by the resident and are for the benefit of the resident. This documentation shall be obtained by the facility for each period of paid absence which exceeds the 30-day annual limit. This information shall be retained in the resident's personal file. If documentation is not available to justify periods of absence in excess of the 30-day annual limit, the facility shall submit a Case Activity Report, Form 470-0042, to the county office of the department to terminate the state supplementary assistance payment.

A family member may contribute to the cost of care for a resident subject to supplementation provisions at rule 441—51.2(249) and any contributions shall be reported to the county office of the department by the facility.

f. Payment will be made for a period not to exceed 20 days in any calendar month when the resident is absent due to hospitalization. A resident may not start state supplementary assistance on reserve bed days.

g. The per diem rate established for recipients of state supplementary assistance shall not exceed the average rate established by the facility for private pay residents.

(1) Residents placed in a facility by another governmental agency are not considered private paying individuals. Payments received by the facility from such an agency shall not be included in determining the average rate for private paying residents.

(2) To compute the facilitywide average rate for private paying residents, the facility shall accumulate total monthly charges for those individuals over a six-month period and divide by the total patient days care provided to this group during the same period of time.

52.1(4) *Blind.* The standard for a blind recipient not receiving another type of state supplementary assistance is \$22 per month.

52.1(5) *In-home, health-related care.* Payment to a person receiving in-home, health-related care shall be made in accordance with rules in 441—Chapter 177.

52.1(6) *Minimum income level cases.* The income level of those persons receiving old age assistance, aid to the blind, and aid to the disabled in December 1973 shall be maintained at the December 1973 level as long as the recipient's circumstances remain unchanged and that income level is above current standards. In determining the continuing eligibility for the minimum income level, the income limits, resource limits, and exclusions which were in effect in October 1972 shall be utilized.

52.1(7) *Supplement for Medicare and Medicaid eligibles.* Payment to a person eligible for the supplement for Medicare and Medicaid eligibles shall be \$1 per month.

This rule is intended to implement Iowa Code chapter 249 as amended by 2004 Iowa Acts, House File 2134, sections 4 and 5.

[Filed 2/19/76, Notice 1/12/76—published 3/8/76, effective 4/12/76]

[Filed emergency 6/9/76—published 6/28/76, effective 7/1/76]

[Filed emergency 7/29/76—published 8/23/76, effective 9/1/76]

[Filed 9/29/76, Notice 8/23/76—published 10/20/76, effective 11/24/76]

[Filed 12/17/76, Notice 11/3/76—published 1/12/77, effective 3/1/77]

- [Filed emergency 5/24/77—published 6/15/77, effective 7/1/77]
- [Filed 3/27/78, Notice 2/8/78—published 4/19/78, effective 5/24/78]
- [Filed emergency 5/8/78—published 5/31/78, effective 5/24/78]
- [Filed emergency 6/28/78—published 7/26/78, effective 7/1/78]
- [Filed 7/17/78, Notice 5/31/78—published 8/9/78, effective 9/13/78]
- [Filed 11/7/78, Notice 4/19/78—published 11/29/78, effective 1/3/79]
- [Filed emergency 6/26/79—published 7/25/79, effective 7/1/79]
- [Filed emergency 6/30/80—published 7/23/80, effective 7/1/80]
- [Filed emergency 6/30/81—published 7/22/81, effective 7/1/81]
- [Filed 2/26/82, Notice 10/28/81—published 3/17/82, effective 5/1/82]
- [Filed emergency 5/21/82—published 6/9/82, effective 7/1/82]
- [Filed emergency 7/1/82—published 7/21/82, effective 7/1/82]
- [Filed 2/25/83, Notice 1/5/83—published 3/16/83, effective 5/1/83]
- [Filed emergency 6/17/83—published 7/6/83, effective 7/1/83]
- [Filed emergency 10/7/83—published 10/26/83, effective 11/1/83]
- [Filed without Notice 10/7/83—published 10/26/83, effective 12/1/83]
- [Filed emergency 11/18/83, after Notice 10/12/83—published 12/7/83, effective 1/1/84]
- [Filed 11/18/83, Notice 10/12/83—published 12/7/83, effective 2/1/84]
- [Filed emergency 6/15/84—published 7/4/84, effective 7/1/84]
- [Filed emergency 12/11/84—published 1/2/85, effective 1/1/85]
- [Filed emergency 6/14/85—published 7/3/85, effective 7/1/85]
- [Filed emergency after Notice 6/14/85, Notice 5/8/85—published 7/3/85, effective 8/1/85]
- [Filed emergency 10/1/85—published 10/23/85, effective 11/1/85]
- [Filed without Notice 10/1/85—published 10/23/85, effective 12/1/85]
- [Filed emergency 12/2/85—published 12/18/85, effective 1/1/86]
- [Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 2/1/86]
- [Filed emergency 6/26/86—published 7/16/86, effective 7/1/86]
- [Filed emergency 12/22/86—published 1/14/87, effective 1/1/87]
- [Filed emergency 1/15/87—published 2/11/87, effective 1/15/87]
- [Filed emergency 12/10/87—published 12/30/87, effective 1/1/88]
- [Filed emergency 6/9/88—published 6/29/88, effective 7/1/88]
- [Filed emergency 12/8/88—published 12/28/88, effective 1/1/89]
- [Filed emergency 6/9/89—published 6/28/89, effective 7/1/89]
- [Filed 8/17/89, Notice 6/28/89—published 9/6/89, effective 11/1/89]
- [Filed emergency 11/16/89—published 12/13/89, effective 1/1/90]
- [Filed 2/16/90, Notice 12/13/89—published 3/7/90, effective 5/1/90]
- [Filed emergency 6/20/90—published 7/11/90, effective 7/1/90]
- [Filed 8/16/90, Notice 7/11/90—published 9/5/90, effective 11/1/90]
- [Filed emergency 12/13/90—published 1/9/91, effective 1/1/91]
- [Filed 12/13/90, Notice 10/31/90—published 1/9/91, effective 3/1/91]
- [Filed 2/14/91, Notice 1/9/91—published 3/6/91, effective 5/1/91]
- [Filed 4/11/91, Notice 3/6/91—published 5/1/91, effective 7/1/91]
- [Filed 9/18/91, Notice 7/24/91—published 10/16/91, effective 12/1/91]
- [Filed emergency 12/11/91—published 1/8/92, effective 1/1/92]
- [Filed 12/11/91, Notice 10/16/91—published 1/8/92, effective 3/1/92]¹
- [Filed 2/13/92, Notice 1/8/92—published 3/4/92, effective 5/1/92]
- [Filed emergency 4/15/92—published 5/13/92, effective 4/16/92]
- [Filed 4/16/92, Notice 1/8/92—published 5/13/92, effective 7/1/92]
- [Filed emergency 12/1/92—published 12/23/92, effective 1/1/93]
- [Filed 2/10/93, Notice 12/23/92—published 3/3/93, effective 5/1/93]
- [Filed emergency 6/11/93—published 7/7/93, effective 7/1/93]
- [Filed 8/12/93, Notice 7/7/93—published 9/1/93, effective 11/1/93]

- [Filed emergency 12/16/93—published 1/5/94, effective 1/1/94]
- [Filed 12/16/93, Notice 10/27/93—published 1/5/94, effective 3/1/94]
- [Filed 2/10/94, Notice 1/5/94—published 3/2/94, effective 5/1/94]
- [Filed emergency 6/16/94—published 7/6/94, effective 7/1/94]
- [Filed 8/12/94, Notice 7/6/94—published 8/31/94, effective 11/1/94]
- [Filed emergency 10/12/94—published 11/9/94, effective 11/1/94]
- [Filed emergency 12/15/94—published 1/4/95, effective 1/1/95]
- [Filed 12/15/94, Notice 11/9/94—published 1/4/95, effective 3/1/95]
- [Filed 2/16/95, Notice 1/4/95—published 3/15/95, effective 5/1/95]
- [Filed emergency 6/7/95—published 7/5/95, effective 7/1/95]
- [Filed 8/10/95, Notice 7/5/95—published 8/30/95, effective 11/1/95]
- [Filed emergency 10/31/95—published 11/22/95, effective 11/1/95]
- [Filed emergency 12/12/95—published 1/3/96, effective 1/1/96]
- [Filed 1/10/96, Notice 11/22/95—published 1/31/96, effective 4/1/96]
- [Filed 2/14/96, Notice 1/3/96—published 3/13/96, effective 5/1/96]
- [Filed emergency 6/13/96—published 7/3/96, effective 7/1/96]
- [Filed 8/15/96, Notice 7/3/96—published 9/11/96, effective 11/1/96]
- [Filed emergency 12/12/96—published 1/1/97, effective 1/1/97]
- [Filed 2/12/97, Notice 1/1/97—published 3/12/97, effective 5/1/97]
- [Filed emergency 3/12/97—published 4/9/97, effective 4/1/97]
- [Filed 4/11/97, Notice 2/12/97—published 5/7/97, effective 7/1/97]
- [Filed 5/14/97, Notice 4/9/97—published 6/4/97, effective 8/1/97]
- [Filed emergency 12/10/97—published 12/31/97, effective 1/1/98]
- [Filed 2/11/98, Notice 12/31/97—published 3/11/98, effective 5/1/98]
- [Filed emergency 12/9/98—published 12/30/98, effective 1/1/99]
- [Filed 2/10/99, Notice 12/30/98—published 3/10/99, effective 4/15/99]
- [Filed emergency 12/8/99—published 12/29/99, effective 1/1/00]
- [Filed 2/9/00, Notice 12/29/99—published 3/8/00, effective 5/1/00]
- [Filed emergency 7/13/00—published 8/9/00, effective 8/1/00]
- [Filed emergency 10/11/00—published 11/1/00, effective 11/15/00]
- [Filed 11/8/00, Notice 8/9/00—published 11/29/00, effective 2/1/01]
- [Filed emergency 12/14/00—published 1/10/01, effective 1/1/01]
- [Filed 2/14/01, Notice 1/10/01—published 3/7/01, effective 5/1/01]
- [Filed emergency 4/11/01—published 5/2/01, effective 5/1/01]
- [Filed 6/13/01, Notice 5/2/01—published 7/11/01, effective 9/1/01]
- [Filed emergency 7/11/01—published 8/8/01, effective 8/1/01]
- [Filed 10/10/01, Notice 8/8/01—published 10/31/01, effective 1/1/02]
- [Filed emergency 12/12/01—published 1/9/02, effective 1/1/02]
- [Filed 2/14/02, Notice 1/9/02—published 3/6/02, effective 5/1/02]
- [Filed emergency 5/9/02—published 5/29/02, effective 6/1/02]
- [Filed 7/15/02, Notice 5/29/02—published 8/7/02, effective 10/1/02]
- [Filed emergency 12/12/02—published 1/8/03, effective 1/1/03]
- [Filed emergency 11/19/03—published 12/10/03, effective 1/1/04]
- [Filed 11/19/03, Notice 10/1/03—published 12/10/03, effective 2/1/04]
- [Filed emergency 8/12/04 after Notice 6/23/04—published 9/1/04, effective 8/12/04]
- [Filed emergency 12/14/04—published 1/5/05, effective 1/1/05]
- [Filed 2/10/05, Notice 1/5/05—published 3/2/05, effective 4/6/05]
- [Filed emergency 12/14/05—published 1/4/06, effective 1/1/06]
- [Filed 2/10/06, Notice 1/4/06—published 3/1/06, effective 4/5/06]
- [Filed emergency 12/13/06—published 1/3/07, effective 1/1/07]

[Filed 3/14/07, Notice 1/3/07—published 4/11/07, effective 5/16/07]
[Filed emergency 12/12/07—published 1/2/08, effective 1/1/08]
[Filed 3/12/08, Notice 1/2/08—published 4/9/08, effective 5/14/08]
[Filed emergency 12/10/08—published 12/31/08, effective 1/1/09]

¹ Effective date of 3/1/92 delayed until adjournment of the 1992 General Assembly by the Administrative Rules Review Committee at its meeting held February 3, 1992.

ENVIRONMENTAL PROTECTION COMMISSION[567]

Former Water, Air and Waste Management[900], renamed by 1986 Iowa Acts, chapter 1245, Environmental Protection Commission under the "umbrella" of the Department of Natural Resources.

TITLE I *GENERAL*

CHAPTER 1

OPERATION OF ENVIRONMENTAL PROTECTION COMMISSION

- 1.1(17A,455A) Scope
- 1.2(17A,455A) Time of meetings
- 1.3(17A,455A) Place of meetings
- 1.4(17A,455A) Notification of meetings
- 1.5(17A,455A) Attendance and participation by the public
- 1.6(17A,455A) Quorum and voting requirements
- 1.7(17A,455A) Conduct of meeting
- 1.8(17A,455A) Minutes, transcripts, and recordings of meetings
- 1.9(17A,455A) Officers and duties
- 1.10(17A,455A) Election and succession of officers
- 1.11(68B) Sales of goods and services

CHAPTER 2

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

(Uniform Rules)

- 2.1(17A,22) Adoption by reference

CHAPTER 3

SUBMISSION OF INFORMATION AND COMPLAINTS—INVESTIGATIONS

- 3.1(17A,455B) Adoption by reference

CHAPTER 4

AGENCY PROCEDURE FOR RULE MAKING

- 4.1(17A) Adoption by reference

CHAPTER 5

PETITIONS FOR RULE MAKING

- 5.1(17A) Adoption by reference

CHAPTER 6

DECLARATORY ORDERS

- 6.1(17A) Adoption by reference

CHAPTER 7

RULES OF PRACTICE IN CONTESTED CASES

- 7.1(17A) Adoption by reference

CHAPTER 8

CONTRACTS FOR PUBLIC IMPROVEMENTS AND PROFESSIONAL SERVICES

- 8.1(17A) Adoption by reference

CHAPTER 9

DELEGATION OF CONSTRUCTION PERMITTING AUTHORITY

- 9.1(455B) Scope
- 9.2(455B,17A) Forms
- 9.3(455B) Procedures
- 9.4(455B) Criteria for authority

CHAPTER 10
ADMINISTRATIVE PENALTIES

- 10.1(455B) Scope
10.2(455B) Criteria for screening and assessing administrative penalties
10.3(455B) Assessment of administrative penalties

CHAPTER 11
TAX CERTIFICATION OF POLLUTION CONTROL OR RECYCLING PROPERTY

- 11.1(427) Scope
11.2(427,17A) Form
11.3(427) Time of submission
11.4(427) Notice
11.5(427) Issuance
11.6(427) Criteria for determining eligibility

CHAPTER 12
ENVIRONMENTAL SELF-AUDITS

- 12.1(455K) General
12.2(455K) Notice of audit
12.3(455K) Request for extension
12.4(455K) Disclosure of violation

CHAPTER 13
WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

- 13.1(17A) Adoption by reference
13.2(17A) Report to commission

CHAPTER 14
ENVIRONMENTAL COVENANTS

- 14.1(455B,455H) Definitions
14.2(455B,455H) Environmental covenants
14.3(455B,455H) Supporting documentation
14.4(455B,455H) Recording and approval
14.5(455B,455H) Mandatory provisions
14.6(455B,455H) Optional provisions
14.7(455B,455H) Modification and termination
14.8(455B,455H) Signatories to the environmental covenant
14.9(455B,455H) Notice

CHAPTERS 15 to 19
Reserved

TITLE II
AIR QUALITY

CHAPTER 20
SCOPE OF TITLE—DEFINITIONS—FORMS—RULES OF PRACTICE

- 20.1(455B,17A) Scope of title
20.2(455B) Definitions
20.3(455B) Air quality forms generally

CHAPTER 21
COMPLIANCE

- 21.1(455B) Compliance schedule
21.2(455B) Variances

21.3(455B)	Emission reduction program
21.4(455B)	Circumvention of rules
21.5(455B)	Evidence used in establishing that a violation has or is occurring
21.6(455B)	Temporary electricity generation for disaster situations

CHAPTER 22

CONTROLLING POLLUTION

22.1(455B)	Permits required for new or existing stationary sources
22.2(455B)	Processing permit applications
22.3(455B)	Issuing permits
22.4(455B)	Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD)
22.5(455B)	Special requirements for nonattainment areas
22.6(455B)	Nonattainment area designations
22.7(455B)	Alternative emission control program
22.8(455B)	Permit by rule
22.9(455B)	Special requirements for visibility protection
22.10(455B)	Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment
22.11 to 22.99	Reserved
22.100(455B)	Definitions for Title V operating permits
22.101(455B)	Applicability of Title V operating permit requirements
22.102(455B)	Source category exemptions
22.103(455B)	Insignificant activities
22.104(455B)	Requirement to have a Title V permit
22.105(455B)	Title V permit applications
22.106(455B)	Title V permit fees
22.107(455B)	Title V permit processing procedures
22.108(455B)	Permit content
22.109(455B)	General permits
22.110(455B)	Changes allowed without a Title V permit revision (off-permit revisions)
22.111(455B)	Administrative amendments to Title V permits
22.112(455B)	Minor Title V permit modifications
22.113(455B)	Significant Title V permit modifications
22.114(455B)	Title V permit reopenings
22.115(455B)	Suspension, termination, and revocation of Title V permits
22.116(455B)	Title V permit renewals
22.117 to 22.119	Reserved
22.120(455B)	Acid rain program—definitions
22.121(455B)	Measurements, abbreviations, and acronyms
22.122(455B)	Applicability
22.123(455B)	Acid rain exemptions
22.124	Reserved
22.125(455B)	Standard requirements
22.126(455B)	Designated representative—submissions
22.127(455B)	Designated representative—objections
22.128(455B)	Acid rain applications—requirement to apply
22.129(455B)	Information requirements for acid rain permit applications
22.130(455B)	Acid rain permit application shield and binding effect of permit application
22.131(455B)	Acid rain compliance plan and compliance options—general
22.132	Reserved
22.133(455B)	Acid rain permit contents—general

22.134(455B)	Acid rain permit shield
22.135(455B)	Acid rain permit issuance procedures—general
22.136(455B)	Acid rain permit issuance procedures—completeness
22.137(455B)	Acid rain permit issuance procedures—statement of basis
22.138(455B)	Issuance of acid rain permits
22.139(455B)	Acid rain permit appeal procedures
22.140(455B)	Permit revisions—general
22.141(455B)	Permit modifications
22.142(455B)	Fast-track modifications
22.143(455B)	Administrative permit amendment
22.144(455B)	Automatic permit amendment
22.145(455B)	Permit reopenings
22.146(455B)	Compliance certification—annual report
22.147	Reserved
22.148(455B)	Sulfur dioxide opt-ins
22.149 to 22.199	Reserved
22.200(455B)	Definitions for voluntary operating permits
22.201(455B)	Eligibility for voluntary operating permits
22.202(455B)	Requirement to have a Title V permit
22.203(455B)	Voluntary operating permit applications
22.204(455B)	Voluntary operating permit fees
22.205(455B)	Voluntary operating permit processing procedures
22.206(455B)	Permit content
22.207(455B)	Relation to construction permits
22.208(455B)	Suspension, termination, and revocation of voluntary operating permits
22.209(455B)	Change of ownership for facilities with voluntary operating permits
22.210 to 22.299	Reserved
22.300(455B)	Operating permit by rule for small sources

CHAPTER 23

EMISSION STANDARDS FOR CONTAMINANTS

23.1(455B)	Emission standards
23.2(455B)	Open burning
23.3(455B)	Specific contaminants
23.4(455B)	Specific processes
23.5(455B)	Anaerobic lagoons
23.6(455B)	Alternative emission limits (the “bubble concept”)

CHAPTER 24

EXCESS EMISSION

24.1(455B)	Excess emission reporting
24.2(455B)	Maintenance and repair requirements

CHAPTER 25

MEASUREMENT OF EMISSIONS

25.1(455B)	Testing and sampling of new and existing equipment
25.2(455B)	Continuous emission monitoring under the acid rain program
25.3(455B)	Continuous emission monitoring under the Clean Air Mercury Rule (CAMR)

CHAPTER 26

PREVENTION OF AIR POLLUTION EMERGENCY EPISODES

26.1(455B)	General
26.2(455B)	Episode criteria

- 26.3(455B) Preplanned abatement strategies
- 26.4(455B) Actions taken during episodes

CHAPTER 27
CERTIFICATE OF ACCEPTANCE

- 27.1(455B) General
- 27.2(455B) Certificate of acceptance
- 27.3(455B) Ordinance or regulations
- 27.4(455B) Administrative organization
- 27.5(455B) Program activities

CHAPTER 28
AMBIENT AIR QUALITY STANDARDS

- 28.1(455B) Statewide standards

CHAPTER 29
QUALIFICATION IN VISUAL DETERMINATION OF THE OPACITY OF EMISSIONS

- 29.1(455B) Methodology and qualified observer

CHAPTER 30
Reserved

CHAPTER 31
NONATTAINMENT AREAS

- 31.1(455B) Permit requirements relating to nonattainment areas
- 31.2(455B) Conformity of general federal actions to the Iowa state implementation plan or federal implementation plan

CHAPTER 32
ANIMAL FEEDING OPERATIONS FIELD STUDY

- 32.1(455B) Animal feeding operations field study
- 32.2(455B) Definitions
- 32.3(455B) Exceedance of the health effects value (HEV) for hydrogen sulfide
- 32.4(455B) Exceedance of the health effects standard (HES) for hydrogen sulfide
- 32.5(455B) Iowa Air Sampling Manual

CHAPTER 33
SPECIAL REGULATIONS AND CONSTRUCTION PERMIT REQUIREMENTS
FOR MAJOR STATIONARY SOURCES—PREVENTION OF SIGNIFICANT
DETERIORATION (PSD) OF AIR QUALITY

- 33.1(455B) Purpose
- 33.2 Reserved
- 33.3(455B) Special construction permit requirements for major stationary sources in areas designated attainment or unclassified (PSD)
- 33.4 to 33.8 Reserved
- 33.9(455B) Plantwide applicability limitations (PALs)
- 33.10(455B) Exceptions to adoption by reference

CHAPTER 34
PROVISIONS FOR AIR QUALITY EMISSIONS TRADING PROGRAMS

- 34.1(455B) Purpose
- 34.2 to 34.199 Reserved
- 34.200(455B) Provisions for air emissions trading and other requirements for the Clean Air Interstate Rule (CAIR)

34.201(455B)	CAIR NOx annual trading program general provisions
34.202(455B)	CAIR designated representative for CAIR NOx sources
34.203(455B)	Permits
34.204	Reserved
34.205(455B)	CAIR NOx allowance allocations
34.206(455B)	CAIR NOx allowance tracking system
34.207(455B)	CAIR NOx allowance transfers
34.208(455B)	Monitoring and reporting
34.209(455B)	CAIR NOx opt-in units
34.210(455B)	CAIR SO2 trading program
34.211 to 34.219	Reserved
34.220(455B)	CAIR NOx ozone season trading program
34.221(455B)	CAIR NOx ozone season trading program general provisions
34.222(455B)	CAIR designated representative for CAIR NOx ozone season sources
34.223(455B)	CAIR NOx ozone season permits
34.224	Reserved
34.225(455B)	CAIR NOx ozone season allowance allocations
34.226(455B)	CAIR NOx ozone season allowance tracking system
34.227(455B)	CAIR NOx ozone season allowance transfers
34.228(455B)	CAIR NOx ozone season monitoring and reporting
34.229(455B)	CAIR NOx ozone season opt-in units
34.230 to 34.299	Reserved
34.300(455B)	Provisions for air emissions trading and other requirements for the Clean Air Mercury Rule (CAMR)
34.301(455B)	Mercury (Hg) budget trading program general provisions
34.302(455B)	Hg designated representative for Hg budget sources
34.303(455B)	General Hg budget trading program permit requirements
34.304(455B)	Hg allowance allocations
34.305(455B)	Hg allowance tracking system
34.306(455B)	Hg allowance transfers
34.307(455B)	Monitoring and reporting
34.308(455B)	Performance specifications

TITLE III
WITHDRAWAL, DIVERSION,
STORAGE AND USE OF WATER
DIVISION A

WATER WELL CONSTRUCTION: GENERAL STANDARDS AND REGISTRATION OF CONTRACTORS

CHAPTERS 35 to 37

Reserved

CHAPTER 38

PRIVATE WATER WELL CONSTRUCTION PERMITS

38.1(455B)	Definitions
38.2(455B)	Forms
38.3(455B)	Permit requirement
38.4(455B)	Form of application
38.5(455B)	Fees
38.6(455B)	Well maintenance and reconstruction
38.7(455B)	Emergency permits
38.8(455B)	Permit issuance and conditions
38.9(455B)	Noncompliance
38.10(455B)	Expiration of a permit

38.11(455B)	Transferability
38.12(455B)	Denial of a permit
38.13(455B)	Appeal of a permit denial
38.14	Reserved
38.15(455B)	Delegation of authority to county board of supervisors
38.16(455B)	Concurrent authority of the department
38.17(455B)	Revocation of delegation agreement

CHAPTER 39

REQUIREMENTS FOR PROPERLY PLUGGING ABANDONED WELLS

39.1(455B)	Purpose
39.2(455B)	Applicability
39.3(455B)	Definitions
39.4(455B)	Forms
39.5(455B)	Abandoned well plugging schedule
39.6(455B)	Abandoned well owner responsibilities
39.7(455B)	Abandoned well plugging materials
39.8(455B)	Abandoned well plugging procedures
39.9(455B)	Designated agent
39.10(455B)	Designation of standby wells
39.11(455B)	Variations

DIVISION B DRINKING WATER

CHAPTER 40

SCOPE OF DIVISION—DEFINITIONS—FORMS—RULES OF PRACTICE

40.1(455B)	Scope of division
40.2(455B)	Definitions
40.3(17A,455B)	Forms
40.4(17A,455B)	Public water supply construction permit application procedures
40.5(17A,455B)	Public water supply operation permit application procedures
40.6(455B)	Drinking water state revolving fund loan application procedures
40.7(455B)	Viability assessment procedures

CHAPTER 41

WATER SUPPLIES

41.1(455B)	Primary drinking water regulations—coverage
41.2(455B)	Biological maximum contaminant levels (MCL) and monitoring requirements
41.3(455B)	Maximum contaminant levels (MCLs) and monitoring requirements for inorganic contaminants other than lead or copper
41.4(455B)	Lead, copper, and corrosivity
41.5(455B)	Organic chemicals
41.6(455B)	Disinfection byproducts maximum contaminant levels and monitoring requirements
41.7	Reserved
41.8(455B)	Radionuclides
41.9 and 41.10	Reserved
41.11(455B)	Special monitoring
41.12(455B)	Alternative analytical techniques
41.13(455B)	Monitoring of interconnected public water supply systems
41.14(455B)	Department analytical results used to determine compliance
41.15(455B)	Monitoring of other contaminants

CHAPTER 42
PUBLIC NOTIFICATION, PUBLIC EDUCATION,
CONSUMER CONFIDENCE REPORTS, REPORTING,
AND RECORD MAINTENANCE

- 42.1(455B) Public notification
- 42.2(455B) Public education for lead action level exceedance
- 42.3(455B) Consumer confidence reports
- 42.4(455B) Reporting
- 42.5(455B) Record maintenance

CHAPTER 43
WATER SUPPLIES—DESIGN AND OPERATION

- 43.1(455B) General information
- 43.2(455B) Permit to operate
- 43.3(455B) Public water supply system construction
- 43.4(455B) Certification of completion
- 43.5(455B) Filtration and disinfection for surface water and influenced groundwater public water supply systems
- 43.6(455B) Residual disinfectant and disinfection byproduct precursors
- 43.7(455B) Lead and copper treatment techniques
- 43.8(455B) Viability assessment
- 43.9(455B) Enhanced filtration and disinfection requirements for surface water and IGW systems serving at least 10,000 people
- 43.10(455B) Enhanced filtration and disinfection requirements for surface water and IGW systems serving fewer than 10,000 people

CHAPTER 44
DRINKING WATER STATE REVOLVING FUND

- 44.1(455B) Statutory authority
- 44.2(455B) Scope of title
- 44.3(455B) Purpose
- 44.4(455B) Definitions
- 44.5(455B) Set-asides
- 44.6(455B) Eligibility
- 44.7(455B) Project point ranking system (project priority list)
- 44.8(455B) Intended use plan
- 44.9(455B) Department initial approval of projects
- 44.10(455B) General administrative requirements
- 44.11 Reserved
- 44.12(455B) Construction phase and postconstruction phase requirements
- 44.13(455B) Sanctions
- 44.14(455B) Disputes

CHAPTERS 45 to 48
Reserved

CHAPTER 49
NONPUBLIC WATER SUPPLY WELLS

- 49.1(455B) Purpose
- 49.2(455B) Definitions
- 49.3(455B) Applicability
- 49.4(455B) General
- 49.5(455B) Variances

49.6(455B)	Location of wells
49.7(455B)	General construction requirements
49.8(455B)	Types of well construction
49.9(455B)	Material standards
49.10(455B)	Well reconstruction
49.11(455B)	Disposal of drilling mud
49.12(455B)	Pumps and pumping equipment
49.13(455B)	Drop pipe
49.14(455B)	Pump wiring
49.15(455B)	Pitless adapters and pitless units
49.16(455B)	Well caps and seals
49.17(455B)	Vents
49.18(455B)	Underground piping
49.19(455B)	Underground wiring
49.20(455B)	Sampling faucets
49.21(455B)	Hydropneumatic (pressure) tanks
49.22(455B)	Electrical connections
49.23(455B)	Interconnections and cross connections
49.24(455B)	Backflow prevention for chemical injection systems for nonpotable water wells
49.25(455B)	Filters and water treatment equipment
49.26(455B)	Well disinfection
49.27(455B)	Water sampling and analysis
49.28(455B)	Abandonment of wells
49.29(455B)	Closed circuit vertical heat exchangers

DIVISION C
WITHDRAWAL, DIVERSION AND STORAGE
OF WATER: WATER RIGHTS ALLOCATION

CHAPTER 50

SCOPE OF DIVISION—DEFINITIONS—FORMS—RULES OF PRACTICE

50.1(455B)	Scope of division
50.2(455B)	Definitions
50.3(17A,455B)	Forms for withdrawal, diversion or storage of water
50.4(17A,455B)	How to request a permit
50.5(455B)	Initial screening of applications
50.6(17A,455B)	Supporting information
50.7(17A,455B)	Review of complete applications
50.8(17A,455B)	Initial decision by the department
50.9(17A,455B)	Appeal of initial decision

CHAPTER 51

WATER PERMIT OR REGISTRATION—WHEN REQUIRED

51.1(455B)	Scope of chapter
51.2(455B)	Storage (surface)
51.3(455B)	Diversion from surface into aquifer
51.4(455B)	Drain tile lines
51.5(455B)	Cooling/heating systems
51.6(455B)	Miscellaneous uses
51.7(455B)	Excavation and processing of rock and gravel products
51.8(159)	Agricultural drainage wells

CHAPTER 52
CRITERIA AND CONDITIONS FOR AUTHORIZING WITHDRAWAL,
DIVERSION AND STORAGE OF WATER

52.1(455B)	Scope of chapter
52.2(455B)	Conditions on permitted water uses
52.3(455B)	Conditions on withdrawals from streams
52.4(455B)	Conditions on withdrawals from groundwater sources
52.5(455B)	Duration of permits for withdrawal or diversion of water
52.6(455B)	Monitoring, recording and reporting of water use and effects on water source
52.7(455B)	Modification, cancellation, and emergency suspension of permits
52.8(455B)	Designated protected flows of streams
52.9(455B)	Water conservation
52.10(455B)	Priority allocation restrictions
52.11(455B)	Plugging of abandoned wells
52.12 to 52.19	Reserved
52.20(455B)	Water storage permits
52.21(455B)	Permits to divert water to an agricultural drainage well

CHAPTER 53
PROTECTED WATER SOURCES — PURPOSES — DESIGNATION PROCEDURES —
INFORMATION IN WITHDRAWAL APPLICATIONS — LIMITATIONS —
LIST OF PROTECTED SOURCES

53.1(455B)	Scope of chapter
53.2(455B)	Designation of protected sources
53.3(455B)	Purposes of designating a protected source
53.4(455B)	Designation procedure
53.5(455B)	Information requirements for applications to withdraw water from protected sources
53.6(455B)	Conditions in permits for withdrawals of water from a protected source
53.7(455B)	List of protected water sources

CHAPTER 54
CRITERIA AND CONDITIONS FOR PERMIT RESTRICTIONS OR COMPENSATION BY
PERMITTED USERS TO NONREGULATED USERS DUE TO WELL INTERFERENCE

54.1(455B)	Scope of chapter
54.2(455B)	Requirements for informal negotiations
54.3(455B)	Failure to cooperate
54.4(455B)	Well interference by proposed withdrawals
54.5(455B)	Well interference by existing permitted uses
54.6(455B)	Verification of well interference
54.7(455B)	Settlement procedures
54.8(455B)	Recurring complaints
54.9(455B)	Variances
54.10(455B)	Appeal procedures

CHAPTER 55
AQUIFER STORAGE AND RECOVERY:
CRITERIA AND CONDITIONS FOR AUTHORIZING STORAGE,
RECOVERY, AND USE OF WATER

55.1(455B)	Statutory authority
55.2	Reserved
55.3(455B)	Purpose
55.4(455B)	Definitions

- 55.5(455B) Application processing
 55.6(455B) Aquifer storage and recovery technical evaluation criteria

CHAPTERS 56 to 59

Reserved

TITLE IV
*WASTEWATER TREATMENT
 AND DISPOSAL*

CHAPTER 60

SCOPE OF TITLE—DEFINITIONS—FORMS—RULES OF PRACTICE

- 60.1(455B,17A) Scope of title
 60.2(455B) Definitions
 60.3(455B,17A) Forms
 60.4(455B,17A) Application procedures and requirements generally

CHAPTER 61

WATER QUALITY STANDARDS

WATER QUALITY STANDARDS

- 61.1 Reserved
 61.2(455B) General considerations
 61.3(455B) Surface water quality criteria
 61.4 to 61.9 Reserved

VOLUNTEER MONITORING DATA REQUIREMENTS

- 61.10(455B) Purpose
 61.11(455B) Monitoring plan required
 61.12(455B) Use of volunteer monitoring data
 61.13(455B) Department audits of volunteer monitoring activities

CHAPTER 62

EFFLUENT AND PRETREATMENT STANDARDS:

OTHER EFFLUENT LIMITATIONS OR PROHIBITIONS

- 62.1(455B) Prohibited discharges
 62.2(455B) Exemption of adoption of certain federal rules from public participation
 62.3(455B) Secondary treatment information: effluent standards for publicly owned treatment works and privately owned domestic sewage treatment works
 62.4(455B) Federal effluent and pretreatment standards
 62.5(455B) Federal toxic effluent standards
 62.6(455B) Effluent limitations and pretreatment requirements for sources for which there are no federal effluent or pretreatment standards
 62.7(455B) Effluent limitations less stringent than the effluent limitation guidelines
 62.8(455B) Effluent limitations or pretreatment requirements more stringent than the effluent or pretreatment standards
 62.9(455B) Disposal of pollutants into wells

CHAPTER 63

MONITORING, ANALYTICAL AND REPORTING REQUIREMENTS

- 63.1(455B) Guidelines establishing test procedures for the analysis of pollutants
 63.2(455B) Records of monitoring activities and results
 63.3(455B) Minimum self-monitoring requirements in permits
 63.4(455B) Effluent toxicity testing requirements in permits
 63.5(455B) Self-monitoring and reporting for animal feeding operations
 63.6(455B) Report of bypass

63.7(455B)	Submission of records of operation
63.8(455B)	Frequency of submitting records of operation
63.9(455B)	Content of records of operation
63.10(455B)	Records of operation forms
63.11(455B)	Certification and signatory requirements in the submission of records of operation

CHAPTER 64

WASTEWATER CONSTRUCTION AND OPERATION PERMITS

64.1(455B)	Definitions
64.2(455B)	Permit to construct
64.3(455B)	Permit to operate
64.4(455B)	Issuance of NPDES permits
64.5(455B)	Notice and public participation in the individual NPDES permit process
64.6(455B)	Completing a Notice of Intent for coverage under a general permit
64.7(455B)	Terms and conditions of NPDES permits
64.8(455B)	Reissuance of NPDES permits
64.9(455B)	Monitoring, record keeping and reporting by operation permit holders
64.10(455B)	Silvicultural activities
64.11 and 64.12	Reserved
64.13(455B)	Storm water discharges
64.14(455B)	Transfer of title
64.15(455B)	General permits issued by the department
64.16(455B)	Fees
64.17(455B)	Validity of rules
64.18(455B)	Applicability

CHAPTER 65

ANIMAL FEEDING OPERATIONS

DIVISION I

CONFINEMENT FEEDING OPERATIONS

65.1(455B)	Definitions
65.2(455B)	Minimum manure control requirements and reporting of releases
65.3(455B)	Requirements and recommended practices for land application of manure
65.4(455B)	Operation permit required
65.5(455B)	Departmental evaluation
65.6(455B)	Operation permits
65.7(455B)	Construction permits
65.8(455B)	Construction
65.9(455B)	Construction permit application
65.10(455B)	Construction permit application review process, site inspections and complaint investigations
65.11(455B)	Confinement feeding operation separation distance requirements
65.12(455B)	Exemptions to confinement feeding operation separation distance requirements
65.13 and 65.14	Reserved
65.15(455B)	Manure storage structure design requirements
65.16(455B)	Manure management plan requirements
65.17(459)	Manure management plan content requirements
65.18(455B)	Construction certification
65.19(455B)	Manure applicators certification
65.20(455B)	Manure storage indemnity fund
65.21(455B)	Transfer of legal responsibilities or title
65.22(455B)	Validity of rules

65.23 to 65.99 Reserved

DIVISION II
OPEN FEEDLOT OPERATIONS

- 65.100(455B,459,459A) Definitions
- 65.101(459A) Minimum open feedlot effluent control requirements and reporting of releases
- 65.102(455B,459A) NPDES permits required for CAFOs
- 65.103(455B,459A) Departmental evaluation; CAFO designation; remedial actions
- 65.104(455B,459A) NPDES permits
- 65.105(459A) Construction permits
- 65.106(459A) Construction
- 65.107(459A) Construction permit application
- 65.108(455B,459A) Well separation distances for open feedlot operations
- 65.109(459A) Settled open feedlot effluent basins—investigation, design and construction requirements
- 65.110(459A) AT systems—design requirements
- 65.111(459A) Construction certification
- 65.112(459A) Nutrient management plan requirements
- 65.113(459A) Complaint investigations
- 65.114(455B,459A) Transfer of legal responsibilities or title

CHAPTER 66
PESTICIDE APPLICATION TO WATERS

- 66.1(455B) Aquatic pesticide

CHAPTER 67
STANDARDS FOR THE LAND APPLICATION OF SEWAGE SLUDGE

- 67.1(455B) Land application of sewage sludge
- 67.2(455B) Exclusions
- 67.3(455B) Sampling and analysis
- 67.4(455B) Land application program
- 67.5(455B) Special definitions
- 67.6(455B) Permit requirements
- 67.7(455B) Land application requirements for Class I sewage sludge
- 67.8(455B) Land application requirements for Class II sewage sludge
- 67.9(455B) Class III sewage sludge
- 67.10(455B) Sampling and analytical methods
- 67.11(455B) Pathogen treatment processes

CHAPTER 68
COMMERCIAL SEPTIC TANK CLEANERS

- 68.1(455B) Purpose and applicability
- 68.2(455B) Definitions
- 68.3(455B) Licensing requirements
- 68.4(455B) Licensing procedures
- 68.5(455B) Suspension, revocation and denial of license
- 68.6(455B) Licensee's obligations
- 68.7(455B) County obligations
- 68.8(455B) Application sites and equipment inspections
- 68.9(455B) Standards for commercial cleaning of private sewage disposal systems
- 68.10(455B) Standards for disposal

CHAPTER 69

ONSITE WASTEWATER TREATMENT AND DISPOSAL SYSTEMS

- 69.1(455B) General
- 69.2(455B) Requirements when effluent is discharged into surface water
- 69.3(455B) Requirements when discharged into the soil
- 69.4(455B) Building sewers
- 69.5(455B) Primary treatment—septic tanks
- 69.6(455B) Secondary treatment—subsurface absorption systems
- 69.7(455B) Mound system
- 69.8(455B) Drip irrigation
- 69.9(455B) Intermittent sand filters
- 69.10(455B) Individual mechanical aerobic wastewater treatment systems
- 69.11(455B) Constructed wetlands
- 69.12(455B) Waste stabilization ponds
- 69.13(455B) Requirements for impervious vault toilets
- 69.14(455B) Requirements for portable toilets
- 69.15(455B) Requirements for chemical toilets
- 69.16(455B) Other methods of wastewater disposal
- 69.17(455B) Disposal of septage from onsite wastewater treatment and disposal systems
- 69.18(455B) Alternative or innovative onsite wastewater treatment and disposal systems
- 69.19(455B) Variances

TITLE V

FLOOD PLAIN DEVELOPMENT

CHAPTER 70

SCOPE OF TITLE—DEFINITIONS—FORMS—RULES OF PRACTICE

- 70.1(455B,481A) Scope of title
- 70.2(455B,481A) Definitions
- 70.3(17A,455B,481A) Forms
- 70.4(17A,455B,481A) Requesting approval of flood plain development
- 70.5(17A,455B,481A) Procedures for review of applications
- 70.6(17A,455B,481A) Appeal of initial decision

CHAPTER 71

FLOOD PLAIN OR FLOODWAY DEVELOPMENT—
WHEN APPROVAL IS REQUIRED

- 71.1(455B) Bridges, culverts, temporary stream crossings, and road embankments
- 71.2(455B) Channel changes
- 71.3(455B) Dams
- 71.4(455B) Levees or dikes
- 71.5(455B) Waste or water treatment facilities
- 71.6(455B) Sanitary landfills
- 71.7(455B) Buildings and associated fill
- 71.8(455B) Pipeline crossings
- 71.9(455B) Stream bank protective devices
- 71.10(455B) Boat docks
- 71.11(455B) Excavations
- 71.12(455B) Miscellaneous structures, obstructions, or deposits not otherwise provided for
in other rules
- 71.13(455B) Animal feeding operation structures

CHAPTER 72
CRITERIA FOR APPROVAL

DIVISION I

SPECIAL CRITERIA FOR VARIOUS TYPES OF FLOOD PLAIN DEVELOPMENT

72.1(455B)	Bridges and road embankments
72.2(455B)	Channel changes
72.3(455B)	Dams
72.4(455B)	Levees or dikes
72.5(455B)	Buildings
72.6(455B)	Wastewater treatment facilities
72.7(455B)	Sanitary landfills
72.8(455B)	Water supply treatment facilities
72.9(455B)	Stream protective devices
72.10(455B)	Pipeline river or stream crossings
72.11(455B)	Miscellaneous construction
72.12	Reserved
72.13(455B)	Animal feeding operation structures
72.14 to 72.29	Reserved

DIVISION II

GENERAL CRITERIA

72.30(455B)	General conditions
72.31(455B)	Variance
72.32(455B)	Protected stream information
72.33 to 72.49	Reserved

DIVISION III

PROTECTED STREAM DESIGNATION PROCEDURE

72.50(455B)	Protected streams
72.51(455B)	Protected stream designation procedure
72.52(455B)	Protected stream declassification procedure

CHAPTER 73

USE, MAINTENANCE, REMOVAL, INSPECTIONS, AND SAFETY OF DAMS

DIVISION I

USE AND MAINTENANCE OF DAMS

73.1(109,455B)	Operating plan for dams with movable structures
73.2(109,455B)	Raising or lowering of impoundment levels
73.3 to 73.9	Reserved

DIVISION II

ABANDONMENT AND REMOVAL OF DAMS

73.10(109,455B)	Abandonment prohibited
73.11(109,455B)	Removal of dams
73.12 to 73.19	Reserved

DIVISION III

INSPECTION OF DAMS

73.20(109,455B)	Scope and purposes of dam safety inspection program
73.21(109,455B)	Types of inspections; when inspections are made
73.22(109,455B)	Duty of dam owner to maintain, investigate, inspect and report
73.23(109,455B)	Special inspections and investigations
73.24(109,455B)	Inspection by others
73.25(109,455B)	Access for inspections a condition of construction approval
73.26(109,455B)	Inspection reports
73.27 to 73.29	Reserved

DIVISION IV
DESIGNATION OF UNSAFE DAMS

- 73.30(109,455B) Procedures for designation of a dam as unsafe
- 73.31(109,455B) Criteria for designating a dam as unsafe
- 73.32(109,455B) Agency action concerning an unsafe dam

CHAPTER 74

Reserved

CHAPTER 75

MANAGEMENT OF SPECIFIC FLOOD PLAIN AREAS

- 75.1(455B) Applicability and purposes of chapter
- 75.2(455B) Flooding characteristics
- 75.3(455B) Area of regulation
- 75.4(455B) Establishment of a floodway
- 75.5(455B) Minimum standards for flood plain and floodway uses
- 75.6(455B) Preexisting nonconforming development and associated uses
- 75.7(335,414,455B) Delegation of authority to local governments by approval of local regulations
- 75.8(335,414,455B) Review and approval of variances from local regulations
- 75.9(335,414,455B) Notice of proposed department flood plain management order or proposed local flood plain regulation

CHAPTER 76

FEDERAL WATER RESOURCE PROJECTS

- 76.1(455B) Referral of federal project
- 76.2(455B) Solicitation of comments
- 76.3(455B) Hearing
- 76.4(455B) Formulation of comments
- 76.5(455B) Transmittal of comments
- 76.6(455B) Other coordination

CHAPTERS 77 to 79

Reserved

TITLE VI
CERTIFICATION OF OPERATORS

CHAPTER 80

Reserved

CHAPTER 81

OPERATOR CERTIFICATION: PUBLIC WATER SUPPLY SYSTEMS
AND WASTEWATER TREATMENT SYSTEMS

- 81.1(455B) Definitions
- 81.2(455B) General
- 81.3(455B) Wastewater treatment plant grades
- 81.4(455B) Water treatment plant grades
- 81.5(455B) Water distribution system grades
- 81.6(455B) Grade A classification
- 81.7(455B) Operator education and experience qualifications
- 81.8(455B) Certification and examination fees
- 81.9(455B) Examinations
- 81.10(455B) Certification by examination
- 81.11(455B) Certification by reciprocity
- 81.12(455B) Restricted and temporary certification

- 81.13(455B) Certification renewal
- 81.14(455B,272C) Continuing education
- 81.15(455B) Upgrading of certificates
- 81.16(455B) Operator by affidavit
- 81.17(455B,272C) Disciplinary actions

CHAPTER 82

WELL CONTRACTOR CERTIFICATION

- 82.1(455B) Definitions
- 82.2(455B) General
- 82.3(455B) Classification of well contractors
- 82.4 and 82.5 Reserved
- 82.6(455B) Experience requirements
- 82.7(455B) Certification and examination fees
- 82.8(455B) Examinations
- 82.9(455B) Certification by examination
- 82.10(455B) Certification renewal
- 82.11(455B) Continuing education
- 82.12(455B) Certified well contractor obligations
- 82.13(455B) Disciplinary actions
- 82.14(455B,272C) Revocation of certificates

CHAPTER 83

LABORATORY CERTIFICATION

PART A GENERAL

- 83.1(455B) Authority, purpose, and applicability
- 83.2(455B) Definitions

PART B CERTIFICATION PROCESS

- 83.3(455B) Application for laboratory certification
- 83.4(455B) Procedure for initial certification for laboratories analyzing solid waste and contaminated site program parameters
- 83.5(455B) Procedures for certification of new laboratories or changes in certification
- 83.6(455B) Laboratory recertification
- 83.7(455B) Criteria and procedure for provisional, suspended, and revoked laboratory certification

CHAPTERS 84 to 89

Reserved

TITLE VII *WATER POLLUTION CONTROL STATE REVOLVING FUND*

CHAPTER 90

SCOPE OF TITLE — DEFINITIONS — FORMS

- 90.1(455B,17A) Scope of title
- 90.2(455B,17A) Definitions
- 90.3(455B,17A) Forms

CHAPTER 91
CRITERIA FOR RATING AND RANKING PROJECTS
FOR THE WATER POLLUTION CONTROL STATE REVOLVING FUND

91.1(455B)	Statutory authority
91.2(455B)	Scope of title
91.3(455B)	Purpose of water pollution control state revolving fund
91.4 and 91.5	Reserved
91.6(455B)	General information—priority rating system
91.7	Reserved
91.8(455B)	Project priority rating system
91.9(455B)	Livestock water quality facilities priority rating criteria system
91.10(455B)	Local water protection projects rating system
91.11(455B)	General nonpoint source projects rating system

CHAPTER 92
CLEAN WATER STATE REVOLVING FUND

92.1(455B)	Statutory authority
92.2(455B)	Scope of title
92.3	Reserved
92.4(455B)	General policy
92.5	Reserved
92.6(455B)	Intended use plan management
92.7(455B)	Point source project procedures
92.8(455B)	Point source project requirements

CHAPTER 93
NONPOINT SOURCE POLLUTION CONTROL SET-ASIDE PROGRAMS

93.1(455B,466)	Statutory authority
93.2(455B,466)	Scope of title
93.3(455B,466)	Purpose
93.4(455B,466)	Onsite wastewater system assistance program
93.5(455B)	Livestock water quality facilities requirements
93.6(455B)	Local water protection project requirements
93.7(455B)	General nonpoint source project requirements

CHAPTERS 94 to 99
Reserved

TITLE VIII
*SOLID WASTE MANAGEMENT
AND DISPOSAL*

CHAPTER 100
SCOPE OF TITLE — DEFINITIONS — FORMS — RULES OF PRACTICE

100.1(455B,455D)	Scope of title
100.2(455B,455D)	Definitions
100.3(17A,455B)	Forms and rules of practice
100.4(455B)	General conditions of solid waste disposal
100.5(455B)	Disruption and excavation of sanitary landfills or closed dumps

CHAPTER 101
SOLID WASTE COMPREHENSIVE PLANNING REQUIREMENTS

101.1(455B,455D)	Purpose and applicability
101.2(455B,455D)	Definitions
101.3(455B,455D)	Waste management hierarchy

- 101.4(455B,455D) Duties of cities and counties
- 101.5(455B,455D) Contracts with permitted agencies
- 101.6(455B,455D) State volume reduction and recycling goals
- 101.7(455B,455D) Base year adjustment method
- 101.8(455B,455D) Submittal of initial comprehensive plans and comprehensive plan updates
- 101.9(455B,455D) Review of initial comprehensive plans and comprehensive plan updates
- 101.10(455B,455D) Municipal solid waste and recycling survey
- 101.11(455B,455D) Online database
- 101.12(455B,455D) Solid waste comprehensive plan categories
- 101.13(455B,455D) Types of comprehensive plan submittals to be filed
- 101.14(455B,455D) Fees for disposal of solid waste at sanitary landfills

CHAPTER 102

PERMITS

- 102.1(455B) Permit required
- 102.2(455B) Types of permits
- 102.3(455B) Applications for permits
- 102.4(455B) Preparation of plans
- 102.5(455B) Construction and operation
- 102.6(455B) Compliance with rule changes
- 102.7(455B) Amendments
- 102.8(455B) Transfer of title and permit
- 102.9(455B) Permit conditions
- 102.10(455B) Effect of revocation
- 102.11(455B) Inspection prior to start-up
- 102.12(455B) Primary plan requirements for all sanitary disposal projects
- 102.13(455B) Operating requirements for all sanitary disposal projects
- 102.14(455B) Emergency response and remedial action plans

CHAPTER 103

SANITARY LANDFILLS: COAL COMBUSTION RESIDUE

- 103.1(455B) Coal combustion residue landfills
- 103.2(455B) Emergency response and remedial action plans
- 103.3(455B) Coal combustion residue sanitary landfill financial assurance

CHAPTER 104

SANITARY DISPOSAL PROJECTS WITH PROCESSING FACILITIES

- 104.1(455B) Scope and applicability
- 104.2(455B) Dumping or holding floors or pits
- 104.3(455B) Compaction equipment
- 104.4(455B) Hammermills
- 104.5(455B) Hydropulping or slurring equipment
- 104.6(455B) Air classifiers
- 104.7(455B) Metals separation equipment
- 104.8(455B) Sludge processing
- 104.9(455B) Storage containers and facilities
- 104.10(455B) Operating requirements for all processing facilities
- 104.11(455B) Closure requirements
- 104.12 to 104.20 Reserved
- 104.21(455B) Specific design requirements
- 104.22(455B) Specific operating requirements for all recycling operations
- 104.23(455B) Recycling operations processing paper, cans, and bottles
- 104.24(455B) Closure requirements

- 104.25(455B) Operator certification
- 104.26(455D) Financial assurance for solid waste processing facilities

CHAPTER 105

ORGANIC MATERIALS COMPOSTING FACILITIES

- 105.1(455B,455D) General
- 105.2(455B,455D) Exemptions
- 105.3(455B,455D) General requirements for all composting facilities not exempt pursuant to 105.2(455B,455D)
- 105.4(455B,455D) Specific requirements for yard waste composting facilities
- 105.5(455B,455D) Small composting facilities receiving off-premises materials
- 105.6(455B,455D) Specific requirements for composting of dead farm animals
- 105.7(455B,455D) Permit requirements for solid waste composting facilities
- 105.8(455B,455D) Permit application requirements for solid waste composting facilities
- 105.9(455B,455D) Specific operating requirements for permitted solid waste composting facilities
- 105.10(455B,455D) Operator certification for permitted solid waste composting facilities
- 105.11(455B,455D) Record-keeping requirements for solid waste composting facilities
- 105.12(455B,455D) Reporting requirements for solid waste composting facilities
- 105.13(455B,455D) Closure requirements for solid waste composting facilities
- 105.14(455B,455D) Composting facility financial assurance
- 105.15(455B,455D) Variances

CHAPTER 106

CITIZEN CONVENIENCE CENTERS AND TRANSFER STATIONS

- 106.1(455B) Compliance
- 106.2(455B,455D) Definitions
- 106.3(455B) Citizen convenience center and transfer station permits
- 106.4(455B) Citizen convenience center permit application requirements
- 106.5(455B) Citizen convenience center operations
- 106.6(455B,455D) Citizen convenience center reporting requirements
- 106.7(455B) Citizen convenience center closure requirements
- 106.8(455B) Transfer station permit application requirements
- 106.9(455B) Transfer station siting and location requirements
- 106.10(455B) Transfer station design standards
- 106.11(455B) Transfer station operating requirements
- 106.12(455B) Temporary solid waste storage at transfer stations
- 106.13(455B,455D) Transfer station record-keeping requirements
- 106.14(455B,455D) Transfer station reporting requirements
- 106.15(455B) Solid waste transport vehicle construction and maintenance requirements
- 106.16(455B) Solid waste transport vehicle operation requirements
- 106.17(455B) Transfer station closure requirements
- 106.18(455B) Citizen convenience center and transfer station financial assurance
- 106.19(455B) Emergency response and remedial action plans

CHAPTER 107

BEVERAGE CONTAINER DEPOSITS

- 107.1(455C) Scope
- 107.2(455C) Definitions
- 107.3(455C) Labeling requirements
- 107.4(455C) Redemption centers
- 107.5(455C) Redeemed containers—use
- 107.6 Reserved
- 107.7(455C) Redeemed containers must be reasonably clean

- 107.8(455C) Interpretive rules
- 107.9(455C) Pickup and acceptance of redeemed containers
- 107.10(455C) Dealer agent lists
- 107.11(455C) Refund value stated on containers—exceptions
- 107.12(455C) Education
- 107.13(455C) Refusing payment when a distributor discontinues a specific beverage product
- 107.14(455C) Payment of refund value
- 107.15(455C) Sales tax on deposits
- 107.16(82GA,HF2700) Independent redemption center grant program

CHAPTER 108

BENEFICIAL USE DETERMINATIONS:

SOLID BY-PRODUCTS AS RESOURCES AND ALTERNATIVE COVER MATERIAL

- 108.1(455B,455D) Purpose
- 108.2(455B,455D) Applicability and compliance
- 108.3(455B,455D) Definitions
- 108.4(455B,455D) Universally approved beneficial use determinations
- 108.5(455B,455D) Application requirements for beneficial use determinations other than alternative cover material
- 108.6(455B,455D) Requirements for beneficial uses other than alternative cover material
- 108.7(455B,455D) Record-keeping and reporting requirements for beneficial use projects other than alternative cover material
- 108.8(455B,455D) Universally approved beneficial use determinations for alternative cover material
- 108.9(455B,455D) Beneficial use determination application requirements for alternative cover material
- 108.10(455B,455D) Beneficial use of alternative cover material and state goal progress
- 108.11(455B,455D) Revocation of beneficial use determinations

CHAPTER 109

SPECIAL WASTE AUTHORIZATIONS

- 109.1(455B,455D) Purpose
- 109.2(455B,455D) Special waste authorization required
- 109.3(455B,455D) Definitions
- 109.4 Reserved
- 109.5(455B,455D) Applications
- 109.6(455B,455D) Restrictions
- 109.7(455B,455D) Landfill responsibilities
- 109.8(455B,455D) Special waste generator responsibilities
- 109.9(455B,455D) Infectious waste
- 109.10(455B,455D) Other special wastes
- 109.11(455B,455D) Conditions and requirements for the disposal of general special wastes

CHAPTER 110

HYDROGEOLOGIC INVESTIGATION AND MONITORING REQUIREMENTS

- 110.1(455B) Applicability
- 110.2(455B) Hydrologic monitoring system planning requirements
- 110.3(455B) Soil investigation
- 110.4(455B) Hydrogeologic investigation
- 110.5(455B) Hydrologic monitoring system planning report requirements
- 110.6(455B) Evaluation of hydrogeologic conditions
- 110.7(455B) Monitoring system plan
- 110.8(455B) Sampling protocol
- 110.9(455B) Monitoring well maintenance performance reevaluation plan
- 110.10(455B) Monitoring well siting requirements

- 110.11(455B) Monitoring well/soil boring construction standards
- 110.12(455B) Sealing abandoned wells and boreholes
- 110.13(455B) Variance from design, construction, and operation standards

CHAPTER 111

Reserved

CHAPTER 112

SANITARY LANDFILLS: BIOSOLIDS MONOFILLS

- 112.1(455B) Scope and applicability
- 112.2(455B) Permit required
- 112.3(455B) Types of permits
- 112.4(455B) Applications for permits
- 112.5(455B) Preparation of plans
- 112.6(455B) Construction and operation
- 112.7(455B) Compliance with rule changes
- 112.8(455B) Amendments
- 112.9(455B) Transfer of title and permit
- 112.10(455B) Permit conditions
- 112.11(455B) Effect of revocation
- 112.12(455B) Inspection prior to start-up
- 112.13(455B) Primary plan requirements for all sanitary disposal projects
- 112.14(455B) Hydrologic monitoring system planning requirements
- 112.15(455B) Soil investigation
- 112.16(455B) Hydrogeologic investigation
- 112.17(455B) Hydrologic monitoring system planning report requirements
- 112.18(455B) Evaluation of hydrogeologic conditions
- 112.19(455B) Monitoring system plan
- 112.20(455B) Sampling protocol
- 112.21(455B) Monitoring well maintenance and performance reevaluation plan
- 112.22(455B) Monitoring well siting requirements
- 112.23(455B) Monitoring well/soil boring construction standards
- 112.24(455B) Sealing abandoned wells and boreholes
- 112.25(455B) Variance from design, construction, and operation standards
- 112.26(455B) General requirements for all sanitary landfills
- 112.27(455B) Operating requirements for all sanitary disposal projects
- 112.28(455B) Specific requirements for a sanitary landfill proposing to accept no solid waste other than municipal sewage sludge
- 112.29(455B) Operator certification
- 112.30(455B) Emergency response and remedial action plans
- 112.31(455B) Biosolids monofill sanitary landfill financial assurance

CHAPTER 113

SANITARY LANDFILLS FOR MUNICIPAL

SOLID WASTE: GROUNDWATER PROTECTION SYSTEMS FOR THE DISPOSAL OF
NONHAZARDOUS WASTES

- 113.1(455B) Purpose
- 113.2(455B) Applicability and compliance
- 113.3(455B) Definitions
- 113.4(455B) Permits
- 113.5(455B) Permit application requirements
- 113.6(455B) Siting and location requirements for MSWLFs
- 113.7(455B) MSWLF unit design and construction standards

- 113.8(455B) Operating requirements
- 113.9(455B) Environmental monitoring and corrective action requirements for air quality and landfill gas
- 113.10(455B) Environmental monitoring and corrective action requirements for groundwater and surface water
- 113.11(455B,455D) Record-keeping and reporting requirements
- 113.12(455B) Closure criteria
- 113.13(455B) Postclosure care requirements
- 113.14(455B) Municipal solid waste landfill financial assurance
- 113.15(455B,455D) Variances

CHAPTER 114

SANITARY LANDFILLS: CONSTRUCTION AND DEMOLITION WASTES

- 114.1(455B) Scope and applicability
- 114.2(455B) Permit required
- 114.3(455B) Types of permits
- 114.4(455B) Applications for permits
- 114.5(455B) Preparation of plans
- 114.6(455B) Construction and operation
- 114.7(455B) Compliance with rule changes
- 114.8(455B) Amendments
- 114.9(455B) Transfer of title and permit
- 114.10(455B) Permit conditions
- 114.11(455B) Effect of revocation
- 114.12(455B) Inspection prior to start-up
- 114.13(455B) Primary plan requirements for all sanitary disposal projects
- 114.14(455B) Hydrologic monitoring system planning requirements
- 114.15(455B) Soil investigation
- 114.16(455B) Hydrogeologic investigation
- 114.17(455B) Hydrologic monitoring system planning report requirements
- 114.18(455B) Evaluation of hydrogeologic conditions
- 114.19(455B) Monitoring system plan
- 114.20(455B) Sampling protocol
- 114.21(455B) Monitoring well maintenance and performance reevaluation plan
- 114.22(455B) Monitoring well siting requirements
- 114.23(455B) Monitoring well/soil boring construction standards
- 114.24(455B) Sealing abandoned wells and boreholes
- 114.25(455B) Variance from design, construction, and operation standards
- 114.26(455B) General requirements for all sanitary landfills
- 114.27(455B) Operating requirements for all sanitary disposal projects
- 114.28(455B) Specific requirements for a sanitary landfill proposing to accept only construction and demolition waste
- 114.29(455B) Operator certification
- 114.30(455B) Emergency response and remedial action plans
- 114.31(455B) Construction and demolition wastes sanitary landfill financial assurance

CHAPTER 115

SANITARY LANDFILLS: INDUSTRIAL MONOFILLS

- 115.1(455B) Scope and applicability
- 115.2(455B) Permit required
- 115.3(455B) Types of permits
- 115.4(455B) Applications for permits

115.5(455B)	Preparation of plans
115.6(455B)	Construction and operation
115.7(455B)	Compliance with rule changes
115.8(455B)	Amendments
115.9(455B)	Transfer of title and permit
115.10(455B)	Permit conditions
115.11(455B)	Effect of revocation
115.12(455B)	Inspection prior to start-up
115.13(455B)	Primary plan requirements for all sanitary disposal projects
115.14(455B)	Hydrologic monitoring system planning requirements
115.15(455B)	Soil investigation
115.16(455B)	Hydrogeologic investigation
115.17(455B)	Hydrologic monitoring system planning report requirements
115.18(455B)	Evaluation of hydrogeologic conditions
115.19(455B)	Monitoring system plan
115.20(455B)	Sampling protocol
115.21(455B)	Monitoring well maintenance and performance reevaluation plan
115.22(455B)	Monitoring well siting requirements
115.23(455B)	Monitoring well/soil boring construction standards
115.24(455B)	Sealing abandoned wells and boreholes
115.25(455B)	Variance from design, construction, and operation standards
115.26(455B)	General requirements for all sanitary landfills
115.27(455B)	Operating requirements for all sanitary disposal projects
115.28(455B)	Specific requirements for a sanitary landfill proposing to accept a specific type of solid waste
115.29(455B)	Operator certification
115.30(455B)	Emergency response and remedial action plans
115.31(455B)	Industrial monofill sanitary landfill financial assurance

CHAPTER 116

REGISTRATION OF WASTE TIRE HAULERS

116.1(455B,455D)	Purpose
116.2(455B,455D)	Definitions
116.3(455B,455D)	Registration requirement
116.4(455B,455D)	Registration form
116.5(455B,455D)	Registration fee
116.6(455B,455D)	Bond form
116.7(455B,455D)	Marking of equipment
116.8(455B,455D)	Disposition of waste tires collected
116.9(455B,455D)	Reporting requirements

CHAPTER 117

WASTE TIRE MANAGEMENT

117.1(455B,455D)	Purpose
117.2(455B,455D)	Definitions
117.3(455B,455D)	Waste tire disposal
117.4(455B,455D)	Waste tire storage permits and requirements
117.5(455B,455D)	Used tire storage
117.6(455B,455D)	Waste tire processing facility permits and requirements
117.7(455B,455D)	Financial assurance for waste tire sites
117.8(455B,455D)	Beneficial uses of waste tires

CHAPTER 118
DISCARDED APPLIANCE DEMANUFACTURING

- 118.1(455B,455D) Purpose
- 118.2(455B,455D) Applicability and compliance
- 118.3(455B,455D) Definitions
- 118.4(455B,455D) Storage and handling of appliances prior to demanufacturing
- 118.5(455B,455D) Appliance demanufacturing permits
- 118.6(455B,455D) Appliance demanufacturing permit application requirements
- 118.7(455B,455D) Fixed facilities and mobile operations
- 118.8(455B,455D) Training
- 118.9(455B,455D) Refrigerant removal requirements
- 118.10(455B,455D) Mercury-containing component removal and disposal requirements
- 118.11(455B,455D) Capacitor removal requirements
- 118.12(455B,455D) Spills
- 118.13(455B,455D) Record keeping and reporting
- 118.14(455B,455D) Appliance demanufacturing facility closure requirements
- 118.15(455B,455D) Shredding of appliances
- 118.16(455B,455D) Appliance demanufacturing facility financial assurance requirements

CHAPTER 119
USED OIL AND USED OIL FILTERS

- 119.1(455D,455B) Authority, purpose, and applicability
- 119.2(455D,455B) Definitions
- 119.3(455D,455B) Prohibited disposal
- 119.4(455D,455B) Operational requirements for acceptance of used oil
- 119.5(455D,455B) Operational requirements for acceptance of used oil filters
- 119.6(455D,455B) Oil retailer requirements
- 119.7(455D,455B) Oil filter retailer requirements
- 119.8(455D,455B) Tanks
- 119.9(455D,455B) Locating collection sites

CHAPTER 120
LANDFARMING OF PETROLEUM CONTAMINATED SOIL

- 120.1(455B) Purpose
- 120.2(455B) Applicability and compliance
- 120.3(455B) Definitions
- 120.4(455B) Landfarming permits
- 120.5(455B) Landfarm permit application requirements
- 120.6(455B) PCS analysis and characterization
- 120.7(455B) Site exploration and suitability requirements for landfarms
- 120.8(455B) Landfarm design requirements
- 120.9(455B) Landfarm operating requirements
- 120.10(455B) Emergency response and remedial action plans
- 120.11(455B) Reporting and record-keeping requirements
- 120.12(455B) Landfarm closure
- 120.13(455B,455D) Financial assurance requirements for multiuse and single-use landfarms

CHAPTER 121
LAND APPLICATION OF WASTES

- 121.1(455B,17A) Scope of title
- 121.2(455B) Definitions
- 121.3(455B) Application for permits and forms
- 121.4(455B) Land application of solid wastes

- 121.5(455B) Land application of solid wastes for home and certain crop use
- 121.6(455B) Permit exemptions
- 121.7(455B) Permit requirements
- 121.8(455B,455D) Financial assurance requirements for land application of wastes

CHAPTER 122

CATHODE RAY TUBE DEVICE RECYCLING

- 122.1(455B,455D) Purpose
- 122.2(455B,455D) Applicability and compliance
- 122.3(455B,455D) Definitions
- 122.4(455B,455D) Short-term CRT collection notification
- 122.5(455B,455D) Operational requirements for short-term CRT collection
- 122.6(455B,455D) CRT recycling permits
- 122.7(455B,455D) Permit application requirements for CRT collection facilities
- 122.8(455B,455D) Operational requirements for CRT collection facilities
- 122.9(455B,455D) Reporting requirements for CRT collection facilities
- 122.10(455B,455D) Record-keeping requirements for CRT collection facilities
- 122.11(455B,455D) CRT recycling facility permit application requirements
- 122.12(455B,455D) Site requirements for CRT recycling facilities
- 122.13(455B,455D) Design requirements for CRT recycling facilities
- 122.14(455B,455D) Operational requirements for permitted CRT recycling facilities
- 122.15(455B,455D) Further requirements for batteries for CRT recycling facilities
- 122.16(455B,455D) Further requirements for circuit boards for CRT recycling facilities
- 122.17(455B,455D) Further requirements for CRTs for CRT recycling facilities
- 122.18(455B,455D) Further requirements for removal and disposal of mercury-containing components for CRT recycling facilities
- 122.19(455B,455D) Further requirements for removal and disposal of PCB capacitors for CRT recycling facilities
- 122.20(455B,455D) Spills and releases at CRT recycling facilities
- 122.21(455B,455D) CRT recycling facilities that shred CRTs
- 122.22(455B,455D) Storage requirements for CRT recycling facilities
- 122.23(455B,455D) ERRAP requirements for CRT recycling facilities
- 122.24(455B,455D) Training requirements for CRT recycling facilities
- 122.25(455B,455D) Reporting requirements for CRT recycling facilities
- 122.26(455B,455D) Record-keeping requirements for CRT recycling facilities
- 122.27(455B,455D) Closure requirements for CRT recycling facilities
- 122.28(455B,455D) Financial assurance requirements for cathode ray tube (CRT) collection and recycling facilities

CHAPTER 123

REGIONAL COLLECTION CENTERS AND

MOBILE UNIT COLLECTION AND CONSOLIDATION CENTERS

- 123.1(455B,455D,455F) Purpose
- 123.2(455B,455D,455F) Definitions
- 123.3(455B,455D,455F) Regional collection center and mobile unit collection and consolidation center permits
- 123.4(455B,455D,455F) Permit application requirements for regional collection centers
- 123.5(455B,455D,455F) Permit application requirements for mobile unit collection and consolidation centers
- 123.6(455B,455D,455F) Site selection
- 123.7(455B,455D,455F) Structures
- 123.8(455B,455D,455F) Staff qualifications

- 123.9(455B,455D,455F) Plans and procedures
- 123.10(455B,455D,455F) Emergency response and remedial action plans
- 123.11(455B,455D,455F) Reporting requirements
- 123.12(455B,455D,455F) Financial assurance requirements for regional collection centers and mobile unit collection and consolidation centers

CHAPTERS 124 to 129

Reserved

TITLE IX

SPILLS AND HAZARDOUS CONDITIONS

CHAPTER 130

Reserved

CHAPTER 131

NOTIFICATION OF HAZARDOUS CONDITIONS

- 131.1(455B) Definitions
- 131.2(455B) Report of hazardous conditions

CHAPTER 132

Reserved

CHAPTER 133

RULES FOR DETERMINING

CLEANUP ACTIONS AND RESPONSIBLE PARTIES

- 133.1(455B,455E) Scope
- 133.2(455B,455E) Definitions
- 133.3(455B,455E) Documentation of contamination and source
- 133.4(455B,455E) Response to contamination
- 133.5(455B,455E) Report to commission
- 133.6(455B) Compensation for damages to natural resources

CHAPTER 134

UNDERGROUND STORAGE TANK LICENSING AND CERTIFICATION PROGRAMS

PART A

CERTIFICATION OF GROUNDWATER PROFESSIONALS

- 134.1(455G) Definition
- 134.2(455G) Certification requirements
- 134.3(455G) Certification procedure
- 134.4(455G) Suspension, revocation and denial of certification
- 134.5(455G) Penalty

PART B

CERTIFICATION OF UST COMPLIANCE INSPECTORS

- 134.6(455B) Definition
- 134.7(455B) Certification requirements for UST compliance inspectors
- 134.8(455B) Temporary certification
- 134.9(455B) Application for inspector certification
- 134.10(455B) Training and certification examination
- 134.11(455B) Renewal of certification
- 134.12(455B) Professional liability insurance requirements
- 134.13(455B) Licensed company
- 134.14(455B) Compliance inspection
- 134.15(455B) Disciplinary actions

134.16(455B) Revocation of inspector certification or company license

PART C
UNDERGROUND STORAGE TANK
INSTALLER AND INSPECTOR LICENSING

134.17(455B) Definitions
 134.18(455B) Applicability of Part C
 134.19(455B) Licensing—general and fees
 134.20(455B) Educational requirements for installers, liners, testers and inspectors
 134.21(455B) Environmental liability insurance requirements
 134.22(455B) Installers
 134.23(455B) Testers
 134.24(455B) Additional liner requirements
 134.25(455B) Inspectors
 134.26(455B) Inspector notification regulation
 134.27(455B) Standards
 134.28(455B) General procedures

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

135.1(455B) Authority, purpose and applicability
 135.2(455B) Definitions
 135.3(455B) UST systems—design, construction, installation and notification
 135.4(455B) General operating requirements
 135.5(455B) Release detection
 135.6(455B) Release reporting, investigation, and confirmation
 135.7(455B) Release response and corrective action for UST systems containing petroleum or hazardous substances
 135.8(455B) Risk-based corrective action
 135.9(455B) Tier 1 site assessment policy and procedure
 135.10(455B) Tier 2 site assessment policy and procedure
 135.11(455B) Tier 3 site assessment policy and procedure
 135.12(455B) Tier 2 and 3 site classification and corrective action response
 135.13(455B) Public participation
 135.14(455B) Action levels
 135.15(455B) Out-of-service UST systems and closure
 135.16(455B) Laboratory analytical methods for petroleum contamination of soil and water
 135.17(455B) Evaluation of ability to pay
 135.18(455B) Transitional rules
 135.19(455B) Analyzing for methyl tertiary-butyl ether (MTBE) in soil and groundwater samples
 135.20(455B) Compliance inspection of UST system

CHAPTER 136
FINANCIAL RESPONSIBILITY FOR UNDERGROUND STORAGE TANKS

136.1(455B) Applicability
 136.2 Reserved
 136.3(455B) Definition of terms
 136.4(455B) Amount and scope of required financial responsibility
 136.5(455B) Allowable mechanisms and combinations of mechanisms
 136.6(455B) Financial test of self-insurance
 136.7(455B) Guarantee
 136.8(455B) Insurance and risk retention group coverage
 136.9(455B) Surety bond

136.10(455B)	Letter of credit
136.11(455B)	Trust fund
136.12(455B)	Standby trust fund
136.13(455B)	Local government bond rating test
136.14(455B)	Local government financial test
136.15(455B)	Local government guarantee
136.16(455B)	Local government fund
136.17(455B)	Substitution of financial assurance mechanisms by owner or operator
136.18(455B)	Cancellation or nonrenewal by a provider of financial assurance
136.19(455B)	Reporting by owner or operator
136.20(455B)	Record keeping
136.21(455B)	Drawing on financial assurance mechanisms
136.22(455B)	Release from the requirements
136.23(455B)	Bankruptcy or other incapacity of owner or operator or provider of financial assurance
136.24(455B)	Replenishment of guarantees, letters of credit, or surety bonds

CHAPTER 137

IOWA LAND RECYCLING PROGRAM AND
RESPONSE ACTION STANDARDS

137.1(455H)	Authority, purpose and applicability
137.2(455H)	Definitions
137.3(455H)	Enrollment in land recycling program
137.4(455H)	Background standards
137.5(455H)	Statewide standards
137.6(455H)	Site-specific standards
137.7(455H)	Institutional and technological controls
137.8(455H)	Site assessment
137.9(455H)	Risk evaluation/response action
137.10(455H)	Demonstration of compliance
137.11(455H)	No further action classification

CHAPTERS 138 and 139

Reserved

TITLE X
HAZARDOUS WASTE

CHAPTER 140

SCOPE OF TITLE—DEFINITIONS—FORMS—RULES OF PRACTICE

140.1(455B)	Scope of title
140.2	Reserved
140.3(455B)	Notification by generators, transporters and hazardous waste facilities
140.4(455B)	Application for permits and renewals by new hazardous waste facilities
140.5(455B)	Application for permits and renewals by existing hazardous waste facilities
140.6(455B)	Form for the hazardous waste program—transportation, treatment and disposal fees
140.7(455B)	Form for the analysis and notification requirements for recycled oil

CHAPTER 141

HAZARDOUS WASTE

141.1(455B)	Hazardous waste management system: General
141.2(455B)	Identification, listing, and exclusions of hazardous waste
141.3(455B)	Standards applicable to generators of hazardous waste
141.4(455B)	Standards applicable to transporters of hazardous waste

141.5(455B)	Standards for owners and operators of hazardous waste treatment, storage and disposal facilities
141.6(455B)	Interim status standards for owners and operators of hazardous waste treatment, storage and disposal facilities
141.7(455B)	Disposal of hazardous waste into wells
141.8 to 141.11	Reserved
141.12(455B)	Notification
141.13(455B)	Permitting procedures
141.14(455B)	The hazardous waste permit program
141.15(455B)	Confidentiality of information
141.16(455B)	Permit in lieu of a state hazardous waste permit

CHAPTERS 142 and 143

Reserved

CHAPTER 144

HOUSEHOLD HAZARDOUS MATERIALS

144.1(455F)	Scope
144.2(455F)	Definitions
144.3(455F)	Household hazardous materials
144.4(455F)	Sign requirements
144.5(455F)	Consumer information material

CHAPTER 145

HOUSEHOLD BATTERIES

145.1(455B,455D)	Scope
145.2(455B,455D)	Definitions
145.3(455B,455D)	Household batteries
145.4(455B,455D)	Recycling/disposal requirements for household batteries
145.5(455B,455D)	Exemptions for batteries used in rechargeable consumer products

CHAPTERS 146 and 147

Reserved

CHAPTER 148

REGISTRY OF HAZARDOUS WASTE OR HAZARDOUS SUBSTANCE DISPOSAL SITES

148.1(455B)	Scope
148.2(455B)	Definitions
148.3(455B)	Site selection for investigation criteria
148.4(455B)	Site investigation for listing on registry
148.5(455B)	Site classification
148.6(455B)	Site listing
148.7(455B)	Annual report

CHAPTER 149

FEES FOR TRANSPORTATION, TREATMENT AND DISPOSAL OF HAZARDOUS WASTE

149.1(455B)	Authority, purpose and applicability
149.2	Reserved
149.3(455B)	Exclusions and effect on other fees
149.4(455B)	Fee schedule
149.5(455B)	Form, manner, time and place of filing
149.6(455B)	Identification, sampling and analytical requirements
149.7(455B)	Reporting and record keeping

- 149.8(455B) Failure to pay fees
- 149.9(455B) Suspension of fees

CHAPTER 150

LOCATION AND CONSTRUCTION OF HAZARDOUS WASTE
TREATMENT, STORAGE AND DISPOSAL FACILITIES

- 150.1(455B) Authority, purpose, scope and policy
- 150.2(455B) Definitions
- 150.3(455B) Application procedure
- 150.4(455B) Temporary commissioners
- 150.5(455B) Initial review, notice, and acceptance
- 150.6(455B) Intervention
- 150.7(455B) Proceedings
- 150.8(455B) Decision of the commission
- 150.9(455B) Assessment of costs
- 150.10(455B) Transfer of license
- 150.11(455B) Suspension/revocation/modification

CHAPTER 151

CRITERIA FOR SITING HAZARDOUS WASTE MANAGEMENT FACILITIES

- 151.1(455B) Authority, purpose, scope
- 151.2(455B) Definitions
- 151.3(455B) Siting criteria

CHAPTER 152

CRITERIA FOR SITING LOW-LEVEL RADIOACTIVE
WASTE DISPOSAL FACILITIES

- 152.1(455B) Authority, purpose and scope
- 152.2(455B) Definitions
- 152.3(455B) Siting criteria

CHAPTERS 153 to 208

Reserved

TITLE XI

WASTE MANAGEMENT AUTHORITY

CHAPTER 209

SOLID WASTE ALTERNATIVES PROGRAM

- 209.1(455B,455E) Goal
- 209.2(455B,455E) Purpose
- 209.3(455B,455E) Definitions
- 209.4(455B,455E) Role of the department of natural resources
- 209.5(455B,455E) Funding sources
- 209.6(455B,455E) Eligible projects
- 209.7(455B,455E) Type of financial assistance
- 209.8(455B,455E) Loans
- 209.9(455B,455E) Reduced award
- 209.10(455B,455E) Fund disbursement limitations
- 209.11(455B,455E) Minimum applicant cost share
- 209.12(455B,455E) Eligible costs
- 209.13(455B,455E) Ineligible costs
- 209.14(455B,455E) Selection criteria
- 209.15(455B,455E) Written agreement

- 209.16(455B,455E) Proposals
- 209.17(455B,455E) Financial assistance denial
- 209.18(455B,455E) Amendments

CHAPTER 210

Reserved

CHAPTER 211

FINANCIAL ASSISTANCE FOR THE COLLECTION OF HOUSEHOLD HAZARDOUS
MATERIALS AND HAZARDOUS WASTE FROM CONDITIONALLY EXEMPT SMALL
QUANTITY GENERATORS

- 211.1(455F) Purpose
- 211.2(455F) Definitions
- 211.3(455F) Role of the department
- 211.4(455F) Funding sources
- 211.5(455F) Eligible costs
- 211.6(455F) Ineligible costs
- 211.7(455F) Criteria for the selection of an RCC establishment grant
- 211.8(455F) Grant denial
- 211.9(455F) RCC and MUCCC household hazardous material disposal funding

CHAPTER 212

Reserved

CHAPTER 213

PACKAGING—HEAVY METAL CONTENT

- 213.1(455D) Purpose
- 213.2(455D) Applicability
- 213.3(455D) Definitions
- 213.4(455D) Prohibition—schedule for removal of incidental amounts
- 213.5(455D) Certification of compliance
- 213.6(455D) Exemptions
- 213.7(455D) Inspection and penalties

CHAPTER 214

HOUSEHOLD HAZARDOUS MATERIALS PROGRAM

- 214.1(455F) Scope
- 214.2(455F) Goal
- 214.3(455F) Definitions
- 214.4(455F) Role of the department of natural resources
- 214.5(455F) Funding sources
- 214.6(455F) Household hazardous materials education
- 214.7(455F) HHM education grants
- 214.8(455F) Selection of TCD event host
- 214.9(455F) TCD events
- 214.10(455F) Selection of hazardous waste contractor

CHAPTER 215

MERCURY-ADDED SWITCH RECOVERY FROM END-OF-LIFE VEHICLES

- 215.1(455B) Purpose
- 215.2(455B) Compliance
- 215.3(455B) Definitions
- 215.4(455B) Plans for removal, collection, and recovery of mercury-added vehicle switches
- 215.5(455B) Proper management of mercury-added vehicle switches

215.6(455B)	Public notification
215.7(455B)	Reporting
215.8(455B)	State procurement
215.9(455B)	Future repeal of mercury-free recycling Act—implementation of national program

CHAPTERS 216 and 217

Reserved

CHAPTER 218

WASTE TIRE STOCKPILE ABATEMENT PROGRAM

218.1(455D)	Goal
218.2(455D)	Purpose
218.3(455D)	Definitions
218.4(455D)	Role of the department of natural resources
218.5(455D)	Existing authority
218.6(455D)	Funding source
218.7(455D)	Applicability
218.8(455D)	Abatement fund priorities
218.9(455D)	Abatement site determination criteria
218.10(455D)	Procedures for use of abatement funds through an abatement order or negotiated settlement
218.11(455D)	Procedure for use of abatement fund at a permitted waste tire processing site
218.12(455D)	Abatement cost recovery
218.13(455D)	Abatement contracts

CHAPTER 22
CONTROLLING POLLUTION

[Prior to 7/1/83, DEQ Ch 3]

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

567—22.1(455B) Permits required for new or existing stationary sources.

22.1(1) Permit required. Unless exempted in subrule 22.1(2) or to meet the parameters established in paragraph “c” of this subrule, no person shall construct, install, reconstruct or alter any equipment, control equipment or anaerobic lagoon without first obtaining a construction permit, or conditional permit, or permit pursuant to 22.8(455B), or permits required pursuant to 22.4(455B) and 22.5(455B) as required in this subrule. A permit shall be obtained prior to the initiation of construction, installation or alteration of any portion of the stationary source or anaerobic lagoon.

a. Existing sources. Sources built prior to September 23, 1970, are not subject to this subrule, unless they have been modified, reconstructed, or altered on or after September 23, 1970.

b. New or reconstructed major sources of hazardous air pollutants. No person shall construct or reconstruct a major source of hazardous air pollutants, as defined in 40 CFR 63.2 and 40 CFR 63.41 as amended through April 22, 2004, unless a construction permit has been obtained from the department, which requires maximum achievable control technology for new sources to be applied. The permit shall be obtained prior to the initiation of construction or reconstruction of the major source.

c. New, reconstructed, or modified sources may initiate construction prior to issuance of the construction permit by the department if they meet the eligibility requirements stated in subparagraph (1) below. The applicant must assume any liability for construction conducted on a source before the permit is issued. In no case will the applicant be allowed to hook up the equipment to the exhaust stack or operate the equipment in any way that may emit any pollutant prior to receiving a construction permit.

(1) Eligibility.

1. The applicant has submitted a construction permit application to the department, as specified in subrule 22.1(3);

2. The applicant has notified the department of the applicant’s intentions in writing five working days prior to initiating construction; and

3. The source is not subject to rule 567—22.4(455B), 567—subrule 23.1(2), 567—subrule 23.1(3), 567—subrule 23.1(4), 567—subrule 23.1(5), or paragraph “b” of this subrule. Prevention of significant deterioration (PSD) provisions and prohibitions remain applicable until a proposed project legally obtains PSD synthetic minor status (i.e., obtains permitted limits which limit the source below the PSD thresholds).

(2) The applicant must cease construction if the department’s evaluation demonstrates that the construction, reconstruction or modification of the source will interfere with the attainment or maintenance of the national ambient air quality standards or will result in a violation of a control strategy required by 40 CFR Part 51, Subpart G, as amended through August 12, 1996.

(3) The applicant will be required to make any modification to the source that may be imposed in the issued construction permit.

(4) The applicant must notify the department of the date that construction or reconstruction actually started. All notifications shall be submitted to the department in writing no later than 30 days after construction or reconstruction started. All notifications shall include all of the information listed in 22.3(3) “b.”

d. Permit requirements for country grain elevators, country grain terminal elevators, grain terminal elevators, and feed mill equipment. The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment, as “country grain elevator,” “country grain terminal elevator,” “grain terminal elevator,” and “feed mill equipment” are defined in subrule 22.10(1), may elect to comply with the requirements specified in rule 567—22.10(455B) for equipment at these facilities.

22.1(2) Exemptions. The requirement to obtain a permit in 567—subrule 22.1(1) is not required for the equipment, control equipment, and processes listed in this subrule. The permitting exemptions in

this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Equipment, control equipment, or processes subject to rule 22.4(455B), prevention of significant deterioration requirements, or rule 22.5(455B), special requirements for nonattainment areas, may not use the exemptions from construction permitting listed in this subrule. Equipment, control equipment, or processes subject to 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, may still use the exemptions from construction permitting listed in this subrule provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. If equipment is permitted under the provisions of rule 22.8(455B), then no other exemptions shall apply to that equipment.

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)“a” (for equipment > 1 million Btu per hour input), 22.1(2)“b,”22.1(2)“e,” 22.1(2)“r” or 22.1(2)“s.” The records shall contain the following information: the specific exemption claimed and a description of the associated equipment. These records shall be made available to the department upon request.

The following paragraphs are applicable to 22.1(2)“g” and “i.” A facility claiming to be exempt under the provisions of paragraph “g” or “i” shall provide to the department the information listed below. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed below shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed below is provided to the department:

- A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in rule 22.100(455B)), accompanied by documentation of the basis for the emissions estimate;
- A detailed description of each change being made;
- The name and location of the facility;
- The height of the emission point or stack and the height of the highest building within 50 feet;
- The date for beginning actual construction and the date that operation will begin after the changes are made;
- A statement that the provisions of rules 22.4(455B) and 22.5(455B) do not apply; and
- A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)“i,” when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences), have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23) as amended through March 12, 1996, and adopted in rule 22.4(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

The written statement shall contain certification by a responsible official as defined in rule 22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

a. Fuel-burning equipment for indirect heating and reheating furnaces or cooling units using natural gas or liquefied petroleum gas with a capacity of less than ten million Btu per hour input per combustion unit.

b. Fuel-burning equipment for indirect heating or cooling with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, untreated seeds or pellets,

other untreated vegetative materials, or fuel oil. Used oils meeting the specification from 40 CFR 279.11 as amended through May 3, 1993, are acceptable fuels for this exemption.

c. Mobile internal combustion and jet engines, marine vessels and locomotives.

d. Equipment used for cultivating land, harvesting crops, or raising livestock other than anaerobic lagoons. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption is also not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, which is normally not fed to livestock, owned by the person or another person, in a feedlot, as defined in Iowa Code section 172D.1, subsection 6, or a confinement building owned or operated by that person and located in this state.

e. Incinerators and pyrolysis cleaning furnaces with a rated refuse burning capacity of less than 25 pounds per hour. Pyrolysis cleaning furnace exemption is limited to those units that use only natural gas or propane. Salt bath units are not included in this exemption.

f. Fugitive dust controls unless a control efficiency can be assigned to the equipment or control equipment.

g. Equipment or control equipment which reduces or eliminates all emission to the atmosphere. If a source wishes to obtain credit for emission reductions, a permit must be obtained for the reduction prior to the time the reduction is made. If a construction permit has been previously issued for the equipment or control equipment, all other conditions of the construction permit remain in effect.

h. Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter, or any other regulated air contaminant (as defined in rule 22.100(455B)).

i. Construction, modification or alteration to equipment which will not result in a net emissions increase (as defined in paragraph 22.5(1)“f”) of more than 1.0 lb/hr of any regulated air pollutant (as defined in rule 22.100(455B)). Emission reduction achieved through the installation of control equipment, for which a construction permit has not been obtained, does not establish a limit to potential emissions.

Hazardous air pollutants (as defined in rule 22.100(455B)) are not included in this exemption except for those listed in Table 1. Further, the net emissions rate INCREASE must not equal or exceed the values listed in Table 1.

Table 1

<u>Pollutant</u>	<u>Ton/year</u>
Lead	0.6
Asbestos	0.007
Beryllium	0.0004
Vinyl Chloride	1
Fluorides	3

This exemption is ONLY applicable to vertical discharges with the exhaust stack height 10 or more feet above the highest building within 50 feet. If a construction permit has been previously issued for the equipment or control equipment, the conditions of the construction permit remain in effect. In order to use this exemption, the facility must comply with the information submission to the department as described above.

The department reserves the right to require proof that the expected emissions from the source which is being exempted from the air quality construction permit requirement, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. If the department finds, at any time after a change has been made pursuant to this exemption, evidence of violations of any of the department’s rules, the department may require the source to submit to the department sufficient information to determine whether enforcement action should be taken. This information may include, but is not limited to, any information that would have

been submitted in an application for a construction permit for any changes made by the source under this exemption, and air quality dispersion modeling.

j. Residential heaters, cookstoves, or fireplaces, which burn untreated wood, untreated seeds or pellets, or other untreated vegetative materials.

k. Asbestos demolition and renovation projects subject to 40 CFR 61.145 as amended through January 16, 1991.

l. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.

m. Storage tanks with a capacity of less than 19,812 gallons and an annual throughput of less than 200,000 gallons.

n. Stack or vents to prevent escape of sewer gases through plumbing traps. Systems which include any industrial waste are not exempt.

o. A nonproduction surface coating process that uses only hand-held aerosol spray cans.

p. Brazing, soldering or welding equipment or portable cutting torches used only for nonproduction activities.

q. Cooling and ventilating equipment: Comfort air conditioning not designed or used to remove air contaminants generated by, or released from, specific units of equipment.

r. An internal combustion engine with a brake horsepower rating of less than 400 measured at the shaft. For the purposes of this exemption, the manufacturer's nameplate rating at full load shall be defined as the brake horsepower output at the shaft. An internal combustion engine may be subject to the new source performance standards (NSPS) for stationary compression ignition internal combustion engines set forth in 40 CFR Part 60, Subpart IIII, as adopted by reference in 567—paragraph 23.1(2)“yyy.” Use of this exemption does not relieve an owner or operator from any obligation to comply with the NSPS requirements.

s. Equipment that is not related to the production of goods or services and used exclusively for academic purposes, located at educational institutions (as defined in Iowa Code section 455B.161). The equipment covered under this exemption is limited to: lab hoods, art class equipment, wood shop equipment in classrooms, wood fired pottery kilns, and fuel-burning units with a capacity of less than one million Btu per hour fuel capacity. This exemption does not apply to incinerators.

t. Any container, storage tank, or vessel that contains a fluid having a maximum true vapor pressure of less than 0.75 psia. “Maximum true vapor pressure” means the equilibrium partial pressure of the material considering:

- For material stored at ambient temperature, the maximum monthly average temperature as reported by the National Weather Service, or

- For material stored above or below the ambient temperature, the temperature equal to the highest calendar-month average of the material storage temperature.

u. Equipment for carving, cutting, routing, turning, drilling, machining, sawing, surface grinding, sanding, planing, buffing, sandblast cleaning, shot blasting, shot peening, or polishing ceramic artwork, leather, metals (other than beryllium), plastics, concrete, rubber, paper stock, and wood or wood products, where such equipment is either used for nonproduction activities or exhausted inside a building.

v. Manually operated equipment, as defined in 567—22.100(455B), used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding, or turning.

w. Small unit exemption.

(1) “Small unit” means any emission unit and associated control (if applicable) that emits less than the following:

1. 40 pounds per year of lead and lead compounds expressed as lead;
2. 5 tons per year of sulfur dioxide;
3. 5 tons per year of nitrogen oxides;
4. 5 tons per year of volatile organic compounds;
5. 5 tons per year of carbon monoxide;

6. 5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 2.5 tons per year of PM10; or
8. 5 tons per year of hazardous air pollutants (as defined in rule 22.100(455B)).

For the purposes of this exemption, “emission unit” means any part or activity of a stationary source that emits or has the potential to emit any pollutant subject to regulation under the Act. This exemption applies to existing and new or modified “small units.”

An emission unit that emits hazardous air pollutants (as defined in rule 22.100(455B)) is not eligible for this exemption if the emission unit is required to be reviewed for compliance with 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR 61, NESHAP), or 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR 63, NESHAP).

An emission unit that emits air pollutants that are not regulated air pollutants as defined in rule 22.100(455B) shall not be eligible to use this exemption.

(2) Permit requested. If requested in writing by the owner or operator of a small unit, the director may issue a construction permit for the emission point associated with that emission unit.

(3) An owner or operator that utilizes the small unit exemption must maintain on site an “exemption justification document.” The exemption justification document must document conformance and compliance with the emission rate limits contained in the definition of “small unit” for the particular emission unit or group of similar emission units obtaining the exemption. Controls which may be part of the exemption justification document include, but are not limited to, the following: emission control devices, such as cyclones, filters, or baghouses; restricted hours of operation or fuel; and raw material or solvent substitution. The exemption justification document for an emission unit or group of similar emission units must be made available for review during normal business hours and for state or EPA on-site inspections, and shall be provided to the director or the director’s representative upon request. If an exemption justification document does not exist, the applicability of the small unit exemption is voided for that particular emission unit or group of similar emission units. The controls described in the exemption justification document establish a limit on the potential emissions. An exemption justification document shall include the following for each applicable emission unit or group of similar emission units:

1. A narrative description of how the emissions from the emission unit or group of similar emission units were determined and maintained at or below the annual small unit exemption levels.

2. If air pollution control equipment is used, a description of the air pollution control equipment used on the emission unit or group of similar emission units and a statement that the emission unit or group of similar emission units will not be operated without the pollution control equipment operating.

3. If air pollution control equipment is used, applicant shall maintain a copy of any report of manufacturer’s testing results of any emissions test, if available. The department may require a test if it believes that a test is necessary for the exemption claim.

4. A description of all production limits required for the emission unit or group of similar emission units to comply with the exemption levels.

5. Detailed calculations of emissions reflecting the use of any air pollution control devices or production or throughput limitations, or both, for applicable emission unit or group of similar emission units.

6. Records of actual operation that demonstrate that the annual emissions from the emission unit or group of similar emission units were maintained below the exemption levels.

7. Facilities designated as major sources with respect to rules 22.4(455B) and 22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with the exemption justification document for five years. The record retention requirements supersede any retention conditions of an individual exemption.

8. A certification from the responsible official that the emission unit or group of similar emission units have complied with the exemption levels specified in 22.1(2) “w”(1).

(4) Requirement to apply for a construction permit. An owner or operator of a small unit will be required to obtain a construction permit or take the unit out of service if the emission unit exceeds the small unit emission levels.

1. If, during an inspection or other investigation of a facility, the department believes that the emission unit exceeds the emission levels that define a “small unit,” then the department will submit calculations and detailed information in a letter to the owner or operator. The owner or operator shall have 60 days to respond with detailed calculations and information to substantiate a claim that the small unit does not exceed the emission levels that define a small unit.

2. If the owner or operator is unable to substantiate a claim to the satisfaction of the department, then the owner or operator that has been using the small unit exemption must cease operation of that small unit or apply for a construction permit for that unit within 90 days after receiving a letter of notice from the department. The emission unit and control equipment may continue operation during this period and the associated initial application review period.

3. If the notification of nonqualification as a small unit is made by the department following the process described above, the owner or operator will be deemed to have constructed an emission unit without the required permit and may be subject to applicable penalties.

(5) Required notice for construction or modification of a “substantial small unit.” The owner or operator shall notify the department in writing at least 10 days prior to commencing construction of any new or modified “substantial small unit” as defined in 22.1(2) “w”(6). The owner or operator shall notify the department within 30 days after determining an existing small unit meets the criteria of the “substantial small unit” as defined in 22.1(2) “w”(6). Notification shall include the name of the business, the location where the unit will be installed, and information describing the unit and quantifying its emissions. The owner or operator shall notify the department within 90 days of the end of the calendar year for which the aggregate emissions from substantial small units at the facility have reached any of the cumulative notice thresholds listed below.

(6) For the purposes of this paragraph, “substantial small unit” means a small unit which emits more than the following amounts, as documented in the exemption justification document:

1. 30 pounds per year of lead and lead compounds expressed as lead;
2. 3.75 tons per year of sulfur dioxide;
3. 3.75 tons per year of nitrogen oxides;
4. 3.75 tons per year of volatile organic compounds;
5. 3.75 tons per year of carbon monoxide;
6. 3.75 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 1.875 tons per year of PM10; or
8. 3.75 tons per year of any hazardous air pollutant or 3.75 tons per year of any combination of hazardous air pollutants.

An emission unit is a “substantial small unit” only for those substances for which annual emissions exceed the above-indicated amounts.

(7) Required notice that a cumulative notice threshold has been reached. Once a “cumulative notice threshold,” as defined in 22.1(2) “w”(8), has been reached for any of the listed pollutants, the owner or operator at the facility must apply for air construction permits for all substantial small units for which the cumulative notice threshold for the pollutant(s) in question has been reached. The owner or operator shall have 90 days from the date it determines that the cumulative notice threshold has been reached in which to apply for construction permit(s). The owner or operator shall submit a letter to the department, within 5 working days of making this determination, establishing the date the owner or operator determined that the cumulative notice threshold had been reached.

(8) “Cumulative notice threshold” means the total combined emissions from all substantial small units using the small unit exemption which emit at the facility the following amounts, as documented in the exemption justification document:

1. 0.6 tons per year of lead and lead compounds expressed as lead;
2. 40 tons per year of sulfur dioxide;
3. 40 tons per year of nitrogen oxides;
4. 40 tons per year of volatile organic compounds;
5. 100 tons per year of carbon monoxide;

6. 25 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp));
7. 15 tons per year of PM10; or
8. 10 tons per year of any hazardous air pollutant or 25 tons per year of any combination of hazardous air pollutants.
 - x. The following equipment, processes, and activities:
 - (1) Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.
 - (2) Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.
 - (3) Janitorial services and consumer use of janitorial products.
 - (4) Internal combustion engines used for lawn care, landscaping, and groundskeeping purposes.
 - (5) Laundry activities located at a stationary source that uses washers and dryers to clean, with water solutions of bleach or detergents, or to dry clothing, bedding, and other fabric items used on site. This exemption does not include laundry activities that use dry cleaning equipment or steam boilers.
 - (6) Bathroom vent emissions, including toilet vent emissions.
 - (7) Blacksmith forges.
 - (8) Plant maintenance and upkeep activities and repair or maintenance shop activities (e.g., groundskeeping, general repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots), provided that these activities are not conducted as part of manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit modification. Cleaning and painting activities qualify if they are not subject to control requirements for volatile organic compounds or hazardous air pollutants as defined in 22.100(455B).
 - (9) Air compressors and vacuum, pumps, including hand tools.
 - (10) Batteries and battery charging stations, except at battery manufacturing plants.
 - (11) Equipment used to store, mix, pump, handle or package soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, and aqueous salt or caustic solutions, provided that appropriate lids and covers are utilized and that no organic solvent has been mixed with such materials.
 - (12) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.
 - (13) Vents from continuous emissions monitors and other analyzers.
 - (14) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.
 - (15) Equipment used by surface coating operations that apply the coating by brush, roller, or dipping, except equipment that emits volatile organic compounds or hazardous air pollutants as defined in 22.100(455B).
 - (16) Hydraulic and hydrostatic testing equipment.
 - (17) Environmental chambers not using gases which are hazardous air pollutants as defined in 22.100(455B).
 - (18) Shock chambers, humidity chambers, and solar simulators.
 - (19) Fugitive dust emissions related to movement of passenger vehicles on unpaved road surfaces, provided that the emissions are not counted for applicability purposes and that any fugitive dust control plan or its equivalent is submitted as required by the department.
 - (20) Process water filtration systems and demineralizers, demineralized water tanks, and demineralizer vents.
 - (21) Boiler water treatment operations, not including cooling towers or lime silos.
 - (22) Oxygen scavenging (deaeration) of water.
 - (23) Fire suppression systems.
 - (24) Emergency road flares.
 - (25) Steam vents, safety relief valves, and steam leaks.
 - (26) Steam sterilizers.

(27) Application of hot melt adhesives from closed-pot systems using polyolefin compounds, polyamides, acrylics, ethylene vinyl acetate and urethane material when stored and applied at the manufacturer's recommended temperatures. Equipment used to apply hot melt adhesives shall have a safety device that automatically shuts down the equipment if the hot melt temperature exceeds the manufacturer's recommended application temperature.

y. Direct-fired equipment burning natural gas, propane, or liquefied propane with a capacity of less than 10 million Btu per hour input, and direct-fired equipment burning fuel oil with a capacity of less than 1 million Btu per hour input, with emissions that are attributable only to the products of combustion. Emissions other than those attributable to the products of combustion shall be accounted for in an enforceable permit condition or shall otherwise be exempt under this subrule.

z. Closed refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.

aa. Pretreatment application processes that use aqueous-based chemistries designed to clean a substrate, provided that the chemical concentrate contains no more than 5 percent organic solvents by weight. This exemption includes pretreatment processes that use aqueous-based cleaners, cleaner-phosphatizers, and phosphate conversion coating chemistries.

bb. Indoor-vented powder coating operations with filters or powder recovery systems.

cc. Electric curing ovens or curing ovens that run on natural gas or propane with a maximum heat input of less than 10 million Btu per hour and that are used for powder coating operations, provided that the total cured powder usage is less than 75 tons of powder per year at the stationary source. Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that cured powder usage is less than the exemption threshold.

dd. Each production painting, adhesive or coating unit using an application method other than a spray system and associated cleaning operations that use 1,000 gallons or less of coating and solvents annually, unless the production painting, adhesive or coating unit and associated cleaning operations are subject to work practice, process limits, emissions limits, stack testing, record-keeping or reporting requirements under 567—subrule 23.1(2), 567—subrule 23.1(3), or 567—subrule 23.1(4). Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that paint, adhesive, or solvent usage is at or below the exemption threshold.

ee. Any production surface coating activity that uses only nonrefillable hand-held aerosol cans, where the total volatile organic compound emissions from all these activities at a stationary source do not exceed 5.0 tons per year.

ff. Production welding.

(1) Welding using a consumable electrode, provided that the consumable electrodes used fall within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years.

For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

$Y = \text{the greater of } 1380x - 19,200 \text{ or } 200,000 \text{ for GMAW, or}$

$Y = \text{the greater of } 187x - 2,600 \text{ or } 28,000 \text{ for SMAW or FCAW}$

Where x is the minimum distance to the property line in feet, and Y is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limits must be applied.

(2) Resistance welding, submerged arc welding, or arc welding that does not use a consumable electrode, provided that the base metals do not include stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium and provided that the base metals are uncoated, excluding manufacturing process lubricants.

- gg.* Electric hand soldering, wave soldering, and electric solder paste reflow ovens.
- hh.* Pressurized piping and storage systems for natural gas, propane, liquefied petroleum gas (LPG), and refrigerants, where emissions could only result from an upset condition.
- ii.* Emissions from the storage and mixing of paints and solvents associated with the painting operations, provided that the emissions from the storage and mixing are accounted for in an enforceable permit condition or are otherwise exempt.
- jj.* Product labeling using laser and ink-jet printers with target distances less than or equal to six inches and an annual material throughput of less than 1,000 gallons per year as calculated on a stationary sourcewide basis.
- kk.* Equipment related to research and development activities at a stationary source, provided that:
- (1) Actual emissions from all research and development activities at the stationary source based on a 12-month rolling total are less than the following levels:
 - 40 pounds per year of lead and lead compounds expressed as lead;
 - 5 tons per year of sulfur dioxide;
 - 5 tons per year of nitrogen dioxides;
 - 5 tons per year of volatile organic compounds;
 - 5 tons per year of carbon monoxide;
 - 5 tons per year of particulate matter (particulate matter as defined in 40 CFR Part 51.100(pp) as amended through November 29, 2004);
 - 2.5 tons per year of PM10; and
 - 5 tons per year of hazardous pollutants (as defined in rule 22.100(455B)); and
 - (2) The owner or operator maintains records of actual operations demonstrating that the annual emissions from all research and development activities conducted under this exemption are below the levels listed in subparagraph (1) above. These records shall:
 1. Include a list of equipment that is included under the exemption;
 2. Include records of actual operation and detailed calculations of actual annual emissions, reflecting the use of any control equipment and demonstrating that the emissions are below the levels specified in the exemption;
 3. Include, if air pollution equipment is used in the calculation of emissions, a copy of any report of manufacturer's testing, if available. The department may require a test if it believes that a test is necessary for the exemption claim; and
 4. Be maintained on site for a minimum of two years, be made available for review during normal business hours and for state and EPA on-site inspections, and be provided to the director or the director's designee upon request. Facilities designated as major sources pursuant to rules 22.4(455B) and 22.101(455B), or subject to any applicable federal requirements, shall retain all records demonstrating compliance with this exemption for five years.
 - (3) An owner or operator using this exemption obtains a construction permit or ceases operation of equipment if operation of the equipment would cause the emission levels listed in this exemption to be exceeded.
- For the purposes of this exemption, "research and development activities" shall be defined as activities:
1. That are operated under the close supervision of technically trained personnel; and
 2. That are conducted for the primary purpose of theoretical research or research and development into new or improved processes and products; and
 3. That do not manufacture more than de minimis amounts of commercial products; and
 4. That do not contribute to the manufacture of commercial products by collocated sources in more than a de minimis manner.
- ll.* A regional collection center (RCC), as defined in 567—Chapter 211, involved in the processing of permitted hazardous materials from households and conditionally exempt small quantity generators (CESQG), not to exceed 1,200,000 pounds of VOC containing material in a 12-month rolling period. Latex paint drying may not exceed 120,000 pounds per year on a 12-month rolling total. Other

nonprocessing emission units (e.g., standby generators and waste oil heaters) shall not be eligible to use this exemption.

mm. Cold solvent cleaning machines that are not in-line cleaning machines, where the maximum vapor pressure of the solvents used shall not exceed 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). The machine must be equipped with a tightly fitted cover or lid that shall be closed at all times except during parts entry and removal. This exemption cannot be used for cold solvent cleaning machines that use solvent containing methylene chloride (CAS # 75-09-2), perchloroethylene (CAS # 127-18-4), trichloroethylene (CAS # 79-01-6), 1,1,1-trichloroethane (CAS # 71-55-6), carbon tetrachloride (CAS # 56-23-5) or chloroform (CAS # 67-66-3), or any combination of these halogenated HAP solvents in a total concentration greater than 5 percent by weight.

nn. Emissions from mobile over-the-road trucks, and mobile agricultural and construction internal combustion engines that are operated only for repair or maintenance purposes at equipment repair shops or equipment dealerships, and only when the repair shops or equipment dealerships are not major sources as defined in rule 567—22.100(455B).

22.1(3) Construction permits. The owner or operator of a new or modified stationary source shall apply for a construction permit unless a conditional permit is required by Iowa Code chapter 455B or subrule 22.1(4) or requested by the applicant in lieu of a construction permit. Two copies of a construction permit application for a new or modified stationary source shall be presented or mailed to Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322. Alternatively, the owner or operator may apply for a construction permit for a new or modified stationary source through the electronic submittal format specified by the department. The owner or operator of any new or modified industrial anaerobic lagoon or a new or modified anaerobic lagoon for an animal feeding operation other than a small operation as defined in rule 567—65.1(455B) shall apply for a construction permit. Two copies of a construction permit application for an anaerobic lagoon shall be presented or mailed to Department of Natural Resources, Water Quality Bureau, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319.

a. New equipment design in concept review. If requested in writing, the director will review the design concepts of proposed new equipment and associated control equipment prior to application for a construction permit. The purpose of the review would be to determine the acceptability of the location of the proposed equipment. If the review is requested, the requester shall supply the following information:

- (1) Preliminary plans and specifications of proposed equipment and related control equipment.
- (2) The exact site location and a plot plan of the immediate area, including the distance to and height of nearby buildings and the estimated location and elevation of the emission points.
- (3) The estimated emission rates of any air contaminants which are to be considered.
- (4) The estimated exhaust gas temperature, velocity at the point of discharge, and stack diameter at the point of discharge.
- (5) An estimate of when construction would begin and when construction would be completed.

b. Construction permit applications. Each application for a construction permit shall be submitted to the department on the form “Air Construction Permit Application.” Final plans and specifications for the proposed equipment or related control equipment shall be submitted with the application for a permit and shall be prepared by or under the direct supervision of a professional engineer licensed in the state of Iowa in conformance with Iowa Code section 542B.1, or consistent with the provisions of Iowa Code section 542B.26 for any full-time employee of any corporation while doing work for that corporation. The application for a permit to construct shall include the following information:

- (1) A description of the equipment or control equipment covered by the application;
- (2) A scaled plot plan, including the distance and height of nearby buildings, and the location and elevation of existing and proposed emission points;
- (3) The composition of the effluent stream, both before and after any control equipment with estimates of emission rates, concentration, volume and temperature;
- (4) The physical and chemical characteristics of the air contaminants;
- (5) The proposed dates and description of any tests to be made by the owner or operator of the completed installation to verify compliance with applicable emission limits or standards of performance;

(6) Information pertaining to sampling port locations, scaffolding, power sources for operation of appropriate sampling instruments, and pertinent allied facilities for making tests to ascertain compliance;

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 22.4(455B) and 22.5(455B); and

(8) Application for a case-by-case MACT determination. If the source meets the definition of construction or reconstruction of a major source of hazardous air pollutants, as defined in paragraph 22.1(1)“b,” then the owner or operator shall submit an application for a case-by-case MACT determination, as required in subparagraph 23.1(4)“b”(1), with the construction permit application. In addition to this paragraph, an application for a case-by-case MACT determination shall include the following information:

1. The hazardous air pollutants (HAP) emitted by the constructed or reconstructed major source, and the estimated emission rate for each HAP, to the extent this information is needed by the permitting authority to determine MACT;

2. Any federally enforceable emission limitations applicable to the constructed or reconstructed major source;

3. The maximum and expected utilization of capacity of the constructed or reconstructed major source, and the associated uncontrolled emission rates for that source, to the extent this information is needed by the permitting authority to determine MACT;

4. The controlled emissions for the constructed or reconstructed major source in tons/yr at expected and maximum utilization of capacity to the extent this information is needed by the permitting authority to determine MACT;

5. A recommended emission limitation for the constructed or reconstructed major source consistent with the principles set forth in 40 CFR Part 63.43(d) as amended through December 27, 1996;

6. The selected control technology to meet the recommended MACT emission limitation, including technical information on the design, operation, size, estimated control efficiency of the control technology (and the manufacturer’s name, address, telephone number, and relevant specifications and drawings, if requested by the permitting authority);

7. Supporting documentation including identification of alternative control technologies considered by the applicant to meet the emission limitation, and analysis of cost and non-air quality health environmental impacts or energy requirements for the selected control technology;

8. An identification of any listed source category or categories in which the major source is included.

(9) A signed statement that ensures the applicant’s legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application. A signed statement shall not be required for rock crushers, portable concrete or asphalt equipment used in conjunction with specific identified construction projects which are intended to be located at a site only for the duration of the specific, identified construction project.

c. Application requirements for anaerobic lagoons. The application for a permit to construct an anaerobic lagoon shall include the following information:

(1) The source of the water being discharged to the lagoon;

(2) A plot plan, including distances to nearby residences or occupied buildings, local land use zoning maps of the vicinity, and a general description of the topography in the vicinity of the lagoon;

(3) In the case of an animal feeding operation, the information required in rule 567—65.15(455B);

(4) In the case of an industrial source, a chemical description of the waste being discharged to the lagoon;

(5) A report of sulfate analyses conducted on the water to be used for any purpose in a livestock operation proposing to use an anaerobic lagoon. The report shall be prepared by using standard methods as defined in 567—60.2(455B);

(6) A description of available water supplies to prove that adequate water is available for dilution;

(7) In the case of an animal feeding operation, a waste management plan describing the method of waste collection and disposal and the land to be used for disposal. Evidence that the waste disposal

equipment is of sufficient size to dispose of the wastes within a 20-day period per year shall also be provided;

(8) Any additional information needed by the department to determine compliance with these rules.

22.1(4) Conditional permits. The owner or operator of any new or modified major stationary source may elect to apply for a conditional permit in lieu of a construction permit. Electric power generating facilities with a total capacity of 100 megawatts or more are required to apply for a conditional permit.

a. Applicability determination. If requested in writing, the director will make a preliminary determination of nonattainment applicability pursuant to rules 22.4(455B) and 22.5(455B), based upon the information supplied by the requester.

b. Conditional permit applications. Each application for a conditional permit shall be submitted to the department in writing and shall consist of the following items:

(1) The results of an air quality impact analysis which characterizes preconstruction air quality and the air quality impacts of facility construction and operation. A quality assurance plan for the preconstruction air monitoring where required in accordance with 40 Code of Federal Regulations Part 58 as amended through July 18, 1997, shall also be submitted.

(2) A description of equipment and pollution control equipment design parameters.

(3) Preliminary plans and specifications showing major equipment items and location.

(4) The fuel specifications of any anticipated energy source, and assurances that any proposed energy source will be utilized.

(5) Certification that the preliminary plans and specifications for the equipment and related control equipment have been prepared by or under the direct supervision of a professional engineer registered in the state of Iowa in conformance with Iowa Code chapter 542B.

(6) An estimate of when construction would begin and when construction would be completed.

(7) Any additional information deemed necessary by the department to determine compliance with or applicability of rules 22.4(455B) and 22.5(455B).

This rule is intended to implement Iowa Code section 455B.133.

567—22.2(455B) Processing permit applications.

22.2(1) Incomplete applications. The department will notify the applicant whether the application is complete or incomplete. If the application is found by the department to be incomplete upon receipt, the applicant will be notified within 30 days of that fact and of the specific deficiencies. Sixty days following such notification, the application may be denied for lack of information. When this schedule would cause undue hardship to an applicant, or the applicant has a compelling need to proceed promptly with the proposed installation, modification or location, a request for priority consideration and the justification therefor shall be submitted to the department.

22.2(2) Public notice and participation. A notice of intent to issue a conditional or construction permit to a major stationary source shall be published by the department in a newspaper having general circulation in the area affected by the emissions of the proposed source. The notice and supporting documentation shall be made available for public inspection upon request from the department's central office. Publication of the notice shall be made at least 30 days prior to issuing a permit and shall include the department's evaluation of ambient air impacts. The public may submit written comments or request a public hearing. If the response indicates significant interest, a public hearing may be held after due notice.

22.2(3) Final notice. The department shall notify the applicant in writing of the issuance or denial of a construction or conditional permit as soon as practicable and at least within 120 days of receipt of the completed application. This shall not apply to applicants for electric generating facilities subject to Iowa Code chapter 476A.

This rule is intended to implement Iowa Code section 455B.133.

567—22.3(455B) Issuing permits.

22.3(1) Stationary sources other than anaerobic lagoons. In no case shall a construction permit or conditional permit which results in an increase in emissions be issued to any facility which is in violation

of any condition found in a permit involving PSD, NSPS, NESHAP or a provision of the Iowa state implementation plan. If the facility is in compliance with a schedule for correcting the violation and that schedule is contained in an order or permit condition, the department may consider issuance of a construction permit or conditional permit. A construction or conditional permit shall be issued when the director concludes that the preceding requirement has been met and:

a. That the required plans and specifications represent equipment which reasonably can be expected to comply with all applicable emission standards, and

b. That the expected emissions from the proposed source or modification in conjunction with all other emissions will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28, and

c. That the applicant has not relied on emission limits based on stack height that exceeds good engineering practice or any other dispersion techniques as defined in 567—subrule 23.1(6), and

d. That the applicant has met all other applicable requirements.

22.3(2) Anaerobic lagoons. A construction permit for an industrial anaerobic lagoon shall be issued when the director concludes that the application for permit represents an approach to odor control that can reasonably be expected to comply with the criteria in 567—subrule 23.5(2). A construction permit for an animal feeding operation using an anaerobic lagoon shall be issued when the director concludes that the application has met the requirements of rule 567—65.15(455B).

22.3(3) Conditions of approval. A permit may be issued subject to conditions which shall be specified in writing. Such conditions may include but are not limited to emission limits, operating conditions, fuel specifications, compliance testing, continuous monitoring, and excess emission reporting.

a. Each permit shall specify the date on which it becomes void if work on the installation for which it was issued has not been initiated.

b. Each permit shall list the requirements for notifying the department of the dates of intended startup, start of construction and actual equipment startup. All notifications shall be in writing and include the following information:

- (1) The date or dates required by 22.3(3) “*b*” for which the notice is being submitted.
- (2) Facility name.
- (3) Facility address.
- (4) DNR facility number.
- (5) DNR air construction permit number.
- (6) The name or the number of the emission unit or units in the notification.
- (7) The emission point number or numbers in the notification.
- (8) The name and signature of a company official.
- (9) The date the notification was signed.

c. Each permit shall specify that no review has been undertaken on the various engineering aspects of the equipment other than the potential of the equipment for reducing air contaminant emissions.

d. A conditional permit shall require the submittal of final plans and specifications for the equipment or control equipment designed to meet the specified emission limits prior to installation of the equipment or control equipment.

e. If changes in the final plans and specifications are proposed by the permittee after a construction permit has been issued, a supplemental permit shall be obtained.

f. A permit is not transferable from one location to another or from one piece of equipment to another unless the equipment is portable. When portable equipment for which a permit has been issued is to be transferred from one location to another, the department shall be notified in writing at least 14 days prior to the transfer of the portable equipment to the new location. However, if the owner or operator is relocating the portable equipment to an area currently classified as nonattainment for ambient air quality standards or to an area under a maintenance plan for ambient air quality standards, the owner or operator shall notify the department at least 30 days prior to transferring the portable equipment to the new location. A list of nonattainment and maintenance areas may be obtained from the department, upon request, or on the department’s Internet Web site. The owner or operator will be notified at least

10 days prior to the scheduled relocation if said relocation will prevent the attainment or maintenance of ambient air quality standards and thus require a more stringent emission standard and the installation of additional control equipment. In such a case a supplemental permit shall be obtained prior to the initiation of construction, installation, or alteration of such additional control equipment.

g. The issuance of a permit or conditional permit (approval to construct) shall not relieve any owner or operator of the responsibility to comply fully with applicable provisions of the state implementation plan and any other requirement under local, state or federal law.

22.3(4) Denial of a permit.

a. When an application for a construction or conditional permit is denied, the applicant shall be notified in writing of the reasons therefor. A denial shall be without prejudice to the right of the applicant to file a further application after revisions are made to meet the objections specified as reasons for the denial.

b. The department may deny an application based upon the applicant's failure to provide a signed statement of the applicant's legal entitlement to install and operate equipment covered by the permit application on the property identified in the permit application.

22.3(5) Modification of a permit. The director may, after public notice of such decision, modify a condition of approval of an existing permit for a major stationary source or an emission limit contained in an existing permit for a major stationary source if necessary to attain or maintain an ambient air quality standard, or to mitigate excessive deposition of mercury.

22.3(6) Limits on hazardous air pollutants. The department may limit a source's hazardous air pollutant potential to emit, as defined at 567—22.100(455B), in the source's construction permit for the purpose of establishing federally enforceable limits on the source's hazardous air pollutant potential to emit.

22.3(7) Revocation of a permit. The department may revoke a permit upon obtaining knowledge that a permit holder has lost legal entitlement to use the property identified in the permit to install and operate equipment covered by the permit, upon notice that the property owner does not wish to have continued the operation of the permitted equipment, or upon notice that the owner of the permitted equipment no longer wishes to retain the permit for future operation.

22.3(8) Ownership change of permitted equipment. The new owner shall notify the department in writing no later than 30 days after the change in ownership of equipment covered by a construction permit pursuant to 567—22.1(455B). The notification to the department shall be mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, and shall include the following information:

- a. The date of ownership change;
- b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after ownership change; and
- c. The construction permit number of the equipment changing ownership.

This rule is intended to implement Iowa Code section 455B.133.

567—22.4(455B) Special requirements for major stationary sources located in areas designated attainment or unclassified (PSD). As applicable, the owner or operator of a stationary source shall comply with the rules for prevention of significant deterioration (PSD) as set forth in 567—Chapter 33.

567—22.5(455B) Special requirements for nonattainment areas.

22.5(1) Definitions.

- a. "Major stationary source" means any of the following:
 - (1) Any stationary source of air contaminants which emits, or has the potential to emit, 100 tons per year or more of any regulated air contaminant;
 - (2) Any physical change that would occur at a stationary source not qualifying under subparagraph (1) as a major stationary source, if the change would constitute a major stationary source by itself;
 - (3) For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as "marginal" or "moderate," 50 tpy or more

in areas classified as “serious,” 25 tpy or more in areas classified as “severe” and 10 tpy or more in areas classified as “extreme”; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the Clean Air Act, that requirements under Section 182(f) of the Clean Air Act do not apply;

(4) For ozone transport regions established pursuant to Section 184 of the Clean Air Act, sources with potential to emit 50 tpy or more of volatile organic compounds;

(5) For carbon monoxide nonattainment areas that both are classified as “serious” and in which there are stationary sources which contribute significantly to carbon monoxide levels, sources with the potential to emit 50 tpy or more of carbon monoxide; or

(6) For particulate matter (PM-10), nonattainment areas classified as “serious,” sources with the potential to emit 70 tpy or more of PM-10.

A major stationary source that is major for volatile organic compounds shall be considered major for ozone.

b. “Major modification” means any physical change in or change in the method of operation of a major stationary source, that would result in a significant net emission increase of any regulated air contaminant.

(1) Any net emissions increase that is considered significant for volatile organic compounds shall be considered significant for ozone.

(2) A physical change, or change in the method of operation, shall not include:

Routine maintenance, repair, and replacement;

Use of an alternative fuel or raw material by reason of an order under Sections 2(a) and (b) of the Energy Supply and Environmental Co-ordination Act of 1974 (or any superseding legislation), or by reason of a natural gas curtailment plan in effect pursuant to the Federal Power Act;

Use of an alternative fuel by reason of an order or rule under Section 125 of the Clean Air Act;

Any change in ownership at a stationary source; or

Use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste.

Use of an alternative fuel or raw material by a stationary source which the source was capable of accommodating before December 21, 1976, unless such change would be prohibited by any enforceable permit condition.

An increase in the hours of operation or in the production rate, unless such change is prohibited under any enforceable permit condition.

c. “Potential to emit” means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design only if the limitation or the effect it would have on emissions is federally enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

The provisions of this paragraph do not apply to a source or modification that would be a major stationary source or major modification only if fugitive emissions, to the extent quantifiable, are considered in calculating the potential to emit of the stationary source or modification and the source does not belong to any of the following categories:

Coal cleaning plants (with thermal dryers);

Kraft pulp mills;

Portland cement plants;

Primary zinc smelters;

Iron and steel mills;

Primary aluminum ore reduction plants;

Primary copper smelters;

Municipal incinerators capable of charging more than 250 tons of refuse per day;

Hydrofluoric, sulfuric, or nitric acid plants;

Petroleum refineries;
Lime plants;
Phosphate rock processing plants;
Coke oven batteries;
Sulfur recovery plants;
Carbon black plants (furnace process);
Primary lead smelters;
Fuel conversion plants;
Sintering plants;
Secondary metal production plants;
Chemical process plants;
Fossil-fuel boilers (or combination thereof) totaling more than 250 million British thermal units per hour heat input;
Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
Taconite ore processing plants;
Glass fiber processing plants;
Charcoal production plants;
Fossil fuel-fired steam electric plants of more than 250 million British thermal units per hour heat input;
Any other stationary source category which, as of August 7, 1980, is being regulated under Section 111 or 112 of the Clean Air Act, 42 U.S.C. §§7401 et seq.

d. "Lowest achievable emission rate" means, for any source, that rate of emissions based on the following, whichever is more stringent:

(1) The most stringent emission limitation which is contained in the implementation plan of any state for such class or category of stationary source, unless the owner or operator of the proposed stationary source demonstrates that such limitations are not achievable; or

(2) The most stringent emission limitation which is achieved in practice by such class or category of source.

This term, applied to a modification, means the lowest achievable emission rate for the new or modified emission units within the stationary source.

This term may include a design, equipment, material, work practice or operational standard or combination thereof.

In no event shall the application of this term permit a proposed new or modified stationary source to emit any regulated air contaminant in excess of the amount allowable under applicable new source standards of performance.

e. "Secondary emissions" means emissions which occur or could occur as a result of the construction or operation of a major stationary source or major modification, but do not necessarily come from the major stationary source or major modification itself. For purposes of this rule, secondary emissions must be specific and well-defined, must be quantifiable, and must affect the same general nonattainment area as the stationary source or modification which causes the secondary emission. Secondary emissions may include, but are not limited to:

Emissions from barges or trains coming to or from the new or modified stationary source; and

Emissions from any off-site support facility which would not otherwise be constructed or increase its emissions as a result of the construction or operation of the major stationary source or major modification.

f. (1) "Net emissions increase" means the amount by which the sum of the following exceeds zero:

Any increase in actual emissions from a particular physical change or change in the method of operation at a stationary source; and

Any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable.

(2) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences and the date that the increase from the particular change occurs.

(3) An increase or decrease in actual emissions is creditable only if the director has not relied on it in issuing a permit for the source under this rule which permit is in effect when the increase in actual emissions from the particular change occurs.

(4) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(5) A decrease in actual emissions is creditable only to the extent that:

The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

It is an enforceable permit condition at and after the time that actual construction on the particular change begins;

The director has not relied on it in issuing any other permit;

Such emission decreases have not been used for showing reasonable further progress; and

It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(6) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

g. “Emissions unit or installation” means an identifiable piece of process equipment.

h. “Reconstruction” will be presumed to have taken place where the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost of a comparable entirely new stationary source. Any final decision as to whether reconstruction has occurred shall be made in accordance with the provisions of new source performance standards (see 567—subrule 23.1(2)). A reconstructed stationary source will be treated as a new stationary source for purposes of this rule. In determining lowest achievable emission rate for a reconstructed stationary source, the definitions in the new source performance standards shall be taken into account in assessing whether a new source performance standard is applicable to such stationary source.

i. “Fixed capital cost” means the capital needed to provide all the depreciable components.

j. “Fugitive emissions” means those emissions which could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

k. “Significant” means in reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Pollutant and Emissions Rate

Carbon monoxide: 100 tons per year (tpy)

Nitrogen oxides: 40 tpy

Sulfur dioxide: 40 tpy

Particulate matter: 25 tpy

Ozone: 40 tpy of volatile organic compounds

Lead: 0.6 tpy

PM₁₀: 15 tpy

l. “Allowable emissions” means the emissions rate calculated using the maximum rated capacity of the source (unless the source is subject to an enforceable permit condition which restricts the operating rate, or hours of operation, or both) and the most stringent of the following:

(1) Applicable standards as set forth in 567—Chapter 23;

(2) Any applicable state implementation plan emissions limitation, including those with a future compliance date; or

(3) The emissions rate specified as an enforceable permit condition, including those with a future compliance date.

m. "Enforceable permit condition" for the purpose of this rule means any of the following limitations and conditions: requirements developed pursuant to new source performance standards, prevention of significant deterioration standards, emission standards for hazardous air pollutants, requirements within the state implementation plan, and any permit requirements established pursuant to this rule, or under conditional, construction or Title V operating permit rules.

n. (1) "Actual emissions" means the actual rate of emissions of a pollutant from an emissions unit as determined in accordance with subparagraphs (2) to (4) below.

(2) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operation. The reviewing authority shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period.

(3) The director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(4) For any emissions unit which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

o. "Construction" means any physical change or change in the method of operation (including fabrication, erection, installation, demolition, or modification of an emissions unit) which would result in a change in actual emissions.

p. "Commence" as applied to construction of a major stationary source or major modification means that the owner or operator has all necessary preconstruction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

q. "Necessary preconstruction approvals or permits" means those permits or approvals required under federal air quality control laws and regulations and those air quality control laws and regulations which are part of the state implementation plan.

r. "Begin actual construction" means, in general, initiation of physical on-site construction activities on an emissions unit which are of a permanent nature. Such activities include, but are not limited to, installation of building supports and foundations, laying of underground pipework and construction of permanent storage structures. With respect to a change in method of operating, this term refers to those on-site activities other than preparatory activities which mark the initiation of the change.

s. "Building, structure, or facility" means all of the pollutant-emitting activities which belong to the same industrial grouping, are located on one or more contiguous or adjacent properties, and are under the control of the same person (or persons under common control). Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e., which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (U.S. Government Printing Office stock numbers 4101-0066 and 003-005-00176-0 respectively).

22.5(2) Applicability. Areas designated as attainment, nonattainment, or unclassified are as listed in 40 CFR §81.316 as amended through March 19, 1998.

a. The requirements contained in rule 22.5(455B) shall apply to any new major stationary source or major modification that, as of the date the permit is issued, is major for any pollutant for which the area in which the source would construct is designated as nonattainment.

b. The requirements contained in rule 22.5(455B) shall apply to each nonattainment pollutant that the source will emit or has the potential to emit in major amounts. In the case of a modification, the requirements shall apply to the significant net emissions increase of each nonattainment pollutant for which the source is major.

c. Particulate matter. If a major source or major modification is proposed to be constructed in an area designated nonattainment for particulate matter, then emission offsets must be achieved prior to startup.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for particulate matter, but the modeled (EPA-approved guideline model) worst case ground level particulate concentrations due to the major source or major modification in a designated particulate matter nonattainment area is equal to or greater than five micrograms per cubic meter (24-hour concentration), or one microgram per cubic meter (annual arithmetic mean), then emission offsets must be achieved prior to startup.

d. Sulfur dioxide. If a major source or major modification is proposed to be constructed in an area designated nonattainment for sulfur dioxide, then emission offsets must be achieved prior to startup.

If a major source or major modification is proposed to be constructed in an area designated attainment or unclassified for sulfur dioxide, but the modeled (EPA-approved guideline model) worst case ground level sulfur dioxide concentrations due to the major source or major modification in a designated sulfur dioxide nonattainment area is equal to or greater than 25 micrograms per cubic meter (three-hour concentration), five microgram per cubic meter (24-hour concentration), or one microgram per cubic meter (annual arithmetic mean), then emission offsets must be achieved prior to startup.

e. At such time that a particular source or modification becomes a major stationary source or major modification solely by virtue of a relaxation in any enforceable limitation which was established after August 7, 1980, on the capacity of the source or modification otherwise to emit a pollutant, such as a restriction on hours of operation, then the requirements of this rule shall apply to the source or modification as though construction had not yet commenced on the source or modification.

22.5(3) Emission offsets.

a. Emission offsets shall be obtained from the same source or other sources in the same nonattainment area, except that the required emissions reductions may be obtained from a source in another nonattainment area if:

- (1) The other area, which must be nonattainment for the same pollutant, has an equal or higher nonattainment classification than the nonattainment area in which the source is located, and
- (2) Emissions from such other nonattainment areas contribute to a violation of a National Ambient Air Quality Standard in the nonattainment area in which the proposed new or modified source would construct.

b. Emission offsets for any regulated air contaminant in the designated nonattainment area shall provide for reasonable further progress toward attainment of the applicable National Ambient Air Quality Standards and provide a positive net air quality benefit in the nonattainment area.

c. The increased emissions of any applicable nonattainment air pollutant allowed from the proposed new or modified source shall be offset by an equal or greater reduction, as applicable, in the total tonnage and impact of actual emissions, as stated in subrule 22.5(4), of such air pollutant from the same or other sources. For purposes of subrule 22.5(3), actual emissions shall be determined in accordance with subparagraphs 22.5(1)“n” (1) and (2).

d. All emissions reductions claimed as offset credit shall be federally enforceable prior to, or upon, the issuance of the permit required under this rule and shall be in effect by the time operation of the permitted new source or modification begins.

e. Proposals for emission offsets shall be submitted with the application for a permit for the major source or major modification. All approved emission offsets shall be made a part of the permit and shall be deemed a condition of expected performance of the major source or major modification.

22.5(4) Acceptable emission offsets.

a. *Equivalence.* The effect of the reduction of emissions must be measured or predicted to occur in the same area as the emissions of the major source or major modification. It can be assumed that, if the emission offsets are obtained from an existing source on the same premises or in the immediate vicinity of the major source or major modification and if the air contaminant disperses from substantially the same stack height, the emissions will be equivalent and may be offset. Otherwise, an adequate dispersion model must be used to predict the effect. If the reduction accomplished at the source is as specified in

subrule 22.5(3) and if the effect of the reduction is measured or predicted to occur in the same area as the emissions of the major source or major modification, the effect of the reduction at the measured or predicted point does not have to exactly offset the effect of the major source or major modification.

b. Offset ratio. Rescinded IAB 2/14/96, effective 3/20/96.

c. Control of uncontrolled existing sources. If control equipment is proposed for a presently uncontrolled existing source for which controls are not required by rules, then credit may be allowed for any reduction below the source's potential to emit. The reduction shall be proposed at the time of permit application. Any such reductions which occurred prior to January 1, 1978, shall not be accepted for offsets.

d. Greater control of existing sources. If more effective control equipment for a source already in compliance with the SIP allowable level is proposed to offset the emissions of the major source or major modification in or affecting a nonattainment area, then the difference in the emissions between the actual level on January 1, 1978, and the new level can be credited for offsets. (This does not allow credit to be granted for any reductions in actual emissions required by the SIP subsequent to January 1, 1978.)

For example, if a cyclone that is being used to meet a SIP emission standard is emitting x_1 lbs/hr and if it is to be replaced by a bag filter emitting x_2 lbs/hr, an emission offset equal to $(x_1 - x_2)$ lbs/hr may be allowed toward the total required reduction.

e. Fugitive dust offsets. Credits may be allowed for permanent control of fugitive dust. EPA's "Technical Guidance for Control of Industrial Process Fugitive Particulate Emissions" (EPA-450/3-77-010, March 1977) shall be used as a guide to estimate reduction from fugitive dust controls on traditional sources. Traditional source means a source category for which a particulate emission standard has been established in 567—subrule 23.1(2), 567—paragraph 23.3(2) "a" or "b" or 567—23.4(455B). The emission factors shall be modified to reflect realistic reductions. This would correspond to a consideration of particles in the less than 3 micron size range and the effectiveness of the fugitive dust control method.

f. Fuel switching credits. Credit may be allowed for fuel switching provided there is a demonstration by the applicant that supplies of the cleaner fuel will be available to the applicant for a minimum of five years. The demonstration must include, as a minimum, a written contract with the fuel supplier that the fuel will not be interrupted. The permit for the existing source shall be amended to provide for maintaining those offsets resulting from the fuel switching before offset credit will be granted.

g. Reduction credits. Credit for an emissions reduction can be claimed to the extent that the administrator and the department have not: (1) relied on it in issuing any permit under regulations approved pursuant to 40 CFR Parts 51 (amended through April 9, 1998), 55 (amended through August 4, 1997), 63 (amended through December 28, 1998), 70 (amended through November 26, 1997), or 71 (amended through October 22, 1997); (2) relied on it in demonstrating attainment or reasonable further progress; or (3) the reduction is not otherwise required under the Clean Air Act. Incidental emissions reductions which are not otherwise required under the Act shall be creditable as emissions reductions for such purposes if such emissions reductions meet the requirements of subrule 22.5(3).

h. Derating of equipment. If the emissions from a major source or major modification are proposed to be offset by reducing the operating capacity of another existing source, then credit may be allowed for this provided proper documentation (such as stack test results) showing the effect on emissions due to derating is submitted. The permit for the existing source must be amended to limit the operating capacity before offsets will be allowed.

i. Shutdown or curtailment.

(1) Emissions reductions achieved by shutting down an existing source or curtailing production or operating hours below baseline levels may be generally credited if such reductions are surplus, permanent, quantifiable, and federally enforceable, and if the area has an EPA-approved attainment plan. In addition, the shutdown or curtailment is creditable only if it occurred on or after the date specified for this purpose in the plan, and if such date is on or after the date of the most recent emissions inventory or attainment demonstration. However, in no event may credit be given for shutdowns which occurred prior to January 1, 1978. For purposes of this paragraph, the director may consider a prior

shutdown or curtailment to have occurred after the date of its most recent emissions inventory, if the inventory explicitly includes as current existing emissions the emissions from such previously shutdown or curtailed sources. The work force shall be notified of the proposed curtailment or shutdown by the source owner or operator.

(2) The reductions described in subparagraph 22.5(4) "i"(1) may be credited in the absence of any approved attainment demonstration only if the shutdown or curtailment occurred on or after the date the new source permit application is filed, or, if the applicant can establish that the proposed new source is a replacement for the shutdown or curtailed source, and the cutoff date provisions in 22.5(4) "i"(1) are observed.

j. External emission offsets. If the emissions from the major source or major modification are proposed to be offset by reduction of emissions from a source not owned or operated by the owner or operator of the major source or major modification, then credit may be allowed for such reductions provided the external source's permit is amended to require the reduced emissions or a consent order is entered into by the department and the existing source. Consent orders for external offsets must be incorporated into the SIP and be approved by EPA before offset credit may be granted.

22.5(5) Banking of offsets in nonattainment areas. If the offsets in a given situation are more than required by 22.5(3) the amount of offsets that is greater than required may be banked for the exclusive use or control of the person achieving the reduction, subject to the limitations of this subrule. If the person achieving the reduction is not an individual, an authorized representative of the person must release control of the banked emissions in writing before another person, other than the commission, can utilize the banked emissions. The banking of offsets creates no property right in those offsets. The commission may proportionally reduce or cancel banked offsets if it is determined that reduction or cancellation is necessary to demonstrate reasonable further progress or to attain the ambient air quality standards. Prior to reduction or cancellation, the commission shall notify the person who banked the offsets.

22.5(6) Control technology review.

a. Lowest achievable emission rate. A new or modified major source in a nonattainment area shall comply with the lowest achievable emission rate.

b. For phased construction projects, the determination of the lowest achievable emissions rate shall be reviewed and modified as appropriate at the latest reasonable time which occurs no later than 18 months prior to the commencement of construction of each independent phase of the project. At such time, the owner or operator of the applicable stationary source may be required to demonstrate the adequacy of any previous determination of the LAER for the source.

c. State implementation plan, new source performance standards, and emission standards for hazardous air pollutants. A major stationary source or major modification shall meet each applicable emissions limitation under the state implementation plan and each applicable emissions standard of performance under 40 CFR Parts 60 (amended through November 24, 1998), 61 (amended through October 14, 1997), and 63 (amended through December 28, 1998).

22.5(7) Compliance of existing sources. If a new major source or major modification is subject to rule 22.5(455B), then all major sources owned or operated by the applicant (or by any entity controlling, controlled by, or under common control by the applicant) in Iowa shall be either in compliance with applicable emission standards or under a compliance schedule approved by the commission.

22.5(8) Alternate site analysis. The permit application shall contain a submittal of an alternative site analysis. Such submittal shall include analysis of alternative sites, sizes, production processes and environmental control techniques for the proposed source. The analysis must demonstrate that benefits of the proposed source significantly outweigh the environmental and social costs that would result from its location, construction or modification. Such analysis shall be completed prior to permit issuance.

22.5(9) Additional conditions for permit approval.

a. For the air pollution control requirements applicable to subrule 22.5(6), the permit shall require the source to monitor, keep records, and provide reports necessary to determine compliance with and deviations from applicable requirements.

b. The state shall not issue the permit if the administrator has determined that the applicable implementation plan is not being adequately implemented for the nonattainment area in which the proposed stationary source or modification is to be constructed.

22.5(10) Public availability of information. No permit shall be issued until notice and opportunity for public comment are made available in accordance with the procedure described in 40 CFR 51.161 (as amended through November 7, 1986).

567—22.6(455B) Nonattainment area designations. Section 107(d) of the federal Clean Air Act, 42 U.S.C. §7457(d), requires each state to submit to the Administrator of the federal Environmental Protection Agency a list of areas that exceed the national ambient air quality standards, that are lower than those standards, or that cannot be classified on the basis of current data. A list of Iowa's nonattainment area designations is found at 40 CFR Part 81.316 as amended through January 5, 2005. The commission uses the document entitled "Criteria for Revising Nonattainment Area Designations"¹ (June 14, 1979) to determine when and to what extent the list will be revised and resubmitted.

¹ Filed with Administrative Rules Coordinator, also available from the department.

567—22.7(455B) Alternative emission control program.

22.7(1) Applicability. The owner or operator of any source located in an area with attainment or unclassified status (as published at 40 CFR §81.316 amended January 5, 2005) or located in an area with an approved state implementation plan (SIP) demonstrating attainment by the statutory deadline may apply for an alternative set of emission limits if:

- a. The applicant is presently in compliance with EPA approved SIP requirements, or
- b. The applicant is subject to a consent order to meet an EPA approved compliance schedule and the final compliance date will not be delayed by the use of alternative emission limits.

22.7(2) Demonstration requirements. The applicant for the alternative emission control program shall have the burden of demonstrating that:

- a. The alternative emission control program will not interfere with the attainment and maintenance of ambient air quality standards, including the reasonable further progress or prevention of significant deterioration requirements of the Clean Air Act;
- b. The alternative emission limits are equivalent to existing emission limits in pollution reduction, enforceability, and environmental impact; (In the case of a particulate nonattainment area, the difference between the allowable emission rate and the actual emission rate, as of January 1, 1978, cannot be credited in the emissions tradeoff.)
- c. The pollutants being exchanged are comparable and within the same pollutant category;
- d. Hazardous air pollutants designated in 40 CFR Part 61, as amended through July 20, 2004, will not be exchanged for nonhazardous air pollutants;
- e. The alternative program will not result in any delay in compliance by any source.

Specific situations may require additional demonstration as specified at 44 FR 71780-71788, December 11, 1979, or as requested by the director.

22.7(3) Approval process.

- a. The director shall review all alternative emission control program proposals and shall make recommendations on all completed demonstrations to the commission.
- b. After receiving recommendations from the director and public comments made available through the hearing process, the commission may approve or disapprove the alternative emission control program proposal.
- c. If approved by the commission, the program will be forwarded to the EPA regional administrator as a revision to the State Implementation Plan. The alternative emission control program must receive the approval of the EPA regional administrator prior to becoming effective.

567—22.8(455B) Permit by rule.

22.8(1) Permit by rule for spray booths. Spray booths which comply with the requirements contained in this rule will be deemed to be in compliance with the requirements to obtain an air construction permit and an air operating permit. Spray booths which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source limits for regulated air pollutants and hazardous air pollutants as defined in 567—22.100(455B).

a. Definition. “Sprayed material” is material sprayed from spray equipment when used in the surface coating process in the spray booth, including but not limited to paint, solvents, and mixtures of paint and solvents.

b. Facilities which facilitywide spray one gallon per day or less of sprayed material are exempt from all requirements, except that they must submit the certification in 22.8(1) “*e*” to the department and keep records of daily sprayed material use. The facility must keep the records of daily sprayed material use for 18 months from the date to which the records apply.

c. Facilities which facilitywide spray more than one gallon per day but never more than three gallons per day are exempt from all requirements, except that they must submit the certification in 22.8(1) “*e*” to the department, keep records of daily sprayed material use, and vent emissions from spray booth(s) through stack(s) which is at least 22 feet tall, measured from ground level. The facility must keep the records of daily sprayed material use for 18 months from the date to which the records apply.

d. Facilities which facilitywide spray more than three gallons per day must comply with all applicable statutes and rules.

e. Facilities which claim to be permitted by provisions of this rule must submit to the department a written statement as follows:

“I certify that all paint booths at the facility and listed below are in compliance with all applicable requirements of 567 IAC 22.8(1) and all other applicable requirements, including but not limited to the allowable emission rate for painting and surface coating operations of 0.01 gr/scf of exhaust gas as specified in 567—subrule 23.4(13). I understand that this equipment shall be deemed permitted under the terms of 567 IAC 22.8(1) only if all applicable requirements of 567 IAC 22.8(1) are met. This certification is based on information and belief formed after reasonable inquiry; the statements and information in the document are true, accurate, and complete.”

The certification must be signed by one of the following individuals.

(1) For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at 567 IAC 22.100(455B).

(2) For partnerships, a general partner.

(3) For sole proprietorships, the proprietor.

(4) For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

22.8(2) Reserved.

567—22.9(455B) Special requirements for visibility protection.

22.9(1) Definitions. Definitions included in this subrule apply to the provisions set forth in rule 567—22.9(455B).

“*Best available retrofit technology (BART)*” means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant which is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility which may reasonably be anticipated to result from the use of such technology.

“*Deciview*” means a haze index derived from calculated light extinction, such that uniform changes in haziness correspond to uniform incremental changes in perception across the entire range of conditions, from pristine to highly impaired. The deciview haze index is calculated based on an equation found in 40 CFR 51.301, as amended on July 1, 1999.

“*Mandatory Class I area*” means any Class I area listed in 40 CFR Part 81, Subpart D, as amended through October 5, 1989.

22.9(2) *Best available retrofit technology (BART) applicability.* A source shall comply with the provisions of subrule 22.9(3) if the source falls within numbers 1 through 20 or 22 through 26 of the “stationary source categories” of air pollutants listed in rule 22.100(455B) or is a fossil-fuel fired boiler individually totaling more than 250 million Btu’s per hour heat input and meets the following criteria:

- a. Any emission unit for which startup began after August 7, 1962; and
- b. Construction of the emission unit commenced on or before August 7, 1977; and
- c. The sum of the potential to emit, as “potential to emit” is defined in 567—20.2(455B), from emission units identified above is equal to or greater than 250 tons per year or more of one of the following pollutants: nitrogen oxides, sulfur dioxide, particulate matter (PM₁₀), or volatile organic compounds.

22.9(3) *Duty to self-identify.* The owner or operator or designated representative of a facility meeting the conditions of subrule 22.9(2) shall submit two copies of a completed BART Eligibility Certification Form #542-8125. The BART Eligibility Certification Form #542-8125 shall include all information necessary for the department to complete eligibility determinations. The information submitted shall include source identification, description of processes, potential emissions, emission unit and emission point characteristics, date construction commenced and date of startup, and other information required by the department. The completed form was required to be submitted to the Air Quality Bureau, Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, by September 1, 2005.

22.9(4) *Notification.* The department shall notify in writing the owner or operator or designated representative of a source of the department’s determination that either:

- a. A source meets the conditions listed in 22.9(2) (a source that meets these conditions is BART-eligible); or
- b. For the purposes of the regional haze program, a source may cause or contribute to visibility impairment in any mandatory Class I area, as identified during either:
 - (1) Regional haze plan development required by 40 CFR 51.308(d) as amended on July 6, 2005; or
 - (2) A five-year periodic review on the progress toward the reasonable progress goals required by 40 CFR 51.308(g) as amended on July 6, 2005; or
 - (3) A ten-year comprehensive periodic revision of the implementation plan required by 40 CFR 51.308(f) as amended on July 6, 2005.

22.9(5) *Analysis.* The department may request in writing an analysis from the owner or operator or designated representative of a source that the department has determined may be causing or contributing to visibility impairment in a mandatory Class I area.

a. *BART control analysis.* For the purposes of BART, a source that is responsible for an impact of 1.0 deciview or more at a mandatory Class I area is considered to cause visibility impairment. A source that is responsible for an impact of 0.5 deciview or more at a mandatory Class I area is considered to contribute to visibility impairment. If a source meets either of these criteria, the owner or operator or designated representative shall prepare the BART analysis in accordance with Section IV of Appendix Y of 40 CFR Part 51 as amended through July 5, 2005, and shall submit the BART analysis 180 days after receipt of written notification by the department that a BART analysis is required.

b. *Regional haze analysis.* The owner or operator or designated representative of a source subject to 22.9(4)“b” shall prepare and submit an analysis after receipt of written notification by the department that an analysis is required.

22.9(6) *Control technology implementation.* Following the department’s review of the analysis submitted pursuant to 22.9(5), an owner or operator of a source identified in 22.9(4) shall:

- a. Submit all necessary permit applications to achieve the emissions requirements established following the completion of analysis performed in accordance with 22.9(5).
- b. Install, operate, and maintain the control technology as required by permits issued by the department.

22.9(7) *BART exemption.* The owner or operator of a source subject to the BART emission control requirements may apply for an exemption from subrule 22.9(5) in accordance with 40 CFR 51.303 as amended on July 1, 1999.

567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment. The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in subrule 22.10(1). The requirements of this rule do not apply to equipment located at grain processing plants or grain storage elevators, as “grain processing” and “grain storage elevator” are defined in rule 567—20.2(455B). Compliance with the requirements of this rule does not alleviate any affected person’s duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2) “ooo”), may apply.

22.10(1) Definitions. For purposes of rule 567—22.10(455B), the following terms shall have the meanings indicated in this subrule.

“*Country grain elevator*” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives more than 50 percent of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Country grain terminal elevator*” means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of less than or equal to 2.5 million U.S. bushels, as “permanent storage capacity” is defined in this subrule;
3. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Feed mill equipment*,” for purposes of rule 567—22.10(455B), means grain processing equipment that is used to make animal feed including, but not limited to, grinders, crackers, hammermills, and pellet coolers, and that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

“*Grain*,” as set forth in Iowa Code section 203.1(9), means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

“*Grain processing*” shall have the same definition as “grain processing” set forth in rule 567—20.2(455B).

“*Grain storage elevator*” shall have the same definition as “grain storage elevator” set forth in rule 567—20.2(455B).

“*Grain terminal elevator*,” for purposes of rule 567—22.10(455B), means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as “grain” is defined in this subrule, from farmers in the immediate vicinity during harvest season;
2. Has a permanent storage capacity of more than 88,100 m³ (2.5 million U.S. bushels), as “permanent storage capacity” is defined in this subrule;
3. Is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot;
4. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

“*Permanent storage capacity*” means grain storage capacity which is inside a building, bin, or silo.

22.10(2) Methods for determining potential to emit (PTE). The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment shall use

the following methods for calculating the potential to emit (PTE) for particulate matter (PM) and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM₁₀).

a. Country grain elevators. The owner or operator of a country grain elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B), except that “maximum capacity” means the greatest amount of grain received at the country grain elevator during one calendar, 12-month period of the previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. The owner or operator may make additional adjustments to the calculations for air pollution control of PM and PM₁₀ if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable air pollution control measures no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs. Credit for the application of some best management practices, as specified in subrule 22.10(3) or in a permit issued by the department, may also be used to make additional adjustments in the PTE for PM and PM₁₀ if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable best management practices no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs.

b. Country grain terminal elevators. The owner or operator of a country grain terminal elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B).

c. Grain terminal elevators. For purposes of the permitting and other requirements specified in subrule 22.10(3), the owner or operator of a grain terminal elevator shall calculate the PTE for PM and PM₁₀ as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1) and in rule 567—22.100(455B), in the PTE calculation.

d. Feed mill equipment. The owner or operator of feed mill equipment, as “feed mill equipment” is defined in subrule 22.10(1), shall calculate the PTE for PM and PM₁₀ for the feed mill equipment as specified in the definition of “potential to emit” in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the stationary source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of feed mill equipment shall sum the PTE of the feed mill equipment with the PTE of the country grain elevator, country grain terminal elevator or grain terminal elevator.

22.10(3) Classification and requirements for permits, emissions controls, record keeping and reporting for Group 1, Group 2, Group 3 and Group 4 grain elevators. The requirements for construction permits, operating permits, emissions controls, record keeping and reporting for a stationary source that is a country grain elevator, country grain terminal elevator or grain terminal elevator are set forth in this subrule.

a. Group 1 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 1 facility if the PTE at the stationary source is less than 15 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 1 facility is one that commenced construction or reconstruction before February 6, 2008. A “new” Group 1 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 1 registration. The owner or operator of a Group 1 facility shall submit to the department a Group 1 registration, including PTE calculations, on forms provided by the department, certifying that the facility’s PTE is less than 15 tons of PM₁₀ per year. The owner or operator of an existing facility shall provide the Group 1 registration to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the Group 1 registration to the department prior to initiating construction or reconstruction of a facility. The registration becomes effective upon the department’s receipt of the signed registration form and the PTE calculations.

1. If the owner or operator registers with the department as specified in subparagraph 22.10(3)“a”(1), the owner or operator is exempt from the requirement to obtain a construction permit as specified under subrule 22.1(1).

2. Upon department receipt of a Group 1 registration and PTE calculations, the owner or operator is allowed to add, remove and modify the emissions units or change throughput or operations at the facility without modifying the Group 1 registration, provided that the owner or operator calculates the PTE for PM₁₀ on forms provided by the department prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM₁₀ calculations) specified in the Group 1 registration.

3. If equipment at a Group 1 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a registration made pursuant to subparagraph 22.10(3)“a”(1).

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement best management practices (BMP) for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007), as adopted by the commission on January 15, 2008, and adopted by reference herein (available from the department, upon request, and on the department’s Internet Web site. No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP. Upon startup of equipment at the facility, the owner or operator of a new Group 1 facility shall fully implement applicable BMP.

(3) Record keeping. The owner or operator of a Group 1 facility shall retain a record of the previous five calendar years of total annual grain handled and shall calculate the facility’s potential PM₁₀ emissions annually by January 31 for the previous calendar year. These records shall be kept on site for a period of five years and shall be made available to the department upon request.

(4) Emissions increases. The owner or operator of a Group 1 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that PM₁₀ emissions at a Group 1 facility will increase to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(5) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 1 facility plans to change the facility’s operations or increase the facility’s permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility’s classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM₁₀ will occur. If the proposed change will alter the facility’s classification or will increase the facility’s PTE for PM₁₀ such that the facility PTE increases to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making the change.

b. Group 2 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 2 facility if the PTE at the stationary source is greater than or equal to 15 tons of PM₁₀ per year and is less than or equal to 50 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 2 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A “new” Group 2 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 2 permit for grain elevators. The owner or operator of a Group 2 facility may, in lieu of obtaining air construction permits for each piece of emissions equipment at the facility, submit to the department a completed Group 2 permit application for grain elevators, including PTE calculations, on forms provided by the department. Alternatively, the owner or operator may obtain an air construction permit as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the appropriate completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department on or before March 31, 2008. The owner or operator of a new

facility shall provide the appropriate, completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department prior to initiating construction or reconstruction of a facility.

1. Upon department issuance of a Group 2 permit to a facility, the owner or operator is allowed to add, remove and modify the emissions units at the facility, or change throughput or operations, without modifying the Group 2 permit, provided that the owner or operator calculates the PTE for PM₁₀ prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM₁₀ calculations) specified in the Group 2 permit.

2. If a Group 2 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a Group 2 permit application for grain elevators made pursuant to this rule. However, the owner or operator of a Group 2 facility may request that the department incorporate any equipment with a previously issued construction permit into the Group 2 permit for grain elevators. The department will grant such requests on a case-by-case basis. If the department grants the request to incorporate previously permitted equipment into the Group 2 permit for grain elevators, the owner or operator of the Group 2 facility is responsible for requesting that the department rescind any previously issued construction permits.

(2) Best management practices (BMP). The owner or operator shall implement BMP, as specified in the Group 2 permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 2 facilities after a facility is issued a Group 2 permit, the owner or operator of the Group 2 facility may request that the department modify the facility's Group 2 permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis. No later than March 31, 2009, the owner or operator of an existing Group 2 facility shall fully implement BMP, as specified in the Group 2 permit. Upon startup of equipment at the facility, the owner or operator of a new Group 2 facility shall fully implement BMP, as specified in the Group 2 permit.

(3) Record keeping. The owner or operator of a Group 2 facility shall retain all records as specified in the Group 2 permit.

(4) Emissions inventory. The owner or operator of a Group 2 facility shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(5) Emissions increases. The owner or operator of a Group 2 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that potential PM₁₀ emissions at a Group 2 facility will increase to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(6) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 2 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM₁₀ will occur. If the proposed change will increase the facility's PTE for PM₁₀ such that the facility PTE increases to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making the change.

c. Group 3 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 3 facility if the PTE for PM₁₀ at the stationary source is greater than 50 tons per year, but is less than 100 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 3 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 3 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 3 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility

shall provide the construction permit applications, as specified in subrule 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified in subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 3 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 3 facilities after a facility is issued a permit, the owner or operator of the Group 3 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) Emissions inventory. The owner or operator shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(4) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 3 facility plans to change its operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM₁₀ will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM₁₀ such that the facility PTE increases to greater than or equal to 100 tons per year, the owner or operator shall comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the change.

(5) PSD applicability. If the PTE for PM or PM₁₀ at the Group 3 facility is greater than or equal to 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 3 facility that is a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(6) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM₁₀ emissions on site for a period of five years, and the records shall be made available to the department upon request.

d. Group 4 facilities. A facility qualifies as a Group 4 facility if the facility is a stationary source with a PTE equal to or greater than 100 tons of PM₁₀ per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an “existing” Group 4 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A “new” Group 4 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 4 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified by subrule 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified by subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 4 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. If the department revises the BMP requirements for Group 4 facilities after a facility is issued a permit, the owner or operator of the Group 4 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) PSD applicability. If the PTE for PM or PM₁₀ at the facility is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions, as “fugitive emissions” is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(4) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM₁₀ emissions on site for a period of five years, and the records shall be made available to the department upon request.

(5) Operating permits. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the facility’s annual PTE for PM₁₀ is equal to or greater than 100 tons per year as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions in the calculations to determine if the PTE for PM₁₀ is greater than or equal to 100 tons per year. The owner or operator also shall submit annual emissions inventories and fees, as specified in rule 567—22.106(455B).

22.10(4) Feed mill equipment. This subrule sets forth the requirements for construction permits, operating permits, and emissions inventories for an owner or operator of feed mill equipment as “feed mill equipment” is defined in subrule 22.10(1). For purposes of this subrule, the owner or operator of “existing” feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment before February 6, 2008. The owner or operator of “new” feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment on or after February 6, 2008.

a. Air construction permit. The owner or operator of feed mill equipment shall obtain an air construction permit as specified under subrule 22.1(1) for each piece of feed mill equipment that emits a regulated air pollutant. The owner or operator of “existing” feed mill equipment shall provide the appropriate permit applications to the department on or before March 31, 2008. The owner or operator of “new” feed mill equipment shall provide the appropriate permit applications to the department prior to initiating construction or reconstruction of feed mill equipment.

b. Emissions inventory. The owner or operator shall submit an emissions inventory for the feed mill equipment for all regulated air pollutants as specified under 567—subrule 21.1(3).

c. Operating permits. The owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator, as PTE is specified in subrule 22.10(2), to determine if operating permit requirements specified in rules 567—22.100(455B) through 567—22.300(455B) apply to the stationary source. If the operating permit requirements apply, then the owner or operator shall apply for an operating permit as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator also shall begin submitting annual emissions inventories and fees, as specified under rule 567—22.106(455B).

d. PSD applicability. For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, the owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator. If the PTE for PM or PM₁₀ for the stationary source is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements for PSD specified in 567—Chapter 33, as applicable.

567—22.11 to 22.99 Reserved.

567—22.100(455B) Definitions for Title V operating permits. For purposes of rules 22.100(455B) to 22.116(455B), the following terms shall have the meaning indicated in this rule:

“Act” means the Clean Air Act, 42 U.S.C. Sections 7401, et seq.

“Actual emissions” means the actual rate of emissions of a pollutant from an emissions unit, as determined in accordance with the following:

1. In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which immediately precedes that date and which is representative of normal source operations. The director may allow the use of a

different time period upon a demonstration that it is more representative of normal source operations. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored or combusted during the selected time period. Actual emissions for acid rain affected sources are calculated using a one-year period.

2. Lacking specific information to the contrary, the director may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

3. For any emissions unit which has not begun normal operations on a particular date, actual emissions shall equal the potential to emit of the unit on that date.

4. For purposes of calculating early reductions of hazardous air pollutants, actual emissions shall not include excess emissions resulting from a malfunction or from startups and shutdowns associated with a malfunction.

Actual emissions for purposes of determining fees shall be the actual emissions calculated over a period of one year.

"Administrator" means the administrator for the United States Environmental Protection Agency (EPA) or designee.

"Affected facility" means, with reference to a stationary source, any apparatus which emits or may emit any regulated air pollutant or contaminant.

"Affected source" means a source that includes one or more affected units subject to any emissions reduction requirement or limitation under Title IV of the Act.

"Affected state" means any state which is contiguous to the permitting state and whose air quality may be affected through the modification, renewal or issuance of a Title V permit; or which is within 50 miles of the permitted source.

"Affected unit" means a unit that is subject to any acid rain emissions reduction requirement or acid rain emissions limitation under Title IV of the Act.

"Allowable emissions" means the emission rate of a stationary source calculated using both the maximum rated capacity of the source, unless the source is subject to federally enforceable limits which restrict the operating rate or hours of operation, and the most stringent of the following:

1. The applicable new source performance standards or national emissions standards for hazardous air pollutants, contained in 567—subrules 23.1(2) and 23.1(3);
2. The applicable existing source emission standard contained in 567—Chapter 23; or
3. The emissions rate specified in the air construction permit for the source.

"Allowance" means an authorization by the administrator under Title IV of the Act or rules promulgated thereunder to emit during or after a specified calendar year up to one ton of sulfur dioxide.

"Applicable requirement" includes the following:

1. Any standard or other requirement provided for in the applicable implementation plan approved or promulgated by EPA through rule making under Title I of the Act that implements the relevant requirements of the Act, including any revisions to that plan promulgated in 40 CFR 52;
2. Any term or condition of any preconstruction permits issued pursuant to regulations approved or promulgated through rule making under Title I, including Parts C and D, of the Act;
3. Any standard or other requirement under Section 111 of the Act (subrule 23.1(2)), including Section 111(d);
4. Any standard or other requirement under Section 112 of the Act, including any requirement concerning accident prevention under Section 112(r)(7) of the Act;
5. Any standard or other requirement of the acid rain program under Title IV of the Act or the regulations promulgated thereunder;
6. Any requirements established pursuant to Section 504(b) or Section 114(a)(3) of the Act;
7. Any standard or other requirement governing solid waste incineration, under Section 129 of the Act;
8. Any standard or other requirement for consumer and commercial products, under Section 183(e) of the Act;
9. Any standard or other requirement for tank vessels under Section 183(f) of the Act;

10. Any standard or other requirement of the program to control air pollution from outer continental shelf sources, under Section 328 of the Act;

11. Any standard or other requirement of the regulations promulgated to protect stratospheric ozone under Title VI of the Act, unless the administrator has determined that such requirements need not be contained in a Title V permit; and

12. Any national ambient air quality standard or increment or visibility requirement under Part C of Title I of the Act, but only as it would apply to temporary sources permitted pursuant to Section 504(e) of the Act.

“Area source” means any stationary source of hazardous air pollutants that is not a major source as defined in rule 567—22.100(455B).

“CFR” means the Code of Federal Regulations, with standard references in this chapter by Title and Part, so that “40 CFR 51” means “Title 40 of the Code of Federal Regulations, Part 51.”

“Consumer Price Index” means for any calendar year the average of the Consumer Price Index for all urban consumers published by the United States Department of Labor, as of the close of the 12-month period ending on August 31 of each calendar year.

“Country grain elevator” shall have the same definition as “country grain elevator” set forth in subrule 22.10(1).

“Designated representative” means a responsible natural person authorized by the owner(s) or operator(s) of an affected source and of all affected units at the source, as evidenced by a certificate of representation submitted in accordance with Subpart B of 40 CFR Part 72 as amended to October 24, 1997, to represent and legally bind each owner and operator, as a matter of federal law, in matters pertaining to the acid rain program. Whenever the term “responsible official” is used in rules 22.100(455B) to 22.208(455B), it shall be deemed to refer to the designated representative with regard to all matters under the acid rain program.

“Draft Title V permit” means the version of a Title V permit for which the department offers public participation or affected state review.

“Emergency generator” means any generator of which the sole function is to provide emergency backup power during an interruption of electrical power from the electric utility. An emergency generator does not include:

1. Peaking units at electric utilities;
2. Generators at industrial facilities that typically operate at low rates, but are not confined to emergency purposes; or
3. Any standby generators that are used during time periods when power is available from the electric utility.

An emergency is an unforeseeable condition that is beyond the control of the owner or operator.

“Emissions allowable under the permit” means a federally enforceable permit term or condition determined at issuance to be required by an applicable requirement that establishes an emissions limit (including a work practice standard) or a federally enforceable emissions cap that the source has assumed to avoid an applicable requirement to which the source would otherwise be subject.

“Emissions unit” means any part or activity of a stationary source that emits or has the potential to emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act. This term is not meant to alter or affect the definition of the term “unit” for purposes of Title IV of the Act or any related regulations.

“EPA conditional method” means any method of sampling and analyzing for air pollutants that has been validated by the administrator but that has not been published as an EPA reference method.

“EPA reference method” means any method of sampling and analyzing for an air pollutant as described in 40 CFR 51, Appendix M (as amended through June 16, 1997); 40 CFR 52, Appendices D (as amended through February 6, 1975) and E (as amended through February 6, 1975); 40 CFR 60, Appendices A (as amended through September 28, 2007), B (as amended through September 28, 2007), C (as amended through December 16, 1975), and F (as amended through January 12, 2004); 40 CFR 61, Appendix B (as amended through October 17, 2000); 40 CFR 63, Appendix A (as amended through October 17, 2000); and 40 CFR 75, Appendices A (as amended through January 24, 2008), B

(as amended through January 24, 2008), F (as amended through January 24, 2008, and corrected on February 13, 2008) and K (as amended through January 24, 2008).

“Equipment leaks” means leaks from pumps, compressors, pressure relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, agitators, accumulator vessels, and instrumentation systems.

“Existing hazardous air pollutant source” means any source as defined in 40 CFR 61 (as amended through July 20, 2004) and 40 CFR 63.72 (as amended through December 29, 1992) with respect to Section 112(i)(5) of the Act, the construction or reconstruction of which commenced prior to proposal of an applicable Section 112(d) standard.

“Facility” means, with reference to a stationary source, any apparatus which emits or may emit any air pollutant or contaminant.

“Federal implementation plan” means a plan promulgated by the administrator to fill all or a portion of a gap or otherwise correct all or a portion of an inadequacy in a state implementation plan, and which includes enforceable emission limitations or other control measures, means or techniques, and provides for attainment of the relevant national ambient air quality standard.

“Federally enforceable” means all limitations and conditions which are enforceable by the administrator including, but not limited to, the requirements of the new source performance standards and national emission standards for hazardous air pollutants contained in 567—subrules 23.1(2) and 23.1(3); the requirements of such other state rules or orders approved by the administrator for inclusion in the SIP; and any construction, Title V or other federally approved operating permit conditions.

“Final Title V permit” means the version of a Title V permit issued by the department that has completed all required review procedures.

“Fugitive emissions” are those emissions which could not reasonably pass through a stack, chimney, vent or other functionally equivalent opening.

“Hazardous air pollutant” means any of the following air pollutants listed in Section 112 of the Act:

cas #	chemical name
75343	1,1-Dichloroethane
57147	1,1-Dimethyl hydrazine
71556	1,1,1-Trichloroethane
79005	1,1,2-Trichloroethane
79345	1,1,2,2-Tetrachloroethane
106887	1,2-Butylene oxide
96128	1,2-Dibromo-3-chloropropane
106934	1,2-Dibromoethane
107062	1,2-Dichloroethane
78875	1,2-Dichloropropane
122667	1,2-Diphenylhydrazine
120821	1,2,4-Trichlorobenzene
106990	1,3-Butadiene
542756	1,3-Dichloropropylene
106467	1,4-Dichlorobenzene
123911	1,4-Dioxane
53963	2-Acetylaminofluorene
532274	2-Chloroacetophenone
79469	2-Nitropropane
540841	2,2,4-Trimethylpentane

1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin (TC-DD)
94757	2,4-D salts and esters
95807	2,4-Diaminotoluene
51285	2,4-Dinitrophenol
121142	2,4-Dinitrotoluene
95954	2,4,5-Trichlorophenol
88062	2,4,6-Trichlorophenol
91941	3,3'-Dichlorobenzidine
119904	3,3'-Dimethoxybenzidine
119937	3,3'-Dimethylbenzidine
92671	4-Aminobiphenyl
60117	4-Dimethylaminoazobenzene
92933	4-Nitrobiphenyl
100027	4-Nitrophenol
101144	4,4'-Methylenebis(2-chloroaniline)
101779	4,4'-methylenedianiline
534521	4,6-Dinitro-o-cresol, and salts
75070	Acetaldehyde
60355	Acetamide
75058	Acetonitrile
98862	Acetophenone
107028	Acrolein
79061	Acrylamide
79107	Acrylic acid
107131	Acrylonitrile
107051	Allyl chloride
62533	Aniline
0	Antimony Compounds
0	Arsenic Compounds (inorganic including arsine)
1332214	Asbestos (friable)
71432	Benzene
92875	Benzidine
98077	Benzoic trichloride
100447	Benzyl chloride
0	Beryllium Compounds
57578	Beta-Propiolactone
92524	Biphenyl
111444	Bis(2-chloroethyl) ether
542881	Bis(chloromethyl) ether
75252	Bromoform
74839	Bromomethane
0	Cadmium Compounds

156627	Calcium cyanamide
133062	Captan
63252	Carbaryl
75150	Carbon disulfide
56235	Carbon tetrachloride
463581	Carbonyl sulfide
120809	Catechol
133904	Chloramben
57749	Chlordane
7782505	Chlorine
79118	Chloroacetic acid
108907	Chlorobenzene
510156	Chlorobenzilate
75003	Chloroethane
67663	Chloroform
74873	Chloromethane
107302	Chloromethyl methyl ether
126998	Chloroprene
0	Chromium Compounds
0	Cobalt Compounds
0	Coke Oven Emissions
1319773	Cresol/Cresylic acid (isomers & mixture)
98828	Cumene
0	Cyanide Compounds ¹
72559	DDE
117817	Di(2-ethylhexyl) phthalate
334883	Diazomethane
132649	Dibenzofuran
84742	Dibutyl phthalate
75092	Dichloromethane
62737	Dichlorvos
111422	Diethanolamine
64675	Diethyl sulfate
68122	Dimethyl formamide
131113	Dimethyl phthalate
77781	Dimethyl sulfate
79447	Dimethylcarbamyl chloride
106898	Epichlorohydrin
140885	Ethyl acrylate
100414	Ethylbenzene
107211	Ethylene glycol
75218	Ethylene oxide

96457	Ethylene thiourea
151564	Ethyleneimine
0	Fine Mineral Fibers ³
50000	Formaldehyde
0	Glycol Ethers ² , except cas #111-76-2, ethylene glycol mono-butyl ether, also known as EGBE or 2-Butoxyethanol
76448	Heptachlor
87683	Hexachloro-1,3-butadiene
118741	Hexachlorobenzene
77474	Hexachlorocyclopentadiene
67721	Hexachloroethane
822060	Hexamethylene-1,6-diisocyanate
680319	Hexamethylphosphoramide
110543	Hexane
302012	Hydrazine
7647010	Hydrochloric acid
7664393	Hydrogen fluoride
123319	Hydroquinone
78591	Isophorone
0	Lead Compounds
58899	Lindane (all isomers)
108394	m-Cresol
108383	m-Xylene
108316	Maleic anhydride
0	Manganese Compounds
0	Mercury Compounds
67561	Methanol
72435	Methoxychlor
60344	Methyl hydrazine
74884	Methyl iodide
108101	Methyl isobutyl ketone
624839	Methyl isocyanate
80626	Methyl methacrylate
1634044	Methyl tertbutyl ether
101688	Methylene bis(phenylisocyanate)
684935	N-Nitroso-N-methylurea
62759	N-Nitrosodimethylamine
59892	N-Nitrosomorpholine
91203	Naphthalene
0	Nickel Compounds
98953	Nitrobenzene
121697	N,N-Dimethylaniline

90040	o-Anisidine
95487	o-Cresol
95534	o-Toluidine
95476	o-Xylene
106445	p-Cresol
106503	p-Phenylenediamine
106423	p-Xylene
56382	Parathion
87865	Pentachlorophenol
108952	Phenol
75445	Phosgene
7803512	Phosphine
7723140	Phosphorus (yellow or white)
85449	Phthalic anhydride
1336363	Polychlorinated biphenyls
0	Polycyclic Organic Matter ⁴
1120714	Propane sultone
123386	Propionaldehyde
114261	Propoxur
75569	Propylene oxide
75558	Propyleneimine
91225	Quinoline
106514	Quinone
82688	Quintozene
0	Radionuclides (including Radon) ⁵
0	Selenium Compounds
100425	Styrene
96093	Styrene oxide
127184	Tetrachloroethylene
7550450	Titanium tetrachloride
108883	Toluene
584849	Toluene-2,4-diisocyanate
8001352	Toxaphene
79016	Trichloroethylene
121448	Triethylamine
1582098	Trifluralin
51796	Urethane
108054	Vinyl acetate
593602	Vinyl bromide
75014	Vinyl chloride
75354	Vinylidene chloride
1330207	Xylene (mixed isomers)

NOTE: For all listings above which contain the word “compounds” and for glycol ethers, the following applies: Unless otherwise specified, these listings are defined as including any unique chemical substance that contains the named chemical (i.e., antimony, arsenic, etc.) as part of that chemical’s infrastructure.

¹X’CN where X=H’ or any other group where a formal dissociation may occur. For example KCN or Ca(CN)₂

²Includes mono- and di-ethers of ethylene glycol, diethylene glycol, and triethylene glycol R(OCH₂CH₂)_n-OR’ where n=1,2, or 3; R=alkyl or aryl groups; R’=R,H, or groups which, when removed, yield glycol ethers with the structure R(OCH₂CH)_n-OH. Polymers are excluded from the glycol category.

³Includes mineral fiber emissions from facilities manufacturing or processing glass, rock, or slag fibers (or other mineral derived fibers) of average diameter 1 micrometer or less.

⁴Includes organic compounds with more than one benzene ring, and which have a boiling point greater than or equal to 100 degrees C.

⁵A type of atom which spontaneously undergoes radioactive decay.

“High-risk pollutant” means one of the following hazardous air pollutants listed in Table 1 in 40 CFR 63.74 as amended through October 21, 1994.

cas #	chemical name	weighting factor
53963	2-Acetylaminofluorene	100
107028	Acrolein	100
79061	Acrylamide	10
107131	Acrylonitrile	10
0	Arsenic compounds	100
1332214	Asbestos	100
71432	Benzene	10
92875	Benzidine	1000
0	Beryllium compounds	10
542881	Bis(chloromethyl) ether	1000
106990	1,3-Butadiene	10
0	Cadmium compounds	10
57749	Chlordane	100
532274	2-Chloroacetophenone	100
0	Chromium compounds	100
107302	Chloromethyl methyl ether	10
0	Coke oven emissions	10
334883	Diazomethane	10
132649	Dibenzofuran	10
96128	1,2-Dibromo-3-chloropropane	10
111444	Dichloroethyl ether(Bis(2-chloroethyl)ether)	10
79447	Dimethylcarbamoyl chloride	100
122667	1,2-Diphenylhydrazine	10
106934	Ethylene dibromide	10
151564	Ethylenimine (Aziridine)	100
75218	Ethylene oxide	10
76448	Heptachlor	100
118741	Hexachlorobenzene	100

77474	Hexachlorocyclopentadiene	100
302012	Hydrazine	100
0	Manganese compounds	10
0	Mercury compounds	100
60344	Methyl hydrazine	10
624839	Methyl isocyanate	10
0	Nickel compounds	10
62759	N-Nitrosodimethylamine	100
684935	N-Nitroso-N-methylurea	1000
56382	Parathion	10
75445	Phosgene	10
7803512	Phosphine	10
7723140	Phosphorus	10
75558	1,2-Propylenimine	100
1746016	2,3,7,8-Tetrachlorodibenzo-p-dioxin	100,000
8001352	Toxaphene (chlorinated camphene)	100
75014	Vinyl chloride	10

“Major source” means any stationary source (or any group of stationary sources located on one or more contiguous or adjacent properties and under common control of the same person or of persons under common control) belonging to a single major industrial grouping that is any of the following:

1. A major stationary source of air pollutants, as defined in Section 302 of the Act, that directly emits or has the potential to emit 100 tons per year (tpy) or more of any air pollutant (including any major source of fugitive emissions of any such pollutant). The fugitive emissions of a stationary source shall not be considered in determining whether it is a major stationary source for the purposes of Section 302(j) of the Act, unless the source belongs to one of the stationary source categories listed in this chapter.

2. A major source of hazardous air pollutants according to Section 112 of the Act as follows:

For pollutants other than radionuclides, any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, in the aggregate, 10 tpy or more of any hazardous air pollutant which has been listed pursuant to Section 112(b) of the Act and these rules or 25 tpy or more of any combination of such hazardous air pollutants. Notwithstanding the previous sentence, emissions from any oil or gas exploration or production well (with its associated equipment) and emission from any pipeline compressor or pump station shall not be aggregated with emissions from other similar units, whether or not such units are in a contiguous area or under common control, to determine whether such units or stations are major sources.

For Title V purposes, all fugitive emissions of hazardous air pollutants are to be considered in determining whether a stationary source is a major source.

For radionuclides, “major source” shall have the meaning specified by the administrator by rule.

3. A major stationary source as defined in Part D of Title I of the Act, including:

For ozone nonattainment areas, sources with the potential to emit 100 tpy or more of volatile organic compounds or oxides of nitrogen in areas classified as “marginal” or “moderate,” 50 tpy or more in areas classified as “serious,” 25 tpy or more in areas classified as “severe” and 10 tpy or more in areas classified as “extreme”; except that the references in this paragraph to 100, 50, 25, and 10 tpy of nitrogen oxides shall not apply with respect to any source for which the administrator has made a finding, under Section 182(f)(1) or (2) of the Act, that requirements under Section 182(f) of the Act do not apply;

For ozone transport regions established pursuant to Section 184 of the Act, sources with potential to emit 50 tpy or more of volatile organic compounds;

For carbon monoxide nonattainment areas (1) that are classified as “serious” and (2) in which stationary sources contribute significantly to carbon monoxide levels, and sources with the potential to emit 50 tpy or more of carbon monoxide;

For particulate matter (PM-10), nonattainment areas classified as “serious,” sources with the potential to emit 70 tpy or more of PM-10.

For the purposes of defining “major source,” a stationary source or group of stationary sources shall be considered part of a single industrial grouping if all of the pollutant emitting activities at such source or group of sources on contiguous or adjacent properties belong to the same major group (i.e., all have the same two-digit code) as described in the Standard Industrial Classification Manual, 1987.

“*Manually operated equipment*” means a machine or tool that is handheld, such as a handheld circular saw or compressed air chisel; a machine or tool for which the work piece is held or manipulated by hand, such as a bench grinder; a machine or tool for which the tool or bit is manipulated by hand, such as a lathe or drill press; and any dust collection system which is part of such machine or tool; but not including any machine or tool for which the extent of manual operation is to control power to the machine or tool and not including any central dust collection system serving more than one machine or tool.

“*Maximum achievable control technology (MACT)*” means the following regarding regulated hazardous air pollutant sources:

1. For existing sources, the emissions limitation reflecting the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the category of stationary sources, that shall not be less stringent than the MACT floor.

2. For new sources, the emission limitation which is not less stringent than the emission limitation achieved in practice by the best-controlled similar source, and which reflects the maximum degree of reduction in emissions that the administrator or the department, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determines is achievable by sources in the Title IV affected source category.

“*Maximum achievable control technology (MACT) floor*” means the following:

1. For existing sources, the average emission limitation achieved by the best 12 percent of the existing sources in the United States (for which the administrator or the department has or could reasonably obtain emission information), excluding those sources that have, within 18 months before the emission standard is proposed or within 30 months before such standard is promulgated, whichever is later, first achieved a level of emission rate or emission reduction which complies, or would comply if the source is not subject to such standard, with the lowest achievable emission rate applicable to the source category and prevailing at the time, for categories and subcategories of stationary sources with 30 or more sources in the category or subcategory, or the average emission limitation achieved by the best performing 5 sources in the United States (for which the administrator or the department has or could reasonably obtain emissions information) for a category or subcategory or stationary source with fewer than 30 sources in the category or subcategory.

2. For new sources, the emission limitation achieved in practice by the best-controlled similar source.

“*New Title IV affected source or unit*” means a unit that commences commercial operation on or after November 15, 1990, including any such unit that serves a generator with a nameplate capacity of 25 MWe or less or that is a simple combustion turbine.

“*Nonattainment area*” means an area so designated by the administrator, acting pursuant to Section 107 of the Act.

“*Permit modification*” means a revision to a Title V operating permit that cannot be accomplished under the provisions for administrative permit amendments found at rule 22.111(455B). A permit modification for purposes of the acid rain portion of the permit shall be governed by the regulations pertaining to acid rain found at rules 22.120(455B) to 22.147(455B). This definition of “permit modification” shall be used solely for purposes of this chapter governing Title V operating permits.

“Permit revision” means any permit modification or administrative permit amendment.

“Permitting authority” means the Iowa department of natural resources or the director thereof.

“Potential to emit” means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term “capacity factor” as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, the provisions set forth in subrule 22.10(2) shall apply.

For purposes of calculating potential to emit for emergency generators, “maximum capacity” means one of the following:

1. 500 hours of operation annually, if the generator has actually been operated less than 500 hours per year for the past five years;
2. 8,760 hours of operation annually, if the generator has actually been operated more than 500 hours in one of the past five years; or
3. The number of hours specified in a state or federally enforceable limit.

“Proposed Title V permit” means the version of a permit that the permitting authority proposes to issue and forwards to the administrator for review in compliance with 22.107(7) “a.”

“Regulated air contaminant” shall mean the same thing as “regulated air pollutant.”

“Regulated air pollutant” means the following:

1. Nitrogen oxides or any volatile organic compounds;
2. Any pollutant for which a national ambient air quality standard has been promulgated;
3. Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
4. Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act; or
5. Any pollutant subject to a standard promulgated under Section 112 or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including the following:

- Any pollutant subject to requirements under Section 112(j) of the Act. If the administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act; and

- Any pollutant for which the requirements of Section 112(g)(2) of the Act have been met, but only with respect to the individual source subject to the Section 112(g)(2) requirement.

6. With respect to Title V, particulate matter, except for PM10, is not considered a regulated air pollutant for the purpose of determining whether a source is considered to be a major source.

“Regulated air pollutant or contaminant (for fee calculation),” which is used only for purposes of rule 22.106(455B), means any “regulated air pollutant or contaminant” except the following:

1. Carbon monoxide;
2. Particulate matter, excluding PM10;
3. Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated under or established by Title VI of the Act;
4. Any pollutant that is a regulated pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act.

“Renewal” means the process by which a permit is reissued at the end of its term.

“Responsible official” means one of the following:

1. For a corporation: a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation, or a duly authorized representative of such person if the representative is

responsible for the overall operation of one or more manufacturing, production, or operating facilities applying for or subject to a permit and either:

- The facilities employ more than 250 persons or have gross annual sales or expenditures exceeding \$25 million (in second quarter 1980 dollars); or
- The delegation of authority to such representative is approved in advance by the permitting authority.

2. For a partnership or sole proprietorship: a general partner or the proprietor, respectively;

3. For a municipality, state, federal, or other public agency: either a principal executive officer or ranking elected official. For the purposes of this chapter, a principal executive officer of a federal agency includes the chief executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., a regional administrator of EPA); or

4. For Title IV affected sources:

- The designated representative insofar as actions, standards, requirements, or prohibitions under Title IV of the Act or the regulations promulgated thereunder are concerned; and

- The designated representative for any other purposes under this chapter or the Act.

“*Section 502(b)(10) changes*” are changes that contravene an express permit term and which are made pursuant to rule 22.110(455B). Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

“*State implementation plan (SIP)*” means the plan adopted by the state of Iowa and approved by the administrator which provides for implementation, maintenance, and enforcement of such primary and secondary ambient air quality standards as are adopted by the administrator, pursuant to the Act.

“*Stationary source*” means any building, structure, facility, or installation that emits or may emit any regulated air pollutant or any pollutant listed under Section 112(b) of the Act.

“*Stationary source categories*” means any of the following classes of sources:

1. Coal cleaning plants with thermal dryers;
2. Kraft pulp mills;
3. Portland cement plants;
4. Primary zinc smelters;
5. Iron and steel mills;
6. Primary aluminum ore reduction plants;
7. Primary copper smelters;
8. Municipal incinerators capable of charging more than 250 tons of refuse per day;
9. Hydrofluoric, sulfuric, or nitric acid plants;
10. Petroleum refineries;
11. Lime plants;
12. Phosphate rock processing plants;
13. Coke oven batteries;
14. Sulfur recovery plants;
15. Carbon black plants using the furnace process;
16. Primary lead smelters;
17. Fuel conversion plants;
18. Sintering plants;
19. Secondary metal production plants;
20. Chemical process plants — The term chemical processing plant shall not include ethanol production facilities that produce ethanol by natural fermentation included in NAICS code 325193 or 312140;
21. Fossil-fuel boilers, or combinations thereof, totaling more than 250 million Btu’s per hour heat input;
22. Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
23. Taconite ore processing plants;
24. Glass fiber processing plants;

25. Charcoal production plants;
26. Fossil fuel-fired steam electric plants of more than 250 million Btu's per hour heat input;
27. Any other stationary source category, which as of August 7, 1980, is regulated under Section 111 or 112 of the Act.

"Title V permit" means an operating permit under Title V of the Act.

"12-month rolling period" means a period of 12 consecutive months determined on a rolling basis with a new 12-month period beginning on the first day of each calendar month.

567—22.101(455B) Applicability of Title V operating permit requirements.

22.101(1) Except as provided in rule 22.102(455B), any person who owns or operates any of the following sources shall obtain a Title V operating permit:

- a. Any affected source subject to the provisions of Title IV of the Act;
- b. Any major source;
- c. Any source, including any nonmajor source, subject to a standard, limitation, or other requirement under Section 111 of the Act (567—subrule 23.1(2), new source performance standards; 567—subrule 23.1(5), emission guidelines);
- d. Any source, including any area source, subject to a standard or other requirement under Section 112 of the Act (567—subrules 23.1(3) and 23.1(4), emission standards for hazardous air pollutants), except that a source is not required to obtain a Title V permit solely because it is subject to regulations or requirements under Section 112(r) of the Act;
- e. Any solid waste incinerator unit required to obtain a Title V permit under Section 129(e) of the Act;
- f. Any source category designated by the Administrator pursuant to 40 CFR 70.3 as amended through December 19, 2005.

22.101(2) Any nonmajor source required to obtain a Title V operating permit pursuant to subrule 22.101(1) is required to obtain a Title V permit only for the emissions units and related equipment causing the source to be subject to the Title V program.

22.101(3) Election to apply for permit. Rescinded IAB 7/19/06, effective 8/23/06.

567—22.102(455B) Source category exemptions.

22.102(1) All sources listed in subrule 22.101(1) that are not major sources, affected sources subject to the provisions of Title IV of the Act or solid waste incineration units required to obtain a permit pursuant to Section 129(e) of the Act are exempt from the obligation to obtain a Title V permit until such time as the Administrator completes a rule making to determine how the program should be structured for nonmajor sources and the appropriateness of any permanent exemptions in addition to those provided for in subrule 22.102(3).

22.102(2) In the case of nonmajor sources subject to a standard or other requirement under either Section 111 or Section 112 of the Act after July 21, 1992, publication, the Administrator will determine at the time the new or amended standard is promulgated whether to exempt any or all such applicable sources from the requirement to obtain a Title V permit.

22.102(3) The following source categories are exempt from the obligation to obtain a Title V permit:

- a. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 60, Subpart AAA, Standards of Performance for New Residential Wood Heaters, as amended through December 14, 2000;
- b. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to 40 CFR 61, Subpart M, National Emission Standard for Hazardous Air Pollutants for Asbestos, Section 61.145, Standard for Demolition and Renovation, as amended through July 20, 2004;
- c. All sources and source categories that would be required to obtain a Title V permit solely because they are subject to any of the following subparts from 40 CFR 63:

(1) Subpart M, National Perchloroethylene Air Emission Standards for Dry Cleaning Facilities, as amended through December 19, 2005.

(2) Subpart N, National Emission Standards for Chromium Emissions from Hard and Decorative Chromium Electroplating and Chromium Anodizing Tanks, as amended through December 19, 2005.

(3) Subpart O, Ethylene Oxide Emissions Standards for Sterilization Facilities, as amended through December 19, 2005.

(4) Subpart T, National Emission Standards for Halogenated Solvent Cleaning, as amended through December 19, 2005.

(5) Subpart RRR, National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production, as amended through December 19, 2005.

(6) Subpart VVV, National Emission Standards for Hazardous Air Pollutants: Publicly Owned Treatment Works, as amended through June 23, 2003.

567—22.103(455B) Insignificant activities. The following are insignificant activities for purposes of the Title V application if not needed to determine the applicability of or to impose any applicable requirement. Title V permit fees are not required from insignificant activities pursuant to subrule 22.106(7).

22.103(1) Insignificant activities excluded from Title V operating permit application. In accordance with 40 CFR 70.5 (as amended through July 21, 1992), these activities need not be included in the Title V permit application.

- a. Mobile internal combustion and jet engines, marine vessels, and locomotives.
- b. Equipment, other than anaerobic lagoons, used for cultivating land, harvesting crops, or raising livestock. This exemption is not applicable if the equipment is used to remove substances from grain which were applied to the grain by another person. This exemption also is not applicable to equipment used by a person to manufacture commercial feed, as defined in Iowa Code section 198.3, when that feed is normally not fed to livestock:
 - (1) Owned by that person or another person, and
 - (2) Located in a feedlot, as defined in Iowa Code section 172D.1(6), or in a confinement building owned or operated by that person, and
 - (3) Located in this state.
- c. Equipment or control equipment which eliminates all emissions to the atmosphere.
- d. Equipment (other than anaerobic lagoons) or control equipment which emits odors unless such equipment or control equipment also emits particulate matter or any other air pollutant or contaminant.
- e. Air conditioning or ventilating equipment not designed to remove air contaminants generated by or released from associated equipment.
- f. Residential wood heaters, cookstoves, or fireplaces.
- g. The equipment in laboratories used exclusively for nonproduction chemical and physical analyses. Nonproduction analyses means analyses incidental to the production of a good or service and includes analyses conducted for quality assurance or quality control activities, or for the assessment of environmental impact.
- h. Recreational fireplaces.
- i. Barbecue pits and cookers except at a meat packing plant or a prepared meat manufacturing facility.
- j. Stacks or vents to prevent escape of sewer gases through plumbing traps for systems handling domestic sewage only. Systems which include any industrial waste are not exempt.
- k. Retail gasoline and diesel fuel handling facilities.
- l. Photographic process equipment by which an image is reproduced upon material sensitized to radiant energy.
- m. Equipment used for hydraulic or hydrostatic testing.
- n. General vehicle maintenance and servicing activities at the source, other than gasoline fuel handling.
- o. Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

p. Equipment using water, water and soap or detergent, or a suspension of abrasives in water for purposes of cleaning or finishing provided no organic solvent has been added to the water, the boiling point of the additive is not less than 100°C (212°F), and the water is not heated above 65.5°C (150°F).

q. Administrative activities including, but not limited to, paper shredding, copying, photographic activities, and blueprinting machines. This does not include incinerators.

r. Laundry dryers, extractors, and tumblers processing clothing, bedding, and other fabric items used at the source that have been cleaned with water solutions of bleach or detergents provided that any organic solvent present in such items before processing that is retained from cleanup operations shall be addressed as part of the volatile organic compound emissions from use of cleaning materials.

s. Housekeeping activities for cleaning purposes, including collecting spilled and accumulated materials at the source, but not including use of cleaning materials that contain organic solvent.

t. Refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.

u. Activities associated with the construction, on-site repair, maintenance or dismantlement of buildings, utility lines, pipelines, wells, excavations, earthworks and other structures that do not constitute emission units.

v. Storage tanks of organic liquids with a capacity of less than 500 gallons, provided the tank is not used for storage of any material listed as a hazardous air pollutant pursuant to Section 112(b) of the Clean Air Act.

w. Piping and storage systems for natural gas, propane, and liquified petroleum gas, excluding pipeline compressor stations and associated storage facilities.

x. Water treatment or storage systems, as follows:

(1) Systems for potable water or boiler feedwater.

(2) Systems, including cooling towers, for process water provided that such water has not been in direct or indirect contact with process steams that contain volatile organic material or materials listed as hazardous air pollutants pursuant to Section 112(b) of the Clean Air Act.

y. Lawn care, landscape maintenance, and groundskeeping activities.

z. Containers, reservoirs, or tanks used exclusively in dipping operations to coat objects with oils, waxes, or greases, provided no organic solvent has been mixed with such materials.

aa. Cold cleaning degreasers that are not in-line cleaning machines, where the vapor pressure of the solvents used never exceeds 2 kPa (15 mmHg or 0.3 psi) measured at 38°C (100°F) or 0.7 kPa (5 mmHg or 0.1 psi) at 20°C (68°F). (Note: Cold cleaners subject to 40 CFR Part 63 Subpart T are not considered insignificant activities.)

bb. Manually operated equipment used for buffing, polishing, carving, cutting, drilling, machining, routing, sanding, sawing, scarfing, surface grinding or turning.

cc. Use of consumer products, including hazardous substances as that term is defined in the Federal Hazardous Substances Act (15 U.S.C. 1261 et seq.), when the product is used at a source in the same manner as normal consumer use.

dd. Activities directly used in the diagnosis and treatment of disease, injury or other medical condition.

ee. Firefighting activities and training in preparation for fighting fires conducted at the source. (Note: Written notification pursuant to 567—paragraph 23.2(3) “g” is required at least ten working days before such action commences.)

ff. Activities associated with the construction, repair or maintenance of roads or other paved or open areas, including operation of street sweepers, vacuum trucks, spray trucks and other vehicles related to the control of fugitive emissions of such roads or other areas.

gg. Storage and handling of drums or other transportable containers when the containers are sealed during storage and handling.

hh. Individual points of emission or activities as follows:

(1) Individual flanges, valves, pump seals, pressure relief valves and other individual components that have the potential for leaks.

(2) Individual sampling points, analyzers, and process instrumentation, whose operation may result in emissions.

(3) Individual features of an emission unit such as each burner and sootblower in a boiler or each use of cleaning materials on a coating or printing line.

ii. Construction activities at a source solely associated with the modification or building of a facility, an emission unit or other equipment at the source. (Note: Notwithstanding the status of this activity as insignificant, a particular activity that entails modification or construction of an emission unit or construction of air pollution control equipment may require a construction permit pursuant to 22.1(455B) and may subsequently require a revised Title V operating permit. A revised Title V operating permit may also be necessary for operation of an emission unit after completion of a particular activity if the existing Title V operating permit does not accommodate the new state of the emission unit.)

jj. Activities at a source associated with the maintenance, repair, or dismantlement of an emission unit or other equipment installed at the source, including preparation for maintenance, repair or dismantlement, and preparation for subsequent startup, including preparation of a shutdown vessel for entry, replacement of insulation, welding and cutting, and steam purging of a vessel prior to startup.

22.103(2) *Insignificant activities which must be included in Title V operating permit applications.*

a. The following are insignificant activities based on potential emissions:

An emission unit which has the potential to emit less than:

5 tons per year of any regulated air pollutant, except:

2.5 tons per year of PM-10,

40 lbs per year of lead or lead compounds,

2500 lbs per year of any combination of hazardous air pollutants except high-risk pollutants,

1000 lbs per year of any individual hazardous air pollutant except high-risk pollutants,

250 lbs per year of any combination of high-risk pollutants, or

100 lbs per year of any individual high-risk pollutant.

The definition of "high risk pollutant" is found in 22.100(455B).

b. The following are insignificant activities:

(1) Fuel-burning equipment for indirect heating and reheating furnaces using natural or liquefied petroleum gas with a capacity of less than 10 million Btu per hour input per combustion unit.

(2) Fuel-burning equipment for indirect heating with a capacity of less than 1 million Btu per hour input per combustion unit when burning coal, untreated wood, or fuel oil.

(3) Incinerators with a rated refuse burning capacity of less than 25 pounds per hour.

(4) Gasoline, diesel fuel, or oil storage tanks with a capacity of 1,000 gallons or less and an annual throughput of less than 40,000 gallons.

(5) A storage tank which contains no volatile organic compounds above a vapor pressure of 0.75 pounds per square inch at the normal operating temperature of the tank when other emissions from the tank do not exceed the levels in paragraph 22.103(2) "a."

(6) Internal combustion engines that are used for emergency response purposes with a brake horsepower rating of less than 400 measured at the shaft. The manufacturer's nameplate rating at full load shall be defined as the brake horsepower output at the shaft.

567—22.104(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application, except in compliance with a properly issued Title V operating permit. However, if a source submits a timely and complete application for permit issuance (including renewal), the source's failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied.

22.104(1) This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

22.104(2) Sources making permit revisions pursuant to rule 22.110(455B) shall not be in violation of this rule.

567—22.105(455B) Title V permit applications.

22.105(1) Duty to apply. For each source required to obtain a Title V permit, the owner or operator or designated representative, where applicable, shall present or mail a complete and timely permit application in accordance with this rule to the following locations: Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322 (two copies); and U.S. EPA Region VII, 901 North 5th Street, Kansas City, Kansas 66101 (one copy); and, if applicable, the local permitting authority, which is either Linn County Public Health Department, Air Quality Division, 501 13th Street NW, Cedar Rapids, Iowa 52405 (one copy); or Polk County Public Works, Air Quality Division, 5885 NE 14th Street, Des Moines, Iowa 50313 (one copy). Alternatively, an owner or operator may submit a complete and timely application through the electronic submittal format specified by the department. If an application is submitted electronically, the owner or operator shall provide one hard copy of the application to U.S. EPA Region VII.

a. Timely application. Each owner or operator applying for a Title V permit shall submit an application as follows:

(1) Initial application for an existing source. The owner or operator of a stationary source that was existing on or before April 20, 1994, shall make the first time submittals of a Title V permit application to the department by November 15, 1994. However, the owner or operator may choose to defer submittal of Part 2 of the permit application until December 31, 1995. The department will mail notice of the deadline for Part 2 of the permit application to all applicants who have filed Part 1 of the application by October 17, 1995.

(2) Initial application for a new source. The owner or operator of a stationary source that commenced construction or reconstruction after April 20, 1994, or that otherwise became subject to the requirement to obtain a Title V permit after April 20, 1994, shall submit an application to the department within 12 months of becoming subject to the Title V permit requirements.

(3) Application related to 112(g), PSD or nonattainment. The owner or operator of a stationary source that is subject to Section 112(g) of the Act, that is subject to rule 22.4(455B) (prevention of significant deterioration (PSD)), or that is subject to rule 22.5(455B) (nonattainment area permitting) shall submit an application to the department within 12 months of commencing operation. In cases in which an existing Title V permit would prohibit such construction or change in operation, the owner or operator must obtain a Title V permit revision before commencing operation.

(4) Renewal application. The owner or operator of a stationary source with a Title V permit shall submit an application to the department for a permit renewal at least 6 months prior to, but not more than 18 months prior to, the date of permit expiration.

(5) Changes allowed without a permit revision (off-permit revision). The owner or operator of a stationary source with a Title V permit who is proposing a change that is allowed without a Title V permit revision (an off-permit revision) as specified in rule 22.110(455B) shall submit to the department a written notification as specified in rule 22.110(455B) at least 30 days prior to the proposed change.

(6) Application for an administrative permit amendment. Prior to implementing a change that satisfies the requirements for an administrative permit amendment as set forth in rule 22.111(455B), the owner or operator shall submit to the department an application for an administrative amendment as specified in rule 22.111(455B).

(7) Application for a minor permit modification. Prior to implementing a change that satisfies the requirements for a minor permit modification as set forth in rule 22.112(455B), the owner or operator shall submit to the department an application for a minor permit modification as specified in rule 22.112(455B).

(8) Application for a significant permit modification. The owner or operator of a source that satisfies the requirements for a significant permit modification as set forth in rule 22.113(455B) shall submit to the department an application for a significant permit modification as specified in rule 22.113(455B) within three months after the commencing operation of the changed source. However, if the existing Title V permit would prohibit such construction or change in operation, the owner or operator shall not commence operation of the changed source until the department issues a revised Title V permit that allows the change.

(9) Application for an acid rain permit. The owner or operator of a source subject to the acid rain program, as set forth in rules 22.120(455B) through 22.148(455B), shall submit an application for an initial Phase II acid rain permit by January 1, 1996 (for sulfur dioxide), or by January 1, 1998 (for nitrogen oxides).

b. Complete application. To be deemed complete, an application must provide all information required pursuant to subrule 22.105(2), except that applications for permit revision need supply such information only if it is related to the proposed change.

22.105(2) Standard application form and required information. To apply for a Title V permit, applicants shall complete the standard permit application form available only from the department of natural resources and supply all information required by the filing instructions found on that form. The information submitted must be sufficient to evaluate the source and its application and to determine all applicable requirements and to evaluate the fee amount required by rule 22.106(455B). If a source is not a major source and is applying for a Title V operating permit solely because of a requirement imposed by paragraphs 22.101(1)“c” and “d,” then the information provided in the operating permit application may cover only the emissions units that trigger Title V applicability. The applicant shall submit the information called for by the application form for each emissions unit to be permitted, except for activities which are insignificant according to the provisions of rule 22.103(455B). The applicant shall provide a list of all insignificant activities and specify the basis for the determination of insignificance for each activity. Nationally standardized forms shall be used for the acid rain portions of permit applications and compliance plans, as required by regulations promulgated under Title IV of the Act. The standard application form and any attachments shall require that the following information be provided:

a. Identifying information, including company name and address (or plant or source name if different from the company name), owner’s name and agent, and telephone number and names of plant site manager/contact.

b. A description of the source’s processes and products (by two-digit Standard Industrial Classification Code) including any associated with each alternate scenario identified by the applicant.

c. The following emissions-related information shall be submitted to the department on the emissions inventory portion of the application:

(1) All emissions of pollutants for which the source is major, and all emissions of regulated air pollutants. The permit application shall describe all emissions of regulated air pollutants emitted from any emissions unit except where such units are exempted. The source shall submit additional information related to the emissions of air pollutants sufficient to verify which requirements are applicable to the source, and other information necessary to collect any permit fees owed under the approved fee schedule.

(2) Identification and description of all points of emissions in sufficient detail to establish the basis for fees and the applicability of any and all requirements.

(3) Emissions rates in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any.

(4) The following information to the extent it is needed to determine or regulate emissions: fuels, fuel use, raw materials, production rates, and operating schedules.

(5) Identification and description of air pollution control equipment.

(6) Identification and description of compliance monitoring devices or activities.

(7) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants.

(8) Other information required by any applicable requirement (including information related to stack height limitations developed pursuant to Section 123 of the Act).

(9) Calculations on which the information in subparagraphs (1) to (8) above is based.

(10) Fugitive emissions from a source shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

d. The following air pollution control requirements:

(1) Citation and description of all applicable requirements, and

(2) Description of or reference to any applicable test method for determining compliance with each applicable requirement.

e. Other specific information that may be necessary to implement and enforce other applicable requirements of the Act or of these rules or to determine the applicability of such requirements.

f. An explanation of any proposed exemptions from otherwise applicable requirements.

g. Additional information as determined to be necessary by the director to define alternative operating scenarios identified by the source pursuant to subrule 22.108(12) or to define permit terms and conditions relating to operational flexibility and emissions trading pursuant to subrule 22.108(11) and rule 22.112(455B).

h. A compliance plan that contains the following:

(1) A description of the compliance status of the source with respect to all applicable requirements.

(2) The following statements regarding compliance status: For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. For requirements for which the stationary source is not in compliance at the time of permit issuance, a narrative description of how the stationary source will achieve compliance with such requirements.

(3) A compliance schedule that contains the following:

1. For applicable requirements with which the stationary source is in compliance, a statement that the stationary source will continue to comply with such requirements. For applicable requirements that will become effective during the permit term, a statement that the stationary source will meet such requirements on a timely basis. A statement that the stationary source will meet in a timely manner applicable requirements that become effective during the permit term shall satisfy this provision, unless a more detailed schedule is expressly required by the applicable requirement.

2. A compliance schedule for sources that are not in compliance with all applicable requirements at the time of permit issuance. Such a schedule shall include a schedule of remedial measures, including an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements for which the stationary source will be in noncompliance at the time of permit issuance.

3. This compliance schedule shall resemble and be at least as stringent as any compliance schedule contained in any judicial consent decree or administrative order to which the source is subject. Any compliance schedule shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based.

(4) A schedule for submission of certified progress reports no less frequently than every six months for sources required to have a compliance schedule in the permit.

i. Requirements for compliance certification, including the following:

(1) A certification of compliance for the prior year with all applicable requirements certified by a responsible official consistent with subrule 22.107(4) and Section 114(a)(3) of the Act.

(2) A statement of methods used for determining compliance, including a description of monitoring, record keeping, and reporting requirements and test methods.

(3) A schedule for submission of compliance certifications for each compliance period (one year unless required for a shorter time period by an applicable requirement) during the permit term, which shall be submitted annually, or more frequently if required by an underlying applicable requirement or by the director.

(4) A statement indicating the source's compliance status with any applicable enhanced monitoring and compliance certification requirements of the Act.

(5) Notwithstanding any other provisions of these rules, for the purposes of submission of compliance certifications, an owner or operator is not prohibited from using monitoring as required by subrules 22.108(3), 22.108(4) or 22.108(5) and incorporated into a Title V operating permit in addition to any specified compliance methods.

j. The compliance plan content requirements specified in these rules shall apply and be included in the acid rain portion of a compliance plan for a Title IV affected source, except as specifically superseded

by regulations promulgated under Title IV of the Act, with regard to the schedule and method(s) the source shall use to achieve compliance with the acid rain emissions limitations.

22.105(3) Hazardous air pollutant early reduction application. Anyone requesting a compliance extension from a standard issued under Section 112(d) of the Act must submit with its Title V permit application information that complies with the requirements established in 567—paragraph 23.1(4) “d.”

22.105(4) Acid rain application content. The acid rain application content shall be as prescribed in the acid rain rules found at rules 22.128(455B) and 22.129(455B).

22.105(5) More than one Title V operating permit for a stationary source. Following application made pursuant to subrule 22.105(1), the department may, at its discretion, issue more than one Title V operating permit for a stationary source, provided that the owner or operator does not have, and does not propose to have, a sourcewide emission limit or a sourcewide alternative operating scenario.

567—22.106(455B) Title V permit fees.

22.106(1) Fee established. Any person required to obtain a Title V permit shall pay an annual fee based on the total tons of actual emissions of each regulated air pollutant, beginning November 15, 1994. Beginning July 1, 1996, Title V operating permit fees will be paid on or before July 1 of each year. The fee shall be based on actual emissions required to be included in the Title V operating permit application and the annual emissions statement for the previous calendar year. The department and the commission will review the fee structure on an annual basis and adjust the fee as necessary to cover all reasonable costs required to develop and administer the programs required by the Act. The department shall submit the proposed budget for the following fiscal year to the commission no later than the March meeting. The commission shall set the fee based on the reasonable cost to run the program and the proposed budget no later than the May commission meeting of each year. The commission shall provide an opportunity for public comment prior to setting the fee. The commission shall not set the fee higher than \$56 per ton without adopting the change pursuant to formal rule making.

22.106(2) Fee calculation. The fee amount shall be calculated based on the first 4,000 tons of each regulated air pollutant or contaminant emitted each year from each major source.

22.106(3) Fee and documentation due dates.

a. The fee shall be submitted annually by July 1. For emissions located in Polk County or Linn County, the fee shall be submitted with three copies of the following forms. For emissions in all remaining counties, the fee shall be submitted with two copies of the following forms:

1. Form 1.0 “Facility identification”;
2. Form 5.0 “Title V annual emissions summary/fee”; and
3. Part 3 “Application certification.”

b. For emissions located in Polk County or Linn County, three copies of the following forms shall be submitted annually by March 31 documenting actual emissions for the previous calendar year. For emissions in all other counties, two copies of the following forms shall be submitted:

1. Form 1.0 “Facility identification”;
2. Form 4.0 “Emission unit—actual operations and emissions” for each emission unit;
3. Form 5.0 “Title V annual emissions summary/fee”; and
4. Part 3 “Application certification.”

Alternatively, an owner or operator may submit the required emissions inventory information through the electronic submittal format specified by the department.

If there are any changes to the emission calculation form, the department shall make revised forms available to the public by January 1. If revised forms are not available by January 1, forms from the previous year may be used and the year of emissions documented changed. The department shall calculate the total statewide Title V emissions for the prior calendar year and make this information available to the public no later than April 30 of each year.

22.106(4) Phase I acid rain sources. No fee shall be required to be paid for emissions which occur during the years 1993 through 1999 inclusive, with respect to any Phase I acid rain affected unit under Section 404 of the Act.

22.106(5) Operation in Iowa. The fee for a portable emissions unit or stationary source which operates both in Iowa and out of state shall be calculated only for emissions from the source while operating in Iowa.

22.106(6) Title V exempted stationary sources. No fee shall be required to be paid for emissions until the year in which sources exempted under subrules 22.102(1) and 22.102(2) are required to apply for a Title V permit. Fees shall be paid for the emission year preceding the year in which the application is due and thereafter.

22.106(7) Insignificant activities. No fee shall be required to be paid for insignificant activities, as defined in rule 22.103(455B).

22.106(8) Correction of errors. If an owner or operator, or the department, finds an error in a Title V emissions inventory or Title V fee payment, the owner or operator shall submit to the department revised forms making the necessary corrections to the Title V emissions inventory or Title V fee payment. Forms shall be submitted as soon as possible after the errors are discovered or upon notification by the department.

567—22.107(455B) Title V permit processing procedures.

22.107(1) Action on application.

a. Conditions for action on application. A permit, permit modification, or renewal may be issued only if all of the following conditions have been met:

(1) The permitting authority has received a complete application for a permit, permit modification, or permit renewal, except that a complete application need not be received before issuance of a general permit under rule 22.109(455B);

(2) Except for modifications qualifying for minor permit modification procedures under rule 22.112(455B), the permitting authority has complied with the requirements for public participation under subrule 22.107(6);

(3) The permitting authority has complied with the requirements for notifying and responding to affected states under subrule 22.107(7);

(4) The conditions of the permit provide for compliance with all applicable requirements and the requirements of this chapter;

(5) The administrator has received a copy of the proposed permit and any notices required under subrule 22.107(7), and has not objected to issuance of the permit under subrule 22.107(7) within the time period specified therein;

(6) If the administrator has properly objected to the permit pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, or subrule 22.107(7), then the permitting authority may issue a permit only after the administrator's objection has been resolved; and

(7) No permit for a solid waste incineration unit combusting municipal waste subject to the provisions of Section 129(e) of the Act may be issued by an agency, instrumentality or person that is also responsible, in whole or part, for the design and construction or operation of the unit.

b. Time for action on application. The permitting authority shall take final action on each complete permit application (including a request for permit modification or renewal) within 18 months of receiving a complete application, except in the following instances:

(1) When otherwise provided under Title V or Title IV of the Act for the permitting of affected sources under the acid rain program.

(2) In the case of initial permit applications, the permitting authority may take up to three years from the effective date of the program to take final action on an application.

(3) Any complete permit applications containing an early reduction demonstration under Section 112(i)(5) of the Act shall be acted upon within nine months of receipt of the complete application.

c. Prioritization of applications. The director shall give priority to action on Title V applications involving construction or modification for which a construction permit pursuant to subrule 22.1(1) or Title I of the Act, Parts C and D, is also required. The director also shall give priority to action on Title V applications involving early reduction of hazardous air pollutants pursuant to 567—paragraph 23.1(4) "d."

d. Completeness of applications. The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take final action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response. The source's ability to operate without a permit, as set forth in rule 22.104(455B), shall be in effect from the date the application is determined to be complete until the final permit is issued, provided that the applicant submits any requested additional information by the deadline specified by the permitting authority. For modifications processed through minor permit modification procedures, a completeness determination shall not be required.

e. Decision to deny a permit application. The director shall decide to issue or deny the permit. The director shall notify the applicant as soon as practicable that the application has been denied. Upon denial of the permit the provisions of paragraph 22.107(1) "d" shall no longer be applicable. The new application shall be regarded as an entirely separate application containing all the required information and shall not depend on references to any documents contained in the previous denied application.

f. Fact sheet. A draft permit and fact sheet shall be prepared by the permitting authority. The fact sheet shall include the rationale for issuance or denial of the permit; a brief description of the type of facility; a summary of the type and quantity of air pollutants being emitted; a brief summary of the legal and factual basis for the draft permit conditions, including references to applicable statutes and rules; a description of the procedures for reaching final decision on the draft permit including the comment period, the address where comments will be received, and procedures for requesting a hearing and the nature of the hearing; and the name and telephone number for a person to contact for additional information. The permitting authority shall provide the fact sheet to EPA and to any other person who requests it.

g. Relation to construction permits. The submittal of a complete application shall not affect the requirement that any source have a construction permit under Title I of the Act and subrule 22.1(1).

22.107(2) Confidential information. If a source has submitted information with an application under a claim of confidentiality to the department, the source shall also submit a copy of such information directly to the administrator. Requests for confidentiality must comply with 561—Chapter 2.

22.107(3) Duty to supplement or correct application. Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date the source filed a complete application but prior to release of a draft permit. Applicants who have filed a complete application shall have 60 days following notification by the department to file any amendments. Any MACT determinations in permit applications will be evaluated based on the standards, limitations or levels of technology existing on the date the initial application is deemed complete.

22.107(4) Certification of truth, accuracy, and completeness. Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

22.107(5) Early reduction application evaluation. Hazardous air pollutant early reduction application evaluation review shall follow the procedures established in 567—paragraph 23.1(4) "d."

22.107(6) Public notice and public participation.

a. The permitting authority shall provide public notice and an opportunity for public comments, including an opportunity for a hearing, before taking any of the following actions: issuance, denial or renewal of a permit; or significant modification or revocation or reissuance of a permit.

b. Notice shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. Notice also shall be

given to persons on a mailing list developed by the permitting authority, including those who request in writing to be on the list. The department may use other means if necessary to ensure adequate notice to the affected public.

c. The public notice shall include the following:

- (1) Identification of the Title V source.
- (2) Name and address of the permittee.
- (3) Name and address of the permitting authority processing the permit.
- (4) The activity or activities involved in the permit action.
- (5) The emissions change involved in any permit modification.
- (6) The air pollutants or contaminants to be emitted.
- (7) The time and place of any possible public hearing.
- (8) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit. A statement of procedures to request a public hearing shall be included.

(9) The name, address, and telephone number of a person from whom additional information may be obtained. Information entitled to confidential treatment pursuant to Section 114(c) of the Act or state law shall not be released pursuant to this provision. However, the contents of a Title V permit shall not be entitled to protection under Section 114(c) of the Act.

(10) Locations where copies of the permit application and the proposed permit may be reviewed, including the closest department office, and the times at which they shall be available for public inspection.

d. At least 30 days shall be provided for public comment. Notice of any public hearing shall be given at least 30 days in advance of the hearing.

e. Any person may request a public hearing. A request for a public hearing shall be in writing and shall state the person's interest in the subject matter and the nature of the issues proposed to be raised at the hearing. The director shall hold a public hearing upon finding, on the basis of requests, a significant degree of relevant public interest in a draft permit. A public hearing also may be held at the director's discretion.

f. The director shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the director's responses shall be made available to the public.

g. The permitting authority shall provide notice and opportunity for participation by affected states as provided by subrule 22.107(7).

22.107(7) Permit review by EPA and affected states.

a. *Transmission of information to the administrator.* Except as provided in subrule 22.107(2) or waived by the administrator, the director shall provide to the administrator a copy of each permit application or modification application, including any attachments and compliance plans; each proposed permit; and each final permit. For purposes of this subrule, the application information may be submitted in a computer-readable format compatible with the administrator's national database management system.

b. *Review by affected states.* The director shall provide notice of each draft permit to any affected state on or before the time that public notice is provided to the public pursuant to subrule 22.107(6), except to the extent that subrule 22.112(3) requires the timing of the notice to be different. If the director refuses to accept a recommendation of any affected state, submitted during the public or affected state review period, then the director shall notify the administrator and the affected state in writing. The notification shall include the director's reasons for not accepting the recommendation(s). The director shall not be required to accept recommendations that are not based on applicable requirements.

c. *EPA objection.* No permit for which an application must be transmitted to the administrator shall be issued if the administrator objects in writing to its issuance as not in compliance with the applicable requirements within 45 days after receiving a copy of the proposed permit and necessary supporting information under 22.107(7) "a." Within 90 days after the date of an EPA objection made pursuant to this rule, the director shall submit a response to the objection, if the objection has not been resolved.

22.107(8) *Public petitions to the administrator regarding Title V permits.*

a. If the administrator does not object to a proposed permit, any person may petition the administrator within 60 days after the expiration of the administrator's 45-day review period to make an objection pursuant to 40 CFR 70.8(d) as amended to July 21, 1992.

b. Any person who petitions the administrator pursuant to the provisions of 40 CFR 70.8(d) as amended to July 21, 1992, shall notify the department by certified mail of such petition immediately, and in no case more than 10 days following the date the petition is submitted to EPA. Such notice shall include a copy of the petition submitted to EPA and a separate written statement detailing the grounds for the objection(s) and whether the objection(s) was raised during the public comment period. A petition for review shall not stay the effectiveness of a permit or its requirements if the permit was issued after the end of the 45-day EPA review period and prior to the administrator's objection.

c. If the administrator objects to the permit as a result of a petition filed pursuant to 40 CFR 70.8(d) as amended to July 21, 1992, then the director shall not issue a permit until the administrator's objection has been resolved. However, if the director has issued a permit prior to receipt of the administrator's objection, and the administrator modifies, terminates, or revokes such permit, consistent with the procedures in 40 CFR 70.7 as amended to July 21, 1992, then the director may thereafter issue only a revised permit that satisfies the administrator's objection. In any case, the source shall not be in violation of the requirement to have submitted a timely and complete application.

22.107(9) *A Title V permit application may be denied if:*

a. The director finds that a source is not in compliance with any applicable requirement; or

b. An applicant knowingly submits false information in a permit application.

22.107(10) *Retention of permit records.* The director shall keep all records associated with each permit for a minimum of five years.

567—22.108(455B) Permit content. Each Title V permit shall include the following elements:

22.108(1) Enforceable emission limitations and standards. Each permit issued pursuant to this chapter shall include emissions limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of permit issuance.

a. The permit shall specify and reference the origin of and authority for each term or condition and identify any difference in form as compared to the applicable requirement upon which the term or condition is based.

b. The permit shall state that, where an applicable requirement of the Act is more stringent than an applicable requirement of regulations promulgated under Title IV of the Act, both provisions shall be incorporated into the permit and shall be enforceable by the administrator.

c. If an applicable implementation plan allows a determination of an alternative emission limit at a Title V source, equivalent to that contained in the plan, to be made in the permit issuance, renewal, or significant modification process, and the state elects to use such process, then any permit containing such equivalency determination shall contain provisions to ensure that any resulting emissions limit has been demonstrated to be quantifiable, accountable, enforceable, and based on replicable procedures.

d. If an early reduction demonstration is approved as part of the Title V permit application, the permit shall include enforceable alternative emissions limitations for the source reflecting the reduction which qualified the source for the compliance extension.

e. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

f. For all major sources, all applicable requirements for all relevant emissions units in the major source shall be included in the permit.

22.108(2) Permit duration. The permit shall specify a fixed term not to exceed five years except:

a. Permits issued to Title IV affected sources shall have a fixed term of five years.

b. Permits issued to solid waste incineration units combusting municipal waste subject to standards under Section 129(e) of the Act shall have a term not to exceed 12 years. Such permits shall be reviewed every five years.

22.108(3) Monitoring. Each permit shall contain the following requirements with respect to monitoring:

a. All emissions monitoring and analysis procedures or test methods required under the applicable requirements, including any procedures and methods promulgated pursuant to Section 114(a)(3) or 504(b) of the Act;

b. Where the applicable requirement does not require periodic testing or instrumental or noninstrumental monitoring (which may consist of record keeping designed to serve as monitoring), periodic monitoring sufficient to yield reliable data from the relevant time period that are representative of the source's compliance with the permit, as reported pursuant to subrule 22.108(5). Such monitoring shall be determined by application of the "Periodic Monitoring Guidance" (June 18, 2001) available from the department;

c. As necessary, requirements concerning the use, maintenance, and, where appropriate, installation of monitoring equipment or methods; and

d. As required, Compliance Assurance Monitoring (CAM) consistent with 40 CFR Part 64 (as amended through October 22, 1997).

22.108(4) Record keeping. With respect to record keeping, the permit shall incorporate all applicable record-keeping requirements and require, where applicable, the following:

a. Records of required monitoring information that include the following:

- (1) The date, place as defined in the permit, and time of sampling or measurements;
- (2) The date(s) the analyses were performed;
- (3) The company or entity that performed the analyses;
- (4) The analytical techniques or methods used;
- (5) The results of such analyses; and
- (6) The operating conditions as existing at the time of sampling or measurement; and

b. Retention of records of all required monitoring data and support information for a period of at least five years from the date of the monitoring sample, measurement, report, or application. Support information includes all calibration and maintenance records and all original strip-chart and other recordings for continuous monitoring instrumentation, and copies of all reports required by the permit.

22.108(5) Reporting. With respect to reporting, the permit shall incorporate all applicable reporting requirements and shall require the following:

a. Submittal of reports of any required monitoring at least every six months. All instances of deviations from permit requirements must be clearly identified in such reports. All required reports must be certified by a responsible official consistent with subrule 22.107(4).

b. Prompt reporting of deviations from permit requirements, including those attributable to upset conditions as defined in the permit, the probable cause of such deviations, and any corrective actions or preventive measures taken. The director shall define "prompt" in relation to the degree and type of deviation likely to occur and the applicable requirements.

22.108(6) Risk management plan. Pursuant to Section 112(r)(7)(E) of the Act, if the source is required to develop and register a risk management plan pursuant to Section 112(r) of the Act, the permit shall state the requirement for submission of the plan to the air quality bureau of the department. The permit shall also require filing the plan with appropriate authorities and an annual certification to the department that the plan is being properly implemented.

22.108(7) A permit condition prohibiting emissions exceeding any allowances that the affected source lawfully holds under Title IV of the Act or the regulations promulgated thereunder.

a. No permit revision shall be required for increases in emissions that are authorized by allowances acquired pursuant to the acid rain program, provided that such increases do not require a permit revision under any other applicable requirement.

b. No limit shall be placed on the number of allowances held by the Title IV affected source. The Title IV affected source may not, however, use allowances as a defense to noncompliance with any other applicable requirement.

c. Any such allowances shall be accounted for according to the procedures established in regulations promulgated under Title IV of the Act.

d. Any permit issued pursuant to the requirements of these rules and Title V of the Act to a unit subject to the provisions of Title IV of the Act shall include conditions prohibiting all of the following:

- (1) Annual emissions of sulfur dioxide in excess of the number of allowances to emit sulfur dioxide held by the owners or operators of the unit or the designated representative of the owners or operators.
- (2) Exceedences of applicable emission rates.
- (3) The use of any allowance prior to the year for which it was allocated.
- (4) Contravention of any other provision of the permit.

22.108(8) Severability clause. The permit shall contain a severability clause to ensure the continued validity of the various permit requirements in the event of a challenge to any portions of the permit.

22.108(9) Other provisions. The Title V permit shall contain provisions stating the following:

a. The permittee must comply with all conditions of the Title V permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for a permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

b. Need to halt or reduce activity not a defense. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit.

c. The permit may be modified, revoked, reopened, and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or of a notification of planned changes or anticipated noncompliance does not stay any permit condition.

d. The permit does not convey any property rights of any sort, or any exclusive privilege.

e. The permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for modifying, revoking and reissuing, or terminating the permit or to determine compliance with the permit. Upon request, the permittee also shall furnish to the director copies of records required to be kept by the permit or, for information claimed to be confidential, the permittee shall furnish such records directly to the administrator of EPA along with a claim of confidentiality.

22.108(10) Fees. The permit shall include a provision to ensure that the Title V permittee pays fees to the director pursuant to rule 22.106(455B).

22.108(11) Emissions trading. A provision of the permit shall state that no permit revision shall be required, under any approved economic incentives, marketable permits, emissions trading and other similar programs or processes for changes that are provided for in the permit.

22.108(12) Terms and conditions for reasonably anticipated operating scenarios identified by the source in its application and as approved by the director. Such terms and conditions:

a. Shall require the source, contemporaneously with making a change from one operating scenario to another, to record in a log at the permitted facility a record of the scenario under which it is operating; and

b. Must ensure that the terms and conditions of each such alternative scenario meet all applicable requirements and the requirements of the department's rules.

22.108(13) Terms and conditions, if the permit applicant requests them, for the trading of emissions increases and decreases in the permitted facility, to the extent that the applicable requirements provide for trading such increases and decreases without a case-by-case approval of each emissions trade. Such terms and conditions:

a. Shall include all terms required under subrules 22.108(1) to 22.108(13) and subrule 22.108(15) to determine compliance;

b. Must meet all applicable requirements of the Act and regulations promulgated thereunder and all requirements of this chapter; and

c. May extend the permit shield described in subrule 22.108(18) to all terms and conditions that allow such increases and decreases in emissions.

22.108(14) Federally enforceable requirements.

a. All terms and conditions in a Title V permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the Act.

b. Notwithstanding paragraph “*a*” of this subrule, the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements. Terms and conditions so designated are not subject to the requirements of 40 CFR 70.7 or 70.8 (as amended through July 21, 1992).

22.108(15) Compliance requirements. All Title V permits shall contain the following elements with respect to compliance:

a. Consistent with the provisions of subrules 22.108(3) to 22.108(5), compliance certification, testing, monitoring, reporting, and record-keeping requirements sufficient to ensure compliance with the terms and conditions of the permit. Any documents, including reports, required by a permit shall contain a certification by a responsible official that meets the requirements of subrule 22.107(4).

b. Inspection and entry provisions which require that, upon presentation of proper credentials, the permittee shall allow the director or the director’s authorized representative to:

(1) Enter upon the permittee’s premises where a Title V source is located or emissions-related activity is conducted, or where records must be kept under the conditions of the permit;

(2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of the permit;

(3) Inspect, at reasonable times, any facilities, equipment (including monitoring and air pollution control equipment), practices, or operations regulated or required under the permit; and

(4) Sample or monitor, at reasonable times, substances or parameters for the purpose of ensuring compliance with the permit or other applicable requirements.

c. A schedule of compliance consistent with subparagraphs 22.105(2) “*h*” and “*j*” and subrule 22.105(3).

d. Progress reports, consistent with an applicable schedule of compliance and with the provisions of paragraphs 22.105(2) “*h*” and “*j*,” to be submitted at least every six months, or more frequently if specified in the applicable requirement or by the department in the permit. Such progress reports shall contain the following:

(1) Dates for achieving the activities, milestones or compliance required in the schedule of compliance, and dates when such activities, milestones or compliance were achieved; and

(2) An explanation of why any dates in the schedule of compliance were not or will not be met, and any preventive or corrective measures adopted.

e. Requirements for compliance certification with terms and conditions contained in the permit, including emission limitations, standards, or work practices. Permits shall include each of the following:

(1) The frequency of submissions of compliance certifications, which shall not be less than annually.

(2) The means to monitor the compliance of the source with its emissions limitations, standards, and work practices, in accordance with the provisions of all applicable department rules.

(3) A requirement that the compliance certification include: the identification of each term or condition of the permit that is the basis of the certification; the compliance status; whether compliance was continuous or intermittent; the method(s) used for determining the compliance status of the source, currently and over the reporting period consistent with all applicable department rules; and other facts as the director may require to determine the compliance status of the source.

(4) A requirement that all compliance certifications be submitted to the administrator and the director.

f. Such additional provisions as the director may require.

g. Such additional provisions as may be specified pursuant to Sections 114(a)(3) and 504(b) of the Act.

h. If there is a federal implementation plan applicable to the source, a provision that compliance with the federal implementation plan is required.

22.108(16) Emergency provisions.

a. For the purposes of a Title V permit, an “emergency” means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source

to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

b. An emergency constitutes an affirmative defense to an action brought for noncompliance with such technology-based emission limitations if the conditions of paragraph 22.108(16) “*c*” are met.

c. Requirements for affirmative defense. The affirmative defense of emergency shall be demonstrated by the source through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An emergency occurred and that the permittee can identify the cause(s) of the emergency;
- (2) The permitted facility was at the time being properly operated;
- (3) During the period of the emergency the permittee took all reasonable steps to minimize levels of emissions that exceeded the emissions standards or other requirements of the permit; and
- (4) The permittee submitted notice of the emergency to the director by certified mail within two working days of the time when emission limitations were exceeded due to the emergency. This notice fulfills the requirement of paragraph 22.108(5) “*b.*” This notice must contain a description of the emergency, any steps taken to mitigate emissions, and corrective actions taken.

d. In any enforcement proceeding, the permittee seeking to establish the occurrence of an emergency has the burden of proof.

e. This provision is in addition to any emergency or upset provision contained in any applicable requirement.

22.108(17) Permit reopenings.

a. A Title V permit issued to a major source shall require that revisions be made to incorporate applicable standards and regulations adopted by the administrator pursuant to the Act, provided that:

- (1) The reopening and revision on this ground is not required if the permit has a remaining term of less than three years;
- (2) The reopening and revision on this ground is not required if the effective date of the requirement is later than the date on which the permit is due to expire, unless the original permit or any of its terms and conditions have been extended pursuant to 40 CFR 70.4(b)(10)(i) or (ii) as amended to May 15, 2001; or
- (3) The additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit.

b. The revisions shall be made as expeditiously as practicable, but not later than 18 months after the promulgation of such standards and regulations. Any permit revision required pursuant to this subrule shall be treated as a permit renewal.

22.108(18) Permit shield.

a. The director may expressly include in a Title V permit a provision stating that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance, provided that:

- (1) Such applicable requirements are included and are specifically identified in the permit; or
- (2) The director, in acting on the permit application or revision, determines in writing that other requirements specifically identified are not applicable to the source, and the permit includes the determination or a concise summary thereof.

b. A Title V permit that does not expressly state that a permit shield exists shall be presumed not to provide such a shield.

c. A permit shield shall not alter or affect the following:

- (1) The provisions of Section 303 of the Act (emergency orders), including the authority of the administrator under that section;
- (2) The liability of an owner or operator of a source for any violation of applicable requirements prior to or at the time of permit issuance;
- (3) The applicable requirements of the acid rain program, consistent with Section 408(a) of the Act;

(4) The ability of the department or the administrator to obtain information from the facility pursuant to Section 114 of the Act.

22.108(19) Emission trades. For emission trades at facilities solely for the purpose of complying with a federally enforceable emissions cap that is established in the permit independent of otherwise applicable requirements, permit applications under this provision are required to include proposed replicable procedures and proposed permit terms that ensure the emission trades are quantifiable and enforceable.

567—22.109(455B) General permits.

22.109(1) Applicability. The director may issue a general permit for multiple sources that contain a number of operations and processes which emit pollutants with similar characteristics and that have substantially similar requirements regarding emissions, operations, monitoring and record keeping. General permits shall not be issued to Title IV affected sources except as provided in regulations promulgated by the administrator under Title IV of the Act.

22.109(2) Issuance of general permits. General permits may be issued by the director and codified in this chapter following notice and opportunity for public participation consistent with the procedures contained in subrule 22.107(6). Public participation shall be provided for a new general permit, for any revision of an existing general permit, and for renewal of an existing general permit. Permit review by the administrator and affected states shall be provided consistent with subrule 22.107(7). Each general permit shall identify criteria by which sources may qualify to operate under the general permit and shall comply with all requirements applicable to other Title V permits.

22.109(3) Applications. Any source that would qualify for a general permit must apply for either (a) coverage under the terms of the general permit or (b) an individual Title V permit. Applications for authority to operate under the terms of a general permit shall be made on the “General Permit Application Form” and shall specify the general permit concerned by citing the subrule containing that general permit. These applications may deviate from the Title V individual permit application but shall include all information necessary to determine qualification for, and to ensure compliance with, the general permit. If a source is later determined not to qualify for the terms and conditions of the general permit, then the source shall be subject to enforcement action for operation without a Title V operating permit.

22.109(4) General permit content. A general permit shall include all of the following:

- a. The terms and conditions required for all sources authorized to operate under the permit;
- b. Emission limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of the permit issuance;
- c. A compliance plan;
- d. Monitoring, record keeping, and reporting requirements to ensure compliance with the terms and conditions of the general permit. These requirements shall ensure the use of consistent terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emissions limitations, standards, and other requirements contained in the general permit;
- e. The requirement to submit at least every six months the results of any required monitoring;
- f. References to the authority for the term or condition;
- g. A provision specifying permit duration as a fixed term not to exceed five years;
- h. A severability clause provision pursuant to subrule 22.108(8);
- i. A provision for payment of fees pursuant to subrule 22.108(10);
- j. A provision for emissions trading pursuant to subrules 22.108(11) and 22.108(13);
- k. Other provisions pursuant to subrule 22.108(9);
- l. Statement that the Title V permit is to be kept at the site of the source as well as at the corporate offices; and
- m. The process for individual sources to apply for coverage under the general permit.

22.109(5) Action on general permit application.

a. Once the director has issued a general permit, any source which is a member of the class of sources covered by the general permit may apply to the director for authority to operate under the general permit.

b. Review of a general permit application. The director shall grant the conditions and terms of a general permit to all sources that apply and qualify under the identified criteria.

c. The director may grant a source's request for authorization to operate under a general permit without repeating the public participation procedures followed in subrule 22.109(2). However, such a grant shall not be a final permit action for purposes of judicial review.

22.109(6) *General permit renewal.* The director shall review and may renew general permits every five years. A source's authorization to operate under a general permit shall expire when the general permit expires regardless of when the authorization began during the five-year period.

22.109(7) *Relationship to individual permits.* Any source covered by a general permit may request to be excluded from coverage by applying for an individual Title V permit. Coverage under the general permit shall terminate on the date the individual Title V permit is issued.

22.109(8) *Permit shield for general permit.* Each general permit issued under this chapter shall specifically identify all federal, state, and local air pollution control requirements applicable to the source at the time the permit is issued. The permit shall state that compliance with the conditions of the permit shall be deemed compliance with any applicable requirements as of the date of permit issuance. Any permit under this chapter that does not expressly state that a permit shield exists shall be presumed not to provide such a shield. Notwithstanding the above provisions, the source shall be subject to enforcement action for operation without a permit if the source is later determined not to qualify for the conditions and terms of the general permit.

22.109(9) *Revocations of authority to operate.*

a. The director may require any source or a class of sources authorized to operate under a general permit to individually apply for and obtain a Title V permit at any time if:

- (1) The source is not in compliance with the terms and conditions of the general permit;
- (2) The director has determined that the emissions from the source or class of sources is contributing significantly to ambient air quality standard violations and that these emissions are not adequately addressed by the terms and conditions of the general permit; or
- (3) The director has information which indicates that the cumulative effects on human health and the environment from the sources covered under the general permit are unacceptable.

b. The director shall provide written notice to all sources operating under that general permit of the proposed revocation of that general permit. Such notice shall include an explanation of the basis for the proposed action.

567—22.110(455B) Changes allowed without a Title V permit revision (off-permit revisions).

22.110(1) A source with a Title V permit may make Section 502(b)(10) changes to the permitted installation/facility without a Title V permit revision if:

a. The changes are not major modifications under any provision of any program required by Section 110 of the Act, modifications under Section 111 of the Act, modifications under Section 112 of the Act, or major modifications of this chapter;

b. The changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

c. The changes are not modifications under any provision of Title I of the Act and the changes do not exceed the emissions allowable under the permit (whether expressed therein as a rate of emissions or in terms of total emissions);

d. The changes are not subject to any requirement under Title IV of the Act (revisions affecting Title IV permitting are addressed in rules 22.140(455B) through 22.144(455B));

e. The changes comply with all applicable requirements; and

f. For each such change, the permitted source provides to the department and the administrator by certified mail, at least 30 days in advance of the proposed change, a written notification, including the following, which shall be attached to the permit by the source, the department, and the administrator:

- (1) A brief description of the change within the permitted facility,
- (2) The date on which the change will occur,
- (3) Any change in emission as a result of the change,

- (4) The pollutants emitted subject to the emissions trade,
- (5) If the emissions trading provisions of the state implementation plan are invoked, then the Title V permit requirements with which the source shall comply; a description of how the emission increases and decreases will comply with the terms and conditions of the Title V permit;
- (6) A description of the trading of emissions increases and decreases for the purpose of complying with a federally enforceable emissions cap as specified in and in compliance with the Title V permit; and
- (7) Any permit term or condition no longer applicable as a result of the change.

22.110(2) Such changes do not include changes that would violate applicable requirements or contravene federally enforceable permit terms and conditions that are monitoring (including test methods), record keeping, reporting, or compliance certification requirements.

22.110(3) Notwithstanding any other part of this rule, the director may, upon review of a notice, require a stationary source to apply for a Title V permit if the change does not meet the requirements of subrule 22.110(1).

22.110(4) The permit shield provided in subrule 22.108(18) shall not apply to any change made pursuant to this rule. Compliance with the permit requirements that the source will meet using the emissions trade shall be determined according to requirements of the state implementation plan authorizing the emissions trade.

567—22.111(455B) Administrative amendments to Title V permits.

22.111(1) An administrative permit amendment is a permit revision that does any of the following:

- a. Corrects typographical errors;
- b. Identifies a change in the name, address, or telephone number of any person identified in the permit, or provides a similar minor administrative change at the source;
- c. Requires more frequent monitoring or reporting by the permittee; or
- d. Allows for a change in ownership or operational control of a source where the director determines that no other change in the permit is necessary, provided that a written agreement containing a specific date for transfer of permit responsibility, coverage, and liability between the current and new permittee has been submitted to the director.

22.111(2) Administrative permit amendments to portions of permits containing provisions pursuant to Title IV of the Act shall be governed by regulations promulgated by the administrator under Title IV of the Act.

22.111(3) The director shall take no more than 60 days from receipt of a request for an administrative permit amendment to take final action on such request, and may incorporate such changes without providing notice to the public or affected states provided that the director designates any such permit revisions as having been made pursuant to this rule.

22.111(4) The director shall submit to the administrator a copy of each Title V permit revised under this rule.

22.111(5) The source may implement the changes addressed in the request for an administrative amendment immediately upon submittal of the request.

567—22.112(455B) Minor Title V permit modifications.

22.112(1) Minor Title V permit modification procedures may be used only for those permit modifications that satisfy all of the following:

- a. Do not violate any applicable requirement;
- b. Do not involve significant changes to existing monitoring, reporting, or record-keeping requirements in the Title V permit;
- c. Do not require or change a case-by-case determination of an emission limitation or other standard, or an increment analysis;
- d. Do not seek to establish or change a permit term or condition for which there is no corresponding underlying applicable requirement and that the source has assumed in order to avoid an applicable requirement to which the source would otherwise be subject. Such terms and conditions include any federally enforceable emissions caps which the source would assume to avoid classification

as a modification under any provision of Title I of the Act; and an alternative emissions limit approved pursuant to regulations promulgated under Section 112(i)(5) of the Act;

e. Are not modifications under any provision of Title I of the Act; and

f. Are not required to be processed as a significant modification under rule 22.113(455B).

22.112(2) An application for minor permit revision shall be on the minor Title V modification application form and shall include at least the following:

a. A description of the change, the emissions resulting from the change, and any new applicable requirements that will apply if the change occurs;

b. The source's suggested draft permit;

c. Certification by a responsible official, pursuant to subrule 22.107(4), that the proposed modification meets the criteria for use of minor permit modification procedures and a request that such procedures be used; and

d. Completed forms to enable the department to notify the administrator and affected states as required by subrule 22.107(7).

22.112(3) The department shall notify the administrator and affected states within five working days of receipt of a complete permit modification application. Notification shall be in accordance with the provisions of subrule 22.107(7). The department shall promptly send to the administrator any notification required by subrule 22.107(7).

22.112(4) The director shall not issue a final Title V permit modification until after the administrator's 45-day review period or until the administrator has notified the director that the administrator will not object to issuance of the Title V permit modification, whichever is first. Within 90 days of the director's receipt of an application under the minor permit modification procedures, or 15 days after the end of the administrator's 45-day review period provided for in subrule 22.107(7), whichever is later, the director shall:

a. Issue the permit modification as proposed;

b. Deny the permit modification application;

c. Determine that the requested permit modification does not meet the minor permit modification criteria and should be reviewed under the significant modification procedures; or

d. Revise the draft permit modification and transmit to the administrator the proposed permit modification, as required by subrule 22.107(7).

22.112(5) Source's ability to make change. The source may make the change proposed in its minor permit modification application immediately after it files the application. After the source makes the change allowed by the preceding sentence, and until the director takes any of the actions specified in paragraphs 22.112(4) "a" to "c," the source must comply with both the applicable requirements governing the change and the proposed permit terms and conditions. During this time, the source need not comply with the existing permit terms and conditions it seeks to modify. However, if the source fails to comply with its proposed permit terms and conditions during this time period, the existing permit terms and conditions it seeks to modify may be enforced against it.

22.112(6) Permit shield. The permit shield under subrule 22.108(18) shall not extend to minor Title V permit revisions.

567—22.113(455B) Significant Title V permit modifications.

22.113(1) Significant Title V modification procedures shall be used for applications requesting Title V permit modifications that do not qualify as minor Title V modifications or as administrative amendments. These include, but are not limited to, all significant changes in monitoring permit terms, every relaxation of reporting or record-keeping permit terms, and any change in the method of measuring compliance with existing requirements.

22.113(2) Significant Title V permit modifications shall meet all requirements of this chapter, including those for applications, public participation, review by affected states, and review by the administrator, as those requirements that apply to Title V permit issuance and renewal.

22.113(3) Unless the director determines otherwise, review of significant Title V permit modification applications shall be completed within nine months of receipt of a complete application.

22.113(4) For a change that is subject to the requirements for a significant permit modification (see rule 22.113(455B)), the permittee shall submit to the department an application for a significant permit modification not later than three months after commencing operation of the changed source unless the existing Title V permit would prohibit such construction or change in operation, in which event the operation of the changed source may not commence until the department revises the permit.

567—22.114(455B) Title V permit reopenings.

22.114(1) Each issued Title V permit shall include provisions specifying the conditions under which the permit may be reopened and revised prior to the expiration of the permit. A permit shall be reopened and revised under any of the following circumstances:

a. The department receives notice that the administrator has granted a petition for disapproval of a permit pursuant to 40 CFR 70.8(d) as amended to July 21, 1992, provided that the reopening may be stayed pending judicial review of that determination;

b. The department or the administrator determines that the Title V permit contains a material mistake or that inaccurate statements were made in establishing the emissions standards or other terms or conditions of the Title V permit;

c. Additional applicable requirements under the Act become applicable to a Title V source, provided that the reopening on this ground is not required if the permit has a remaining term of less than three years, the effective date of the requirement is later than the date on which the permit is due to expire, or the additional applicable requirements are implemented in a general permit that is applicable to the source and the source receives approval for coverage under that general permit. Such a reopening shall be complete not later than 18 months after promulgation of the applicable requirement.

d. Additional requirements, including excess emissions requirements, become applicable to a Title IV affected source under the acid rain program. Upon approval by the administrator, excess emissions offset plans shall be deemed to be incorporated into the permit.

e. The department or the administrator determines that the permit must be revised or revoked to ensure compliance by the source with the applicable requirements.

22.114(2) Proceedings to reopen and reissue a Title V permit shall follow the procedures applicable to initial permit issuance and shall affect only those parts of the permit for which cause to reopen exists.

22.114(3) A notice of intent shall be provided to the Title V source at least 30 days in advance of the date the permit is to be reopened, except that the director may provide a shorter time period in the case of an emergency.

22.114(4) Within 90 days of receipt of a notice from the administrator that cause exists to reopen a permit, the director shall forward to the administrator and the source a proposed determination of termination, modification, revocation, or reissuance of the permit, as appropriate.

567—22.115(455B) Suspension, termination, and revocation of Title V permits.

22.115(1) Permits may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a Title V permit:

a. The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

b. The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

c. The terms and conditions of the permit have been or are being violated.

d. The permittee has failed to pay the Title V permit fees.

e. The permittee has failed to pay an administrative, civil or criminal penalty imposed for violations of the permit.

22.115(2) If the director suspends, terminates or revokes a Title V permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested.

The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

567—22.116(455B) Title V permit renewals.

22.116(1) An application for Title V permit renewal shall be subject to the same procedural requirements that apply to initial permit issuance, including those for public participation and review by the administrator and affected states.

22.116(2) Except as provided in rule 22.104(455B), permit expiration terminates a source's right to operate unless a timely and complete application for renewal has been submitted in accordance with rule 22.105(455B).

567—22.117 to 22.119 Reserved.

567—22.120(455B) Acid rain program—definitions. The terms used in rules 22.120(455B) through 22.147(455B) shall have the meanings set forth in Title IV of the Clean Air Act, 42 U.S.C. 7401, et seq., as amended through November 15, 1990, and in this rule. The definitions set forth in 40 CFR Part 72 as amended through January 24, 2008, and 40 CFR Part 76 as amended through October 15, 1999, are adopted by reference.

"40 CFR Part 72," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 72, or the cited provision therein, as amended through January 24, 2008.

"40 CFR Part 73," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 73, or the cited provision therein, as amended through April 28, 2006.

"40 CFR Part 74," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 74, or the cited provision therein, as amended through April 28, 2006.

"40 CFR Part 75," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 75, or the cited provision therein, as amended through February 13, 2008.

"40 CFR Part 76," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 76, or the cited provision therein, as amended through October 15, 1999.

"40 CFR Part 77," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 77, or the cited provision therein, as amended through May 12, 2005.

"40 CFR Part 78," or any cited provision therein, shall mean 40 Code of Federal Regulations Part 78, or the cited provision therein, as amended through April 28, 2006.

"Acid rain permit" means the legally binding written document, or portion of such document, issued by the department (following an opportunity for appeal as set forth in 561—Chapter 7, as adopted by reference at 567—Chapter 7), including any permit revisions, specifying the acid rain program requirements applicable to an affected source, to each affected unit at an affected source, and to the owner and operators and the designated representative of the affected source or the affected unit.

"Department" means the department of natural resources and is the state acid rain permitting authority.

"Draft acid rain permit" means the version of the acid rain permit, or the acid rain portion of a Title V operating permit, that the department offers for public comment.

"Permit revision" means a permit modification, fast-track modification, administrative permit amendment, or automatic permit amendment, as provided in rules 22.140(455B) through 22.144(455B).

"Proposed acid rain permit" means the version of the acid rain permit that the department submits to the Administrator after the public comment period, but prior to completion of the EPA permit review under 40 CFR 70.8(c) as amended through July 21, 1992.

"Title V operating permit" means a permit issued under rules 22.100(455B) through 22.116(455B) implementing Title V of the Act.

"Ton" or *"tonnage"* means any short ton (i.e., 2,000 pounds). For purposes of determining compliance with the acid rain emissions limitations and reduction requirements, total tons for a year shall be calculated as the sum of all recorded hourly emissions (or the tonnage equivalent of the recorded hourly emissions) in accordance with rule 567—25.2(455B), with any remaining fraction of

a ton equal to or greater than 0.50 ton deemed to equal one ton and any fraction of a ton less than 0.50 ton deemed not equal to a ton.

567—22.121(455B) Measurements, abbreviations, and acronyms. Measurements, abbreviations, and acronyms used in rules 22.120(455B) to 22.147(455B) are defined as follows:

“*ASTM*” means American Society for Testing and Materials.

“*Btu*” means British thermal unit.

“*CFR*” means Code of Federal Regulations.

“*DOE*” means Department of Energy.

“*EPA*” means Environmental Protection Agency.

“*mmBtu*” means million Btu.

“*MWe*” means megawatt electrical.

“*SO₂*” means sulfur dioxide.

567—22.122(455B) Applicability.

22.122(1) Each of the following units shall be an affected unit, and any source that includes such a unit shall be an affected source, subject to the requirements of the acid rain program:

- a. A unit listed in Table 1 of 40 CFR 73.10(a).
- b. An existing unit that is identified in Table 2 or 3 of 40 CFR 73.10, and any other existing utility unit, except a unit under subrule 22.122(2).
- c. A utility unit, except a unit under subrule 22.122(2), that:
 - (1) Is a new unit;
 - (2) Did not serve a generator with a nameplate capacity greater than 25 MWe on November 15, 1990, but serves such a generator after November 15, 1990;
 - (3) Was a simple combustion turbine on November 15, 1990, but adds or uses auxiliary firing after November 15, 1990;
 - (4) Was an exempt cogeneration facility under paragraph 22.122(2)“*d*” but during any three-calendar-year period after November 15, 1990, sold, to a utility power distribution system, an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs electric output, on a gross basis;
 - (5) Was an exempt qualifying facility under paragraph 22.122(2)“*e*” but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of qualifying facility;
 - (6) Was an exempt independent power production facility under paragraph 22.122(2)“*f*” but, at any time after the later of November 15, 1990, or the date the facility commences commercial operation, fails to meet the definition of independent power production facility; or
 - (7) Was an exempt solid waste incinerator under paragraph 22.122(2)“*g*” but during any three-calendar-year period after November 15, 1990, consumes 20 percent or more (on a Btu basis) fossil fuel.
- (8) Is a coal-fired substitution unit that is designated in a substitution plan that was not approved and not active as of January 1, 1995, or is a coal-fired compensating unit.

22.122(2) The following types of units are not affected units subject to the requirements of the acid rain program:

- a. A simple combustion turbine that commenced operation before November 15, 1990.
- b. Any unit that commenced commercial operation before November 15, 1990, and that did not, as of November 15, 1990, and does not currently, serve a generator with a nameplate capacity of greater than 25 MWe.
- c. Any unit that, during 1985, did not serve a generator that produced electricity for sale and that did not, as of November 15, 1990, and does not currently, serve a generator that produces electricity for sale.
- d. A cogeneration facility which:

(1) For a unit that commenced construction on or prior to November 15, 1990, was constructed for the purpose of supplying equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). If the purpose of construction is not known, it will be presumed to be consistent with the actual operation from 1985 through 1987. However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program; or

(2) For units that commenced construction after November 15, 1990, supplies equal to or less than one-third its potential electrical output capacity or equal to or less than 219,000 MWe-hrs actual electric output on an annual basis to any utility power distribution system for sale (on a gross basis). However, if in any three-calendar-year period after November 15, 1990, such unit sells to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis), that unit shall be an affected unit, subject to the requirements of the acid rain program.

e. A qualifying facility that:

(1) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(2) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of the total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

f. An independent power production facility that:

(1) Has, as of November 15, 1990, one or more qualifying power purchase commitments to sell at least 15 percent of its total planned net output capacity; and

(2) Consists of one or more units designated by the owner or operator with total installed net output capacity not exceeding 130 percent of its total planned net output capacity. If the emissions rates of the units are not the same, the administrator may exercise discretion to designate which units are exempt.

g. A solid waste incinerator, if more than 80 percent (on a Btu basis) of the annual fuel consumed at such incinerator is other than fossil fuels. For a solid waste incinerator which began operation before January 1, 1985, the average annual fuel consumption of nonfossil fuels for calendar years 1985 through 1987 must be greater than 80 percent for such an incinerator to be exempt. For a solid waste incinerator which began operation after January 1, 1985, the average annual fuel consumption of nonfossil fuels for the first three years of operation must be greater than 80 percent for such an incinerator to be exempt. If, during any three-calendar-year period after November 15, 1990, such incinerator consumes 20 percent or more (on a Btu basis) fossil fuel, such incinerator will be an affected source under the acid rain program.

h. A nonutility unit.

22.122(3) A certifying official of any unit may petition the administrator for a determination of applicability under 40 CFR 72.6(c). The administrator's determination of applicability shall be binding upon the department, unless the petition is found to have contained significant errors or omissions.

567—22.123(455B) Acid rain exemptions.

22.123(1) *New unit exemption.* The new unit exemption, as specified in 40 CFR §72.7, except for 40 CFR §72.7(c)(1)(i), is adopted by reference. This exemption applies to new utility units.

22.123(2) *Retired unit exemption.* The retired unit exemption, as specified in 40 CFR §72.8, is adopted by reference. This exemption applies to any affected unit that is permanently retired.

22.123(3) *Industrial utility-unit exemption.* The industrial utility-unit exemption, as specified in 40 CFR §72.14, is adopted by reference. This exemption applies to any noncogeneration utility unit.

567—22.124(455B) Retired units exemption. Rescinded IAB 9/9/98, effective 10/14/98.

567—22.125(455B) Standard requirements.**22.125(1) Permit requirements.**

a. The designated representative of each affected source and each affected unit at the source shall:

(1) Submit a complete acid rain permit application under this chapter in accordance with the deadlines specified in rule 22.128(455B);

(2) Submit in a timely manner any supplemental information that the department determines is necessary in order to review an acid rain permit application and issue or deny an acid rain permit.

b. The owners and operators of each affected source and each affected unit at the source shall:

(1) Operate the unit in compliance with a complete acid rain permit application or a superseding acid rain permit issued by the department; and

(2) Have an acid rain permit.

22.125(2) Monitoring requirements.

a. The owners and operators and, to the extent applicable, designated representative of each affected source and each affected unit at the source shall comply with the monitoring requirements as provided in rule 567—25.2(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

b. The emissions measurements recorded and reported in accordance with rule 567—25.2(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act shall be used to determine compliance by the unit with the acid rain emissions limitations and emissions reduction requirements for sulfur dioxide and nitrogen oxides under the acid rain program.

c. The requirements of rule 567—25.2(455B) and regulations implementing Section 407 of the Act shall not affect the responsibility of the owners and operators to monitor emissions of other pollutants or other emissions characteristics at the unit under other applicable requirements of the Act and other provisions of the operating permit for the source.

22.125(3) Sulfur dioxide requirements.

a. The owners and operators of each source and each affected unit at the source shall:

(1) Hold allowances, as of the allowance transfer deadline, in the unit's compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide for the previous calendar year from the unit; and

(2) Comply with the applicable acid rain emissions limitation for sulfur dioxide.

b. Each ton of sulfur dioxide emitted in excess of the acid rain emissions limitations for sulfur dioxide shall constitute a separate violation of the Act.

c. An affected unit shall be subject to the requirements under paragraph 22.125(3) "a" as follows: starting January 1, 2000, an affected unit under paragraph 22.122(1) "b"; or starting on the later of January 1, 2000, or the deadline for monitor certification under rule 567—25.2(455B), an affected unit under paragraph 22.122(1) "c."

d. Allowances shall be held in, deducted from, or transferred among allowance tracking system accounts in accordance with the acid rain program.

e. An allowance shall not be deducted, in order to comply with the requirements under paragraph 22.125(3) "a," prior to the calendar year for which the allowance was allocated.

f. An allowance allocated by the administrator under the acid rain program is a limited authorization to emit sulfur dioxide in accordance with the acid rain program. No provision of the acid rain program, the acid rain permit application, the acid rain permit, or the written exemption under rules 22.123(455B) and 22.124(455B) and no provision of law shall be construed to limit the authority of the United States to terminate or limit such authorization.

g. An allowance allocated by the administrator under the acid rain program does not constitute a property right.

22.125(4) Nitrogen oxides requirements. The owners and operators of the source and each affected unit at the source shall comply with the applicable acid rain emission limitation for nitrogen oxides, as specified in 40 CFR Sections 76.5 and 76.7; 76.6; and 76.8, 76.11, 76.12, and 76.15; or by alternative emission limitations provided for by 40 CFR 76.10, as long as the alternative emission limitation has been petitioned and demonstrated according to 40 CFR 76.14 and approved by the department.

22.125(5) Excess emissions requirements.

a. The designated representative of an affected unit that has excess emissions in any calendar year shall submit a proposed offset plan to the administrator, as required under 40 CFR Part 77, and submit a copy to the department.

b. The owners and operators of an affected unit that has excess emissions in any calendar year shall:

(1) Pay to the administrator without demand the penalty required, and pay to the administrator upon demand the interest on that penalty, as required by 40 CFR Part 77; and

(2) Comply with the terms of an approved offset plan, as required by 40 CFR Part 77.

22.125(6) Record-keeping and reporting requirements.

a. Unless otherwise provided, the owners and operators of the source and each affected unit at the source shall keep on site at the source each of the following documents for a period of five years from the date the document is created. This period may be extended for cause, at any time prior to the end of five years, in writing by the administrator or the department.

(1) The certificate of representation for the designated representative for the source and each affected unit at the source and all documents that demonstrate the truth of the statements in the certificate of representation, in accordance with 40 CFR 72.24; provided that the certificate and documents shall be retained on site at the source beyond such five-year period until such documents are superseded because of the submission of a new certificate of representation changing the designated representative.

(2) All emissions monitoring information, in accordance with rule 567—25.2(455B).

(3) Copies of all reports, compliance certifications, and other submissions and all records made or required under the acid rain program.

(4) Copies of all documents used to complete an acid rain permit application and any other submission under the acid rain program or to demonstrate compliance with the requirements of the acid rain program.

b. The designated representative of an affected source and each affected unit at the source shall submit the reports and compliance certifications required under the acid rain program, including those under rules 22.146(455B) and 22.147(455B) and rule 567—25.2 (455B).

22.125(7) Liability.

a. Any person who knowingly violates any requirement or prohibition of the acid rain program, a complete acid rain permit application, an acid rain permit, or a written exemption under rules 22.123(455B) or 22.124(455B), including any requirement for the payment of any penalty owed to the United States, shall be subject to enforcement by the administrator pursuant to Section 113(c) of the Act and by the department pursuant to Iowa Code section 455B.146.

b. Any person who knowingly makes a false, material statement in any record, submission, or report under the acid rain program shall be subject to criminal enforcement by the administrator pursuant to Section 113(c) of the Act and 18 U.S.C. 1001 and by the department pursuant to Iowa Code section 455B.146.

c. No permit revision shall excuse any violation of the requirements of the acid rain program that occurs prior to the date that the revision takes effect.

d. Each affected source and each affected unit shall meet the requirements of the acid rain program.

e. Any provision of the acid rain program that applies to an affected source (including a provision applicable to the designated representative of an affected source) shall also apply to the owners and operators of such source and of the affected units at the source.

f. Any provision of the acid rain program that applies to an affected unit (including a provision applicable to the designated representative of an affected unit) shall also apply to the owners and operators of such unit. Except as provided under rule 22.132(455B) (Phase II repowering extension plans), Section 407 of the Act and regulations implementing Section 407 of the Act, and except with regard to the requirements applicable to units with a common stack under rule 567—25.2(455B), the owners and operators and the designated representative of one affected unit shall not be liable for any violation by any other affected unit of which they are not owners or operators or the designated

representative and that is located at a source of which they are not owners or operators or the designated representative.

g. Each violation of a provision of rules 22.120(455B) to 22.146(455B) and 40 CFR Parts 72, 73, 75, 76, 77, and 78 and regulations implementing Sections 407 and 410 of the Act by an affected source or affected unit, or by an owner or operator or designated representative of such source or unit, shall be a separate violation of the Act.

22.125(8) *Effect on other authorities.* No provision of the acid rain program, an acid rain permit application, an acid rain permit, or a written exemption under rule 22.123(455B) or 22.124(455B) shall be construed as:

a. Except as expressly provided in Title IV of the Act, exempting or excluding the owners and operators and, to the extent applicable, the designated representative of an affected source or affected unit from compliance with any other provision of the Act, including the provisions of Title I of the Act relating to applicable National Ambient Air Quality Standards or State Implementation Plans;

b. Limiting the number of allowances a unit can hold; provided that the number of allowances held by the unit shall not affect the source's obligation to comply with any other provisions of the Act;

c. Requiring a change of any kind in any state law regulating electric utility rates and charges, affecting any state law regarding such state rule, or limiting such state rule, including any prudence review requirements under such state law;

d. Modifying the Federal Power Act or affecting the authority of the Federal Energy Regulatory Commission under the Federal Power Act; or

e. Interfering with or impairing any program for competitive bidding for power supply in a state in which such program is established.

567—22.126(455B) Designated representative—submissions.

22.126(1) The designated representative shall submit a certificate of representation, and any superseding certificate of representation, to the administrator in accordance with Subpart B of 40 CFR Part 72, and, concurrently, shall submit a copy to the department. Whenever the term “designated representative” is used in this rule, the term shall be construed to include the alternate designated representative.

22.126(2) Each submission under the acid rain program shall be submitted, signed, and certified by the designated representative for all sources on behalf of which the submission is made.

22.126(3) In each submission under the acid rain program, the designated representative shall certify by signature:

a. The following statement, which shall be included verbatim in such submission: “I am authorized to make this submission on behalf of the owners and operators of the affected source or affected units for which the submission is made.”

b. The following statement, which shall be included verbatim in such submission: “I certify under penalty of law that I have personally examined, and am familiar with, the statements and information submitted in this document and all its attachments. Based on my inquiry of those individuals with primary responsibility for obtaining the information, I certify that the statements and information are to the best of my knowledge and belief true, accurate, and complete. I am aware that there are significant penalties for submitting false statements and information or omitting required statements and information, including the possibility of fine or imprisonment.”

22.126(4) The department will accept or act on a submission made on behalf of owners or operators of an affected source and an affected unit only if the submission has been made, signed, and certified in accordance with subrules 22.126(2) and 22.126(3).

22.126(5) The designated representative of a source shall serve notice on each owner and operator of the source and of an affected unit at the source:

a. By the date of submission, of any acid rain program submissions by the designated representative;

b. Within ten business days of receipt of a determination, of any written determination by the administrator or the department; and

c. Provided that the submission or determination covers the source or the unit.

22.126(6) The designated representative of a source shall provide each owner and operator of an affected unit at the source a copy of any submission or determination under subrule 22.126(5), unless the owner or operator expressly waives the right to receive such a copy.

567—22.127(455B) Designated representative—objections.

22.127(1) Except as provided in 40 CFR 72.23, no objection or other communication submitted to the administrator or the department concerning the authorization, or any submission, action or inaction, of the designated representative shall affect any submission, action, or inaction of the designated representative, or the finality of any decision by the department, under the acid rain program. In the event of such communication, the department is not required to stay any submission or the effect of any action or inaction under the acid rain program.

22.127(2) The department will not adjudicate any private legal dispute concerning the authorization or any submission, action, or inaction of any designated representative, including private legal disputes concerning the proceeds of allowance transfers.

567—22.128(455B) Acid rain applications—requirement to apply.

22.128(1) Duty to apply. The designated representative of any source with an affected unit shall submit a complete acid rain permit application by the applicable deadline in subrules 22.128(2) and 22.128(3), and the owners and operators of such source and any affected unit at the source shall not operate the source or unit without a permit that states its acid rain program requirements.

22.128(2) Deadlines.

a. For any source with an existing unit described under paragraph 22.122(1)“b,” the designated representative shall submit a complete acid rain permit application governing such unit to the department on or before January 1, 1996.

b. For any source with a new unit described under subparagraph 22.122(1)“c”(1), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the unit commences operation.

c. For any source with a unit described under subparagraph 22.122(1)“c”(2), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the unit begins to serve a generator with a nameplate capacity greater than 25 MWe.

d. For any source with a unit described under subparagraph 22.122(1)“c”(3), the designated representative shall submit a complete acid rain permit application governing such unit to the department at least 24 months before the later of January 1, 2000, or the date on which the auxiliary firing commences operation.

e. For any source with a unit described under subparagraph 22.122(1)“c”(4), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the unit sold to a utility power distribution system an annual average of more than one-third of its potential electrical output capacity and more than 219,000 MWe-hrs actual electric output (on a gross basis).

f. For any source with a unit described under subparagraph 22.122(1)“c”(5), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of qualifying facility.

g. For any source with a unit described under subparagraph 22.122(1)“c”(6), the designated representative shall submit a complete acid rain permit application governing such unit to the department before the later of January 1, 1998, or March 1 of the year following the calendar year in which the facility fails to meet the definition of an independent power production facility.

h. For any source with a unit described under subparagraph 22.122(1)“c”(7), the designated representative shall submit a complete acid rain permit application governing such unit to the department

before the later of January 1, 1998, or March 1 of the year following the three-calendar-year period in which the incinerator consumed 20 percent or more fossil fuel (on a Btu basis).

i. For a Phase II unit with a Group 1 or a Group 2 boiler, the designated representative shall submit a complete permit application and compliance plan for NO_x emissions to the department no later than January 1, 1998.

22.128(3) *Duty to reapply.* The designated representative shall submit a complete acid rain permit application for each source with an affected unit at least six months prior to the expiration of an existing acid rain permit governing the unit.

22.128(4) *Submission of copies.* The original and three copies of all permit applications shall be presented or mailed to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322.

567—22.129(455B) Information requirements for acid rain permit applications. A complete acid rain permit application shall be submitted on a form approved by the department, which includes the following elements:

22.129(1) Identification of the affected source for which the permit application is submitted;

22.129(2) Identification of each affected unit at the source for which the permit application is submitted;

22.129(3) A complete compliance plan for each unit, in accordance with rules 22.131(455B) and 22.132(455B);

22.129(4) The standard requirements under rule 22.125(455B); and

22.129(5) If the unit is a new unit, the date that the unit has commenced or will commence operation and the deadline for monitor certification.

567—22.130(455B) Acid rain permit application shield and binding effect of permit application.

22.130(1) Once a designated representative submits a timely and complete acid rain permit application, the owners and operators of the affected source and the affected units covered by the permit application shall be deemed in compliance with the requirement to have an acid rain permit under paragraph 22.125(1) “b” and subrule 22.128(1); provided that any delay in issuing an acid rain permit is not caused by the failure of the designated representative to submit in a complete and timely fashion supplemental information, as required by the department, necessary to issue a permit.

22.130(2) Prior to the date on which an acid rain permit is issued as a final agency action subject to judicial review, an affected unit governed by and operated in accordance with the terms and requirements of a timely and complete acid rain permit application shall be deemed to be operating in compliance with the acid rain program.

22.130(3) A complete acid rain permit application shall be binding on the owners and operators and the designated representative of the affected source and the affected units covered by the permit application and shall be enforceable as an acid rain permit from the date of submission of the permit application until the issuance or denial of such permit as a final agency action subject to judicial review.

567—22.131(455B) Acid rain compliance plan and compliance options—general.

22.131(1) For each affected unit included in an acid rain permit application, a complete compliance plan shall include:

a. For sulfur dioxide emissions, a certification that, as of the allowance transfer deadline, the designated representative will hold allowances in the unit’s compliance subaccount (after deductions under 40 CFR 73.34(c)) not less than the total annual emissions of sulfur dioxide from the unit. The compliance plan may also specify, in accordance with rule 22.131(455B), one or more of the acid rain compliance options.

b. For nitrogen oxides emissions, a certification that the unit will comply with the applicable limitation established by subrule 22.125(4) or shall specify one or more acid rain compliance options, in accordance with Section 407 of the Act, and 40 CFR Section 76.9.

22.131(2) The compliance plan may include a multiunit compliance option under rule 22.132(455B) or Section 407 of the Act or regulations implementing Section 407.

a. A plan for a compliance option that includes units at more than one affected source shall be complete only if:

(1) Such plan is signed and certified by the designated representative for each source with an affected unit governed by such plan; and

(2) A complete permit application is submitted covering each unit governed by such plan.

b. The department's approval of a plan under paragraph 22.131(2) "a" that includes units in more than one state shall be final only after every permitting authority with jurisdiction over any such unit has approved the plan with the same modifications or conditions, if any.

22.131(3) Conditional approval. In the compliance plan, the designated representative of an affected unit may propose, in accordance with rules 22.131(455B) and 22.132(455B), any acid rain compliance option for conditional approval; provided that an acid rain compliance option under Section 407 of the Act may be conditionally proposed only to the extent provided in regulations implementing Section 407 of the Act.

a. To activate a conditionally approved acid rain compliance option, the designated representative shall notify the department in writing that the conditionally approved compliance option will actually be pursued beginning January 1 of a specified year. If the conditionally approved compliance option includes a plan described in paragraph 22.131(2) "a," the designated representative of each source governed by the plan shall sign and certify the notification. Such notification shall be subject to the limitations on activation under rule 22.132(455B) and regulations implementing Section 407 of the Act.

b. The notification under paragraph 22.131(3) "a" shall specify the first calendar year and the last calendar year for which the conditionally approved acid rain compliance option is to be activated. A conditionally approved compliance option shall be activated, if at all, before the date of any enforceable milestone applicable to the compliance option. The date of activation of the compliance option shall not be a defense against failure to meet the requirements applicable to that compliance option during each calendar year for which the compliance option is activated.

c. Upon submission of a notification meeting the requirements of paragraphs 22.131(3) "a" and "b," the conditionally approved acid rain compliance option becomes binding on the owners and operators and the designated representative of any unit governed by the conditionally approved compliance option.

d. A notification meeting the requirements of paragraphs 22.131(3) "a" and "b" will revise the unit's permit in accordance with rule 22.143(455B) (administrative permit amendment).

22.131(4) Termination of compliance option.

a. The designated representative for a unit may terminate an acid rain compliance option by notifying the department in writing that an approved compliance option will be terminated beginning January 1 of a specified year. Such notification shall be subject to the limitations on termination under rule 22.132(455B) and regulations implementing Section 407 of the Act. If the compliance option includes a plan described in paragraph 22.131(2) "a," the designated representative for each source governed by the plan shall sign and certify the notification.

b. The notification under paragraph 22.131(4) "a" shall specify the calendar year for which the termination will take effect.

c. Upon submission of a notification meeting the requirements of paragraphs 22.131(4) "a" and "b," the termination becomes binding on the owners and operators and the designated representative of any unit governed by the acid rain compliance option to be terminated.

d. A notification meeting the requirements of paragraphs 22.131(4) "a" and "b" will revise the unit's permit in accordance with rule 22.143(455B) (administrative permit amendment).

567—22.132(455B) Repowering extensions. Rescinded IAB 4/8/98, effective 5/13/98.

567—22.133(455B) Acid rain permit contents—general.

22.133(1) Each acid rain permit (including any draft acid rain permit) will contain the following elements:

- a. All elements required for a complete acid rain permit application under rule 22.129(455B), as approved or adjusted by the department;
- b. The applicable acid rain emissions limitation for sulfur dioxide; and
- c. The applicable acid rain emissions limitation for nitrogen oxides.

22.133(2) Each acid rain permit is deemed to incorporate the definitions of terms under rule 22.120(455B).

567—22.134(455B) Acid rain permit shield. Each affected unit operated in accordance with the acid rain permit that governs the unit and that was issued in compliance with Title IV of the Act, as provided in rules 22.120(455B) to 22.146(455B), rule 567—25.2(455B), or 40 CFR Parts 72, 73, 75, 76, 77, and 78, and the regulations implementing Section 407 of the Act, shall be deemed to be operating in compliance with the acid rain program, except as provided in paragraph 22.125(7) “f.”

567—22.135(455B) Acid rain permit issuance procedures—general. The department will issue or deny all acid rain permits in accordance with rules 22.100(455B) to 22.116(455B), including the completeness determination, draft permit, administrative record, statement of basis, public notice and comment period, public hearing, proposed permit, permit issuance, permit revision, and appeal procedures as amended by rules 22.135(455B) to 22.145(455B).

567—22.136(455B) Acid rain permit issuance procedures—completeness. The department will submit a written notice of application completeness to the administrator within ten working days following a determination by the department that the acid rain permit application is complete.

567—22.137(455B) Acid rain permit issuance procedures—statement of basis.

22.137(1) The statement of basis will briefly set forth significant factual, legal, and policy considerations on which the department relied in issuing or denying the draft acid rain permit.

22.137(2) The statement of basis will include the reasons, and supporting authority, for approval or disapproval of any compliance options requested in the permit application, including references to applicable statutory or regulatory provisions and to the administrative record.

22.137(3) The department will submit to the administrator a copy of the draft acid rain permit and the statement of basis and all other relevant portions of the Title V operating permit that may affect the draft acid rain permit.

567—22.138(455B) Issuance of acid rain permits.

22.138(1) Proposed permit. After the close of the public comment and EPA 45-day review period (pursuant to subrules 22.107(6) and 22.107(7)), the department will address any objections by the administrator, incorporate all necessary changes and issue or deny the acid rain permit.

22.138(2) The department will submit the proposed acid rain permit or denial of a proposed acid rain permit to the administrator in accordance with rules 22.100(455B) to 22.116(455B), the provisions of which shall be treated as applying to the issuance or denial of a proposed acid rain permit.

22.138(3) Following the administrator’s review of the proposed acid rain permit or denial of a proposed acid rain permit, the department, or under 40 CFR 70.8(c) as amended to July 21, 1992, the administrator, will incorporate any required changes and issue or deny the acid rain permit in accordance with rules 22.133(455B) and 22.134(455B).

22.138(4) No acid rain permit including a draft or proposed permit shall be issued unless the administrator has received a certificate of representation for the designated representative of the source in accordance with Subpart B of 40 CFR Part 72.

22.138(5) Permit issuance deadline and effective date.

a. On or before December 31, 1997, the department will issue an acid rain permit to each affected source whose designated representative submitted a timely and complete acid rain permit application by

January 1, 1996, in accordance with rule 22.126(455B) and meets the requirements of rules 22.135(455B) to 22.139(455B) and rules 22.100(455B) to 22.116(455B).

b. Nitrogen oxides. Not later than January 1, 1999, the department will reopen the acid rain permit to add the acid rain program nitrogen oxides requirements; provided that the designated representative of the affected source submitted a timely and complete acid rain permit application for nitrogen oxides in accordance with rule 22.126(455B). Such reopening shall not affect the term of the acid rain portion of a Title V operating permit.

c. Each acid rain permit issued in accordance with paragraph 22.138(5) “*a*” shall take effect by the later of January 1, 2000, or, where the permit governs a unit under paragraph 22.122(1) “*c*,” the deadline for monitor certification under rule 567—25.2(455B).

d. Each acid rain permit shall have a term of five years commencing on its effective date.

e. An acid rain permit shall be binding on any new owner or operator or designated representative of any source or unit governed by the permit.

22.138(6) Each acid rain permit shall contain all applicable acid rain requirements, shall be a portion of the Title V operating permit that is complete and segregable from all other air quality requirements, and shall not incorporate information contained in any other documents, other than documents that are readily available.

22.138(7) Invalidation of the acid rain portion of a Title V operating permit shall not affect the continuing validity of the rest of the Title V operating permit, nor shall invalidation of any other portion of the Title V operating permit affect the continuing validity of the acid rain portion of the permit.

567—22.139(455B) Acid rain permit appeal procedures.

22.139(1) Appeals of the acid rain portion of a Title V operating permit issued by the department that do not challenge or involve decisions or actions of the administrator under 40 CFR Parts 72, 73, 75, 76, 77, and 78 and Sections 407 and 410 of the Act and regulations implementing Sections 407 and 410 shall be conducted according to the procedures in Iowa Code chapter 17A and 561—Chapter 7, as adopted by reference at 567—Chapter 7. Appeals of the acid rain portion of such a permit that challenge or involve such decisions or actions of the administrator shall follow the procedures under 40 CFR Part 78 and Section 307 of the Act. Such decisions or actions include, but are not limited to, allowance allocations, determinations concerning alternative monitoring systems, and determinations of whether a technology is a qualifying repowering technology.

22.139(2) No administrative appeal or judicial appeal of the acid rain portion of a Title V operating permit shall be allowed more than 30 days following respective issuance of the acid rain portion of the permit that is subject to administrative appeal or issuance of the final agency action subject to judicial appeal.

22.139(3) The administrator may intervene as a matter of right in any state administrative appeal of an acid rain permit or denial of an acid rain permit.

22.139(4) No administrative appeal concerning an acid rain requirement shall result in a stay of the following requirements:

a. The allowance allocations for any year during which the appeal proceeding is pending or is being conducted;

b. Any standard requirement under rule 22.125(455B);

c. The emissions monitoring and reporting requirements applicable to the affected units at an affected source under rule 567—25.2(455B);

d. Uncontested provisions of the decision on appeal; and

e. The terms of a certificate of representation submitted by a designated representative under Subpart B of 40 CFR Part 72.

22.139(5) The department will serve written notice on the administrator of any state administrative or judicial appeal concerning an acid rain provision of any Title V operating permit or denial of an acid rain portion of any Title V operating permit within 30 days of the filing of the appeal.

22.139(6) The department will serve written notice on the administrator of any determination or order in a state administrative or judicial proceeding that interprets, modifies, voids, or otherwise relates

to any portion of an acid rain permit. Following any such determination or order, the administrator will have an opportunity to review and veto the acid rain permit or revoke the permit for cause in accordance with subrules 22.107(7) and 22.107(8).

567—22.140(455B) Permit revisions—general.

22.140(1) Rules 22.140(455B) to 22.145(455B) shall govern revisions to any acid rain permit issued by the department.

22.140(2) A permit revision may be submitted for approval at any time. No permit revision shall affect the term of the acid rain permit to be revised. No permit revision shall excuse any violation of an acid rain program requirement that occurred prior to the effective date of the revision.

22.140(3) The terms of the acid rain permit shall apply while the permit revision is pending.

22.140(4) Any determination or interpretation by the state (including the department or a state court) modifying or voiding any acid rain permit provision shall be subject to review by the administrator in accordance with 40 CFR 70.8(c) as amended to July 21, 1992, as applied to permit modifications, unless the determination or interpretation is an administrative amendment approved in accordance with rule 22.143(455B).

22.140(5) The standard requirements of rule 22.125(455B) shall not be modified or voided by a permit revision.

22.140(6) Any permit revision involving incorporation of a compliance option that was not submitted for approval and comment during the permit issuance process, or involving a change in a compliance option that was previously submitted, shall meet the requirements for applying for such compliance option under rule 22.132(455B) and Section 407 of the Act and regulations implementing Section 407 of the Act.

22.140(7) For permit revisions not described in rules 22.141(455B) and 22.142(455B), the department may, in its discretion, determine which of these rules is applicable.

567—22.141(455B) Permit modifications.

22.141(1) Permit modifications shall follow the permit issuance requirements of rules 22.135(455B) to 22.139(455B) and subrules 22.113(2) and 22.113(3).

22.141(2) For purposes of applying subrule 22.141(1), a permit modification shall be treated as an acid rain permit application, to the extent consistent with rules 22.140(455B) to 22.145(455B).

22.141(3) The following permit revisions are permit modifications:

- a.* Relaxation of an excess emission offset requirement after approval of the offset plan by the administrator;
- b.* Incorporation of a final nitrogen oxides alternative emissions limitation following a demonstration period;
- c.* Determinations concerning failed repowering projects under subrule 22.132(6); and
- d.* At the option of the designated representative submitting the permit revision, the permit revisions listed in subrule 22.142(2).

567—22.142(455B) Fast-track modifications.

22.142(1) Fast-track modifications shall follow the following procedures:

a. The designated representative shall serve a copy of the fast-track modification on the administrator, the department, and any person entitled to a written notice under subrules 22.107(6) and 22.107(7). Within five business days of serving such copies, the designated representative shall also give public notice by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice.

b. The public shall have a period of 30 days, commencing on the date of publication of the notice, to comment on the fast-track modification. Comments shall be submitted in writing to the air quality bureau of the department and to the designated representative.

c. The designated representative shall submit the fast-track modification to the department on or before commencement of the public comment period.

d. Within 30 days of the close of the public comment period, the department will consider the fast-track modification and the comments received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. A fast-track modification shall be effective immediately upon issuance, in accordance with subrule 22.113(2) as applied to significant modifications.

22.142(2) The following permit revisions are, at the option of the designated representative submitting the permit revision, either fast-track modifications under this rule or permit modifications under rule 22.141(455B):

- a.* Incorporation of a compliance option that the designated representative did not submit for approval and comment during the permit issuance process;
- b.* Addition of a nitrogen oxides averaging plan to a permit; and
- c.* Changes in a repowering plan, nitrogen oxides averaging plan, or nitrogen oxides compliance deadline extension.

567—22.143(455B) Administrative permit amendment.

22.143(1) Administrative amendments shall follow the procedures set forth at rule 22.111(455B). The department will submit the revised portion of the permit to the administrator within ten working days after the date of final action on the request for an administrative amendment.

22.143(2) The following permit revisions are administrative amendments:

- a.* Activation of a compliance option conditionally approved by the department; provided that all requirements for activation under subrule 22.131(3) and rule 22.132(455B) are met;
- b.* Changes in the designated representative or alternative designated representative; provided that a new certificate of representation is submitted to the administrator in accordance with Subpart B of 40 CFR Part 72;
- c.* Correction of typographical errors;
- d.* Changes in names, addresses, or telephone or facsimile numbers;
- e.* Changes in the owners or operators; provided that a new certificate of representation is submitted within 30 days to the administrator and the department in accordance with Subpart B of 40 CFR Part 72;
- f.* Termination of a compliance option in the permit; provided that all requirements for termination under subrule 22.131(4) shall be met and this procedure shall not be used to terminate a repowering plan after December 31, 1999;
- g.* Changes in the date, specified in a new unit's acid rain permit, of commencement of operation or the deadline for monitor certification; provided that they are in accordance with rule 22.125(455B);
- h.* The addition of or change in a nitrogen oxides alternative emissions limitation demonstration period; provided that the requirements of regulations implementing Section 407 of the Act are met; and
- i.* Incorporation of changes that the administrator has determined to be similar to those in paragraphs "*a*" through "*h*" of this subrule.

567—22.144(455B) Automatic permit amendment. The following permit revisions shall be deemed to amend automatically, and become a part of the affected unit's acid rain permit by operation of law without any further review:

22.144(1) Upon recordation by the administrator under 40 CFR Part 73, all allowance allocations to, transfers to, and deductions from an affected unit's allowance tracking system account; and

22.144(2) Incorporation of an offset plan that has been approved by the administrator under 40 CFR Part 77.

567—22.145(455B) Permit reopenings.

22.145(1) As provided in rule 22.114(455B), the department will reopen an acid rain permit for cause, including whenever additional requirements become applicable to any affected unit governed by the permit.

22.145(2) In reopening an acid rain permit for cause, the department will issue a draft permit changing the provisions, or adding the requirements, for which the reopening was necessary. The draft permit shall be subject to the requirements of rules 22.135(455B) to 22.139(455B).

22.145(3) Any reopening of an acid rain permit shall not affect the term of the permit.

567—22.146(455B) Compliance certification—annual report.

22.146(1) Applicability and deadline. For each calendar year in which a unit is subject to the acid rain emissions limitations, the designated representative of the source at which the unit is located shall submit to the administrator and the department, within 60 days after the end of the calendar year, an annual compliance certification report for the unit in compliance with 40 CFR 72.90.

22.146(2) The submission of complete compliance certifications in accordance with subrule 22.146(1) and rule 567—25.2(455B) shall be deemed to satisfy the requirement to submit compliance certifications under paragraph 22.108(15) “e” with regard to the acid rain portion of the source’s Title V operating permit.

567—22.147(455B) Compliance certification—units with repowering extension plans. Rescinded IAB 4/8/98, effective 5/13/98.

567—22.148(455B) Sulfur dioxide opt-ins. The department adopts by reference the provisions of 40 CFR Part 74, Acid Rain Opt-Ins.

567—22.149 to 22.199 Reserved.

567—22.200(455B) Definitions for voluntary operating permits. For the purposes of rules 22.200(455B) to 22.208(455B), the definitions shall be the same as the definitions found at rule 22.100(455B).

567—22.201(455B) Eligibility for voluntary operating permits.

22.201(1) Except as provided in 567—subrules 22.201(2) and 22.205(2), any person who owns or operates a major source otherwise required to obtain a Title V operating permit may instead obtain a voluntary operating permit following successful demonstration of the following:

a. That the potential to emit, as limited by the conditions of air quality permits obtained from the department, of each regulated air pollutant shall be limited to less than 100 tons per 12-month rolling period. The fugitive emissions of each regulated air pollutant from a stationary source shall not be considered in determining the potential to emit unless the source belongs to one of the stationary source categories listed in this chapter; and

b. That the actual emissions of each regulated air pollutant have been and are predicted to be less than 100 tons per 12-month rolling period. The fugitive emissions of each regulated air pollutant from a stationary source shall not be considered in determining the actual emissions unless the source belongs to one of the stationary source categories listed in this chapter; and

c. That the potential to emit of each regulated hazardous air pollutant, including fugitive emissions, shall be less than 10 tons per 12-month rolling period and the potential to emit of all regulated hazardous air pollutants, including fugitive emissions, shall be less than 25 tons per 12-month rolling period; and

d. That the actual emissions of each regulated hazardous air pollutant, including fugitive emissions, have been and are predicted to be less than 10 tons per 12-month rolling period and the actual emissions of all regulated hazardous air pollutants, including fugitive emissions, have been and are predicted to be less than 25 tons per 12-month rolling period.

22.201(2) Exceptions.

a. Any affected source subject to the provisions of Title IV of the Act or sources required to obtain a Title V operating permit under paragraph 22.101(1) “f” or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for a voluntary operating permit.

b. Sources which are not major sources but subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act; or 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for a voluntary operating permit. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

567—22.202(455B) Requirement to have a Title V permit. No source may operate after the time that it is required to submit a timely and complete application for an operating permit, except in compliance with a properly issued Title V operating permit or a properly issued voluntary operating permit or operating permit by rule for small sources. However, if a source submits a timely and complete application for permit issuance (including renewal), the source's failure to have a permit is not a violation of this chapter until the director takes final action on the permit application, except as noted in this rule. In that case, all terms and conditions of the permit shall remain in effect until the renewal permit has been issued or denied. This protection shall cease to apply if, subsequent to the completeness determination, the applicant fails to submit, by the deadline specified in writing by the director, any additional information identified as being needed to process the application.

567—22.203(455B) Voluntary operating permit applications.

22.203(1) Duty to apply. Any source which would qualify for a voluntary operating permit and which would not qualify under the provisions of rule 22.300(455B), Operating permit by rule for small sources, must apply for either a voluntary operating permit or a Title V operating permit. Any source determined not to be eligible for a voluntary operating permit shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in rule 22.202(455B) and rule 22.300(455B). For each source applying for a voluntary operating permit, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, an original and one copy of a timely and complete permit application in accordance with this rule.

a. *Timely application.* Each source applying for a voluntary operating permit shall submit an application:

- (1) By July 1, 1996, if the source is existing on or before July 1, 1995, unless otherwise required to obtain a Title V permit under rule 22.101(455B);
- (2) At least 6 months but not more than 12 months prior to the date of expiration if the application is for renewal;
- (3) Within 12 months of becoming subject to rule 22.101(455B) for a new source or a source which would otherwise become subject to the Title V permit requirement after July 1, 1995.

b. *Complete application.* To be deemed complete, an application must provide all information required pursuant to subrule 22.203(2).

c. *Duty to supplement or correct application.* Any applicant who fails to submit any relevant facts or who has submitted incorrect information in a permit application shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, an applicant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete application but prior to the issuance of a permit. Applicants who have filed a complete application shall have 30 days following notification by the department to file any amendments to the application.

d. *Certification of truth, accuracy, and completeness.* Any application form, report, or compliance certification submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

22.203(2) Standard application form and required information. To apply for a voluntary operating permit, applicants shall complete the Voluntary Operating Permit Application Form and supply all

information required by the Filing Instructions. The information submitted must be sufficient to evaluate the source, its application, predicted actual emissions from the source, and the potential to emit of the source; and to determine all applicable requirements. The applicant shall submit the information called for by the application form for all emissions units, including those having insignificant activities according to the provisions of rules 22.102(455B) and 22.103(455B). The standard application form and any attachments shall require that the following information be provided:

a. Identifying information, including company name and address (or plant or source name if different from the company name), owner's name and agent, and telephone number and names of plant site manager or contact;

b. A description of source processes and products (by two-digit Standard Industrial Classification Code);

c. The following emissions-related information shall be submitted to the department on the emissions inventory portion of the application:

(1) All emissions of any regulated air pollutants from each emissions unit and information sufficient to determine which requirements are applicable to the source;

(2) Emissions in tons per year and in such terms as are necessary to establish compliance consistent with the applicable standard reference test method, if any;

(3) The following information to the extent it is needed to determine or regulate emissions, including toxic emissions: fuels, fuel use, raw materials, production rates and operating schedules;

(4) Identification and description of air pollution control equipment;

(5) Identification and description of compliance monitoring devices or activities;

(6) Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

(7) Other information required by any applicable requirement; and

(8) Calculations on which the information in (1) to (7) above is based.

(9) Fugitive emissions sources shall be included in the permit application in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

d. Requested permit conditions sufficient to limit the operation of the source according to the requirements of rule 22.201(455B).

e. Requirements for compliance certification. This shall include the following:

(1) Certification of compliance for the prior year with all applicable requirements with an exception for violations of subrules 22.1(1) and 22.105(1);

(2) A list of the emission points, control equipment, and emission units in violation of subrule 22.1(1);

(3) Construction permit applications for emission points and associated equipment listed in subparagraph 22.203(2)“*e*”(2); and

(4) Compliance certification certified by a responsible official consistent with 22.203(1)“*d.*”

567—22.204(455B) Voluntary operating permit fees. Each source in compliance with a current voluntary operating permit shall be exempt from Title V operating permit fees.

567—22.205(455B) Voluntary operating permit processing procedures.

22.205(1) Action on application.

a. Completeness of applications. The department shall promptly provide notice to the applicant of whether the application is complete. Unless the permitting authority requests additional information or otherwise notifies the applicant of incompleteness within 60 days of receipt of an application, the application shall be deemed complete. If, while processing an application that has been determined to be complete, the permitting authority determines that additional information is necessary to evaluate or take formal action on that application, the permitting authority may request in writing such information and set a reasonable deadline for a response.

b. Public notice and public participation.

(1) The department shall provide public notice and an opportunity for public comment, including an opportunity for a hearing, before issuing or renewing a permit.

(2) Notice of the intended issuance or renewal of a permit shall be given by publication in a newspaper of general circulation in the area where the source is located or in a state publication designed to give general public notice. The department shall also provide the administrator a copy of the notice. The department may use other means if necessary to ensure adequate notice to the affected public.

(3) The public notice shall include: identification of the source; name and address of the permittee; the activity or activities involved in the permit action; the air pollutants or contaminants to be emitted; a statement that a public hearing may be requested, or the time and place of any public hearing which has been set; the name, address, and telephone number of a department representative who may be contacted for further information; and the location of copies of the permit application and the proposed permit which are available for public inspection.

(4) At least 30 days shall be provided for public comment.

22.205(2) Denial of voluntary operating permit applications.

a. A voluntary operating permit application may be denied if:

(1) The director finds that a source is not in compliance with any applicable requirement except for subrule 22.1(1); or

(2) An applicant knowingly submits false information in a permit application.

(3) An applicant is unable to certify that the source was in compliance with all applicable requirements, except for subrule 22.1(1), for the year preceding the application.

b. Once agency action has occurred denying a voluntary operating permit, the source shall apply for a Title V operating permit. Any source determined not to be eligible for a voluntary operating permit shall be subject to enforcement action for operating without a Title V operating permit pursuant to rule 22.104(455B).

567—22.206(455B) Permit content.

22.206(1) Each voluntary operating permit shall include all of the following provisions:

- a.* The terms and conditions required for all sources authorized to operate under the permit;
- b.* Emission limitations and standards, including those operational requirements and limitations that ensure compliance with all applicable requirements at the time of the permit issuance;
- c.* A certified statement from the source that each emissions unit is in compliance;
- d.* Monitoring, record keeping, and reporting requirements to ensure compliance with the terms and conditions of the permit. These requirements shall ensure the use of consistent terms, test methods, units, averaging periods, and other statistical conventions consistent with the applicable emissions limitations, standards, and other requirements contained in the permit;
- e.* The requirement to submit the results of any required monitoring at intervals to be specified in the permit;
- f.* References to the authority for the term or condition;
- g.* A provision specifying permit duration as a fixed term not to exceed five years;
- h.* A statement that the voluntary operating permit is to be kept at the site of the source;
- i.* A statement that the permittee must comply with all conditions of the voluntary operating permit and that any permit noncompliance is grounds for enforcement action, for a permit termination or revocation, and for an immediate requirement to obtain a Title V operating permit;
- j.* A statement that it shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of the permit;
- k.* A statement that the permit may be revoked or terminated for cause;
- l.* A statement that the permit does not convey any property rights of any sort, or any exclusive privilege;
- m.* A statement that the permittee shall furnish to the director, within a reasonable time, any information that the director may request in writing to determine whether cause exists for revoking or

terminating the permit or to determine compliance with the permit; and that, upon request, the permittee also shall furnish to the director copies of records required by the permit to be kept.

22.206(2) The following shall apply to voluntary operating permits:

a. Fugitive emissions from a source shall be included in the permit in the same manner as stack emissions, regardless of whether the source category in question is included in the list of sources contained in the definition of major source.

b. Federally enforceable requirements.

(1) All terms and conditions in a voluntary operating permit, including any provisions designed to limit a source's potential to emit, are enforceable by the administrator and citizens under the Act.

(2) Notwithstanding paragraph "a" of this subrule, the director shall specifically designate as not being federally enforceable under the Act any terms and conditions included in the permit that are not required under the Act or under any of its applicable requirements.

c. All emission limitations, all controls, and all other requirements included in a voluntary permit shall be at least as stringent as any other applicable limitation or requirement in the state implementation plan or enforceable as a practical matter under the state implementation plan. For the purposes of this paragraph, "enforceable as a practical matter under the state implementation plan" shall mean that the provisions of the permit shall specify technically accurate limitations and the portions of the source subject to each limitation; the time period for the limitation (hourly, daily, monthly, annually); and the method to determine compliance including appropriate monitoring, record keeping and reporting.

d. The director shall not issue a voluntary operating permit that waives any limitation or requirement contained in or issued pursuant to the state implementation plan or that is otherwise federally enforceable.

e. The limitations, controls, and requirements in a voluntary operating permit shall be permanent, quantifiable, and otherwise enforceable.

f. Emergency provisions. For the purposes of a voluntary operating permit, an "emergency" means any situation arising from sudden and reasonably unforeseeable events beyond the control of the source, including acts of God, which situation requires immediate corrective action to restore normal operation, and that causes the source to exceed a technology-based emission limitation under the permit, due to unavoidable increases in emissions attributable to the emergency. An emergency shall not include noncompliance to the extent caused by improperly designed equipment, lack of preventive maintenance, careless or improper operation, or operator error.

567—22.207(455B) Relation to construction permits.

22.207(1) *Construction permits issued after the voluntary operating permit is issued.* If the issuance of a construction permit acts to make the source no longer eligible for a voluntary operating permit, then the source shall, in accordance with subparagraph 22.105(1)"a"(2), not operate without a Title V operating permit, and the source shall be subject to enforcement action for operating without a Title V operating permit.

22.207(2) *Relation of construction permits to voluntary operating permit renewal.* At the time of renewal of a voluntary operating permit, the conditions of construction permits issued during the term of the voluntary operating permit shall be incorporated into the voluntary operating permit. Each application for renewal of a voluntary operating permit shall include a list of construction permits issued during the term of the voluntary operating permit and shall state the effect of each of these construction permits on the conditions of the voluntary operating permit. Applications for renewal shall be accompanied by copies of all construction permits issued during the term of the voluntary operating permit.

567—22.208(455B) Suspension, termination, and revocation of voluntary operating permits.

22.208(1) Permits may be terminated, modified, revoked or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of a voluntary permit:

a. The director has reasonable cause to believe that the permit was obtained by fraud or misrepresentation.

b. The person applying for the permit failed to disclose a material fact required by the permit application form or the rules applicable to the permit, of which the applicant had or should have had knowledge at the time the application was submitted.

c. The terms and conditions of the permit have been or are being violated.

d. The permittee has failed to pay an administrative, civil or criminal penalty for violations of the permit.

22.208(2) If the director suspends, terminates or revokes a voluntary permit under this rule, the notice of such action shall be served on the applicant or permittee by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

567—22.209(455B) Change of ownership for facilities with voluntary operating permits. The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by a voluntary operating permit. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, and shall include the following information:

1. The date of ownership change;
2. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after the change of ownership; and
3. The voluntary operating permit number for the equipment changing ownership.

567—22.210 to 22.299 Reserved.

567—22.300(455B) Operating permit by rule for small sources. Except as provided in 567—subrules 22.201(2) and 22.300(11), any source which otherwise would be required to obtain a Title V operating permit may instead register for an operation permit by rule for small sources. Sources which comply with the requirements contained in this rule will be deemed to have an operating permit by rule for small sources. Sources which comply with this rule will be considered to have federally enforceable limits so that their potential emissions are less than the major source thresholds for regulated air pollutants and hazardous air pollutants as defined in 567—22.100(455B).

22.300(1) Definitions for operating permit by rule for small sources. For the purposes of rule 22.300(455B), the definitions shall be the same as the definitions found at rule 22.100(455B).

22.300(2) Registration for operating permit by rule for small sources.

a. Except as provided in subrules 22.300(3) and 22.300(11), any person who owns or operates a stationary source and meets the following criteria may register for an operating permit by rule for small sources:

(1) The potential to emit air contaminants is equal to or in excess of the threshold for a major stationary source of regulated air pollutants or hazardous air pollutants, and

(2) For every 12-month rolling period, the actual emissions of the stationary source are less than or equal to the emission limitations specified in subrule 22.300(6).

b. Eligibility for an operating permit by rule for small sources does not eliminate the source's responsibility to meet any and all applicable federal requirements including, but not limited to, a maximum achievable control technology (MACT) standard.

c. Nothing in this rule shall prevent any stationary source which has had a Title V operating permit or a voluntary operating permit from qualifying to comply with this rule in the future in lieu of maintaining an application for a Title V operating permit or a voluntary operating permit or upon rescission of a Title V operating permit or a voluntary operating permit if the owner or operator demonstrates that the stationary source is in compliance with the emissions limitations in subrule 22.300(6).

d. The department reserves the right to require proof that the expected emissions from the stationary source, in conjunction with all other emissions, will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28.

22.300(3) Exceptions to eligibility.

a. Any affected source subject to the provisions of Title IV of the Act or any solid waste incinerator unit required to obtain a Title V operating permit under Section 129(e) of the Act is not eligible for an operating permit by rule for small sources.

b. Sources which meet the registration criteria established in 22.300(2)“*a*” and meet all applicable requirements of rule 22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(2) (standards of performance for new stationary sources) or Section 111 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

c. Sources which meet the registration criteria established in 22.300(2)“*a*” and meet all applicable requirements of rule 22.300(455B), and are subject to a standard or other requirement under 567—subrule 23.1(3) (emissions standards for hazardous air pollutants), 567—subrule 23.1(4) (emissions standards for hazardous air pollutants for source categories) or Section 112 of the Act are eligible for an operating permit by rule for small sources. These sources shall be required to obtain a Title V operating permit when the exemptions specified in subrule 22.102(1) or 22.102(2) no longer apply.

22.300(4) Stationary source with de minimus emissions. Stationary sources with de minimus emissions must submit the standard registration form and must meet and fulfill all registration and reporting requirements as found in 22.300(8). Only the record-keeping and reporting provisions listed in 22.300(4)“*b*” shall apply to a stationary source with de minimus emissions or operations as specified in 22.300(4)“*a*”:

a. De minimus emission and usage limits. For the purpose of this rule a stationary source with de minimus emissions means:

(1) In every 12-month rolling period, the stationary source emits less than or equal to the following quantities of emissions:

1. 5 tons per year of a regulated air pollutant (excluding HAPs), and
2. 2 tons per year of a single HAP, and
3. 5 tons per year of any combination of HAPs.

(2) In every 12-month rolling period, at least 90 percent of the stationary source’s emissions are associated with an operation for which the throughput is less than or equal to one of the quantities specified in paragraphs “1” to “9” below:

1. 1,400 gallons of any combination of solvent-containing materials but no more than 550 gallons of any one solvent-containing material, provided that the materials do not contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (perchloroethylene), or trichloroethylene;

2. 750 gallons of any combination of solvent-containing materials where the materials contain the following: methyl chloroform (1,1,1-trichloroethane), methylene chloride (dichloromethane), tetrachloroethylene (per- chloroethylene), or trichloroethylene, but not more than 300 gallons of any one solvent-containing material;

3. 365 gallons of solvent-containing material used at a paint spray unit(s);

4. 4,400,000 gallons of gasoline dispensed from equipment with Phase I and II vapor recovery systems;

5. 470,000 gallons of gasoline dispensed from equipment without Phase I and II vapor recovery systems;

6. 1,400 gallons of gasoline combusted;

7. 16,600 gallons of diesel fuel combusted;

8. 500,000 gallons of distillate oil combusted; or

9. 71,400,000 cubic feet of natural gas combusted.

b. Record keeping for de minimis sources. Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small sources shall comply with all applicable record-keeping requirements of this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in a construction permit or in a local, state, or federal rule or regulation.

(1) De minimis sources shall always maintain an annual log of each raw material used and its amount. The annual log and all related material safety data sheets (MSDS) for all materials shall be maintained for a period of not less than the most current five years. The annual log will begin on the date the small source operating permit application is submitted, then on an annual basis, based on a calendar year.

(2) Within 30 days of a written request by the state or the U.S. EPA, the owner or operator of a stationary source not maintaining records pursuant to subrule 22.300(7) shall demonstrate that the stationary source's emissions or throughput is not in excess of the applicable quantities set forth in paragraph "a" above.

22.300(5) Provision for air pollution control equipment. The owner or operator of a stationary source may take into account the operation of air pollution control equipment on the capacity of the source to emit an air contaminant if the equipment is required by federal, state, or local air pollution control agency rules and regulations or permit terms and conditions that are federally enforceable. The owner or operator of the stationary source shall maintain and operate such air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions.

22.300(6) Emission limitations.

a. No stationary source subject to this rule shall emit in every 12-month rolling period more than the following quantities of emissions:

(1) 50 percent of the major source thresholds for regulated air pollutants (excluding hazardous air pollutants), and

(2) 5 tons per year of a single hazardous air pollutant, and

(3) 12.5 tons per year of any combination of hazardous air pollutants.

b. The owner or operator of a stationary source subject to this rule shall obtain any necessary permits prior to commencing any physical or operational change or activity which will result in actual emissions that exceed the limits specified in paragraph "a" of this subrule.

22.300(7) Record-keeping requirements for non-de minimis sources. Upon registration with the department the owner or operator of a stationary source eligible to register for an operating permit by rule for small stationary sources shall comply with all applicable record-keeping requirements in this rule. The record-keeping requirements of this rule shall not replace any record-keeping requirement contained in any operating permit, a construction permit, or in a local, state, or federal rule or regulation.

a. A stationary source previously covered by the provisions in 22.300(4) shall comply with the applicable provisions of subrule 22.300(7) (record-keeping requirements) and subrule 22.300(8) (reporting requirements) if the stationary source exceeds the quantities specified in paragraph 22.300(4) "a."

b. The owner or operator of a stationary source subject to this rule shall keep and maintain records, as specified in 22.300(7) "c" below, for each permitted emission unit and each piece of emission control equipment sufficient to determine actual emissions. Such information shall be maintained on site for five years, and be made available to local, state, or U.S. EPA staff upon request.

c. Record-keeping requirements for emission units and emission control equipment. Record-keeping requirements for emission units are specified below in 22.300(7) "c"(1) through 22.300(7) "c"(4). Record-keeping requirements for emission control equipment are specified in 22.300(7) "c"(5).

(1) Coating/solvent emission unit. The owner or operator of a stationary source subject to this rule that contains a coating/solvent emission unit not permitted under 22.8(1) (permit by rule for spray booths) or uses a coating, solvent, ink or adhesive shall keep and maintain the following records:

1. A current list of all coatings, solvents, inks and adhesives in use. This list shall include: material safety data sheets (MSDS), manufacturer's product specifications, and material VOC content reports for

each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used showing at least the product manufacturer, product name and code, VOC and hazardous air pollutant content;

2. A description of any equipment used during and after coating/solvent application, including type, make and model; maximum design process rate or throughput; and control device(s) type and description (if any);

3. A monthly log of the consumption of each solvent (including solvents used in cleanup and surface preparation), coating, ink, and adhesive used; and

4. All purchase orders, invoices, and other documents to support information in the monthly log.

(2) Organic liquid storage unit. The owner or operator of a stationary source subject to this rule that contains an organic liquid storage unit shall keep and maintain the following records:

1. A monthly log identifying the liquid stored and monthly throughput; and

2. Information on the tank design and specifications including control equipment.

(3) Combustion emission unit. The owner or operator of a stationary source subject to this rule that contains a combustion emission unit shall keep and maintain the following records:

1. Information on equipment type, make and model, maximum design process rate or maximum power input/output, minimum operating temperature (for thermal oxidizers) and capacity and all source test information; and

2. A monthly log of fuel type, fuel usage, fuel heating value (for nonfossil fuels; in terms of Btu/lb or Btu/gal), and percent sulfur for fuel oil and coal.

(4) General emission unit. The owner or operator of a stationary source subject to this rule that contains an emission unit not included in subparagraph (1), (2), or (3) above shall keep and maintain the following records:

1. Information on the process and equipment including the following: equipment type, description, make and model; and maximum design process rate or throughput;

2. A monthly log of operating hours and each raw material used and its amount; and

3. Purchase orders, invoices, or other documents to support information in the monthly log.

(5) Emission control equipment. The owner or operator of a stationary source subject to this rule that contains emission control equipment shall keep and maintain the following records:

1. Information on equipment type and description, make and model, and emission units served by the control equipment;

2. Information on equipment design including, where applicable: pollutant(s) controlled; control effectiveness; and maximum design or rated capacity; other design data as appropriate including any available source test information and manufacturer's design/repair/maintenance manual; and

3. A monthly log of hours of operation including notation of any control equipment breakdowns, upsets, repairs, maintenance and any other deviations from design parameters.

22.300(8) Registration and reporting requirements.

a. Duty to apply. Any person who owns or operates a source otherwise required to obtain a Title V operating permit and which would be eligible for an operating permit by rule for small sources must either register for an operating permit by rule for small sources, apply for a voluntary operating permit, or apply for a Title V operating permit. Any source determined not to be eligible for an operating permit by rule for small sources, and operating without a valid Title V or a valid voluntary operating permit, shall be subject to enforcement action for operation without a Title V operating permit, except as provided for in the application shield provisions contained in rules 22.104(455B) and 22.202(455B). For each source registering for an operating permit by rule for small sources, the owner or operator or designated representative, where applicable, shall present or mail to the Air Quality Bureau, Iowa Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, one original and one copy of a timely and complete registration form in accordance with this rule.

(1) Timely registration. Each source registering for an operating permit by rule for small sources shall submit a registration form:

1. By August 1, 1996, if the source became subject to rule 22.101(455B) on or before August 1, 1995, unless otherwise required to obtain a Title V permit under rule 22.101(455B).

2. Within 12 months of becoming subject to rule 22.101(455B) (the requirement to obtain a Title V operating permit) for a new source or a source which would otherwise become subject to the Title V permit requirement after August 1, 1995.

(2) Complete registration form. To be deemed complete the registration form must provide all information required pursuant to 22.300(8)“b.”

(3) Duty to supplement or correct registration. Any registrant who fails to submit any relevant facts or who has submitted incorrect information in an operating permit by rule for small sources registration shall, upon becoming aware of such failure or incorrect submittal, promptly submit such supplementary facts or corrected information. In addition, the registrant shall provide additional information as necessary to address any requirements that become applicable to the source after the date it filed a complete registration.

(4) Certification of truth, accuracy, and completeness. Any registration form, report, or supplemental information submitted pursuant to these rules shall contain certification by a responsible official of truth, accuracy, and completeness. This certification and any other certification required under these rules shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

b. At the time of registration for an operating permit by rule for small sources each owner or operator of a stationary source shall submit to the department a standard registration form and required attachments. To register for an operating permit by rule for small sources, applicants shall complete the registration form and supply all information required by the filing instructions. The information submitted must be sufficient to evaluate the source, its registration, predicted actual emissions from the source; and to determine whether the source is subject to the exceptions listed in subrule 22.300(3). The standard registration form and attachments shall require that the following information be provided:

(1) Identifying information, including company name and address (or plant or source name if different from the company name), owner’s name and responsible official, and telephone number and names of plant site manager or contact;

(2) A description of source processes and products;

(3) The following emissions-related information shall be submitted to the department on the standard registration form:

1. The total actual emissions of each regulated air pollutant. Actual emissions shall be reported for one contiguous 12-month period within the 18 months preceding submission of the registration to the department;

2. Identification and description of each emission unit with the potential to emit a regulated air pollutant;

3. Identification and description of air pollution control equipment;

4. Limitations on source operations affecting emissions or any work practice standards, where applicable, for all regulated pollutants;

5. Fugitive emissions sources shall be included in the registration form in the same manner as stack emissions if the source is one of the source categories defined as a stationary source category in rule 22.100(455B).

(4) Requirements for certification. Facilities which claim to meet the requirements set forth in this rule to qualify for an operating permit by rule for small sources must submit to the department, with a complete registration form, a written statement as follows:

“I certify that all equipment at the facility with a potential to emit any regulated pollutant is included in the registration form, and submitted to the department as required in 22.300(8)“b.” I understand that the facility will be deemed to have been granted an operating permit by rule for small sources under the terms of 567 IAC 22.300(455B) only if all applicable requirements of 567 IAC 22.300(455B) are met and if the registration is not denied by the director under 567 IAC 22.300(11). This certification is based on information and belief formed after reasonable inquiry; the statements and information in the document are true, accurate, and complete.” The certification must be signed by one of the following individuals.

For corporations, a principal executive officer of at least the level of vice president, or a responsible official as defined at 567 IAC 22.100(455B).

For partnerships, a general partner.

For sole proprietorships, the proprietor.

For municipal, state, county, or other public facilities, the principal executive officer or the ranking elected official.

22.300(9) *Construction permits issued after registration for an operating permit by rule for small sources.* This rule shall not relieve any stationary source from complying with requirements pertaining to any otherwise applicable construction permit, or to replace a condition or term of any construction permit, or any provision of a construction permitting program. This does not preclude issuance of any construction permit with conditions or terms necessary to ensure compliance with this rule.

a. If the issuance of a construction permit acts to make the source no longer eligible for an operating permit by rule for small sources, the source shall, within 12 months of issuance of the construction permit, submit an application for either a Title V operating permit or a voluntary operating permit.

b. If the issuance of a construction permit does not prevent the source from continuing to be eligible to operate under an operating permit by rule for small sources, the source shall, within 30 days of issuance of a construction permit, provide to the department the information as listed in 22.300(8) “*b*” for the new or modified source.

22.300(10) *Violations.*

a. Failure to comply with any of the applicable provisions of this rule shall constitute a violation of this rule.

b. A stationary source subject to this rule shall be subject to applicable federal requirements for a major source, including rules 22.101(455B) to 22.116(455B) when the conditions specified in either subparagraph (1) or (2) below, occur:

(1) Commencing on the first day following every 12-month rolling period in which the stationary source exceeds a limit specified in subrule 22.300(6), or

(2) Commencing on the first day following every 12-month rolling period in which the owner or operator cannot demonstrate that the stationary source is in compliance with the limits in subrule 22.300(6).

22.300(11) *Suspension, termination, and revocation of an operating permit by rule for small sources.*

a. Registrations may be terminated, modified, revoked, or reissued for cause. The following examples shall be considered cause for the suspension, modification, revocation, or reissuance of an operating permit by rule for small sources:

(1) The director has reasonable cause to believe that the operating permit by rule for small sources was obtained by fraud or misrepresentation.

(2) The person registering for the operating permit by rule for small sources failed to disclose a material fact required by the registration form or the rules applicable to the operating permit by rule for small sources, of which the applicant had or should have had knowledge at the time the registration form was submitted.

(3) The terms and conditions of the operating permit by rule for small sources have been or are being violated.

(4) The owner or operator of the source has failed to pay an administrative, civil or criminal penalty for violations of the operating permit by rule for small sources.

b. If the director suspends, terminates or revokes an operating permit by rule for small sources under this rule, the notice of such action shall be served on the applicant by certified mail, return receipt requested. The notice shall include a statement detailing the grounds for the action sought, and the proceeding shall in all other respects comply with the requirements of rule 561—7.16(17A,455A).

22.300(12) *Change of ownership.* The new owner shall notify the department in writing no later than 30 days after the change of ownership of equipment covered by an operating permit by rule for small sources. The notification to the department shall be mailed to Air Quality Bureau, Iowa Department of

Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, and shall include the following information:

- a. The date of ownership change; and
- b. The name, address and telephone number of the responsible official, the contact person and the owner of the equipment both before and after the change of ownership.

These rules are intended to implement Iowa Code sections 455B.133 and 455B.134.

[Filed 8/24/70; amended 5/2/72, 12/11/73, 12/17/74]

[Filed 3/1/76, Notice 11/3/75—published 3/22/76, effective 4/26/76]

[Filed 5/27/77, Notice 3/9/77—published 6/15/77, effective 1/1/78]

[Filed without Notice 10/28/77—published 11/16/77, effective 12/21/77]

[Filed 4/27/78, Notice 11/16/77—published 5/17/78, effective 6/21/78]¹

[Filed emergency 10/12/78—published 11/1/78, effective 10/12/78]

[Filed 6/29/79, Notice 2/7/79—published 7/25/79, effective 8/29/79]

[Filed 4/10/80, Notice 12/26/79—published 4/30/80, effective 6/4/80]

[Filed 9/26/80, Notice 5/28/80—published 10/15/80, effective 11/19/80]

[Filed 12/12/80, Notice 10/15/80—published 1/7/81, effective 2/11/81]

[Filed 4/23/81, Notice 2/18/81—published 5/13/81, effective 6/17/81]

[Filed 9/24/82, Notice 3/17/82—published 10/13/82, effective 11/17/82]

[Filed emergency 6/3/83—published 6/22/83, effective 7/1/83]

[Filed 7/25/84, Notice 5/9/84—published 8/15/84, effective 9/19/84]

[Filed 12/20/85, Notice 7/17/85—published 1/15/86, effective 2/19/86]

[Filed 5/2/86, Notice 1/15/86—published 5/21/86, effective 6/25/86]

[Filed emergency 11/14/86—published 12/3/86, effective 12/3/86]

[Filed 2/20/87, Notice 12/3/86—published 3/11/87, effective 4/15/87]

[Filed 7/22/88, Notice 5/18/88—published 8/10/88, effective 9/14/88]

[Filed 10/28/88, Notice 7/27/88—published 11/16/88, effective 12/21/88]

[Filed 1/19/90, Notice 11/15/89—published 2/7/90, effective 3/14/90]

[Filed 9/28/90, Notice 6/13/90—published 10/17/90, effective 11/21/90]

[Filed 12/30/92, Notice 9/16/92—published 1/20/93, effective 2/24/93]

[Filed 2/25/94, Notice 10/13/93—published 3/16/94, effective 4/20/94]

[Filed 9/23/94, Notice 6/22/94—published 10/12/94, effective 11/16/94]

[Filed 10/21/94, Notice 4/13/94—published 11/9/94, effective 12/14/94]

[Filed without Notice 11/18/94—published 12/7/94, effective 1/11/95]

[Filed emergency 2/24/95—published 3/15/95, effective 2/24/95]

[Filed 5/19/95, Notices 12/21/94, 3/15/95—published 6/7/95, effective 7/12/95][◇]

[Filed 8/25/95, Notice 6/7/95—published 9/13/95, effective 10/18/95][◇]

[Filed emergency 10/20/95—published 11/8/95, effective 10/20/95]

[Filed emergency 11/16/95—published 12/6/95, effective 11/16/95]

[Filed 1/26/96, Notices 11/8/95, 12/6/95—published 2/14/96, effective 3/20/96]

[Filed 1/26/96, Notice 11/8/95—published 2/14/96, effective 3/20/96][◇]

[Filed 4/19/96, Notice 1/17/96—published 5/8/96, effective 6/12/96]³

[Filed 5/31/96, Notice 3/13/96—published 6/19/96, effective 7/24/96]

[Filed 8/23/96, Notice 5/8/96—published 9/11/96, effective 10/16/96]

[Filed 11/1/96, Notice 8/14/96—published 11/20/96, effective 12/25/96]

[Filed 3/20/97, Notice 10/9/96—published 4/9/97, effective 5/14/97]

[Filed 3/20/97, Notice 11/20/96—published 4/9/97, effective 5/14/97]

[Filed 6/27/97, Notice 3/12/97—published 7/16/97, effective 8/20/97]

[Filed 3/19/98, Notice 1/14/98—published 4/8/98, effective 5/13/98]

[Filed emergency 5/29/98—published 6/17/98, effective 6/29/98]

[Filed 6/26/98, Notice 3/11/98—published 7/15/98, effective 8/19/98]

[Filed 8/21/98, Notice 6/17/98—published 9/9/98, effective 10/14/98][◇]

[Filed 10/30/98, Notice 8/26/98—published 11/18/98, effective 12/23/98]

[Filed 3/19/99, Notice 12/30/98—published 4/7/99, effective 5/12/99]
 [Filed 5/28/99, Notice 3/10/99—published 6/16/99, effective 7/21/99]
 [Filed 3/3/00, Notice 12/15/99—published 3/22/00, effective 4/26/00]
 [Filed 1/19/01, Notice 6/14/00—published 2/7/01, effective 3/14/01]⁴
 [Filed 6/21/01, Notice 3/21/01—published 7/11/01, effective 8/15/01]
 [Filed 12/19/01, Notice 10/17/01—published 1/9/02, effective 2/13/02]
 [Filed 2/28/02, Notice 12/12/01—published 3/20/02, effective 4/24/02]
 [Filed 5/24/02, Notice 10/17/01—published 6/12/02, effective 7/17/02]
 [Filed 5/24/02, Notice 3/20/02—published 6/12/02, effective 7/17/02]
 [Filed 11/21/02, Notice 6/12/02—published 12/11/02, effective 1/15/03]
 [Filed without Notice 2/28/03—published 3/19/03, effective 4/23/03]
 [Filed 5/22/03, Notice 3/19/03—published 6/11/03, effective 7/16/03]
 [Filed 8/15/03, Notice 5/14/03—published 9/3/03, effective 10/8/03]
 [Filed 8/29/03, Notice 6/11/03—published 9/17/03, effective 10/22/03]
 [Filed 11/19/03, Notice 9/17/03—published 12/10/03, effective 1/14/04]
 [Filed 10/22/04, Notice 7/21/04—published 11/10/04, effective 12/15/04]
 [Filed 2/25/05, Notice 12/8/04—published 3/16/05, effective 4/20/05]
 [Filed 5/18/05, Notice 3/16/05—published 6/8/05, effective 7/13/05]
 [Filed 8/23/05, Notice 5/11/05—published 9/14/05, effective 10/19/05]
 [Filed 2/24/06, Notice 11/9/05—published 3/15/06, effective 4/19/06]
 [Filed 5/17/06, Notice 1/18/06—published 6/7/06, effective 7/12/06]⁰
 [Filed 6/28/06, Notice 4/12/06—published 7/19/06, effective 8/23/06]
 [Filed 8/25/06, Notice 6/7/06—published 9/27/06, effective 11/1/06]
 [Filed 2/8/07, Notice 12/6/06—published 2/28/07, effective 4/4/07]
 [Filed 5/3/07, Notice 1/31/07—published 5/23/07, effective 6/27/07]⁰
 [Filed emergency 10/4/07 after Notice 8/1/07—published 10/24/07, effective 10/4/07]
 [Filed 1/23/08, Notice 8/29/07—published 2/13/08, effective 3/19/08]
 [Filed 4/18/08, Notice 1/2/08—published 5/7/08, effective 6/11/08]
 [Filed 8/20/08, Notice 6/4/08—published 9/10/08, effective 10/15/08]
 [Filed 12/10/08, Notice 10/8/08—published 12/31/08, effective 2/4/09]

⁰ Two or more ARCs

¹ Effective date of 22.1(455B) [DEQ, 3.1] delayed by the Administrative Rules Review Committee 70 days from June 21, 1978. The Administrative Rules Review Committee at the August 15, 1978 meeting delayed 22.1 [DEQ, 3.1] under provisions of 67GA, SF244, §19. (See HJR 6, 1/22/79).

² Effective date of 22.100(455B), definition of “12-month rolling period”; 22.200(455B); 22.201(1)“a,” “b,”; 22.201(2)“a”; 22.206(2)“c,” delayed 70 days by the Administrative Rules Review Committee at its meeting held October 10, 1995; delay lifted by this Committee December 13, 1995, effective December 14, 1995.

³ Effective date of 22.300 delayed 70 days by the Administrative Rules Review Committee at its meeting held June 11, 1996; delay lifted by this Committee at its meeting held June 12, 1996, effective June 12, 1996.

⁴ Effective date of 22.1(2), unnumbered introductory paragraphs and paragraphs “g” and “i,” delayed 70 days by the Administrative Rules Review Committee at its meeting held March 9, 2001.

CHAPTER 113
SANITARY LANDFILLS FOR MUNICIPAL
SOLID WASTE: GROUNDWATER PROTECTION SYSTEMS FOR THE DISPOSAL OF
NONHAZARDOUS WASTES

[Prior to 12/11/02, see 567—Chs 102, 103, 110]

567—113.1(455B) Purpose. The purpose of this chapter is to protect human health and the environment through the implementation of minimum national standards pursuant to the Resource Conservation and Recovery Act (“RCRA” or “the Act”) for all municipal solid waste landfill (MSWLF) units and under the Clean Water Act for MSWLFs that are used to dispose of sewage sludge.

This chapter details the permitting, siting, design, operating, monitoring, corrective action, reporting, record-keeping, closure, and postclosure requirements for all sanitary landfills accepting municipal solid waste (MSW).

Groundwater is a precious natural resource. The vast majority of citizens in Iowa depend on groundwater as a drinking water source. Agriculture, industry and commerce also depend heavily on groundwater. It is essential to the health, welfare, and economic prosperity of all citizens in Iowa that groundwater is protected and that the prevention of groundwater contamination is of paramount importance. Therefore, the intent of this chapter is to prevent groundwater contamination from MSWLF units to the maximum extent practical, and if necessary to restore the groundwater to a potable state, regardless of present condition, use, or characteristics.

567—113.2(455B) Applicability and compliance.

113.2(1) All sanitary landfills accepting municipal solid waste must comply with the provisions of this chapter.

113.2(2) These rules do not encompass the beneficial use of by-products as alternative cover material. For rules pertaining to the beneficial use of by-products as alternative cover material, see 567—Chapter 108.

113.2(3) These rules do not encompass the management and disposal of special wastes. For rules pertaining to the management and disposal of special wastes, see 567—Chapter 109.

113.2(4) This chapter does not apply to MSWLF units that did not receive waste after October 9, 1994. The closure permit issued or the rules in effect at the time of closure shall govern postclosure activities for such MSWLF units.

113.2(5) This chapter does not apply to MSWLF units that stop receiving waste before October 1, 2007, and are not contiguous with MSWLF units that will continue to accept waste after October 1, 2007. For the purpose of this subrule, contiguous MSWLF units are those that adjoin, abut or have a common boundary or edge with one another or that utilize the same groundwater monitoring network system. The permit issued and the rules in effect at the time waste acceptance ceased shall govern postclosure activities for such MSWLF units except as follows:

a. Financial assurance in accordance with rule 567—113.14(455B) shall be required.

b. Owners or operators of MSWLF units described in this subrule that fail to complete cover installation within one year after October 1, 2007, will be subject to all the requirements of this chapter, unless otherwise specified.

c. Surface water sampling in accordance with subrule 113.10(3) shall be required.

d. MSWLF units subject to this rule shall perform groundwater sampling for the following parameters:

(1) Routine semiannual water sampling parameters:

1. Chloride.
2. Specific conductance (field measurement).
3. pH (field measurement).
4. Ammonia nitrogen.
5. Iron, dissolved.
6. Chemical oxygen demand.

7. Any additional parameters deemed necessary by the department.
- (2) Routine annual water sampling parameters:
 1. Total organic halogen.
 2. Phenols.
 3. Any additional parameters deemed necessary by the department.

e. If the analytical results for a downgradient groundwater monitoring point do not fall within the control limits of two standard deviations above (or below for pH) the mean parameters, listed in subparagraphs 113.2(5) “*d*”(1) and (2), in a corresponding upgradient groundwater monitoring point and it cannot be demonstrated that a source other than an MSWLF unit caused the control limit exceedence, then the owner or operator shall comply with the groundwater assessment monitoring program requirements in subrule 113.10(6) and corrective action requirements in subrules 113.10(7), 113.10(8) and 113.10(9), if necessary.

113.2(6) MSWLF units containing sewage sludge and failing to satisfy the requirements of this chapter violate Sections 309 and 405(e) of the Clean Water Act.

113.2(7) Consideration of other laws. The issuance of an MSWLF permit by the department in no way relieves the permit holder of the responsibility of complying with all other local, state, or federal statutes, ordinances, and rules and other applicable requirements.

113.2(8) Closure of existing MSWLF units.

a. Existing MSWLF units that cannot make the demonstration specified in paragraph 113.6(2) “*a*,” pertaining to airports, in 113.6(2) “*b*,” pertaining to floodplains, or in 113.6(2) “*f*,” pertaining to unstable areas, must close in accordance with rule 113.12(455B) and conduct postclosure activities in accordance with rule 113.13(455B).

b. Existing MSWLF units that do not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance shall cease accepting waste by October 1, 2007.

c. Rescinded IAB 12/31/08, effective 2/4/09.

d. Those portions of existing MSWLF units demonstrating placement of final cover in conformance with previously approved plans and specifications or regulations in effect at the time of such closure shall not be required to apply additional cover solely to achieve compliance with rule 113.12(455B).

113.2(9) Existing MSWLF units that continue accepting waste after October 1, 2007, shall submit an implementation plan to the department by January 31, 2008, that identifies how the MSWLF shall achieve compliance with these rules. The plan shall include a compliance schedule which shall not extend beyond January 31, 2011. This subrule shall not preclude compliance with subrule 113.2(8).

113.2(10) Compliance with amendments to these rules.

a. Owners or operators of existing MSWLF units that have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance shall not be required to redesign or reconstruct the MSWLF units due to amendments to these rules subsequent to such approval unless the department finds that such facilities are causing pollution or that continued use of such facilities results in a vertical expansion on top of or against the side slopes of a previously filled noncompliant MSWLF unit. Prior to waste placement in the vertical expansion area, revised design plans shall be submitted to include construction of a separatory liner and leachate collection system that comply with all the requirements of subrule 113.7(5) to be placed between the area of vertical expansion and the underlying noncompliant MSWLF unit. The department, in conjunction with the MSWLF owner or operator, shall determine the maximum amount of time necessary for continued waste placement on top of or against the previously filled noncompliant MSWLF unit to achieve an adequate slope in order to maintain drainage of leachate to the leachate collection system after expected settlement.

b. Except as authorized by subrule 113.2(9) and paragraph 113.2(10) “*a*,” if any new requirement conflicts with a provision of or an operating procedure prescribed in the engineering plans or the MSWLF permit, the facility shall conform to the new rule.

113.2(11) Equivalency review procedure.

a. In approving a permit application under this chapter, the department may authorize, in writing, alternatives to the design requirements in this chapter only if, and only to the extent that, specific rules in this chapter expressly state that alternatives may be authorized under this chapter.

b. An owner or operator requesting an alternative design under this chapter shall submit a request to the department prepared by an Iowa-licensed professional engineer. The request shall:

(1) Identify the specific rule for which an equivalency alternative is being sought.

(2) Demonstrate, through supporting technical documentation, justification and quality control procedures, that the requested alternative to the design requirements in the rules of this chapter will, for the life of operations at the facility, achieve the performance standards in that rule.

c. No equivalency alternative will be approved unless the application affirmatively demonstrates that the following conditions are met:

(1) The request is complete and accurate and the requirements of this subrule have been met.

(2) The proposed alternative will, for the life of operations at the facility, achieve the performance standards in the rule for which the alternative to the design requirements in that rule is sought.

(3) The proposed alternative will provide protection equivalent to the design requirements in this chapter for the air, water or other natural resources of the state of Iowa, and will not harm or endanger the public health, safety or welfare.

567—113.3(455B) Definitions. Unless otherwise noted, the definitions set forth in Iowa Code section 455B.301 and 567—Chapter 100, which are incorporated by reference; the definitions that appear in specific rules within this chapter; and the following definitions shall apply to this chapter:

“Active life” means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with rule 113.12(455B).

“Active portion” means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with rule 113.12(455B).

“Aquifer” has the same meaning as in 567—Chapter 100.

“Commercial solid waste” means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

“Existing MSWLF unit” means any municipal solid waste landfill unit that has received solid waste as of the most recent permit renewal.

“Facility” means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste. The facility is formally defined in the permit issued by the department. Buffer lands around a facility are not required to be included in the permitted boundary of a facility.

“High water table” has the same meaning as in 567—Chapter 100.

“Household waste” means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

“Industrial solid waste” means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing and foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. “Industrial solid waste” does not include mining waste or oil and gas waste.

“Lateral expansion” means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

“Municipal solid waste landfill (MSWLF) unit” means a discrete area of land or an excavation that receives household waste, and that is not a land application site, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR Part 257.2. An MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, construction

and demolition debris, and industrial solid waste. An MSWLF unit may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not an MSWLF unit.

“*New MSWLF unit*” means any municipal solid waste landfill unit that has not received waste prior to the most recent permit renewal.

“*Open burning*” has the same meaning as in 567—Chapter 100.

“*Operator*” has the same meaning as in 567—Chapter 100.

“*Owner*” means the person(s) who owns a facility or part of a facility.

“*Point of compliance*” or “*POC*” means the point at which the MSWLF owner or operator demonstrates compliance with the liner performance standard, if applicable, and with the groundwater protection standard. The point of compliance is a vertical surface located hydraulically downgradient of the waste management area that extends down into the uppermost aquifer underlying the regulated MSWLF unit(s) and where groundwater monitoring shall be conducted.

“*Residential lead-based paint waste*” means waste containing lead-based paint that is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. “Residential lead-based paint waste” includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

“*Runoff*” means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

“*Run-on*” means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

“*Saturated zone*” means that part of the earth’s crust in which all voids are filled with water.

“*Sewage sludge*” has the same meaning as in 567—Chapter 67.

“*Sludge*” means any solid, semisolid, or liquid waste generated from a commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, or any other such waste having similar characteristics and effects exclusive of the treated effluent from a wastewater treatment plant.

“*Statistically significant increase*” or “*SSI*” means a statistical difference large enough to account for data variability and not thought to be due to chance alone.

“*Uppermost aquifer*” means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility’s property boundary.

“*Vertical expansion*” means additional waste placement on top of or against the side slopes of a previously filled MSWLF unit, whether active, closed, or inactive.

“*Waste management unit boundary*” means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

567—113.4(455B) Permits.

113.4(1) *Permit required.* An MSWLF unit shall not be constructed or operated without a permit from the department.

113.4(2) *Construction and operation.* An MSWLF unit shall be constructed and operated according to this chapter, any plans and specifications approved by the department, and the conditions of the permit. Any approved plans and specifications shall constitute a condition of the permit.

113.4(3) *Transfer of title and permit.* If title to an MSWLF unit is transferred, then the department shall transfer the permit within 60 days if the department has found that the following requirements have been met:

a. The title transferee has applied in writing to the department to request a transfer of the permit within 30 days of the transfer of the title.

b. The permitted facility is in compliance with Iowa Code chapters 455B and 455D, this chapter and the conditions of the permit.

c. The transferee possesses the equipment and personnel to operate the project in conformance with Iowa Code chapter 455B and these rules and the terms of the permit.

113.4(4) *Permit conditions.* Any permit may be issued subject to conditions specified in writing by the department that are necessary to ensure that the facility is constructed and operated in a safe and effective manner, and in compliance with Iowa Code chapters 455B and 455D, this chapter and the conditions of the permit.

113.4(5) *Effect of revocation.* If an MSWLF permit held by any public or private agency is revoked by the department, then no new permit shall be issued to that agency for that MSWLF for a period of one year from the date of revocation. Such revocation shall not prohibit the issuance of a permit for the facility to another public or private agency.

113.4(6) *Inspection of site and operation.* The department shall be notified when the construction of a new facility or MSWLF unit or significant components thereof have been completed so that the department may inspect the facility to determine if the project has been constructed in accordance with the design approved by the department. The department shall inspect and approve a new facility or MSWLF unit before MSW may be accepted. The department shall inspect a facility and its operations on a regular basis to determine if the facility is in compliance with this chapter.

113.4(7) *Duration and renewal of permits.*

a. *Operating permits.* An MSWLF permit shall be issued and may be renewed for a period no longer than five years, unless the MSWLF adopts research, development and demonstration (RD&D) provisions pursuant to subrule 113.4(10). An MSWLF permit with RD&D provisions pursuant to subrule 113.4(10) shall be issued and may be renewed for a period no longer than three years.

b. *Closure permits.* An MSWLF closure permit shall be issued only after a facility no longer accepts solid waste. A closure permit shall initially be issued for a period of 30 years. If the department extends the postclosure period beyond 30 years, then the duration of the subsequent closure permit will be determined on a site-specific basis. An MSWLF requires a closure permit until the department determines that postclosure operations are no longer necessary.

113.4(8) *Request for permit renewal.*

a. *Operating permits.* A request for an operating permit renewal shall be in writing and filed at least 90 days before the expiration of the current permit. If the applicant is found not to be in compliance with this chapter or the permit requirements, then the applicant shall achieve compliance or be placed on a compliance schedule approved by the department before the permit may be renewed.

b. *Closure permits.* A request for a closure permit renewal or termination shall be filed at least 180 days before the expiration of the current permit. If the department finds that an MSWLF has completed all required postclosure activities and no longer presents a significant risk to human health or the environment, then the department shall issue written notification that a closure permit is no longer required for the facility.

113.4(9) *Request for permit amendment.* Requests for permit amendments must be submitted in writing to the department with supporting documentation and justification.

113.4(10) *RD&D permits.* The department may issue an RD&D permit that overrides the applicable portions of this chapter, as listed below, without issuing a variance. A permit amendment from the department for leachate recirculation only does not require an RD&D permit.

a. The department may issue an RD&D permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria, provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-cm (i.e., 12-inch) depth of leachate on the liner:

- (1) The run-on control systems in subrule 113.7(8); and
- (2) The liquids restrictions in subparagraph 113.8(1)“b”(3).

b. The department may issue a permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from the final cover criteria of subrules 113.12(1) and 113.12(2), provided that the MSWLF unit owner or operator demonstrates that the infiltration of liquid through the alternative cover system will not cause

contamination of groundwater or surface water, or cause leachate depth on the liner to exceed 30 cm (i.e., 12 inches).

c. Any permit issued under subrule 113.4(10) must include such terms and conditions at least as protective as the criteria for MSWLFs to ensure protection of human health and the environment. Such permits shall:

(1) Provide for the construction and operation of such facilities as necessary, for not longer than three years, unless renewed as provided in paragraph 113.4(10)“e”;

(2) Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and nonhazardous wastes which the department deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the department with respect to the operation of the facility;

(4) Require the owner or operator of an MSWLF unit permitted under subrule 113.4(10) to submit an annual report to the department showing whether and to what extent the site is progressing in attaining project goals. The report shall also include a summary of all monitoring and testing results, as well as any other operating information specified by the department in the permit; and

(5) Require compliance with all criteria in this chapter, except as permitted under subrule 113.4(10).

d. The department may order an immediate termination of all operations at the facility allowed under subrule 113.4(10) or other corrective measures at any time the department determines that the overall goals of the project are not being attained, including protection of human health or the environment.

e. Any permit issued under subrule 113.4(10) shall not exceed 3 years, and each renewal of a permit may not exceed 3 years.

(1) The total term for a permit for a project including renewals may not exceed 12 years; and

(2) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and the status with respect to problem resolutions, and any other requirements that the department determines necessary for permit renewal.

113.4(11) Factors in permit issuance decisions. The department may request that additional information be submitted for review to make a permit issuance decision. The department may review and inspect the facility, its agents and operators, and compliance history. The department may consider compliance with related requirements, such as financial assurance and comprehensive planning. The department may review whether or not a good-faith effort to maintain compliance and protect human health and the environment is being made, and whether a compliance schedule is being followed.

113.4(12) Notice and public participation in the MSWLF permit issuance and postpermit actions process.

a. For the purposes of this subrule, “postpermit actions” includes permit renewals and requests for major facility modifications as defined below:

(1) Change in an MSWLF facility boundary or an MSWLF unit.

(2) Application for an RD&D permit pursuant to subrule 113.4(10).

(3) Installation of a landfill gas collection system.

(4) Application for a closure permit for a MSWLF unit.

(5) Transfer of an MSWLF permit to a new owner.

(6) Variance from this chapter under rule 567—113.15(455B).

(7) Change in the postclosure land use of the property.

(8) Other significant permit actions that are determined by the department to require public notice and participation. Such actions may include requests to change any of the requirements set forth as special provisions in the permit.

b. Prior to the issuance of approval or denial for an MSWLF permit or postpermit action, public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the permit or postpermit action request. Procedures for the circulation of public notice shall include at least the following procedures:

(1) Upon receipt of the permit application or postpermit action request, the department shall make a determination of whether public notice is required in accordance with this subrule. If the determination is made that public notice is required, then the department shall prepare the public notice which shall be circulated by the owner or operator within the service area of the MSWLF by posting the public notice near the entrance to the MSWLF; and by publishing the public notice in periodicals or, if appropriate, in a newspaper(s) of general circulation.

(2) The public notice shall be mailed by the department to any person upon request and posted on the department's Web site.

c. The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views with respect to the MSWLF permit application or postpermit action request. All written comments submitted during the 30-day comment period shall be retained by the department and considered by the department in the formulation of the department's final determinations with respect to the permit application or postpermit action request. The period for comment may be extended at the discretion of the department.

d. The contents of the public notice shall include at least the following:

(1) The name, address, and telephone number of the department.

(2) The name and address of each applicant.

(3) A brief description of each applicant's activities or operations which result in the submittal of the permit application or postpermit action request.

(4) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit or postpermit action request. A statement of procedures to request a public hearing pursuant to paragraph 113.4(12) "e" shall be included.

(5) Locations where copies of the permit application or postpermit action request may be reviewed, including the closest department field office, and the times at which the copies shall be available for public inspection.

e. The applicant, any interested agency, person or group of persons may request or petition for a public hearing with respect to an MSWLF permit application or postpermit action request. Any such request shall clearly state issues and topics to be addressed at the hearing. Any such request or petition for public hearing must be filed with the department within the 30-day period prescribed in paragraph 113.4(12) "c" and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The department shall hold an informal and noncontested case hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Frivolous or insubstantial requests for hearing may be denied by the department. Instances of doubt should be resolved in favor of holding the hearing. Any hearing requested pursuant to this subrule shall be held in the service area of the MSWLF, or other appropriate area at the discretion of the department.

f. If the department determines that a public hearing is warranted, then the department shall prepare the public notice of the hearing. Public notice of any hearing held shall be circulated at least as widely as was the notice of the permit application or postpermit action request.

g. The contents of public notice of any hearing held pursuant to paragraph 113.4(12) "e" shall include at least the following:

(1) The name, address, and telephone number of the department;

(2) The name and address of each applicant whose application will be considered at the hearing;

(3) A brief reference to the public notice issued for each permit application and postpermit action request;

(4) Information regarding the time and location for the hearing;

(5) The purpose of the hearing;

(6) A concise statement of the issues raised by the person requesting the hearing;

(7) Locations where copies of the permit application or postpermit action may be reviewed, including the closest department field office, and the times at which the copies shall be available for public inspection; and

(8) A brief description of the nature of the hearing, including the rules and procedures to be followed.

h. The department shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the department's responses shall be made available to the public.

567—113.5(455B) Permit application requirements.

113.5(1) Unless otherwise authorized by the department, an MSWLF permit applicant shall submit, at a minimum, the following permit application information to the department:

- a.* The name, address and telephone number of:
 - (1) Owner of the site where the facility will be located.
 - (2) Permit applicant.
 - (3) Official responsible for the facility.
 - (4) Certified operator (i.e., "operator") responsible for operation of the facility.
 - (5) Professional engineer(s) (P.E.) licensed in the state of Iowa and retained for the design of the facility.
 - (6) Agency to be served by the facility, if any.
 - (7) Responsible official of agency to be served, if any.
- b.* An organizational chart.
- c.* A site exploration and characterization report for the facility that complies with the requirements of subrule 113.6(4).
- d.* Plans and specifications for the facility, and quality control and assurance (QC&A) plans, that comply with the requirements of subrule 113.7(6).
- e.* A development and operations (DOPs) plan for the facility, an emergency response and remedial action plan (ERRAP), and proof of MSWLF operator certification that comply with the requirements of rule 113.8(455B).
- f.* An environmental monitoring plan that complies with the requirements of rules 113.9(455B) and 113.10(455B).
- g.* The project goals and time lines, and other documentation as necessary to comply with subrule 113.4(10) and other requirements of the department if an RD&D permit is being requested or renewed.
- h.* Proof of financial assurance in compliance with rule 113.14(455B).
- i.* A closure and postclosure plan that complies with the requirements of rules 113.12(455B) and 113.13(455B).

113.5(2) Incomplete permit applications. If the department finds the permit application information to be incomplete, the department shall notify the applicant of that fact and of the specific deficiencies. If the applicant fails to correct the noted deficiencies within 30 days, the department may reject the application and return the application materials to the applicant. The applicant may reapply without prejudice.

567—113.6(455B) Siting and location requirements for MSWLFs. This rule applies to new MSWLF units and horizontal expansions of existing MSWLF units. Except for paragraphs 113.6(2)"*a*," 113.6(2)"*b*" and 113.6(2)"*f*," this rule does not apply to permitted MSWLF units which have been approved prior to October 1, 2007. Information required to document compliance with the requirements of rule 113.6(455B) shall be consolidated and maintained in a site exploration and characterization report pursuant to subrule 113.6(4).

113.6(1) *Local siting approval.* The department will not consider a permit application for a new MSWLF unless local siting approval pursuant to Iowa Code section 455B.305A, if applicable, has been obtained.

113.6(2) *Location restrictions.* All MSWLFs shall comply with the following location restrictions.

a. Airports. For purposes of this chapter:

"*Airport*" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

“*Bird hazard*” means an increase in the likelihood of bird-aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(1) A prohibition on locating a new MSWLF near certain airports was enacted in Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act), Pub. L. 106-181 (49 U.S.C. 44718 note). Section 503 prohibits the “construction or establishment” of new MSWLFs after April 5, 2000, within six miles of certain smaller public airports. The Federal Aviation Administration (FAA) administers the Ford Act and has issued guidance in FAA Advisory Circular 150/5200-34A, dated January 26, 2006.

(2) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that are located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by piston-type aircraft only must demonstrate to the FAA that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft. The owner or operator must place the demonstration of this requirement in the operating record and submit to the department a copy of the demonstration approved by the FAA.

(3) Owners or operators proposing to site new MSWLF units and lateral expansions within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the FAA. A copy of these notifications shall be submitted to the department.

b. Floodplains. For purposes of this chapter:

“*Floodplain*” means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands that may be inundated by a 100-year flood.

“*100-year flood*” means a flood that has a 1 percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

“*Washout*” means the carrying away of solid waste by waters of the base flood.

Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in 100-year floodplains must demonstrate to the department that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department.

c. Wetlands. For purposes of this chapter:

“*Wetlands*” means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the department:

(1) Where applicable under Section 404 of the Clean Water Act or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the MSWLF unit will not:

1. Cause or contribute to violations of any applicable state water quality standard;

2. Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act;

3. Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973; and

4. Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

1. Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the MSWLF unit;
2. Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;
3. The volume and chemical nature of the waste managed in the MSWLF unit;
4. Impacts on fish, wildlife, and other aquatic resources and their habitats from release of the solid waste;
5. The potential effects of catastrophic release of waste to wetlands and the resulting impacts on the environment; and
6. Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(4) To the extent required under Section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by subparagraph 113.6(2)“c”(1), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of human-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

d. Fault areas. For the purposes of this chapter:

“*Fault*” means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

“*Displacement*” means the relative movement of any two sides of a fault measured in any direction.

“*Holocene*” means the most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

New MSWLF units and lateral expansions shall not be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the department that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

e. Seismic impact zones. For the purposes of this chapter:

“*Seismic impact zone*” means an area with a 10 percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth’s gravitational pull (g), will exceed 0.10g in 250 years.

“*Maximum horizontal acceleration in lithified earth material*” means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

“*Lithified earth material*” means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. “Lithified earth material” does not include human-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth’s surface.

New MSWLF units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maximum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department.

f. Unstable areas. For purposes of this chapter:

“*Unstable area*” means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for

preventing releases from a landfill. Unstable areas may include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

“Structural components” means liners, leachate collection systems, final covers, run-on systems, runoff systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

“Poor foundation conditions” means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

“Areas susceptible to mass movement” means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

“Karst terranes” means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area must demonstrate to the department that engineering measures have been incorporated into the MSWLF unit’s design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department. The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

- (1) On-site or local soil conditions that may result in significant differential settling;
- (2) On-site or local geologic or geomorphologic features; and
- (3) On-site or local human-made features or human-induced events (both surface and subsurface).

g. Threatened or endangered flora and fauna.

(1) All MSWLF owners or operators shall contact the department’s Iowa Natural Areas Inventory with a request to search its records to determine the presence of, or habitat for, any threatened or endangered species or communities of flora or fauna on the proposed site. In the event that the department’s Iowa Natural Areas Inventory does not contain records of threatened or endangered species or communities but their presence is suspected, then the permit applicant shall conduct a site survey.

(2) Should any threatened or endangered species be identified pursuant to subparagraph 113.6(2)“g”(1), the permit applicant shall demonstrate to the department that the MSWLF unit will not cause or contribute to significant degradation of the threatened or endangered species or communities.

h. Cultural resources.

(1) All MSWLF owners and operators shall prepare a comprehensive listing of, and assessment of the impact on, any archaeologically, historically, or architecturally significant properties on the proposed site. To assess the impact, the permit applicant shall consult with the historic preservation bureau of the state historical society of Iowa.

(2) Should any significant cultural resources be identified pursuant to subparagraph 113.6(2)“h”(1), the permit applicant shall demonstrate to the department that the MSWLF unit will not cause or contribute to significant degradation of those cultural resources.

i. Separation from groundwater. The base of an MSWLF unit shall be situated so that the base of the waste within the proposed unit is at least 5 feet above the high water table unless a greater separation is required to ensure that there will be no significant adverse effect on groundwater or surface waters or a lesser separation is unlikely to have a significant adverse effect on groundwater or surface waters. Artificial means of lowering the high water table are acceptable. The separation of the base of an MSWLF unit from the high water table shall be measured and maintained in a manner acceptable to the department.

j. Wells and community water systems. An MSWLF unit shall not be within 1,000 feet of any potable well or community water system in existence at the time of receipt of the original permit application or application to laterally expand the permitted MSWLF unit for the facility that is being used for human or livestock consumption. Groundwater monitoring wells are exempt from this requirement. The department may also exempt extraction wells utilized as part of a remediation system from this requirement. A new MSWLF unit shall not be within 1,000 feet of a downgradient agricultural drainage well.

k. Property line setback. An MSWLF unit shall be at least 50 feet from the adjacent property line.

l. Housing and sensitive populations. An MSWLF unit shall not be within 500 feet of an occupied residence, recreational area, child care facility, educational facility, or health care facility in existence at the time of receipt of the original permit application or application to laterally expand the permitted MSWLF unit, unless there is a written agreement between the MSWLF owner and such facility. The written agreement shall be filed with the county recorder for abstract of title purposes, and a copy submitted to the department.

113.6(3) Soil and hydrogeologic investigations. An MSWLF shall have a qualified groundwater scientist, as defined in paragraph 113.10(1)“d,” to conduct a soil and hydrogeologic investigation in accordance with this subrule. The purpose of this investigation is to obtain data to determine potential routes of contaminant migration via groundwater. Such information is vital for completion of the site exploration and characterization report, and the hydrologic monitoring system plan and design. This subrule sets forth the minimum requirements for soil and hydrogeologic investigations. The MSWLF shall comply with this subrule unless the department issues written approval due to specific site conditions.

a. Number of borings. A sufficient number of borings shall be made to accurately identify the stratigraphic and hydrogeologic conditions at the site.

b. Depth of borings. Unless otherwise approved by the department in writing, the following requirements shall apply to the depth of borings.

(1) All borings shall be a minimum of 25 feet deep and at least 10 feet below the water table.

(2) At a minimum, half of all borings shall extend 20 feet into the uppermost aquifer, 50 feet below the water table, or 10 feet into bedrock.

(3) At a minimum, one boring shall extend 10 feet into bedrock or 100 feet below the lowest ground surface elevation.

(4) All borings shall be of sufficient depth to correlate strata between borings.

c. Boring method and soil samples.

(1) Continuous samples shall be collected for all borings, unless otherwise approved by the department in writing.

(2) Boring logs shall be as detailed as possible in describing each stratum.

(3) Samples shall be clearly marked, preserved and transported in accordance with laboratory procedures.

(4) The permit applicant shall keep and preserve samples until at least 30 days after the permit is issued.

(5) Soil samples from each stratum shall be tested for falling-head permeability and grain size distribution.

d. Conversion of or plugging borings.

(1) Borings may be converted to piezometers or monitoring wells. However, the conversion of such borings does not guarantee that more piezometers or monitoring wells will not be required in the department-approved hydrologic monitoring system plan and design.

(2) Borings not converted to piezometers or monitoring wells shall be plugged and properly sealed so as not to create pathways for subsurface or surface pollution migration. Borings converted to piezometers or monitoring wells may still need to be partially plugged depending on the depth of the boring. Plugging shall be performed pursuant to paragraph 113.10(2)“d.”

e. Soil and hydrogeologic investigation description and analysis. A soil and hydrogeologic investigation description and analysis shall be completed and maintained and, at a minimum, shall contain the following:

- (1) The boring logs pursuant to subparagraph 113.6(3)“c”(2).
- (2) A description of the properties of each soil and bedrock stratum as appropriate, including:
 1. Soil texture and classification.
 2. Particle size distribution.
 3. Mineral composition, cementation, and soil structure.
 4. Permeability, including horizontal and vertical permeability, and porosity.
 5. Geologic structure, including strike, dip, folding, faulting and jointing.
 6. Previous activities and infrastructure at the site that could affect geology and hydrogeology, such as but not limited to mining, quarry operations, borrow pits, waste disposal, storage tanks, pipelines, utilities and tile lines.
 7. Lenses and other discontinuous units, voids, solution openings, layering, fractures, other heterogeneity, and the scale or frequency of the heterogeneity.
 8. Correlation and continuity of strata between borings.
- (3) Descriptions of the hydrogeologic units within the saturated zone, including:
 1. Thickness.
 2. Hydraulic properties, including as appropriate, conductivity, transmissivity, storativity, and effective porosity.
 3. Concentrations of chemical constituents listed in Appendix I present in the groundwater of hydrogeologic units and the source of those constituents, if known.
 4. Role and effect of each hydrogeologic unit as an aquifer, aquitard, or perched saturated zone.
 5. The actual or potential use of the aquifers as water supplies.
- (4) Plan view maps, and a series of cross sections with two oriented perpendicular and two oriented parallel to the predominant directions of groundwater flow through the MSWLF unit, showing:
 1. The extent of soil and bedrock strata.
 2. The position of the water table.
 3. The position of the uppermost aquifer.
 4. Measured values of hydraulic head.
 5. Equipotential lines and inferred groundwater streamlines of the water table, and the uppermost aquifer if different from the water table.
 6. Location of soil and bedrock borings.
 7. Location of piezometers and monitoring points, if any.
- (5) A description and evaluation of horizontal and vertical groundwater flow which specifically addresses the following and their significance to the movement of pollutants carried by groundwater:
 1. Local, intermediate and regional groundwater systems.
 2. Groundwater recharge and discharge areas within and immediately surrounding the facility, including interactions with perennial and intermittent surface waters and how the facility affects recharge rates.
 3. Existing and proposed groundwater and surface water withdrawals.
 4. The effects of heterogeneity, fractures or directional differences in permeability on groundwater movement.
 5. Directions of groundwater movement, including vertical components of flow, specific discharge rates and average linear velocities within the hydrologic strata.
 6. Seasonal or other temporal fluctuations in hydraulic head.
 7. The effect of existing and proposed MSWLF units.
- (6) An analysis of potential impacts on groundwater and surface water quality, and water users, in the event of a theoretical release at the most downgradient portion of each MSWLF unit. The analysis shall at a minimum utilize contaminants and indicator parameters with high mobility in groundwater (e.g., chlorides, organic solvents). This analysis shall include:
 1. Assumptions and approximations utilized, and why they were utilized.

2. If a model is utilized, a thorough description of models used and each model's capabilities and limitations, including the reliability and accuracy of the models in actual field tests.

3. Projected paths and rates of movement of contaminants found in leachate.

(7) Recommendations for the location of the proposed MSWLF unit and conceptual design based on hydrogeologic information.

113.6(4) *Site exploration and characterization report.* An MSWLF shall maintain a site exploration and characterization report. At a minimum, the site exploration and characterization report shall detail compliance with the requirements of rule 113.6(455B) and shall contain the following components.

a. A title page and index.

b. A legal description of the site.

c. Proof of the applicant's ownership of the site and legal entitlement to use the site as an MSWLF.

If the applicant does not own the site, then proof of legal entitlement to the site, such as, for example, a lease, must be submitted. Such legal entitlement must include the following:

(1) Provisions that allow continued disposal operations until closure of the facility.

(2) Provisions for the performance of facility closure operations.

(3) Provisions for postclosure care for at least a 30-year period after facility closure.

d. Proof of the applicant's local siting approval pursuant to Iowa Code section 455B.305A, if applicable.

e. Scaled maps or aerial photographs locating the boundaries of the facility and identifying:

(1) North and other principal compass points.

(2) Section lines and other legal boundaries.

(3) Zoning and land use within 0.5 miles.

(4) Haul routes to and from the facility, including load limits or other restrictions on those routes.

(5) Topography within 0.5 miles.

(6) Applicable setback distances and location requirements pursuant to rule 113.6(455B), including:

1. Airports within 6 miles of existing, new and planned MSWLF units.

2. Floodplains within or adjacent to the facility.

3. Wetlands within or adjacent to the facility.

4. Fault areas within 200 feet of existing, new and planned MSWLF units.

5. Seismic impact zones within or adjacent to the facility.

6. Unstable areas within or adjacent to the facility.

7. Location of threatened or endangered species within or adjacent to the facility.

8. Location of cultural resources within or adjacent to the facility.

9. Wells within 1,000 feet of upgradient existing, new and planned MSWLF units.

10. Community water systems within 1 mile of upgradient existing, new and planned MSWLF units.

11. Boundaries of the existing, new and planned MSWLF units and the facility property line.

12. Housing and sensitive populations within 500 feet of existing, new and planned MSWLF units.

f. The bird-aircraft hazard demonstration pursuant to paragraph 113.6(2) "a," if applicable.

g. The floodplain demonstration pursuant to paragraph 113.6(2) "b," if applicable.

h. The wetlands demonstration pursuant to paragraph 113.6(2) "c," if applicable.

i. The fault area demonstration pursuant to paragraph 113.6(2) "d," if applicable.

j. The seismic impact zone demonstration pursuant to paragraph 113.6(2) "e," if applicable.

k. The unstable area demonstration pursuant to paragraph 113.6(2) "f," if applicable.

l. The threatened or endangered flora and fauna demonstration pursuant to paragraph 113.6(2) "g," if applicable.

m. The cultural resources demonstration pursuant to paragraph 113.6(2) "h," if applicable.

n. Copies of written agreements with surrounding property owners pursuant to paragraph 113.6(2) "l," if applicable.

o. The soil and hydrogeologic investigation description and analysis pursuant to paragraph 113.6(3) "e."

567—113.7(455B) MSWLF unit design and construction standards. All MSWLF units shall be designed and constructed in accordance with this rule.

113.7(1) *Pre-design meeting with the department.* A potential applicant for a new MSWLF unit may schedule a pre-design meeting with the department's landfill permitting staff prior to beginning work on the plans and specifications of a modified or new MSWLF. The purpose of this meeting is to help minimize the need for revisions upon submittal of the official designs and specifications.

113.7(2) *Plans and specifications.*

a. Unless otherwise requested by the department, one copy of plans, specifications and supporting documents shall be sent to the department for review. Upon written department approval, the documents shall be submitted in triplicate to the department for proper distribution.

b. All new MSWLF units shall be constructed in compliance with the rules and regulations in effect at the time of construction. Previous department approval of plans and specifications for MSWLF units not yet constructed shall be superseded by the promulgation of new rules and regulations, after which plans and specifications shall be resubmitted to the department for approval prior to construction and operation.

113.7(3) *General site design and construction requirements.* An MSWLF shall have the following:

a. All-weather access roads to the facility.

b. A perimeter fence with a lockable gate(s) to help prevent unauthorized access.

c. A sign at the entrance to the facility specifying:

(1) Name and permit number of the facility.

(2) Days and hours that the facility is open to the public or a statement that the facility is not open to the public.

(3) A general list of materials that are not accepted.

(4) Telephone number of the official responsible for operation of the facility and the emergency contact person(s).

d. All-weather access roads within the facility.

e. Signs or pavement markings clearly indicating safe and proper on-site traffic patterns.

f. Adequate queuing distance for vehicles entering and exiting the property.

g. A scale certified by the Iowa department of agriculture and land stewardship.

113.7(4) *MSWLF unit subgrade.* The subgrade for a new MSWLF unit shall be constructed as follows:

a. All trees, stumps, roots, boulders, debris, and other material capable of deteriorating in situ material strength or of creating a preferential pathway for contaminants shall be completely removed or sealed off prior to construction of the MSWLF unit.

b. The material beneath the MSWLF unit shall have sufficient strength to support the weight of the unit during all phases of construction and operation. The loads and loading rate shall not cause or contribute to failure of the liner and leachate collection system.

c. The total settlement or swell of the MSWLF unit's subgrade shall not cause or contribute to failure of the liner and leachate collection system.

d. If the in situ material of the MSWLF unit's subgrade cannot meet the requirements of paragraphs 113.7(4) "b" and 113.7(4) "c," then such material shall be removed and replaced with material capable of compliance.

e. The subgrade of an MSWLF unit shall be constructed and graded to provide a smooth working surface on which to construct the liner.

f. The subgrade of an MSWLF unit shall not be constructed in or with frozen soil.

113.7(5) *MSWLF unit liners and leachate collection systems.* The liner and leachate collection system for a new MSWLF unit shall be constructed in accordance with the requirements of this subrule. All active portions must have a composite liner or an alternative liner approved by the department. An MSWLF unit must have a functioning leachate collection system during its active life.

*a. *Liner systems.** An MSWLF unit shall have a liner system that complies with either the composite liner requirements of subparagraph 113.7(5) "a"(1) or an alternative liner system that

complies with the requirements of subparagraph 113.7(5)“a”(2). Liners utilizing compacted soil must place the compacted soil in lifts no thicker than 8 inches after compaction.

(1) Composite liner systems.

1. A composite liner consists of two components, an upper flexible membrane liner (FML) and a lower compacted soil liner.

2. The upper component must consist of a minimum 30-mil flexible membrane liner (FML). FML components consisting of high-density polyethylene (HDPE) shall be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the lower compacted soil component.

3. The lower component must consist of at least a 2-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second (cm/sec). The compacted soil must be placed in lifts no thicker than 8 inches after compaction.

4. The composite liner must be adequately sloped toward the leachate collection pipes to provide drainage of leachate. Unless alternative design requirements to this performance standard are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the leachate collection system shall have a slope greater than or equal to 2 percent and not exceeding 33 percent.

(2) Alternative liner systems.

1. The design must ensure that the concentration values listed in Table I of rule 113.7(455B) will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified pursuant to numbered paragraph 113.7(5)“a”(2)“2.” Alternative liners utilizing compacted soil must place the compacted soil in lifts no thicker than 8 inches.

2. The relevant point of compliance specified by the department must be within 50 feet of the planned liner or waste boundary, unless site conditions dictate otherwise, downgradient of the facility with respect to the hydrologic unit being monitored in accordance with subparagraph 113.10(2)“a”(2), and located on land owned by the owner of the MSWLF unit. The relevant point of compliance specified by the department shall be at least 50 feet from the property line of the facility.

3. When approving an alternative liner design, the department shall consider at least the following factors:

- The hydrogeologic characteristics of the facility and surrounding land.
- The climatic factors of the area.
- The volume and physical and chemical characteristics of the leachate.
- The sensitivities and limitations of the modeling demonstrating the applicable point of compliance.
- Practicable capability of the owner or operator.

4. The alternative liner must be adequately sloped toward the leachate collection pipes to provide drainage of leachate. Unless alternative design requirements to this performance standard are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the leachate collection system shall have a slope greater than or equal to 2 percent and not exceeding 33 percent.

Table I

Chemical	MCL (mg/l)
Arsenic	0.01
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007

Endrin	0.0002
Fluoride	4.0
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10.0
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl chloride	0.002

b. Leachate collection system. All MSWLF units shall have a leachate collection system that complies with the following requirements:

(1) The leachate collection system shall be designed and constructed to function for the entire active life of the facility and the postclosure period.

(2) The leachate collection system shall be of a structural strength capable of supporting waste and equipment loads throughout the active life of the facility and the postclosure period.

(3) The leachate collection system shall be designed and constructed to minimize leachate head over the liner at all times. An MSWLF unit shall have a leachate collection system that maintains less than a 30-centimeter (i.e., 12-inch) depth of leachate over the liner. The leachate collection system shall have a method for accurately measuring the leachate head on the liner at the system's lowest point(s) within the MSWLF unit (e.g., sumps). Furthermore, an additional measuring device shall be installed to measure leachate directly on the liner in the least conductive drainage material outside of the sump and collection trench. Leachate head measurements from cleanout lines or manholes are not acceptable for the second measurement. All such measurement devices shall be in place before waste is placed in the MSWLF unit.

(4) If the leachate collection system is not designed and constructed factoring in leachate recirculation or bioreactor operations, the department may prohibit such activities within the MSWLF unit.

(5) The collection pipes shall be of a length and cross-sectional area that allow for cleaning and inspection through the entire length of all collection pipes at least once every three years. The collection pipes shall not be designed or constructed with sharp bends that prevent cleaning or inspection along any section of the collection pipe or that may cause the collection pipe to be damaged during cleaning or inspection.

(6) Leachate collection system designs shall attempt to minimize the potential for clogging due to mass loading.

(7) Unless alternative design requirements are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the following design requirements shall apply:

1. A geotextile cushion over the flexible membrane liner (FML), if the liner utilizes an FML and granular drainage media. A geotextile cushion is not required if the granular drainage media is well rounded and less than 3/8 inch in diameter. The geotextile's mass shall be determined based on the allowable pressure on the geomembrane.

2. Collection pipe(s) at least 4 inches in diameter at the base of the liner slope(s), surrounded by the high hydraulic-conductivity material listed in numbered paragraph 113.7(5) "b"(7)"3" below. The collection pipe shall have slots or holes large enough to minimize the potential for clogging from fines conveyed by incoming leachate.

3. One of the following high hydraulic-conductivity materials:

- High hydraulic-conductivity material (e.g., gravel) of uniform size and a fines content of no more than 5 percent by weight passing a #200 sieve. The high hydraulic-conductivity material shall be at least 12 inches in depth and have a hydraulic conductivity of at least 1×10^{-2} cm/sec; or
- A geosynthetic drainage media (e.g., geonet). The transmissivity of geonets shall be tested with method ASTM D4716, or an equivalent test method, to demonstrate that the design transmissivity will be maintained for the design period of the facility. The testing for the geonet in the liner system shall be conducted using actual boundary material intended for the geonet at the maximum design normal load for the MSWLF unit, and at the design load expected from one lift of waste. At the maximum design normal load, testing shall be conducted for a minimum period of 100 hours unless data equivalent of the 100-hour period is provided, in which case the test shall be conducted for a minimum period of one hour. In the case of the design load from one lift of waste, the minimum period shall be one hour. For geonets used in final covers, only one test shall be conducted for a minimum period of one hour using the expected maximum design normal load from the cover soils and the actual boundary materials intended for the geonet. A granular layer at least 12 inches thick with a hydraulic conductivity of at least 1×10^{-3} cm/sec shall be placed above the geosynthetic drainage material that readily transmits leachate and provides separation between the waste and liner.

(8) Manholes within the MSWLF unit shall be designed to minimize the potential for stressing or penetrating the liner due to friction on the manhole exterior from waste settlement.

(9) The leachate drainage and collection system within the MSWLF unit shall not be used for the purpose of storing leachate. If leachate is to be stored, it shall be stored in designated storage structures outside of the MSWLF unit.

(10) All of the facility's leachate storage and management structures outside of the MSWLF unit (e.g., tanks, holding ponds, pipes, sumps, manholes, lift stations) and operations shall have containment structures or countermeasures adequate to prevent seepage to groundwater or surface water. The containment structures and countermeasures for leachate storage shall be at least as protective of groundwater at the liner of the MSWLF unit on a performance basis.

(11) Unless alternative design requirements are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the leachate storage structures shall be able to store at least 7 days of accumulated leachate at the maximum generation rate used in designing the leachate collection system. Such minimum storage capacity may be constructed in phases over time so long as the 7-day accumulation capacity is maintained. The storage facility shall also have the ability to load tanker trucks in case sanitary sewer service is unavailable for longer than 7 days.

(12) The leachate collection system shall be equipped with valves or devices similar in effectiveness so that leachate can be controlled during maintenance.

(13) The leachate collection system shall be accessible for maintenance at all times and under all weather conditions.

(14) The permit holder shall annually submit a Leachate Control System Performance Evaluation (LCSPE) Report as a supplement to the facility Annual Water Quality Report, as defined in subrule 113.10(10). The report shall include an evaluation of the effectiveness of the system in controlling the leachate, leachate head levels and elevations, the volume of leachate collected and transported to the treatment works or discharged under any NPDES permits, records of leachate contaminants testing required by the treatment works, proposed additional leachate control measures, and an implementation schedule in the event that the constructed system is not performing effectively.

113.7(6) *Quality control and assurance programs.* All MSWLF units shall be constructed under the supervision of a strict quality control and assurance (QC&A) program to ensure that MSWLF units are constructed in accordance with the requirements of rule 113.7(455B) and the approved plans and specifications. At a minimum, such a QC&A program shall consist of the following.

a. The owner or operator shall designate a quality control and assurance (QC&A) officer. The QC&A officer shall be a professional engineer (P.E.) registered in Iowa. The QC&A officer shall not be an employee of the facility, the construction company or construction contractor. The owner or operator shall notify the department of the designated QC&A officer and provide the department with that person's

contact information. The QC&A officer may delegate another person or persons who are not employees of the facility to supervise or implement an aspect of the QC&A program.

b. The QC&A officer shall document compliance with rule 113.7(455B), and the approved plans and specifications, for the following aspects of construction:

(1) The MSWLF unit's subgrade.

(2) The liner system, as applicable, below:

1. The flexible membrane liner (FML). Destructive testing of the FML shall be kept to side slopes when continuous seams are utilized. Patches over FML destructive testing areas shall be checked with nondestructive methods.

2. The compacted clay component of the liner system. A minimum of five field moisture density tests per 8-inch lift per acre shall be performed to verify that the correct density, as correlated to permeability by a laboratory analysis, has been achieved. Laboratory hydraulic conductivity testing of Shelby tube samples from the constructed soil liner or test pad, or field hydraulic conductivity testing of the constructed soil liner or test pad, or other methods approved by the department, shall be utilized as a QC&A test.

(3) The leachate collection, conveyance and storage systems.

(4) Any other aspect of construction as required by the department.

c. A sampling and testing program shall be implemented by the QC&A officer as part of the QC&A program. The sampling and testing program shall:

(1) Verify full compliance with the requirements of rule 113.7(455B), and the approved plans and specifications.

(2) Be approved by the department prior to construction of the MSWLF unit.

(3) Detail how each stage of construction will be verified for full compliance with the requirements of rule 113.7(455B), and the approved plans and specifications.

(4) Be based on statistically significant sampling techniques and establish criteria for the acceptance or rejection of materials and constructed components of the MSWLF unit.

(5) Detail what actions will take place to remedy and verify any material or constructed component that is not in compliance with the requirements of rule 113.7(455B), and the approved plans and specifications.

d. The QC&A officer shall document the QC&A program. Upon completion of the MSWLF unit construction, the QC&A officer shall submit a final report to the department that verifies compliance with the requirements of rule 113.7(455B), and the approved plans and specifications. A copy of the final report shall also be maintained by the facility in the operating record. At a minimum, the final report shall include the following.

(1) A title page and index.

(2) The name and permit number of the facility.

(3) Contact information for the QC&A officer and persons delegated by the QC&A officer to supervise or implement an aspect of the QC&A program.

(4) Contact information for all construction contractors.

(5) Copies of daily reports containing the following information.

1. The date.

2. Summary of weather conditions.

3. Summary of locations on the facility where construction was occurring.

4. Summary of equipment, materials and personnel utilized in construction.

5. Summary of meetings held regarding the construction of the MSWLF unit.

6. Summary of construction progress.

7. Photographs of the construction progress, with descriptions of the time, subject matter and location of each photograph.

8. Details of sampling and testing program for that day. At a minimum, this report shall include details of where sampling and testing occurred, the methods utilized, personnel involved and test results.

9. Details of how any material or constructed component that was found not to be in compliance via the sampling and testing program was remedied.

(6) A copy of detailed as-built drawings with supporting documentation and photographic evidence. This copy shall also include a narrative explanation of changes from the original department-approved plans and specifications.

(7) A signed and sealed statement by the QC&A officer that the MSWLF unit was constructed in accordance with the requirements of rule 113.7(455B), and the approved plans and specifications.

113.7(7) Vertical and horizontal expansions of MSWLF units. All vertical and horizontal expansions of disposal airspace over existing and new MSWLF units shall comply with the following requirements.

a. Horizontal expansions shall, at a minimum, comply with the following requirements:

(1) Horizontal expansions are new MSWLF units and, at a minimum, shall be designed and constructed in accordance with subrules 113.7(4), 113.7(5) and 113.7(6).

(2) The slope stability of the horizontal expansion between the existing unit and new MSWLF unit shall be analyzed. The interface between two MSWLF units shall not cause a slope failure of either of the MSWLF units.

(3) A horizontal expansion may include a vertical elevation increase of an existing MSWLF unit, pursuant to paragraph 113.7(7) “*b*,” if approved by the department.

b. Vertical expansions shall, at a minimum, comply with the following requirements:

(1) A vertical expansion of an MSWLF unit shall not be allowed if the MSWLF unit does not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance.

(2) An analysis of the structural impacts of the proposed vertical expansion on the liner and leachate collection system shall be completed. The vertical expansion shall not contribute to the structural failure of the liner and leachate collection system.

(3) An analysis of the impact of the proposed vertical expansion on leachate generation shall be completed. The vertical expansion shall not overload the leachate collection system or contribute to excess head on the liner.

(4) An analysis of the effect of the proposed vertical expansion on run-on, runoff and discharges into waters of the state shall be completed. The vertical expansion shall not cause a violation of subrule 113.7(8).

(5) The proposed vertical expansion shall be in compliance with the final slopes required at closure pursuant to paragraph 113.12(1) “*e*.”

(6) An analysis of the potential impact of the proposed vertical expansion on litter generation shall be completed. Landfill management strategies may need to be amended to help prevent increased litter.

(7) An analysis of the impact of the proposed vertical expansion on lines-of-sight and any visual buffering utilized by the landfill shall be completed.

113.7(8) Run-on and runoff control systems.

a. Owners or operators of all MSWLF units must design, construct, and maintain the following:

(1) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(2) A runoff control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

b. Runoff from the active portion of the MSWLF unit must be handled in accordance with paragraph 113.10(1) “*a*.”

567—113.8(455B) Operating requirements. The requirements of this rule shall be consolidated in a development and operations plan (DOPs) pursuant to subrule 113.8(4) and the emergency response and remedial action plan (ERRAP) pursuant to subrule 113.8(5), as applicable.

113.8(1) Prohibited operations and activities. For the purposes of this subrule, “regulated hazardous waste” means a solid waste that is a hazardous waste, as defined in Iowa Code section 455B.411.

a. Waste screening for prohibited materials. Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes, polychlorinated biphenyls (PCB) wastes and other prohibited wastes listed in paragraph 113.8(1) “*b*.” This program must include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming loads do not contain regulated hazardous wastes, PCB wastes or other prohibited wastes listed in paragraph 113.8(1)“b”;

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous wastes, PCB wastes and other prohibited wastes listed in paragraph 113.8(1)“b”; and

(4) Notification of the EPA regional administrator if regulated hazardous wastes or PCB wastes are discovered at the facility.

b. Materials prohibited from disposal. The following wastes shall not be accepted for disposal by an MSWLF. Some wastes may be banned from disposal via the multiple categories listed below.

(1) Hazardous waste, whether it is a chemical compound specifically listed by EPA as a regulated hazardous waste or a characteristic hazardous waste pursuant to the characteristics below:

1. Ignitable in that the waste has a flash point (i.e., it will ignite) at a temperature of less than 140 degrees Fahrenheit.

2. Corrosive in that the waste has a pH less than 2 or greater than 12.5.

3. Reactive in that the waste is normally unstable; reacts violently with water; forms an explosive mixture with water; contains quantities of cyanide or sulfur that could be released into the air in sufficient quantity to be a danger to human health; or can easily be detonated or exploded.

4. Toxicity characteristic leaching procedure (TCLP) (EPA Method 1311) toxic, in that a TCLP listed chemical constituent exceeds the EPA assigned concentration standard in 40 CFR Part 261 or the department assigned concentration standard in Table I of rule 113.7(455B). Waste from a residential building that is contaminated by lead-based paint (i.e., the waste fails the TCLP test for lead only) may be disposed of in an MSWLF unit. The purpose of this exclusion is to help prevent the exposure of children to lead-based paint. Therefore, the meaning of “residential building” in regard to this TCLP exclusion shall be interpreted broadly and include any building which children or parents may utilize as a residence (temporarily or permanently). Such residential buildings include, but are not limited to, single-family homes, apartment buildings, townhomes, condominiums, public housing, military barracks, nursing homes, hotels, motels, bunkhouses, and campground cabins.

(2) Polychlorinated biphenyl (PCB) wastes with a concentration equal to or greater than 50 parts per million (ppm).

(3) Free liquids, liquid waste and containerized liquids. For purposes of this subparagraph, “liquid waste” means any waste material that is determined to contain “free liquids” as defined by Method 9095B (Paint Filter Liquids Test), as described in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods (EPA Pub. No. SW-846). For the purposes of this subparagraph, “gas condensate” means the liquid generated as a result of the gas recovery process(es) at the MSWLF unit. However, free liquids and containerized liquids may be placed in MSWLF units if:

1. The containerized liquid is household waste other than septic waste. The container must be a small container similar in size to that normally found in household waste;

2. The waste is leachate or gas condensate derived from the MSWLF unit, whether it is a new or existing MSWLF unit or lateral expansion, and is designed with a composite liner and leachate collection system as described in paragraph 113.7(5)“a.” The owner or operator must demonstrate compliance with this subparagraph and place the demonstration in the operating record; or

3. The MSWLF unit is a research, development and demonstration (RD&D) project in which the department has authorized the addition of liquids and meets the applicable requirements of subrule 113.4(10).

(4) Septage, which is the raw material, liquids and pumpings from a septic system, unless treated pursuant to 567—Chapter 68.

(5) Appliances as defined pursuant to 567—Chapter 118, unless there is documentation that the appliance has been demanufactured pursuant to 567—Chapter 118.

(6) Radioactive waste, excluding luminous timepieces and other items using very small amounts of tritium.

(7) Infectious waste, unless managed and disposed of pursuant to 567—Chapter 109.

(8) Hot loads, meaning solid waste that is smoking, smoldering, emitting flames or hot gases, or otherwise indicating that the solid waste is in the process of combustion or close to igniting. Ash that has not been fully quenched or cooled is considered a hot load. Such wastes may be accepted at the gate, but shall be segregated and completely extinguished and cooled in a manner as safe and responsible as practical before disposal.

(9) Asbestos-containing material (ACM) waste with greater than 1 percent asbestos, unless managed and disposed of pursuant to 567—Chapter 109.

(10) Petroleum-contaminated soil, unless managed and remediated pursuant to 567—Chapter 120.

(11) Grit and bar screenings, and grease skimmings, unless managed and disposed of pursuant to 567—Chapter 109.

(12) Waste tires, unless each tire is processed into pieces no longer than 18 inches on any side. The department encourages the recycling of all waste tires, even if processed to disposal standards.

(13) Yard waste.

(14) Lead-acid batteries.

(15) Waste oil and materials containing free-flowing waste oil. Materials contaminated with waste oil may be disposed of if no free-flowing oil is retained in the material, and the material is not a hazardous waste.

(16) Baled solid waste, unless the waste is baled on site after the waste has been visually inspected for prohibited materials.

c. Open burning and fire hazards. No open burning of any type shall be allowed within the permitted boundary of an MSWLF facility. The fueling of vehicles and equipment, and any other activity that may produce sparks or flame, shall be conducted at least 50 feet away from the working face.

d. Scavenging and salvaging. Scavenging shall not be allowed at the MSWLF facility. However, salvaging by MSWLF operators may be allowed.

e. Animal feeding and grazing. Feeding animals MSW shall not be allowed at an MSWLF facility. The grazing of domestic animals on fully vegetated areas of the MSWLF facility not used for disposal, including closed MSWLF units, may be allowed by the department so long as the animals do not cause damage or interfere with operations, inspections, environmental monitoring and other required activities. Large, hooved animals (including but not limited to buffalo, cattle, llamas, pigs, and horses) shall not be allowed on closed MSWLF units.

113.8(2) Disposal operations and activities. All MSWLFs shall comply with the following requirements.

a. Survey controls and monuments. Survey controls and monuments shall be maintained as follows.

(1) The property boundary, the permitted boundary and the boundaries of all MSWLF units shall be surveyed and marked by a professional land surveyor at least once prior to closure.

(2) Prior to waste placement, all new MSWLF unit boundaries shall be surveyed and marked by a professional engineer.

(3) Survey monuments shall be established to check vertical elevations and the progression of fill sequencing. The survey monuments shall be established and maintained by a professional land surveyor.

(4) All survey stakes and monuments shall be clearly marked.

(5) A professional engineer shall biennially inspect all survey monuments and replace missing or damaged survey monuments.

b. First lift. The first lift and initial placement of MSW over a new MSWLF unit liner and leachate collection system shall comply with the following requirements.

(1) Waste shall not be placed in the new MSWLF unit until the QC&A officer has submitted a signed and sealed final report to the department pursuant to paragraph 113.7(6)“d” and that report has been approved by the department.

(2) Construction and earth-moving equipment shall not operate directly on the liner and leachate management system. Waste disposal operations shall begin at the edge of the new MSWLF unit by pushing MSW out over the liner and leachate collection system. Compactors and other similarly heavy

equipment shall not operate directly on the leachate collection system until a minimum of 4 feet of waste has been mounded over the top of the leachate collection system.

(3) Construction and demolition debris and materials clearly capable of spearing through the leachate collection system and liner shall not be placed in the first 4 feet of waste over the top of the leachate collection system. The first 4 feet of waste shall consist of select waste that is unlikely to damage the liner and performance of the leachate collection system.

(4) The owner or operator must place documentation in the operating record and submit a copy to the department that adequate cover material was placed over the top of the leachate collection system in the MSWLF unit or that freeze/thaw effects had no adverse impact on the compacted clay component of the liner.

c. Fill sequencing. The rate and phasing of disposal operations shall comply with the following requirements.

(1) The fill sequencing shall be planned and conducted in a manner and at a rate that do not cause a slope failure, lead to extreme differential settlement, or damage the liner and leachate collection system.

(2) The fill sequencing shall be planned and conducted in a manner compliant with the run-on and runoff requirements of subrule 113.7(8) and surface water requirements of rule 113.10(455B).

d. Working face. The working face shall comply with the following requirements.

(1) The working face shall be no larger than necessary to accommodate the rate of disposal in a safe and efficient manner.

(2) The working face shall not be so steep as to cause heavy equipment and solid waste collection vehicles to roll over or otherwise lose control.

(3) Litter control devices of sufficient size to help prevent blowing litter shall be utilized at the working face. The operation of the working face shall attempt to minimize blowing litter.

(4) The operation of the working face shall prevent the harborage of vectors and attempt to minimize the attraction of vectors.

(5) Employees at the working face shall be trained to visually recognize universal symbols, markings and indications of prohibited wastes pursuant to paragraph 113.8(1) "b."

e. Special wastes. Special wastes shall be managed and disposed of pursuant to 567—Chapter 109.

f. Cover material and alternative cover material. Pursuant to 567—Chapter 108, alternative cover material of an alternative thickness (e.g., tarps, spray covers) may be authorized if the owner or operator demonstrates to the approval of the department that the alternative material and thickness control vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. Cover material or alternative cover material shall be available for use during all seasons in all types of weather. Cover material and alternative cover material shall be utilized as follows unless otherwise approved by the department pursuant to 567—Chapter 108:

(1) Daily cover. Six inches of cover material or an approved depth or application of alternative cover material shall be placed and maintained over waste in the active portion at the end of each operating day, or at more frequent intervals if necessary, to control vectors, fires, odors, blowing litter, and scavenging.

(2) Intermediate cover. At least 1 foot of compacted cover material or an approved depth or application of alternative cover material shall be placed and maintained over waste in the active portion that has not or will not receive more waste for at least 30 days. At least 2 feet of compacted cover material or alternative cover material shall be placed and maintained over waste in the active portion that has not or will not receive waste for at least 180 days. Such active portions shall be graded to manage run-on and runoff pursuant to subrule 113.7(8). Such active portions shall be seeded if they will not receive waste for a full growing season.

(3) Scarification of cover. To help prevent leachate seeps by aiding the downward flow of leachate, cover material or alternative cover material, which prevents the downward flow of leachate and is at least 5 feet from the outer edge of the MSWLF unit, shall be scarified prior to use of that area as a working face. Cover material or alternative cover material that does not impede the downward flow of leachate, as approved by the department, does not require scarification. Scarification may be as simple as the

spearing or breaking up of a small area of the cover. Areas of intermediate cover may require removal of some of the cover material or alternative cover material to aid the downward flow of leachate.

(4) Final cover. Final cover over an MSWLF unit that is to be closed shall be constructed and maintained according to the closure and postclosure requirements of rules 113.12(455B) and 113.13(455B).

g. Leachate seeps. Leachate seeps shall be contained and plugged upon being identified. Leachate seeps shall not be allowed to reach waters of the state. Soils outside of the MSWLF unit that are contaminated by a leachate seep shall be excavated and then disposed of within the MSWLF unit. Such soils may be used for daily cover material.

h. Leachate recirculation. The department must approve an MSWLF unit for leachate recirculation. The primary goal of the leachate recirculation system is to help stabilize the waste in a more rapid, but controlled, manner. The leachate recirculation system shall not contaminate waters of the state, contribute to erosion, damage cover material, harm vegetation, or spray persons at the MSWLF facility. Leachate recirculation shall be limited to MSWLF units constructed with a composite liner.

i. Differential settlement. Areas of differential settlement sufficient to interfere with runoff and run-on shall be brought back up to the contours of the surrounding active portion. Differential settlement shall not be allowed to cause ponding of water on the active portion.

113.8(3) Facility operations and activities. All MSWLFs shall comply with the following requirements.

a. Controlled access. Owners or operators of all MSWLF units must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

b. Scales and weights. A scale certified by the Iowa department of agriculture and land stewardship shall weigh all solid waste collection vehicles and solid waste transport vehicles. The owner or operator shall maintain a record of the weight of waste disposed of.

c. All-weather access to disposal. A disposal area shall be accessible during all weather conditions.

d. Salvaged and processed materials. Salvaged and processed materials (e.g., scrap metal, compost, mulch, aggregate, tire chips) shall be managed and stored in an orderly manner that does not create a nuisance or encourage the attraction or harborage of vectors.

e. Vector control. Owners or operators must prevent or control the on-site populations of vectors using techniques appropriate for the protection of human health and the environment.

f. Litter control. The operator shall take steps to minimize the production of litter and the release of windblown litter off site of the facility. All windblown litter off site of the facility shall be collected daily unless prevented by unsafe working conditions. On-site litter shall be collected daily unless prevented by working conditions. A dated record of unsafe conditions that prevented litter collection activities shall be maintained by the facility.

g. Dust. The operator shall take steps to minimize the production of dust so that unsafe or nuisance conditions are prevented. Leachate shall not be used for dust control purposes.

h. Mud. The operator shall take steps to minimize the tracking of mud by vehicles exiting the facility so that slick or unsafe conditions are prevented.

i. Leachate and wastewater treatment. The leachate management system shall be managed and maintained pursuant to the requirements of paragraph 113.7(5) "b." Leachate collection pipes shall be cleaned and inspected as necessary, but not less than once every three years. Leachate and wastewater shall be treated as necessary to meet the pretreatment limits, if any, imposed by an agreement between the MSWLF and a publicly owned wastewater treatment works (POTW) or by the effluent discharge limits established by an NPDES permit. Documentation of the POTW agreement or NPDES permit must be submitted to the department. All leachate and wastewater treatment systems shall conform to department wastewater design standards.

j. Financial assurance. Financial assurance shall be maintained pursuant to rule 113.14(455B).

113.8(4) Development and operations plan (DOPs). An MSWLF unit shall maintain a development and operations plan (DOPs). At a minimum, the DOPs shall detail how the facility will operate and how

compliance with the requirements of rule 113.8(455B) will be maintained. The DOPs shall contain at least the following components.

- a. A title page and table of contents.
- b. Telephone number of the official responsible for the operation of the facility and an emergency contact person if different.
- c. Service area of the facility and political jurisdictions included in that area.
- d. Days and hours of operation of the facility.
- e. Details of how the site will comply with the prohibited operations and activity requirements of subrule 113.8(1) and any related permit conditions.
- f. Details of how the site will comply with the disposal operation and activity requirements of subrule 113.8(2) and any related permit conditions.
- g. Details of how the site will comply with the facility operations and activity requirements of subrule 113.8(3), any related permit conditions, and any leachate and wastewater treatment requirements.

113.8(5) Emergency response and remedial action plan (ERRAP). All MSWLFs shall develop, submit to the department for approval, and maintain on site an ERRAP.

- a. *ERRAP submittal requirements.* An updated ERRAP shall be submitted to the department with any permit modification or renewal request that incorporates facility changes that impact the ERRAP.
- b. *Content.* The ERRAP is intended to be a quick reference during an emergency. The content of the ERRAP shall be concise and readily usable as a reference manual by facility managers and operators during emergency conditions. The ERRAP shall contain and address at least the following components, unless facility conditions render the specific issue as not applicable. To facilitate department review, the rationale for exclusion of any issues that are not applicable must be provided either in the body of the plan or as a supplement. Additional ERRAP requirements unique to the facility shall be addressed as applicable.

- (1) Facility information.
 1. Permitted agency.
 2. DNR permit number.
 3. Responsible official and contact information.
 4. Certified operator and contact information.
 5. Facility description.
 6. Site and environs map.
- (2) Regulatory requirements.
 1. Iowa Code section 455B.306(6)“d” criteria citation.
 2. Reference to provisions of the permit.
- (3) Emergency conditions, response activities and remedial action.
 1. Failure of utilities.
 - Short-term (48 hours or less).
 - Long-term (over 48 hours).
 2. Evacuation procedures during emergency conditions.
 3. Weather-related events.
 - Tornado and wind events.
 - Snow and ice.
 - Intense rainstorms, mud, and erosion.
 - Lightning strikes.
 - Flooding.
 - Event and postevent conditions.
 4. Fire and explosions.
 - Waste materials.
 - Buildings and site.
 - Equipment.
 - Fuels.
 - Utilities.

- Facilities.
- Working area.
- Hot loads.
- Waste gases.
- Explosive devices.
- 5. Regulated waste spills and releases.
 - Waste materials.
 - Leachate.
 - Waste gases.
 - Waste stockpiles and storage facilities.
 - Waste transport systems.
 - Litter and airborne particulate.
 - Site drainage system.
 - Off-site releases.
- 6. Hazardous material spills and releases.
 - Load-check control points.
 - Mixed waste deliveries.
 - Fuels.
 - Waste gases.
 - Site drainage systems.
 - Off-site releases.
- 7. Mass movement of land and waste.
 - Earthquakes.
 - Slope failure.
 - Waste shifts.
 - Waste subsidence.
- 8. Emergency and release notification and reporting.
 - Federal agencies.
 - State agencies.
 - County and city agencies including emergency management services.
 - News media.
 - Public and private facilities with special populations within five miles.
 - Reporting requirements and forms.
- 9. Emergency waste management procedures.
 - Communications.
 - Temporary discontinuation of services—short-term and long-term.
 - Facilities access and rerouting.
 - Waste acceptance.
 - Wastes in process.
- 10. Primary emergency equipment inventory.
 - Major equipment.
 - Fire hydrants and water sources.
 - Off-site equipment resources.
- 11. Emergency aid.
 - Responder contacts.
 - Medical services.
 - Contracts and agreements.
- 12. ERRAP training requirements.
 - Training providers.
 - Employee orientation.
 - Annual training updates.
 - Training completion and record keeping.

13. Reference tables, figures and maps.

113.8(6) MSWLF operator certification. Sanitary landfill operators shall be trained, tested, and certified by a department-approved certification program.

a. A sanitary landfill operator shall be on duty during all hours of operation of a sanitary landfill, consistent with the respective certification.

b. To become a certified operator, an individual shall complete a basic operator training course that has been approved by the department or an alternative, equivalent training approved by the department and shall pass a departmental examination as specified by this subrule. An operator certified by another state may have reciprocity subject to approval by the department.

c. A sanitary landfill operator certification is valid until June 30 of the following even-numbered year.

d. The required basic operator training course for a certified sanitary landfill operator shall have at least 25 contact hours and shall address the following areas, at a minimum:

- (1) Description of types of wastes.
- (2) Interpreting and using engineering plans.
- (3) Construction surveying techniques.
- (4) Waste decomposition processes.
- (5) Geology and hydrology.
- (6) Landfill design.
- (7) Landfill operation.
- (8) Environmental monitoring.
- (9) Applicable laws and regulations.
- (10) Permitting processes.
- (11) Leachate control and treatment.

e. Alternate basic operator training must be approved by the department. The applicant shall be responsible for submitting any documentation the department may require to evaluate the equivalency of alternate training.

f. Fees.

(1) The examination fee for each examination is \$20.

(2) The initial certification fee is \$8 for each one-half year of a two-year period from the date of issuance to June 30 of the next even-numbered year.

- (3) The certification renewal is \$24.
- (4) The penalty fee is \$12.

g. Examinations.

(1) The operator certification examinations shall be based on the basic operator training course curriculum.

(2) All individuals wishing to take the examination required to become a certified operator of a sanitary landfill shall complete the Operator Certification Examination Application, Form 542-1354. A listing of dates and locations of examinations is available from the department upon request. The application form requires the applicant to indicate the basic operator training course taken. Evidence of training course completion must be submitted with the application for certification. The completed application and the application fee shall be sent to the department and addressed to the central office in Des Moines. Application for examination must be received by the department at least 30 days prior to the date of examination.

(3) A properly completed application for examination shall be valid for one year from the date the application is approved by the department.

(4) Upon failure of the first examination, the applicant may be reexamined at the next scheduled examination. Upon failure of the second examination, the applicant shall be required to wait a period of 180 days between each subsequent examination.

(5) Upon each reexamination when a valid application is on file, the applicant shall submit to the department the examination fee at least ten days prior to the date of examination.

(6) Failure to successfully complete the examination within one year from the date of approval of the application shall invalidate the application.

(7) Completed examinations will be retained by the department for a period of one year after which they will be destroyed.

(8) Oral examinations may be given at the discretion of the department.

h. Certification.

(1) All operators who passed the operator certification examination by July 1, 1991, are exempt from taking the required operator training course. Beginning July 1, 1991, all operators are required to take the basic operator training course and pass the examination in order to become certified.

(2) Application for certification must be received by the department within 30 days of the date the applicant receives notification of successful completion of the examination. All applications for certification shall be made on a form provided by the department and shall be accompanied by the certification fee.

(3) Applications for certification by examination which are received more than 30 days but less than 60 days after notification of successful completion of the examination shall be accompanied by the certification fee and the penalty fee. Applicants who do not apply for certification within 60 days of notice of successful completion of the examination will not be certified on the basis of that examination.

(4) For applicants who have been certified under other state mandatory certification programs, the equivalency of which has been previously reviewed and accepted by the department, certification without examination will be recommended.

(5) For applicants who have been certified under voluntary certification programs in other states, certification will be considered. The applicant must have successfully completed a basic operator training course and an examination generally equivalent to the Iowa examination. The department may require the applicant to successfully complete the Iowa examination.

(6) Applicants who seek Iowa certification pursuant to subparagraphs 113.8(6) "h"(4) and (5) shall submit an application for examination accompanied by a letter requesting certification pursuant to those subparagraphs. Application for certification pursuant to those subparagraphs shall be received by the department in accordance with subparagraphs 113.8(6) "h"(2) and (3).

i. Renewals. All certificates shall expire every two years, on even-numbered years, and must be renewed every two years to maintain certification. Application and fee are due prior to expiration of certification.

(1) Late application for renewal of a certificate may be made, provided that such late application shall be received by the department or postmarked within 30 days of the expiration of the certificate. Such late application shall be on forms provided by the department and accompanied by the penalty fee and the certification renewal fee.

(2) If a certificate holder fails to apply for renewal within 30 days following expiration of the certificate, the right to renew the certificate automatically terminates. Certification may be allowed at any time following such termination, provided that the applicant successfully completes an examination. The applicant must then apply for certification in accordance with paragraph 113.8(6) "h."

(3) An operator shall not continue to operate a sanitary landfill after expiration of a certificate without renewal thereof.

(4) Continuing education must be earned during the two-year certification period. All certified operators must earn ten contact hours per certificate during each two-year period. The two-year period will begin upon issuance of certification.

(5) Only those operators fulfilling the continuing education requirements before the end of each two-year period will be allowed to renew their certificates. The certificates of operators not fulfilling the continuing education requirements shall be void upon expiration, unless an extension is granted.

(6) All activities for which continuing education credit will be granted must be related to the subject matter of the particular certificate to which the credit is being applied.

(7) The department may, in individual cases involving hardship or extenuating circumstances, grant an extension of time of up to three months within which the applicant may fulfill the minimum continuing education requirements. Hardship or extenuating circumstances include documented

health-related confinement or other circumstances beyond the control of the certified operator which prevent attendance at the required activities. All requests for extensions must be made 60 days prior to expiration of certification.

(8) The certified operator is responsible for notifying the department of the continuing education credits earned during the period. The continuing education credits earned during the period shall be shown on the application for renewal.

(9) A certified operator shall be deemed to have complied with the continuing education requirements of this subrule during periods that the operator serves honorably on active duty in the military service; or for periods that the operator is a resident of another state or district having a continuing education requirement for operators and meets all the requirements of that state or district for practice there; or for periods that the person is a government employee working as an operator and is assigned to duty outside the United States; or for other periods of active practice and absence from the state approved by the department.

j. Discipline of certified operators.

(1) Disciplinary action may be taken on any of the following grounds:

1. Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified operator. Duties of certified operators include compliance with rules and permit conditions applicable to landfill operation.

2. Failure to submit required records of operation or other reports required under applicable permits or rules of the department, including failure to submit complete records or reports.

3. Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

(2) Disciplinary sanctions allowable are:

1. Revocation of a certificate.

2. Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional education or training or reexamination may be required as a condition of probation.

(3) The procedure for discipline is as follows:

1. The department shall initiate disciplinary action. The commission may direct that the department investigate any alleged factual situation that may be grounds for disciplinary action under subparagraph 113.8(6)“j”(1) and report the results of the investigation to the commission.

2. A disciplinary action may be prosecuted by the department.

3. Written notice shall be given to an operator against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. The operator shall be given 20 days to present any relevant facts and indicate the operator's position in the matter and to indicate whether informal resolution of the matter may be reached.

4. An operator who receives notice shall communicate verbally, in writing, or in person with the department, and efforts shall be made to clarify the respective positions of the operator and department.

5. The applicant's failure to communicate facts and positions relevant to the matter by the required date may be considered when determining appropriate disciplinary action.

6. If agreement as to appropriate disciplinary sanction, if any, can be reached with the operator and the commission concurs, a written stipulation and settlement between the department and the operator shall be entered into. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the operator, and the reasons for the particular sanctions imposed.

7. If an agreement as to appropriate disciplinary action, if any, cannot be reached, the department may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 567—Chapter 7 related to contested and certain other cases pertaining to license discipline.

k. Revocation of certificates. Upon revocation of a certificate, application for certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

l. Temporary certification. A temporary operator of a sanitary landfill may be designated for a period of six months when an existing certified operator is no longer available to the facility. The facility

must make application to the department, explain why a temporary certification is needed, identify the temporary operator, and identify the efforts which will be made to obtain a certified operator. A temporary operator designation shall not be approved for greater than a six-month period except for extenuating circumstances. In any event, not more than one six-month extension to the temporary operator designation may be granted. Approval of a temporary operator designation may be rescinded for cause as set forth in paragraph 113.8(6) "j." All MSWLFs shall have at least one MSWLF operator trained, tested and certified by a department-approved program.

567—113.9(455B) Environmental monitoring and corrective action requirements for air quality and landfill gas. All MSWLFs shall comply with the following environmental monitoring and corrective action requirements for air quality and landfill gas.

113.9(1) Air criteria. Owners or operators of all MSWLFs must ensure that the units do not violate any applicable requirements developed under a state implementation plan (SIP) approved or promulgated by the department pursuant to Section 110 of the Clean Air Act.

113.9(2) Landfill gas. All MSWLFs shall comply with the following requirements for landfill gas. For purposes of this subrule, "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and atmospheric pressure.

a. Owners or operators of all MSWLF units must ensure that:

(1) The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas pipeline, control or recovery system components);

(2) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary; and

b. Owners or operators of all MSWLF units must implement a routine methane-monitoring program to ensure that the standards of paragraph 113.9(2) "a" are met. Such a program shall include routine subsurface methane monitoring (e.g., at select groundwater wells, at gas monitoring wells).

(1) The type and frequency of monitoring must be determined based on the following factors:

1. Soil conditions;

2. The hydrogeologic conditions surrounding the facility;

3. The hydraulic conditions surrounding the facility;

4. The location of facility structures (including potential subsurface preferential pathways such as, but not limited to, pipes, utility conduits, drain tiles and sewers) and property boundaries; and

5. The locations of structures near the outside of the facility to which or along which subsurface migration of methane gas may occur. Examples of such structures include, but are not limited to, houses, buildings, basements, crawl spaces, pipes, utility conduits, drain tiles and sewers.

(2) The minimum frequency of monitoring shall be quarterly.

c. If methane gas levels exceeding the limits specified in paragraph 113.9(2) "a" are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the department and department field office with jurisdiction over the MSWLF;

(2) Within 7 days of detection, place in the operating record and notify the department and department field office with jurisdiction over the MSWLF of the methane gas levels detected and a description of the steps taken to protect human health; and

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the department and department field office with jurisdiction over the MSWLF that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

d. The owner or operator shall submit an annual report to the department detailing the gas monitoring sampling locations and results, any action taken, and the results of steps taken to address gas levels exceeding the limits of paragraph 113.9(2) "a" during the previous year. This report shall include a site map that delineates all structures, perimeter boundary locations, and other monitoring points where gas readings were taken. The site map shall also delineate areas of landfill gas migration

outside the MSWLF units, if any. The report shall contain a narrative explaining and interpreting all of the data collected during the previous year. The report shall be due each year at a date specified by the department in the facility's permit.

567—113.10(455B) Environmental monitoring and corrective action requirements for groundwater and surface water. All MSWLFs shall comply with the following environmental monitoring and corrective action requirements for groundwater and surface water.

113.10(1) General requirements for environmental monitoring and corrective action for groundwater and surface water. The following general requirements apply to all provisions of this rule.

a. Surface water requirements. MSWLF units shall not:

(1) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to Section 402 of the Clean Water Act.

(2) Cause the discharge of a nonpoint source of pollution into waters of the United States, including wetlands, that violates any requirement of an areawide or statewide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act.

b. A new MSWLF unit must be in compliance with the groundwater monitoring requirements specified in subrules 113.10(2), 113.10(4), 113.10(5) and 113.10(6) before waste can be placed in the unit.

c. Once established at an MSWLF unit, groundwater monitoring shall be conducted throughout the active life and postclosure care period of that MSWLF unit as specified in rule 113.13(455B).

d. For the purposes of this rule, a "qualified groundwater scientist" means a scientist or an engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

e. The department may establish alternative schedules for demonstrating compliance with:

(1) Subparagraph 113.10(2)"*e*"(3), pertaining to notification of placement of certification in operating record;

(2) Subparagraph 113.10(5)"*c*"(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record;

(3) Subparagraphs 113.10(5)"*c*"(2) and (3), pertaining to an assessment monitoring program;

(4) Paragraph 113.10(6)"*b*," pertaining to sampling and analyzing Appendix II constituents;

(5) Subparagraph 113.10(6)"*d*"(1), pertaining to placement of notice (Appendix II constituents detected) in record and notification of placement of notice in record;

(6) Subparagraph 113.10(6)"*d*"(2), pertaining to sampling for Appendices I and II;

(7) Paragraph 113.10(6)"*g*," pertaining to notification (and placement of notice in record) of SSI above groundwater protection standard;

(8) Numbered paragraph 113.10(6)"*g*"(1)"4" and paragraph 113.10(7)"*a*," pertaining to assessment of corrective measures;

(9) Paragraph 113.10(8)"*a*," pertaining to selection of remedy and notification of placement in record;

(10) Paragraph 113.10(9)"*f*," pertaining to notification of placement in record (certification of remedy completed).

113.10(2) Groundwater monitoring systems. All MSWLFs shall have a groundwater monitoring system that complies with the following requirements:

a. A groundwater monitoring system must be installed that meets the following objectives:

(1) Yields groundwater samples from the uppermost aquifer that represent the quality of background groundwater that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where either:

1. Hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient; or

2. Sampling at other wells will provide an indication of background groundwater quality that is as representative as or more representative than that provided by the upgradient wells.

(2) Yields groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the relevant point of compliance specified by the department under numbered paragraph 113.7(5)“a”(2)“2.” The downgradient monitoring system must be installed at the relevant point of compliance specified by the department under numbered paragraph 113.7(5)“a”(2)“2” that ensures detection of groundwater contamination in the uppermost aquifer. When physical obstacles preclude installation of groundwater monitoring wells at the relevant point of compliance at existing units, the downgradient monitoring system may be installed at the closest practicable distance, hydraulically downgradient from the relevant point of compliance specified by the department under numbered paragraph 113.7(5)“a”(2)“2,” that ensures detection of groundwater contamination in the uppermost aquifer.

(3) Provides a high level of certainty that releases of contaminants from the site can be promptly detected. Downgradient monitoring wells shall be placed along the site perimeter, within 50 feet of the planned liner or waste boundary unless site conditions dictate otherwise, downgradient of the facility with respect to the hydrologic unit being monitored. Each groundwater underdrain system shall be included in the groundwater detection monitoring program under subrule 113.10(5). The maximum drainage area routed through each outfall shall not exceed 10 acres unless it can be demonstrated that site-specific factors such as drain flow capacity or site development sequencing require an alternative drainage area. If contamination is identified in the groundwater underdrain system pursuant to subrule 113.10(5), the owner or operator shall manage the underdrain discharge as leachate in lieu of assessment monitoring and corrective action.

(4) Be designed and constructed with the theoretical release evaluation pursuant to subparagraph 113.6(3)“e”(6) taken into consideration.

b. For those facilities which are long-term, multiphase operations, the department may establish temporary waste boundaries in order to define locations for monitoring wells. The convergence of groundwater paths to minimize the overall length of the downgradient dimension may be taken into consideration in the placement of downgradient monitoring wells provided that the multiphase unit groundwater monitoring system meets the requirements of paragraphs 113.10(2)“a,” 113.10(2)“c,” 113.10(2)“d” and 113.10(2)“e” and will be as protective of human health and the environment as the individual monitoring systems for each MSWLF unit, based on the following factors:

- (1) Number, spacing, and orientation of the MSWLF units;
- (2) Hydrogeologic setting;
- (3) Site history;
- (4) Engineering design of the MSWLF units; and
- (5) Type of waste accepted at the MSWLF units.

c. Monitoring wells must be constructed and cased by a well contractor certified pursuant to 567—Chapter 82 in a manner that maintains the integrity of the monitoring well borehole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the borehole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater. Monitoring wells constructed in accordance with the rules in effect at the time of construction shall not be required to be abandoned and reconstructed as a result of subsequent amendments to these rules unless the department finds that the well is no longer providing representative groundwater samples. See Figure 1 for a general diagram of a properly constructed monitoring well.

(1) The owner or operator must notify the department that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record.

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(3) Each groundwater monitoring point must have a unique and permanent number, and that number must never change or be used again at the MSWLF. The types of groundwater monitoring points shall be identified as follows:

1. Monitoring wells by "MW# (Insert unique and permanent number)".
2. Piezometers by "PZ# (Insert unique and permanent number)".
3. Groundwater underdrain systems by "GU# (Insert unique and permanent number)".

(4) Monitoring well construction shall be performed by a certified well contractor (pursuant to 567—Chapter 82) and shall comply with the following requirements:

1. In all phases of drilling, well installation and completion, the methods and materials used shall not introduce substances or contaminants that may alter the results of water quality analyses.

2. Drilling equipment that comes into contact with contaminants in the borehole or aboveground shall be thoroughly cleaned to avoid spreading contamination to other depths or locations. Contaminated materials or leachate from wells must not be discharged onto the ground surface or into waters of the state so as to cause harm in the process of drilling or well development.

3. The owner or operator must ensure that, at a minimum, the well design and construction log information is maintained in the facility's permanent record using DNR Form 542-1277 and that a copy is sent to the department.

(5) Monitoring well casings shall comply with the following requirements:

1. The diameter of the inner well casing (see Figure 1) of a monitoring well shall be at least 2 inches.

2. Plastic-cased wells shall be constructed of materials with threaded and nonglued joints that do not allow water infiltration under the local subsurface pressure conditions and when the well is evacuated for sampling.

3. Well casing shall provide sufficient structural stability so that a borehole or well collapse does not occur. Flush joint casing is required for small diameter wells installed through hollow stem augers.

(6) Monitoring well screens shall comply with the following requirements:

1. Slot size shall be based on sieve analysis of the sand and gravel stratum or filter pack. The slot size must keep out at least 90 percent of the filter pack.

2. Slot configuration and open area must permit effective development of the well.

3. The screen shall be no longer than 10 feet in length, except for water table wells, in which case the screen shall be of sufficient length to accommodate normal seasonal fluctuations of the water table. The screen shall be placed 5 feet above and below the observed water table, unless local conditions are known to produce greater fluctuations. Screen length for piezometers shall be 2 feet or less. Multiple-screened, single-cased wells are prohibited.

(7) Monitoring well filter packs shall comply with the following requirements:

1. The filter pack shall extend at least 18 inches above and 12 inches below the well screen.

2. The size of the filter pack material shall be based on sieve analysis when sand and gravel are screened. The filter pack material must be 2.5 to 3 times larger than the 50 percent grain size of the zone being monitored.

3. In stratum that is neither sand nor gravel, the size of the filter pack material shall be selected based on the particle size of the zone being monitored.

(8) Monitoring well annular space shall comply with the following requirements:

1. Grouting materials must be installed from the top of the filter pack up in one continuous operation with a tremie tube.

2. The annular space between the filter pack and the frostline must be backfilled with bentonite grout.

3. The remaining annular space between the protective casing and the monitoring well casing must be sealed with bentonite grout from the frostline to the ground surface.

(9) Monitoring well heads shall be protected as follows:

1. Monitoring wells shall have a protective metal casing installed around the upper portion of the monitoring well casing as follows:

- The inside diameter of the protective metal casing shall be at least 2 inches larger than the outer diameter of the monitoring well casing.
- The protective metal casing shall extend from a minimum of 1 foot below the frostline to slightly above the well casing top; however, the protective casing shall be shortened if such a depth would cover a portion of the well screen.
- The protective casing shall be sealed and immobilized with a concrete plug around the outside. The bottom of the concrete plug must extend at least 1 foot below the frostline; however, the concrete plug shall be shortened if such a depth would cover a portion of the well screen. The top of the concrete plug shall extend at least 3 inches above the ground surface and slope away from the well. Soil may be placed above the plug and shall be at least 6 inches below the cap to improve runoff.
- The inside of the protective casing shall be sealed with bentonite grout from the frostline to the ground surface.
- A vented cap shall be placed on the monitoring well casing.
- A vented, locking cap shall be placed on the protective metal casing. The cap must be kept locked when the well is not being sampled.

2. All monitoring wells shall have a ring of brightly colored protective posts or other protective barriers to help prevent accidental damage.

3. All monitoring wells shall have a sign or permanent marking clearly identifying the permanent monitoring well number (MW#).

4. Run-on shall be directed away from all monitoring wells.

(10) Well development is required prior to the use of the monitoring well for water quality monitoring purposes. Well development must loosen and remove fines from the well screen and gravel pack. Any water utilized to stimulate well development must be of sufficient quality that future samples are not contaminated. Any gases utilized in well development must be inert gases that will not contaminate future samples. Following development, the well shall be pumped until the water does not contain significant amounts of suspended solids.

d. Groundwater monitoring points that are no longer functional must be sealed. Groundwater monitoring points that are to be sealed and are in a future waste disposal area shall be reviewed to determine if the method utilized to seal the monitoring point needs to be more protective than the following requirements. All abandoned groundwater-monitoring points (e.g., boreholes, monitoring wells, and piezometers) shall be sealed by a well contractor certified pursuant to 567—Chapter 82 and in accordance with the following requirements.

(1) The following information shall be placed in the operating record and a copy sent to the department:

1. The unique, permanent monitoring point number.
2. The reasons for abandoning the monitoring point.
3. The date and time the monitoring point was sealed.
4. The method utilized to remove monitoring point materials.
5. The method utilized to seal the monitoring point.
6. Department Form 542-1226 for Water Well Abandonment Plugging Record.

(2) The monitoring point materials (e.g., protective casing, casing, screen) shall be removed. If drilling is utilized to remove the materials, then the drilling shall be to the maximum depth of the previously drilled monitoring point. All drilling debris shall be cleaned from the interior of the borehole.

(3) The cleared borehole shall be sealed with impermeable bentonite grout via a tremie tube. The end of the tremie tube shall be submerged in the grout while filling from the bottom of the borehole to the top of the ground surface. Uncontaminated water shall be added from the surface as needed to aid grout expansion.

(4) After 24 hours, the bentonite grout shall be retopped if it has settled below the ground surface.

e. Hydrologic monitoring system plan (HMSP). Unless otherwise approved by the department in writing, the number, spacing, and depth of groundwater monitoring points shall be:

(1) Determined based upon site-specific technical information, including but not limited to the soil and hydrogeologic investigation pursuant to subrule 113.6(3) and the site exploration and characterization report pursuant to subrule 113.6(4), that must include thorough characterization of:

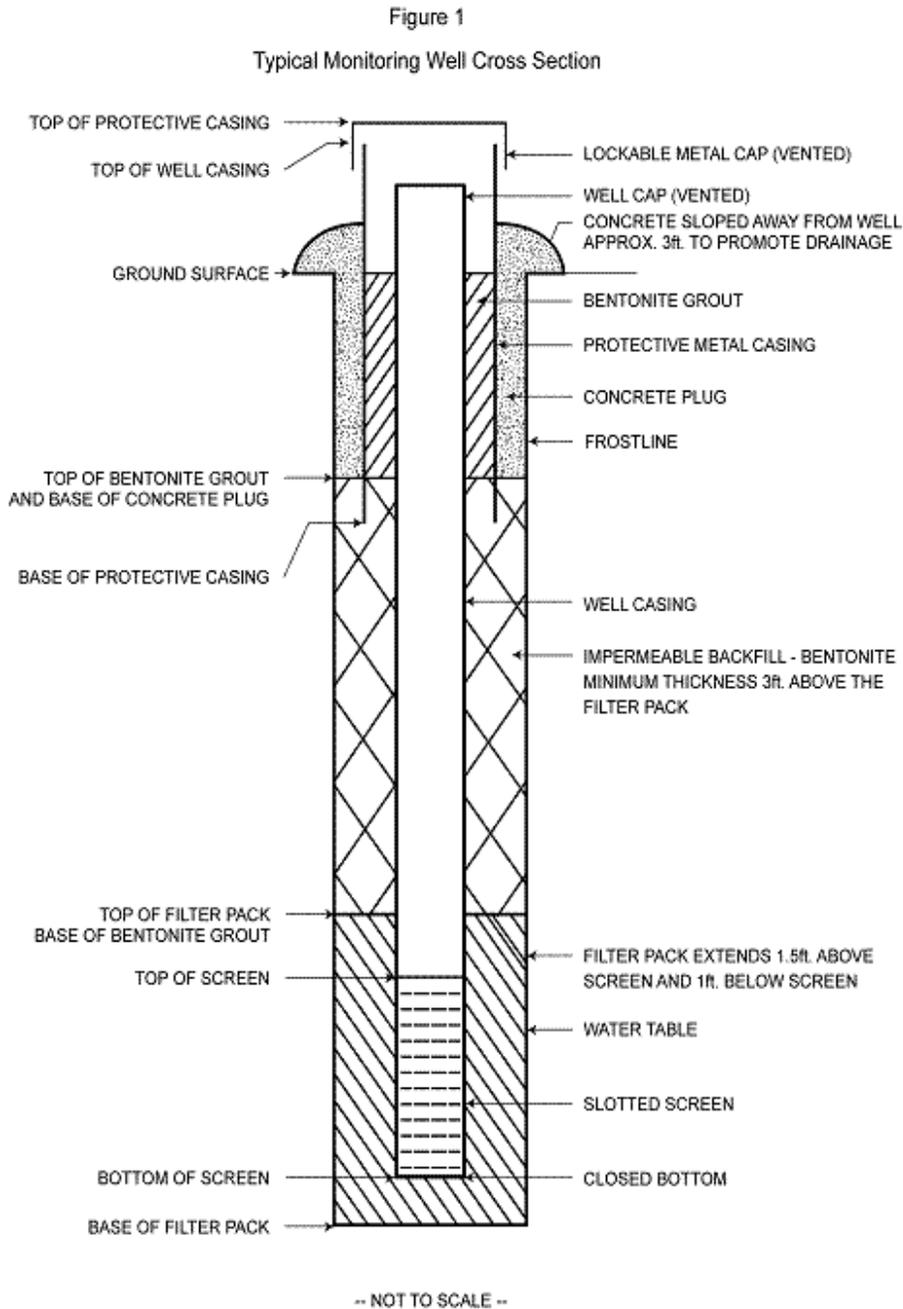
1. Aquifer thickness, groundwater flow rate, and groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and

2. Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities; and

3. Projected paths and rates of movement of contaminants found in leachate pursuant to subparagraph 113.6(3)“e”(6).

(2) Designed and constructed with a maximum of 300 feet between downgradient groundwater monitoring wells, unless it is demonstrated by site-specific analysis or modeling that an alternative well spacing is justified. The convergence of groundwater paths to minimize the overall length of the downgradient dimension may be taken into consideration in the placement of downgradient monitoring wells provided that the groundwater monitoring system meets the requirements of paragraphs 113.10(2)“a,” 113.10(2)“c,” 113.10(2)“d,” and 113.10(2)“e.”

(3) Certified by a qualified groundwater scientist, as defined in paragraph 113.10(1)“d,” and approved by the department. Within 14 days of this certification and approval by the department, the owner or operator must notify the department that the certification has been placed in the operating record.



f. Monitoring well maintenance and performance reevaluation plan. A monitoring well maintenance and performance reevaluation plan shall be included as part of the hydrologic monitoring system plan. The plan shall ensure that all monitoring points remain reliable. The plan shall provide for the following:

(1) A biennial examination of high and low water levels accompanied by a discussion of the acceptability of well location (vertically and horizontally) and exposure of the screened interval to the atmosphere.

(2) A biennial evaluation of water level conditions in the monitoring wells to ensure that the effects of waste disposal or well operation have not resulted in changes in the hydrologic setting and resultant flow paths.

(3) Measurements of well depths to ensure that wells are physically intact and not filling with sediment. Measurements shall be taken annually in wells which do not contain dedicated sampling pumps and every five years in wells containing dedicated sampling pumps.

(4) A biennial evaluation of well recharge rates and chemistry to determine if well deterioration is occurring.

113.10(3) Surface water monitoring systems. The department may require an MSWLF facility to implement a surface water monitoring program if there is reason to believe that a surface water of the state has been impacted as a result of facility operations (i.e., leachate seeps, sediment pond discharge) or a groundwater SSI over background has occurred.

a. A surface water monitoring program must be developed that consists of a sufficient number of monitoring points, designated at appropriate locations, to yield surface water samples that:

(1) Provide a representative sample of the upstream quality of a surface water of the state if the surface water being monitored is a flowing body of water.

(2) Provide a representative sample of the downstream quality of a surface water of the state if the surface water being monitored is a flowing body of water.

b. Surface water levels must be measured at a frequency specified in the facility's permit, within 1/10 of a foot at each surface water monitoring point immediately prior to sampling, each time surface water is sampled. The owner or operator must determine the rate and direction of surface water flow, if any, each time surface water is sampled. Surface water level and flow measurements for the same surface water of the state must be measured on the same day to avoid temporal variations that could preclude accurate determination of surface water flow and direction.

c. The owner or operator must notify and receive approval from the department for the designation or decommission of any surface water monitoring point, and must place that approval in the operating record.

d. The surface water monitoring points shall be designated to maintain sampling at that monitoring point throughout the life of the surface water monitoring program.

e. Each surface water monitoring point must have a unique and permanent number, and that number must never change or be used again at the MSWLF. Surface water monitoring points shall be identified by "SW# (Insert unique and permanent number)".

f. The number, spacing, and location of the surface water monitoring points shall be determined based upon site-specific technical information, including:

(1) Water level, including seasonal and temporal fluctuations in water level; and

(2) Flow rate and flow direction, including seasonal and temporal fluctuations in flow.

g. The MSWLF may discontinue the surface water monitoring program if monitoring data indicates that facility operations are not impacting surface water.

113.10(4) Groundwater sampling and analysis requirements.

a. The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells installed in compliance with subrule 113.10(2). The groundwater monitoring program shall utilize a laboratory certified by the department. The owner or operator must notify the department that the sampling and analysis program documentation has been placed in the operating record, and the program must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

b. The groundwater monitoring programs must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. Groundwater samples shall not be field-filtered prior to laboratory analysis.

c. The sampling procedures and frequency must be protective of human health and the environment, and consistent with subrule 113.10(5).

d. Groundwater elevations must be measured at a frequency specified in the facility's permit, within 1/100 of a foot in each well immediately prior to purging, each time groundwater is sampled. The owner or operator must determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

e. The owner or operator must establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the MSWLF unit, as determined under paragraph 113.10(5) "a" or 113.10(6) "a." Background groundwater quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if the wells meet the requirements of subparagraph 113.10(2) "a"(1).

f. The number of samples collected to establish groundwater quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph 113.10(4) "g." The sampling procedures shall be those specified under paragraphs 113.10(5) "b" for detection monitoring, 113.10(6) "b" and 113.10(6) "d" for assessment monitoring, and 113.10(7) "b" for corrective action.

g. The owner or operator must specify in the operating record which of the following statistical methods will be used in evaluating groundwater monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of paragraph 113.10(4) "h." The owner or operator must place a justification for this alternative in the operating record and notify the department of the use of this alternative test. The justification must demonstrate that the alternative method meets the performance standards of paragraph 113.10(4) "h."

h. The statistical method required pursuant to paragraph 113.10(4) "g" shall comply with the following performance standards:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level not less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be not less than 0.05; however, the Type I error level of not less than 0.01 for individual well comparisons must be maintained.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the

environment. The parameters shall be determined after the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern have been considered.

(4) If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern have been considered.

(5) The statistical method shall account for data below the limit of detection (LD) by recording such data at one-half the limit of detection (i.e., LD/2) or as prescribed by the statistical method. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

i. The owner or operator must determine whether or not there is an SSI over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the MSWLF unit, as determined under paragraph 113.10(5) "a" or 113.10(6) "a."

(1) In determining whether an SSI has occurred, the owner or operator must compare the groundwater quality of each parameter or constituent at each monitoring well designated pursuant to subrule 113.10(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs 113.10(4) "g" and 113.10(4) "h."

(2) Within 45 days after completing sampling and analysis, the owner or operator must determine whether there has been an SSI over background at each monitoring well.

113.10(5) *Detection monitoring program.*

a. Detection monitoring is required at MSWLF units at all groundwater monitoring wells defined under subrule 113.10(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in Appendix I and any additional parameters required by the department on a site-specific basis. An alternative list of constituents may be used if it can be demonstrated that the constituents removed are not reasonably expected to be in or derived from the waste contained in the unit and if the alternative list of constituents is expected to provide a reliable indication of leachate leakage or gas impact from the MSWLF unit.

(1) The department may establish an alternative list of inorganic indicator parameters for an MSWLF unit within Appendix I, in lieu of some or all of the heavy metals (constituents 1 to 15 in Appendix I), if the alternative parameters provide a reliable indication of inorganic releases from the MSWLF unit to the groundwater. In determining alternative parameters, the department shall consider the following factors:

1. The types, quantities and concentrations of constituents in wastes managed at the MSWLF unit;
2. The mobility, stability and persistence of waste constituents or their reaction products in the unsaturated zone beneath the MSWLF unit;
3. The detectability of indicator parameters, waste constituents and reaction products in the groundwater; and
4. The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(2) Reserved.

b. The monitoring frequency for all constituents listed in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5) "a"(1) shall be at least semiannual (i.e., every six months) during the active life of the facility (including closure) and the postclosure period. Where insufficient background data exist, a minimum of five independent samples from each well, collected at intervals to account for seasonal and temporal variation, must be analyzed for the constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5) "a"(1) during the first year. At least one sample from each well must be collected and analyzed during subsequent

semiannual sampling events. The department may specify an appropriate alternative frequency for repeated sampling and analysis for constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)“a”(1) during the active life (including closure) and the postclosure care period. The alternative frequency during the active life (including closure) shall be not less than annually. The alternative frequency shall be based on consideration of the following factors:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Groundwater flow rates;
- (4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel); and
- (5) Resource value of the aquifer.

c. If the owner or operator determines, pursuant to paragraph 113.10(4)“i,” that there is an SSI over background for one or more of the constituents listed in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)“a”(1) at any monitoring well specified under subrule 113.10(2), then the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the department that this notice was placed in the operating record.

(2) Must establish within 90 days an assessment monitoring program meeting the requirements of subrule 113.10(6) except as provided in subparagraph 113.10(5)“c”(3).

(3) The owner or operator may demonstrate that a source other than an MSWLF unit caused the contamination or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be certified by a qualified groundwater scientist, approved by the department, and placed in the operating record. If resampling is a part of the demonstration, resampling procedures shall be specified prior to initial sampling. If a successful demonstration to the department is made and documented, the owner or operator may continue detection monitoring as specified in subrule 113.10(5). If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in subrule 113.10(6).

113.10(6) Assessment monitoring program.

a. Assessment monitoring is required whenever an SSI over background has been confirmed pursuant to paragraph 113.10(5)“c” to be the result of a release from the facility.

b. Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the groundwater for all constituents identified in Appendix II. A minimum of one sample from each downgradient well shall be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as a result of the complete Appendix II analysis, a minimum of four independent samples from each well must be collected and analyzed to establish background for the constituents. The department may specify an appropriate subset of wells to be sampled and analyzed for Appendix II constituents during assessment monitoring. The department may delete any of the Appendix II monitoring parameters for an MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

c. The department may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Appendix II constituents required by paragraph 113.10(6)“b” during the active life (including closure) and postclosure care period of the unit. The following factors shall be considered:

- (1) Lithology of the aquifer and unsaturated zone;
- (2) Hydraulic conductivity of the aquifer and unsaturated zone;
- (3) Groundwater flow rates;
- (4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel);
- (5) Resource value of the aquifer; and

(6) Nature (fate and transport) of any constituents detected in response to this paragraph.

d. After obtaining the results from the initial or subsequent sampling events required in paragraph 113.10(6)“*b*,” the owner or operator must:

(1) Within 14 days, place a notice in the operating record identifying the Appendix II constituents that have been detected and notify the department that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by subrule 113.10(2) and conduct analyses for all constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)“*a*”(1), and for those constituents in Appendix II that are detected in response to the requirements of paragraph 113.10(6)“*b*.” Concentrations shall be recorded in the facility operating record. At least one sample from each well must be collected and analyzed during these sampling events. The department may specify an alternative monitoring frequency during the active life (including closure) and the postclosure period for the constituents referred to in this subparagraph. The alternative frequency for constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)“*a*”(1) during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph 113.10(6)“*c*”;

(3) Establish background concentrations for any constituents detected pursuant to paragraph 113.10(6)“*b*” or subparagraph 113.10(6)“*d*”(2); and

(4) Establish groundwater protection standards for all constituents detected pursuant to paragraph 113.10(6)“*b*” or 113.10(6)“*d*.” The groundwater protection standards shall be established in accordance with paragraph 113.10(6)“*h*” or 113.10(6)“*i*.”

e. If the concentrations of all Appendix II constituents are shown to be at or below background values, using the statistical procedures in paragraph 113.10(4)“*g*” for two consecutive sampling events, the owner or operator must notify the department of this finding and may return to detection monitoring.

f. If the concentrations of any Appendix II constituents are above background values, but all concentrations are below the groundwater protection standard established under paragraph 113.10(6)“*h*” or 113.10(6)“*i*,” using the statistical procedures in paragraph 113.10(4)“*g*,” the owner or operator must continue assessment monitoring in accordance with this subrule.

g. If one or more Appendix II constituents are detected at statistically significant levels above the groundwater protection standard established under paragraph 113.10(6)“*h*” or 113.10(6)“*i*” in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the Appendix II constituents that have exceeded the groundwater protection standard and notify the department and all other appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1) Must, within 90 days of this finding, comply with the following requirements or the requirements in subparagraph 113.10(6)“*g*”(2):

1. Characterize the nature and extent of the release by installing additional monitoring wells as necessary until the horizontal and vertical dimensions of the plume have been defined to background concentrations;

2. Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with subparagraph 113.10(6)“*g*”(2);

3. Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off site when indicated by sampling of wells in accordance with subparagraph 113.10(6)“*g*”(1); and

4. Initiate an assessment of corrective measures as required by subrule 113.10(7).

(2) May demonstrate that a source other than an MSWLF unit caused the contamination, or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be certified by a qualified groundwater scientist, approved by the department, and placed in the operating record. If a successful demonstration is made, the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to subrule 113.10(6), and may return to detection monitoring if the Appendix II constituents are at or below background as specified in paragraph 113.10(6)“*e*.” Until a successful demonstration

is made, the owner or operator must comply with paragraph 113.10(6)“g” including initiating an assessment of corrective measures.

h. The owner or operator must establish a groundwater protection standard for each Appendix II constituent detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under Section 1412 of the Safe Drinking Water Act (codified) under 40 CFR Part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with subrule 113.10(2); or

(3) For constituents for which the background concentration is higher than the MCL identified under subparagraph 113.10(6)“h”(1) or health-based concentrations identified under paragraph 113.10(6)“i,” the background concentration.

i. The department may establish an alternative groundwater protection standard for constituents for which MCLs have not been established. These groundwater protection standards shall be appropriate health-based concentrations that comply with the statewide standards for groundwater established pursuant to 567—Chapter 137.

j. In establishing alternative groundwater protection standards under paragraph 113.10(6)“i,” the department may consider the following:

(1) The policies set forth by the Groundwater Protection Act;

(2) Multiple contaminants in the groundwater with the assumption that the effects are additive regarding detrimental effects to human health and the environment;

(3) Exposure threats to sensitive environmental receptors; and

(4) Other site-specific exposure or potential exposure to groundwater.

113.10(7) *Assessment of corrective measures.*

a. Within 90 days of finding that any of the constituents listed in Appendix II have been detected at a statistically significant level exceeding the groundwater protection standards defined under paragraph 113.10(6)“h” or 113.10(6)“i,” the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed and submitted to the department for review and approval within 180 days of the initial finding unless otherwise authorized or required by the department.

b. The owner or operator must continue to monitor in accordance with the assessment monitoring program as specified in subrule 113.10(6).

c. The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under subrule 113.10(8), addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(ies).

d. Within 60 days of approval from the department of the assessment of corrective measures, the owner or operator must discuss the results of the corrective measures assessment, prior to the selection of a remedy, in a public meeting with interested and affected parties. The department may establish an alternative schedule for completing the public meeting requirement. Notice of public meeting shall be sent to all owners and occupiers of property adjacent to the permitted boundary of the facility, the department, and the department field office with jurisdiction over the facility. A copy of the minutes of this public meeting and the list of community concerns must be placed in the operating record and submitted to the department.

113.10(8) *Selection of remedy.*

a. Based on the results of the corrective measures assessment conducted under subrule 113.10(7), the owner or operator must select a remedy within 60 days of holding the public meeting that, at a

minimum, meets the standards listed in paragraph 113.10(8)“b.” The department may establish an alternative schedule for selecting a remedy after holding the public meeting. The owner or operator must submit a report to the department, within 14 days of selecting a remedy, describing the selected remedy, stating that the report has been placed in the operating record, and explaining how the selected remedy meets the standards in paragraph 113.10(8)“b.”

b. Remedies must:

- (1) Be protective of human health and the environment;
- (2) Attain the groundwater protection standards specified pursuant to paragraph 113.10(6)“h” or 113.10(6)“i”;
- (3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Appendix II constituents into the environment that may pose a threat to human health or the environment; and
- (4) Comply with standards for management of wastes as specified in paragraph 113.10(9)“d.”

c. In selecting a remedy that meets the standards of paragraph 113.10(8)“b,” the owner or operator shall consider the following evaluation factors:

(1) The long-term and short-term effectiveness and protectiveness of the potential remedy(ies), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

1. Magnitude of reduction of existing risks;
2. Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;
3. The type and degree of long-term management required, including monitoring, operation, and maintenance;
4. Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, redisposal, or containment;
5. Time period until full protection is achieved;
6. Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;
7. Long-term reliability of the engineering and institutional controls; and
8. Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

1. The extent to which containment practices will reduce further releases; and
2. The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(ies) based on consideration of the following factors:

1. Degree of difficulty associated with constructing the technology;
2. Expected operational reliability of the technology;
3. Need to coordinate with and obtain necessary approvals and permits from other agencies;
4. Availability of necessary equipment and specialists; and
5. Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of technical and economic capabilities.

(5) The degree to which community concerns, including but not limited to the concerns identified at the public meeting required pursuant to paragraph 113.10(7)“d,” are addressed by a potential remedy(ies).

d. The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in subparagraphs 113.10(8)“d”(1)

to (8). The owner or operator must consider the following factors in determining the schedule of remedial activities:

- (1) Extent and nature of contamination;
- (2) Practical capabilities of remedial technologies in achieving compliance with groundwater protection standards established under paragraph 113.10(6) "h" or 113.10(6) "i" and other objectives of the remedy;
- (3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;
- (4) Desirability of utilizing alternative or experimental technologies that are not widely available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;
- (5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;
- (6) Resource value of the aquifer including:
 1. Current and future uses;
 2. Proximity and withdrawal rate of users;
 3. Groundwater quantity and quality;
 4. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;
 5. The hydrogeologic characteristics of the facility and surrounding land;
 6. Groundwater removal and treatment costs; and
 7. The cost and availability of alternative water supplies;
- (7) Practicable capability of the owner or operator; and
- (8) Other relevant factors.

113.10(9) *Implementation of the corrective action plan.*

a. Based on the schedule established under paragraph 113.10(8) "d" for initiation and completion of remedial activities, the owner or operator must:

- (1) Establish and implement a corrective action groundwater monitoring program that:
 1. At a minimum, meets the requirements of an assessment monitoring program under subrule 113.10(6);
 2. Indicates the effectiveness of the corrective action remedy; and
 3. Demonstrates compliance with groundwater protection standards pursuant to paragraph 113.10(9) "e";
- (2) Implement the corrective action remedy selected under subrule 113.10(8); and
- (3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to subrule 113.10(8). The following factors must be considered by an owner or operator in determining whether interim measures are necessary:
 1. Time period required to develop and implement a final remedy;
 2. Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;
 3. Actual or potential contamination of drinking water supplies or sensitive ecosystems;
 4. Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;
 5. Weather conditions that may cause hazardous constituents to migrate or be released;
 6. Risk of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or the failure of a container or handling system; and
 7. Other factors that may pose threats to human health and the environment.

b. An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with the requirements of paragraph 113.10(8) "b" is not being achieved through the remedy selected. In such cases, the owner or operator

must notify the department and implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under paragraph 113.10(9)“c.” The notification shall explain how the proposed alternative methods or techniques will meet the standards in paragraph 113.10(8)“b,” or the notification shall indicate that the determination was made pursuant to paragraph 113.10(9)“c.” The notification shall also specify a schedule(s) for implementing and completing the remedial activities to comply with paragraph 113.10(8)“b” or the alternative measures to comply with paragraph 113.10(9)“c.” Within 90 days of approval by the department for the proposed alternative methods or techniques or the determination of impracticability, the owner or operator shall implement the proposed alternative methods or techniques meeting the standards of paragraph 113.10(8)“b” or implement alternative measures meeting the requirements of subparagraphs 113.10(9)“c”(2) and (3).

c. If the owner or operator determines that compliance with requirements under paragraph 113.10(8)“b” cannot be practicably achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified groundwater scientist and approval by the department that compliance with requirements under paragraph 113.10(8)“b” cannot be practicably achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment;

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

1. Technically practicable; and

2. Consistent with the overall objective of the remedy; and

(4) Notify the department within 14 days that a report justifying the alternate measures prior to implementation has been placed in the operating record.

d. All solid wastes that are managed pursuant to a remedy required under subrule 113.10(8), or an interim measure required under subparagraph 113.10(9)“a”(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA, state and local requirements.

e. Remedies selected pursuant to subrule 113.10(8) shall be considered complete when:

(1) The owner or operator complies with the groundwater protection standards established under paragraph 113.10(6)“h” or 113.10(6)“i” at all points within the plume of contamination that lie beyond the groundwater monitoring well system established under subrule 113.10(2).

(2) Compliance with the groundwater protection standards established under paragraph 113.10(6)“h” or 113.10(6)“i” has been achieved by demonstrating that concentrations of Appendix II constituents have not exceeded the groundwater protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in paragraphs 113.10(4)“g” and 113.10(4)“h.” The department may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of Appendix II constituents have not exceeded the groundwater protection standard(s), taking into consideration:

1. The extent and concentration of the release(s);

2. The behavior characteristics of the hazardous constituents in the groundwater;

3. The accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variables that may affect accuracy; and

4. The characteristics of the groundwater.

(3) All actions required by the department to complete the remedy have been satisfied.

f. Upon completion of the remedy, the owner or operator must notify the department within 14 days that a certification has been placed in the operating record verifying that the remedy has been completed in compliance with the requirements of paragraph 113.10(9)“e.” The certification must be signed by the owner or operator and by a qualified groundwater scientist and approved by the department.

g. When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under paragraph 113.10(9)“e,”

the owner or operator shall be released from the requirements for financial assurance for corrective action pursuant to subrule 113.14(5).

113.10(10) Annual water quality reports. The owner or operator shall submit an annual report to the department detailing the water quality monitoring sampling locations and results, assessments, selection of remedies, implementation of corrective action, and the results of corrective action remedies to address SSIs, if any, during the previous year. This report shall include a site map that delineates all monitoring points where water quality samples were taken, and plumes of contamination, if any. The report shall contain a narrative explaining and interpreting all of the data collected during the previous year. The report shall be due each year on a date set by the department in the facility's permit.

567—113.11(455B,455D) Record-keeping and reporting requirements. The primary purpose of the record-keeping and reporting activities is to verify compliance with this chapter and to document the construction and operations of the facility. The department can set alternative schedules for record-keeping and notification requirements as specified in subrules 113.11(1) and 113.11(2), except for the notification requirements in paragraph 113.6(2) "a" and numbered paragraph 113.10(6) "g"(1) "3." All MSWLFs shall comply with the following record-keeping and reporting requirements.

113.11(1) Record keeping. The owner or operator of an MSWLF unit must record and retain near the facility in an operating record or in an alternative location approved by the department the following information as it becomes available:

- a. Permit application, permit renewal and permit modification application materials pursuant to rule 113.5(455B);
- b. The site exploration and characterization reports pursuant to subrule 113.6(4);
- c. Design and construction plans and specifications, and related analyses and documents, pursuant to rule 113.7(455B). The QC&A final reports, and related analyses and documents, pursuant to paragraph 113.7(6) "d";
- d. Inspection records, training procedures, and notification procedures required in rule 113.8(455B);
- e. Any MSWLF unit design documentation for placement of leachate or gas condensate in an MSWLF unit as required under numbered paragraphs 113.8(1) "b"(3) "2" and "3";
- f. Gas monitoring results from monitoring and any remediation plans required by rule 113.9(455B);
- g. Any demonstration, certification, finding, monitoring, testing, or analytical data required by rule 113.10(455B);
- h. Closure and postclosure care plans and any monitoring, testing, or analytical data as required by rules 113.12(455B) and 113.13(455B); and
- i. Any cost estimates and financial assurance documentation required by this chapter.

113.11(2) Reporting requirements. The owner or operator must notify the department when the documents required in subrule 113.11(1) have been placed in the operating record. All information contained in the operating record must be furnished upon request to the department and be made available at all reasonable times for inspection by the department.

567—113.12(455B) Closure criteria. All MSWLFs shall comply with the following closure requirements.

113.12(1) Owners or operators of all MSWLF units must install a final cover system that is designed to minimize infiltration and erosion. The final cover system must be designed and constructed to:

- a. Have a permeability less than or equal to the permeability of any bottom liner system (for MSWLFs with some type of liner) or have a permeability no greater than 1×10^{-7} cm/sec, whichever is less;
- b. Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum of 18 inches of compacted earthen material;
- c. Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of 24 inches of earthen material that is capable of sustaining native plant growth;

d. Have an infiltration layer and erosion layer that are a combined minimum of 42 inches of earthen material at all locations over the closed MSWLF unit; and

e. Have a slope between 5 percent and 25 percent. Steeper slopes may be used if it is demonstrated that a steeper slope is unlikely to adversely affect final cover system integrity.

113.12(2) The department may approve an alternative final cover design that includes:

a. An infiltration layer that achieves reduction in infiltration equivalent to the infiltration layer specified in paragraphs 113.12(1)“*a*” and 113.12(1)“*b*”; and

b. An erosion layer that provides protection from wind and water erosion equivalent to the erosion layer specified in paragraphs 113.12(1)“*c*” and 113.12(1)“*d*.”

113.12(3) The owner or operator must prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during the active life in accordance with the cover design requirements in subrule 113.12(1) or 113.12(2), as applicable. The closure plan, at a minimum, must include the following information:

a. A description of the final cover including source, volume, and characteristics of cover material, designed in accordance with subrule 113.12(1) or 113.12(2) and the methods and procedures to be used to install the cover;

b. An estimate of the largest area of the MSWLF unit requiring a final cover, as required under subrule 113.12(1) or 113.12(2), at any time during the active life;_

c. An estimate of the maximum inventory of wastes on site over the active life of the landfill facility; and

d. A schedule for completing all activities necessary to satisfy the closure criteria in rule 113.12(455B).

113.12(4) The owner or operator must notify the department that the closure plan has been placed in the operating record no later than the initial receipt of waste in a new MSWLF unit.

113.12(5) At least 180 days prior to beginning closure of each MSWLF unit as specified in subrule 113.12(6), an owner or operator must notify the department of the intent to close the MSWLF unit, and that a notice of the intent to close the unit has been placed in the operating record. If the MSWLF facility will no longer be accepting MSW for disposal, then the owner or operator must also notify all local governments utilizing the facility and post a public notice of the intent to close and no longer to accept MSW.

113.12(6) The owner or operator must begin closure activities of each MSWLF unit:

a. No later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes; or

b. If the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the department if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

113.12(7) The owner or operator of all MSWLF units must complete closure activities of each MSWLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in subrule 113.12(6). Extensions of the closure period may be granted by the department if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

113.12(8) Following closure of each MSWLF unit, the owner or operator must submit to the department certification, signed by an independent professional engineer (P.E.) registered in Iowa, verifying that closure has been completed in accordance with the closure plan. Upon approval by the department, the certification shall be placed in the operating record.

113.12(9) Following closure of all MSWLF units, the owner or operator must record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search in lieu of a deed notification, and notify the department that the notation has been recorded and

a copy has been placed in the operating record. The notation on the deed must in perpetuity notify any potential purchaser of the property that:

- a. The land has been used as a landfill facility; and
- b. Its use is restricted under paragraph 113.13(3)“c.”

113.12(10) The owner or operator may request permission from the department to remove the notation from the deed if all wastes are removed from the facility.

567—113.13(455B) Postclosure care requirements. All MSWLFs shall comply with the following postclosure care requirements.

113.13(1) Following closure of each MSWLF unit, the owner or operator must conduct postclosure care. Postclosure care must be conducted for 30 years, except as provided under subrule 113.13(2), and consist of at least the following:

- a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;
- b. Maintaining and operating the leachate collection system in accordance with the requirements in paragraphs 113.7(5)“b” and 113.8(3)“i,” if applicable. The department may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;
- c. Monitoring the groundwater in accordance with the requirements of rule 113.10(455B) and maintaining the groundwater monitoring system; and
- d. Maintaining and operating the gas monitoring system in accordance with the requirements of rule 113.9(455B).

113.13(2) The length of the postclosure care period may be:

- a. Decreased by the department if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the department; or
- b. Increased by the department if the department determines that the lengthened period is necessary to protect human health and the environment.

113.13(3) The owner or operator of all MSWLF units must prepare a written postclosure plan that includes, at a minimum, the following information:

- a. A description of the monitoring and maintenance activities required in subrule 113.13(1) for each MSWLF unit, and the frequency at which these activities will be performed;
- b. Name, address, and telephone number of the person or office to contact about the facility during the postclosure period; and
- c. A description of the planned uses of the property during the postclosure period. Postclosure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this chapter. The department may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

113.13(4) The owner or operator must notify the department that a postclosure plan has been prepared and placed in the operating record by the date of initial receipt of waste.

113.13(5) Following completion of the postclosure care period for each MSWLF unit, the owner or operator must submit to the department a certification, signed by an independent professional engineer (P.E.) registered in Iowa, verifying that postclosure care has been completed in accordance with the postclosure plan. Upon department approval, the certification shall be placed in the operating record.

567—113.14(455B) Municipal solid waste landfill financial assurance.

113.14(1) Purpose. The purpose of this rule is to implement Iowa Code sections 455B.304(8) and 455B.306(8) by providing the criteria for establishing financial assurance for closure, postclosure care and corrective action at MSWLFs.

113.14(2) Applicability. The requirements of this rule apply to all owners and operators of MSWLFs except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

113.14(3) Financial assurance for closure. The owner or operator of an MSWLF must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with rule 113.12(455B). Proof of compliance pursuant to paragraphs 113.14(3) "a" through 113.14(3) "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Municipal Solid Waste Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(8) "e" and 455B.306(6) "c," and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code section 455B.306(8) "b."

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 113.14(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 113.14(6) "a" to 113.14(6) "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the MSWLF in accordance with the closure plan as required by paragraph 103.5(1) "i" and rule 113.12(455B). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the MSWLF at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the MSWLF, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or MSWLF conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 113.14(3) "a" through 113.14(3) "e" and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;

6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For publicly owned MSWLFs, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held MSWLFs shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

113.14(4) *Financial assurance for postclosure care.* The owner or operator of an MSWLF must establish financial assurance for the costs of postclosure care in accordance with the criteria in this chapter. The owner or operator must provide continuous coverage for postclosure care until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 113.14(4) "a" through 113.14(4) "e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Municipal Solid Waste Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(8) "e" and 455B.306(6) "c," and the current balances of the closure and postclosure accounts required by Iowa Code section 455B.306(8) "b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 113.14(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 113.14(6) "a" to 113.14(6) "i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure care for the MSWLF in compliance with the postclosure plan developed pursuant to paragraph 113.5(1) "i" and rule 113.13(455B). The cost estimate must account for the total cost of conducting postclosure care, as described in the plan, for the entire postclosure care period.

(1) The cost estimate for postclosure care must be based on the most expensive costs of that care during the entire postclosure care period.

(2) The costs contained in the third-party estimate for postclosure care must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the MSWLF and during the postclosure care period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or MSWLF conditions increase the maximum cost of postclosure care.

(5) The owner or operator may reduce the amount of financial assurance for postclosure care if the most recent estimate of the maximum cost of postclosure care beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 113.14(4) "a" through 113.14(4) "e" and

must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure care and account for at least the following factors determined by the department to be minimal necessary costs for postclosure care:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance;
6. Gas control systems monitoring and reports;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Engineering and technical services;
14. Legal, financial and administrative services; and
15. Financial assurance, accounting, audits and reports.

d. For publicly owned MSWLFs, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held MSWLFs shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

113.14(5) *Financial assurance for corrective action.*

a. An owner or operator required to undertake corrective action pursuant to rules 113.9(455B) and 113.10(455B) must have a detailed written estimate, in current dollars, prepared by an Iowa licensed professional engineer of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or MSWLF conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of an MSWLF required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 113.14(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by a qualified groundwater scientist and approved by the department.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

113.14(6) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code section 455B.306(8)“a” must ensure that the funds necessary to meet the costs of closure, postclosure care, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 113.14(6)“a” to 113.14(6)“i.”

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, and corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 113.14(3) and 113.14(4) and placed in the facility’s official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the MSWLF, whichever is shorter, in the case of a trust fund for closure or postclosure care; or over one-half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure care, the first payment into the fund must be at least equal to the amount specified in subrule 113.14(9) for closure or postclosure care divided by the number of years in the pay-in period as defined in subparagraph 113.14(6)“a”(2).

The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the amount specified in 113.14(9) for closure or postclosure care (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 113.14(6)“a”(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{RB} - \text{CV}}{\text{Y}}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure care, or corrective action activities may request reimbursement from the trustee for these expenditures, including partial closure, as they are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure care, or corrective action and if justification and documentation of the costs are placed in the operating

record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure care by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 113.14(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 113.14(6) "b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 113.14(6) "a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 113.14(6) "a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this chapter. A failure to comply with subparagraph 113.14(6) "b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure periods.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subrule. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit

and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 113.14(9) for closure, postclosure care or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(8) "b." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code section 455B.306(8) "b." The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action by obtaining insurance which conforms to the requirements of this subrule. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure care insurance policy must guarantee that funds will be available to close the MSWLF unit whenever final closure occurs or to provide postclosure care for the MSWLF unit whenever the postclosure care period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure care, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 113.14(9) for closure, postclosure care, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure care, may receive reimbursements for closure or postclosure expenditures, including partial closure, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure care, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(8) "b." If the owner or operator has not complied with this subrule within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subrule within the 60-day period shall make the insurer liable for the closure and postclosure care of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 113.14(6) "e"(1)"1" to "3" to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or
- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus \$10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure care, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus \$10 million except as provided in the second bulleted paragraph of numbered paragraph 113.14(6) "e"(1)"2"; or
- Net worth of \$10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure care, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 113.14(6) "e"(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of

solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:
 - Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 113.14(3) to 113.14(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
 - Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 113.14(6)“e”(1).
2. A copy of the independent certified public accountant’s unqualified opinion of the owner’s or operator’s financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner’s or operator’s financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.
3. If the certified public accountant’s letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subparagraph 113.14(6)“e”(1) that differs from data in the audited financial statements referred to in numbered paragraph 113.14(6)“e”(2)“2,” then a special report from the owner’s or operator’s independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant’s letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.
4. If the certified public accountant’s letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 113.14(6)“e”(1)“2,” then the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least \$10 million plus the amount of any guarantees provided.
 - (3) The owner or operator may cease the submission of the information required by paragraph 113.14(6)“e” only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.
 - (4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 113.14(6)“e”(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 113.14(6)“e”(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 113.14(6)“e”(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.
 - (5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 113.14(6)“e,” the owner or operator must include cost estimates required for subrules 113.14(3) to 113.14(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures

those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

- If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or

- The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 113.14(6) "f" if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or

- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 113.14(6) "f"(1) "2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

- "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.

- "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.

- "Deficit" means total annual revenues minus total annual expenditures.

- "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.

- "Total revenues" means revenues from all taxes and fees, excluding revenue from funds managed by local government on behalf of a specific third party, and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure care costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 113.14(6) "f"(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 113.14(6) "f"(1) "1," "2," and "3"; and certifies that the local government meets the conditions of subparagraphs 113.14(6) "f"(2) and (4); and

- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 113.14(6) "f"(1) "1," second bulleted paragraph, if applicable; and the requirements of numbered paragraph 113.14(6) "f"(1) "2" and the third and fourth bulleted paragraphs of numbered paragraph 113.14(6) "f"(1) "3"; and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 113.14(6) "f"(3) "1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial mechanism, in the case of closure and postclosure care; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 113.14(6) "f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government at any time. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure care, and corrective action costs which an owner or operator may assure under this subrule is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure care, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure care, and corrective action costs it seeks to assure under this subparagraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 113.14(6) "f"(4) "1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a “substantial business relationship” with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 113.14(6) “g” and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility’s operating record along with copies of the letter from a certified public accountant and the accountant’s opinions. If the guarantor’s parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a “substantial business relationship” with the owner or operator, this letter must describe this “substantial business relationship” and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure care; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure care, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 113.14(6) “g”(3)“2” and “3,” the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure care, or corrective action as required (performance guarantee);
- Establish a fully funded trust fund as specified in paragraph 113.14(6) “a” in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 113.14(6) “g”(3)“3.”

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 113.14(6) “a.” If the owner or operator fails to comply with the provisions of this paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 113.14(6) “e,” the owner or operator must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 113.14(6) “g” upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 113.14(6) “f” and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure care, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 113.14(6)“h”(1)“2” and “3,” the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure care, or corrective action as required; or

- Establish a fully funded trust fund as specified in paragraph 113.14(6)“a” in the name of the owner or operator; or

- Obtain alternative financial assurance as required by numbered paragraph 113.14(6)“h”(1)“3.”

2. The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 113.14(6)“a.” If the owner or operator fails to comply with the provisions of this paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 113.14(6)“f”(3) and place a copy in the facility’s official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 113.14(6)“h”(2)“1” when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 113.14(6)“f,” the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned MSWLF or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure care, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this subrule. A dedicated fund will be considered eligible if it complies with subparagraph 113.14(6)“i”(1) or (2) below, and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure care, or corrective action costs, whichever is applicable, arising from the operation of the MSWLF and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the MSWLF, whichever is shorter, in the case of a dedicated fund for closure or postclosure care; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the “pay-in period.” The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure care or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure care, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 113.14(9), divided by the number of years in the pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{\text{CE} - \text{CB}}{\text{Y}}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

$$\text{Payment} = \frac{\text{RB} - \text{CF}}{\text{Y}}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

113.14(7) General requirements.

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this subrule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure care, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this subrule for multiple MSWLFs by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure care, or corrective action, whichever is applicable, for all MSWLFs covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure care, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action plan has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code section 455B.305 unless the applicant has demonstrated compliance with rule 113.14(455B).

113.14(8) Closure and postclosure accounts. The holder of a permit for an MSWLF shall maintain a separate account for closure and postclosure care as required by Iowa Code section 455B.306(8) "b." The account shall be specific to a particular facility.

a. Definitions. For the purpose of this subrule, the following definitions shall apply:

"Account" means a formal, separate set of records.

"Current balance" means cash in an account established pursuant to this rule plus the current value of investments of moneys collected pursuant to subrule 113.14(8) and used to purchase one or more of the investments listed in Iowa Code section 12B.10(5).

"Current cost estimate" means the closure cost estimate prepared and submitted to the department pursuant to subrule 113.14(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 113.14(4).

b. Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

c. Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

d. Withdrawal of funds. Except as provided in paragraph 113.14(8) "e," moneys in the accounts may be withdrawn without departmental approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to paragraph 113.5(1) "i." Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 113.14(6) "a" to satisfy the requirements of this subrule must comply with the requirements of subparagraph 113.14(6) "a"(6) prior to withdrawal.

e. Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

f. Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2003, that indicates that accounts have been established pursuant to this subrule. Permit holders for new MSWLFs permitted after April 1, 2003, shall submit to the department prior to the MSWLF's initial receipt of waste a statement of account, signed by the permit holder.

g. An account established pursuant to paragraph 113.14(6) "a" for trust funds or paragraph 113.14(6) "i" for local government dedicated funds also satisfies the requirements of this subrule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts. Accounts established pursuant to paragraph 113.14(6) "a" or 113.14(6) "i," which are intended to satisfy the requirements of this subrule, must comply with Iowa Code section 455B.306(8) "b."

h. Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility's first fiscal year that begins after June 30, 2002. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

“CE” means the current cost estimate of closure and postclosure costs.

“CB” means the current balance of the closure or postclosure accounts.

“RPC” means the remaining permitted capacity, in tons, of the MSWLF as of the start of the permit holder’s fiscal year.

“TR” is the number of tons of solid waste disposed of at the facility in the prior year.

i. Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 113.14(3) “a” and 113.14(4) “a.”

j. The department shall have full rights of access to all funds existing in a facility’s closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

113.14(9) Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 113.14(6) shall be in the amount of the third-party cost estimates required by subrules 113.14(3), 113.14(4), and 113.14(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 113.14(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

567—113.15(455B,455D) Variances. A request for a variance to this chapter shall be submitted in writing pursuant to 561—Chapter 10. Some provisions of this chapter are minimum standards required by federal law (see 40 CFR 258), and variances to such provisions shall not be granted unless they are as protective as the applicable minimum federal standards.

Appendix I
Constituents for Detection Monitoring¹

Inorganic Constituents:	
(1) Antimony	(Total)
(2) Arsenic	(Total)
(3) Barium	(Total)
(4) Beryllium	(Total)
(5) Cadmium	(Total)
(6) Chromium	(Total)
(7) Cobalt	(Total)
(8) Copper	(Total)
(9) Lead	(Total)
(10) Nickel	(Total)
(11) Selenium	(Total)
(12) Silver	(Total)
(13) Thallium	(Total)
(14) Vanadium	(Total)
(15) Zinc	(Total)

Organic Constituents:	
(16) Acetone	67-64-1
(17) Acrylonitrile	107-13-1
(18) Benzene	71-43-2
(19) Bromochloromethane	74-97-5
(20) Bromodichloromethane	75-27-4
(21) Bromoform; Tribromomethane	75-25-2
(22) Carbon disulfide	75-15-0
(23) Carbon tetrachloride	56-23-5
(24) Chlorobenzene	108-90-7
(25) Chloroethane; Ethyl chloride	75-00-3
(26) Chloroform; Trichloromethane	67-66-3
(27) Dibromochloromethane; Chlorodibromomethane	124-48-1
(28) 1,2-Dibromo-3-chloropropane; DBCP	96-12-8
(29) 1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
(30) o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
(31) p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
(32) trans-1,4-Dichloro-2-butene	110-57-6
(33) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(34) 1,2-Dichloroethane; Ethylene dichloride	107-06-2
(35) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4
(36) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
(37) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
(38) 1,2-Dichloropropane; Propylene dichloride	78-87-5
(39) cis-1,3-Dichloropropene	10061-01-5
(40) trans-1,3-Dichloropropene	10061-02-6

Organic Constituents:	
(41) Ethylbenzene	100-41-4
(42) 2-Hexanone; Methyl butyl ketone	591-78-6
(43) Methyl bromide; Bromomethane	74-83-9
(44) Methyl chloride; Chloromethane	74-87-3
(45) Methylene bromide; Dibromomethane	74-95-3
(46) Methylene chloride; Dichloromethane	75-09-2
(47) Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
(48) Methyl iodide; Iodomethane	74-88-4
(49) 4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
(50) Styrene	100-42-5
(51) 1,1,1,2-Tetrachloroethane	630-20-6
(52) 1,1,2,2-Tetrachloroethane	79-34-5
(53) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(54) Toluene	108-88-3
(55) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(56) 1,1,2-Trichloroethane	79-00-5
(57) Trichloroethylene; Trichloroethene	79-01-6
(58) Trichlorofluoromethane; CFC-11	75-69-4
(59) 1,2,3-Trichloropropane	96-18-4
(60) Vinyl acetate	108-05-4
(61) Vinyl chloride	75-01-4
(62) Xylenes	1330-20-7

Notes:

¹This list contains 47 volatile organics for which possible analytical procedures provided in EPA Report SW-846 "Test Methods for Evaluating Solid Waste," third edition, November 1986, as revised December 1987, includes Method 8260; and 15 metals for which SW-846 provides either Method 6010 or a method from the 7000 series of methods.

²Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

³Chemical Abstracts Service registry number. Where "Total" is entered, all species in the groundwater that contain this element are included.

Appendix II
List of Hazardous Inorganic and Organic Constituents¹

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	8100 8270	200 10
Acenaphthylene	208-96-8	Acenaphthylene	8100 8270	200 10
Acetone	67-64-1	2-Propanone	8260	100
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	8015	100
Acetophenone	98-86-2	Ethanone, 1-phenyl-	8270	10
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	8270	20
Acrolein	107-02-8	2-Propenal	8030 8260	5 100
Acrylonitrile	107-13-1	2-Propenenitrile	8030 8260	5 200
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene, 1,2,3,4, 10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5α,8α,8aβ)-	8080 8270	0.05 10
Allyl chloride	107-05-1	1-Propene, 3-chloro-	8010 8260	5 10
4-Aminobiphenyl	92-67-1	[1,1'-Biphenyl]-4-amine	8270	20
Anthracene	120-12-7	Anthracene	8100 8270	200 10
Antimony	(Total)	Antimony	6010 7040 7041	300 2000 30
Arsenic	(Total)	Arsenic	6010 7060 7061	500 10 20
Barium	(Total)	Barium	6010 7080	20 1000

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
Benzene	71-43-2	Benzene	8020 8021 8260	2 0.1 5
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	8100 8270	200 10
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	8100 8270	200 10
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	8100 8270	200 10
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	8100 8270	200 10
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	8100 8270	200 10
Benzyl alcohol	100-51-6	Benzenemethanol	8270	20
Beryllium	(Total)	Beryllium	6010 7090 7091	3 50 2
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5β,6β)-	8080 8270	0.05 10
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2β,3α,4β,5α,6β)-	8080 8270	0.05 20
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3α,4β,5α,6β)-	8080 8270	0.1 20
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)-	8080 8270	0.05 20
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1 ¹ -[methylene bis(oxy)] bis[2-chloro-	8110 8270	5 10
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4	Ethane, 1,1 ¹ -oxybis[2-chloro-	8110 8270	3 10
Bis-(2-chloro-1-methylethyl) ether; 2,2 ¹ -Dichlorodiisopropyl ether; DCIP, see Note 7	108-60-1	Propane, 2,2 ¹ -oxybis[1-chloro-	8110 8270	10 10

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	8060	20
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-	8021 8260	0.1 5
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-	8010 8021 8260	1 0.2 5
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	8010 8021 8260	2 15 5
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	8110 8270	25 10
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	8060 8270	5 10
Cadmium	(Total)	Cadmium	6010 7130 7131	40 50 1
Carbon disulfide	75-15-0	Carbon disulfide	8260	100
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	8010 8021 8260	1 0.1 10
Chlordane	See Note 8	4,7-Methano-1H-indene, 1,2,4,5,6,7,8,8-octachloro-2,3,3a,4,7,7a-hexahydro-	8080 8270	0.1 50
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	8270	20
Chlorobenzene	108-90-7	Benzene, chloro-	8010 8020 8021 8260	2 2 0.1 5
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chloro- α -(4-chlorophenyl)- α -hydroxy-, ethyl ester	8270	10
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-	8040 8270	5 20

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	8010 8021 8260	5 1 10
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-	8010 8021 8260	0.5 0.2 5
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	8120 8270	10 10
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	8040 8270	5 10
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	8110 8270	40 10
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	8010 8260	50 20
Chromium	(Total)	Chromium	6010 7190 7191	70 500 10
Chrysene	218-01-9	Chrysene	8100 8270	200 10
Cobalt	(Total)	Cobalt	6010 7200 7201	70 500 10
Copper	(Total)	Copper	6010 7210 7211	60 200 10
m-Cresol; 3-methylphenol	108-39-4	Phenol, 3-methyl-	8270	10
o-Cresol; 2-methylphenol	95-48-7	Phenol, 2-methyl-	8270	10
p-Cresol; 4-methylphenol	106-44-5	Phenol, 4-methyl-	8270	10
Cyanide	57-12-5	Cyanide	9010	200
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-	8150	10
4,4'-DDD	72-54-8	Benzene 1,1'-(2,2-dichloroethyl-idene) bis[4-chloro-	8080 8270	0.1 10

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
4,4 ¹ -DDE	72-55-9	Benzene, 1,1 ¹ - (dichloroethenyl-idene) bis[4- chloro-	8080 8270	0.05 10
4,4 ¹ -DDT	50-29-3	Benzene, 1,1 ¹ -(2,2,2- trichloroethylidene)bis[4- chloro-	8080 8270	0.1 10
Diallate	2303-16-4	Carbamothioic acid, bis(1- methyl-ethyl)-, S-(2,3- dichloro-2-propenyl) ester	8270	10
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	8100 8270	200 10
Dibenzofuran	132-64-9	Dibenzofuran	8270	10
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	8010 8021 8260	1 0.3 5
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibromo-3- chloro-	8011 8021 8260	0.1 30 25
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4	Ethane, 1,2-dibromo-	8011 8021 8260	0.1 10 5
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	8060 8270	5 10
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	8010 8020 8021 8120 8260 8270	2 5 0.5 10 5 10
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-	8010 8020 8021 8120 8260 8270	5 5 0.2 10 5 10
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	8010 8020 8021 8120 8260 8270	2 5 0.1 15 5 10

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
3,3 ¹ -Dichlorobenzidine	91-94-1	[1,1 ¹ -Biphenyl]-4,4 ¹ -diamine, 3,3 ¹ -dichloro-	8270	20
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-	8260	100
Dichlorodifluoromethane; CFC 12	75-71-8	Methane, dichlorodifluoro-	8021 8260	0.5 5
1,1-Dichloroethane; Ethylidene chloride	75-34-3	Ethane, 1,1-dichloro-	8010 8021 8260	1 0.5 5
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,1-dichloro-	8010 8021 8260	0.5 0.3 5
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	8010 8021 8260	1 0.5 5
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-, (Z)-	8021 8260	0.2 5
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5	Ethene, 1,2-dichloro-, (E)-	8010 8021 8260	1 0.5 5
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	8040 8270	5 10
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	8270	10
1,2-Dichloropropane; Propylene dichloride	78-87-5	Propane, 1,2-dichloro-	8010 8021 8260	0.5 0.05 5
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-	8021 8260	0.3 5
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-	8021 8260	0.5 15
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-	8021 8260	0.2 5
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	8010 8260	20 10
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	8010 8260	5 10

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexa, chloro-1a, 2,2a,3,6,6a,7,7a-octahydro-, (1α, 2β, 2α, 3β, 6β, 6α, 7β, 7α)-	8080 8270	0.05 10
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	8060 8270	5 10
0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	8141 8270	5 20
Dimethoate	60-51-5	Phosphorodithioic acid, 0,0-dimethyl S- [2-(methylamino)-2-oxoethyl] ester	8141 8270	3 20
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	8270	10
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	8270	10
3,3 ¹ -Dimethylbenzidine	119-93-7	[1,1 ¹ -Biphenyl]-4,4 ¹ -diamine, 3,3 ¹ -dimethyl-	8270	10
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-	8040 8270	5 10
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	8060 8270	5 10
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	8270	20
4,6-Dinitro-o-cresol 4,6-Dinitro-2-methylphenol	534-52-1	Phenol, 2-methyl-4,6-dinitro-	8040 8270	150 50
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-	8040 8270	150 50
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	8090 8270	0.2 10
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-	8090 8270	0.1 10
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	8150 8270	1 20

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	8060 8270	30 10
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	8270	10
Disulfoton	298-04-4	Phosphorodithioic acid, 0,0-diethyl S-[2-(ethylthio)ethyl] ester	8140 8141 8270	2 0.5 10
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	8080 8270	0.1 20
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,(3α,5αα,6β,9β,9αα)-	8080 8270	0.05 20
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxathiepin, 6,7,8,9,10,10-hexachloro-1,5,5a,6,9,9a-hexahydro-, 3-3-dioxide	8080 8270	0.5 10
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b]oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a, 7,7a-octahydro-, (1α,2β, 2aβ,4β,3α,6α, 6aβ,7β,7αα)-	8080 8270	0.1 20
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]pentalene- 5-carboxaldehyde,2,2a,3,3,4,7-hexachlorodecahydro-, (1α,2β, 2aβ,4β,4aβ,5β,6aβ, 6bβ,7R)-	8080 8270	0.2 10
Ethylbenzene	100-41-4	Benzene, ethyl-	8020 8221 8260	2 0.05 5
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	8015 8260 8270	5 10 10
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	8270	20

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
Famphur	52-85-7	Phosphorothioic acid, 0-[4-[(dimethyl-amino)sulfonyl]phenyl] 0,0-dimethyl ester	8270	20
Fluoranthene	206-44-0	Fluoranthene	8100 8270	200 10
Fluorene	86-73-7	9H-Fluorene	8100 8270	200 10
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7, 8,8- heptachloro-3a,4,7, 7a-tetrahydro-	8080 8270	0.05 10
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b] oxirene, 2,3,4,5,6,7,7- heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1α,1β, 2α, 5α,5αβ, 6β, 6α)	8080 8270	1 10
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	8120 8270	0.5 10
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4, 4-hexachloro-	8021 8120 8260 8270	0.5 5 10 10
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5- hexachloro-	8120 8270	5 10
Hexachloroethane	67-72-1	Ethane, hexachloro-	8120 8260 8270	0.5 10 10
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3- hexachloro-	8270	10
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone	8260	50
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno(1,2,3-cd)pyrene	8100 8270	200 10
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	8015 8240	50 100

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene, 1,2, 3,4, 10,10- hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-	8270 8260	20 10
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	8090 8270	60 10
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	8270	10
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd]pentalen-2-one, 1,1a,3,3a,4,5,5,5a,5b,6-decachlorooctahydro-	8270	20
Lead	(Total)	Lead	6010 7420 7421	400 1000 10
Mercury	(Total)	Mercury	7470	2
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	8015 8260	5 100
Methapyrilene	91-80-5	1,2-Ethanediamine, N,N-dimethyl-N ¹ -2-pyridinyl-N ¹ /2-thienylmethyl)-	8270	100
Methoxychlor	72-43-5	Benzene, 1,1 ¹ -(2,2,2-trichloroethylidene)bis[4-methoxy-	8080 8270	2 10
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	8010 8021	20 10
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	8010 8021	1 0.3
3-Methylcholanthrene	56-49-5	Benz[<i>j</i>]aceanthrylene, 1,2-dihydro- 3-methyl-	8270	10
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone	8015 8260	10 100
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	8010 8260	40 10
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	8015 8260	2 30

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, 0,0-dimethyl	8140 8141 8270	0.5 1 10
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	8015 8260	5 100
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	8010 8021 8260	15 20 10
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	8010 8021 8260	5 0.2 10
Naphthalene	91-20-3	Naphthalene	8021 8100 8260 8270	0.5 200 5 10
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	134-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010 7520	150 400
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline; 3-Nitroaniline	99-09-2	Benzenamine, 3-nitro-	8270	50
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro-	8270	20
Nitrobenzene	98-95-3	Benzene, nitro-	8090 8270	40 10
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040 8270	5 10
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-	8040 8270	10 50

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	8270	10
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	8270	20
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	8070	2
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	8070	5
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine propyl-	621-64-7	1-Propanamine, N-nitroso-N-	8070	10
N-Nitrosomethylethalamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	8270	20
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	8270	40
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10
Parathion	56-38-2	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	8141 8270	0.5 10
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	8270	10
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	8270	20
Pentachlorophenol	87-86-5	Phenol, pentachloro-	8040 8270	5 50
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenl)	8270	20
Phenanthrene	85-01-8	Phenanthrene	8100 8270	200 10
Phenol	108-95-2	Phenol	8040	1
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	8270	10
Phorate	298-02-2	Phosphorodithioic acid, 0,0-diethyl S-[(ethylthio)methyl]ester	8140 8141 8270	2 0.5 10

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
Polychlorinated biphenyls; PCBs; Aroclors	See Note 9	1,1[prime]-Biphenyl, chloroderivatives	8080 8270	50 200
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N- (1,1- dimethyl-2-propynyl)-	8270	10
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	8015 8260	60 150
Pyrene	129-00-0	Pyrene	8100 8270	200 10
Safrole	94-59-7	1,3-Benzodioxole, 5-(2- propenyl)-	8270	10
Selenium	(Total)	Selenium	6010 7740 7741	750 20 20
Silver	(Total)	Silver	6010 7760 7761	70 100 10
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5- trichlorophenoxy)-	8150	2
Styrene	100-42-5	Benzene, ethenyl-	8020 8021 8260	1 0.1 10
Sulfide	18496-25-8	Sulfide	9030	4000
2,4,5-T; 2,4,5- Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5- trichlorophenoxy)-	8150	2
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	8270	10
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	8010 8021 8260	5 0.05 5
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	8010 8021 8260	0.5 0.1 5
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-	8010 8021 8260	0.5 0.5 5

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	8270	10
Thallium	(Total)	Thallium	6010 7840 7841	400 1000 10
Tin	(Total)	Tin	6010	40
Toluene	108-88-3	Benzene, methyl-	8020 8021 8260	2 0.1 5
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	8270	10
Toxaphene	See Note 10	Toxaphene	8080	2
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	8021 8120 8260 8270	0.3 0.5 10 10
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-	8010 8021 8260	0.3 0.3 5
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-	8010 8260	0.2 5
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-	8010 8021 8260	1 0.2 5
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-	8010 8021 8260	10 0.3 5
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	8270	10
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	8040 8270	5 10
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	8010 8021 8260	10 5 15
0,0,0-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, 0,0,0-triethyl ester	8270	10
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	8270	10

Common Name ²	CAS RN ³	Chemical abstracts index name ⁴	Suggested Method ⁵	PQL (µg/L) ⁶
Vanadium	(Total)	Vanadium	6010 7910 7911	80 2000 40
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	8260	50
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-	8010 8021 8260	2 0.4 10
Xylene (total)	See Note 11	Benzene, dimethyl-	8020 8021 8260	5 0.2 5
Zinc	(Total)	Zinc	6010 7950 7951	20 50 0.5

Notes:

¹The regulatory requirements pertain only to the list of substances; the right-hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.

²Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

³Chemical Abstracts Service registry number. Where "Total" is entered, all species in the groundwater that contain this element are included.

⁴CAS index names are those used in the 9th Collective Index.

⁵Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste," third edition, November 1986, as revised, December 1987. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.

⁶Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in groundwaters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. PQLs are based on 5 mL samples for volatile organics and 1 L samples for semivolatile organics. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.

⁷This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2[sec]-oxybis[2-chloro- (CAS RN 39638-32-9).

⁸Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6). PQL shown is for technical chlordane. PQLs of specific isomers are about 20 µg/L by method 8270.

⁹Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.

¹⁰Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

¹¹Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7). PQLs for method 8021 are 0.2 µg/L for o-xylene and 0.1 for m- or p-xylene. The PQL for m-xylene is 2.0 µg/L by method 8020 or 8260.

These rules are intended to implement Iowa Code section 455B.304.

[Filed 11/21/02, Notice 9/18/02—published 12/11/02, effective 1/15/03]

[Filed 6/14/07, Notice 12/6/06—published 7/4/07, effective 10/1/07]¹

[Filed 12/10/08, Notice 6/4/08—published 12/31/08, effective 2/4/09]

¹ Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held September 11, 2007.

CHAPTER 119
USED OIL AND USED OIL FILTERS

567—119.1(455D,455B) Authority, purpose, and applicability.

119.1(1) Authority. Pursuant to Iowa Code sections 455D.7(1), 455D.6(6), and 455B.304, the environmental protection commission is given the authority to adopt rules regulating the disposal, collection, recycling and reuse of used oil and used oil filters.

119.1(2) Purpose. The purpose of these rules is to protect the public health and the environment by regulating the disposal and collection of used oil and used oil filters and to promote the reuse and recycling of used oil and used oil filters.

119.1(3) Applicability. The provisions of this chapter apply to oil retailers, oil filter retailers, sanitary disposal project permittees, persons involved in the collection of used oil, and persons involved in the generation or collection of used oil filters.

567—119.2(455D,455B) Definitions. The following definitions apply to the provisions of this chapter:

“Contaminated” means used oil mixed with hazardous waste as defined by the resource conservation and recovery Act or with incompatible wastes including, but not limited to: antifreeze, solvents, paints, pesticides, or household hazardous materials. Minimal amounts of vehicle fuel shall not be considered an incompatible waste.

“Customer” means any individual who purchases oil or oil filters or generates used oil or used oil filters for personal or family purposes, including a farmer or a farm household.

“Department” means the department of natural resources.

“Retailer” means a person offering for sale or selling a petroleum-based or synthetic oil or oil filter to the ultimate consumer or user of the product, as an over-the-counter product or whereby the consumer is charged separately for the oil or oil filter when coupled with a service.

“Tank” means a closable stationary or mobile device designed to contain an accumulation of used oil and constructed of nonearthen materials (e.g., concrete, steel, plastic) that provide structural support.

“Used oil” means any petroleum-based or synthetic oil which through its use, storage, or handling has become unsuitable for its original purpose due to the presence of chemical or physical impurities. Used oil includes, but is not limited to, the following:

1. Spent lubricating fluids which have been removed from an engine crankcase, transmission, gearbox, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine.
2. Spent industrial oils, including compressor, turbine, bearing, hydraulic, metalworking, electrical, and refrigerator oils.

Used oil does not include oil which has been contaminated or contains PCBs of 5ppm or greater.

“Used oil collection site” means any commercial, municipal, or nonprofit establishment or operation which has a used oil collection tank on the premises, and accepts used oil for temporary storage prior to the recycling of that which is collected.

“Used oil collector” means any sanitary landfill operator, sanitary disposal project operator, oil retailer, or other individual who operates a used oil collection site.

“Used oil filter” means a filter that removes impurities from the oil used to lubricate an internal combustion engine and has been used for its intended purpose.

“Used oil filter recycling” means the preparation of used oil filters for steel recovery.

“Used oil recycling” means the preparation of used oil for reuse as a petroleum product by rerefining, reprocessing, reclaiming, or other means or to use used oil as a substitute for a petroleum product made from new oil, provided that the preparation or use is operationally safe, environmentally sound, and complies with all federal and state laws.

567—119.3(455D,455B) Prohibited disposal.

119.3(1) Used oil shall not be accepted for final disposal at any sanitary landfill. However, a sanitary landfill or sanitary disposal project, as defined in Iowa Code section 455B.301, may accept used oil

for temporary storage or collection if the ultimate disposition of the oil is for recycling or reuse. All necessary permits or permit conditions must be obtained prior to the storage or collection of used oil at these landfills and projects.

119.3(2) A business that generates used oil filters or accepts used oil filters from a person shall not dispose of the used oil filters in a sanitary landfill and shall source separate and recycle the used oil filters.

567—119.4(455D,455B) Operational requirements for acceptance of used oil. Any person accepting used oil from customers shall comply with the following requirements:

119.4(1) Used oil shall be accepted which is contained in a closed, unbreakable, preferably reusable, container.

119.4(2) Used oil collectors shall provide supervision of the collection process to minimize the risk of spills and to prevent customers from depositing contaminated used oil into the collection tank. However, this does not preclude designating unsupervised drop-off sites for used oil as long as the following conditions are met:

- a. Only sealed containers of five gallons or less shall be accepted.
- b. The designated drop-off site must be protected from the elements.
- c. Customers shall drop off their used oil in containers at the designated site and are not permitted to deposit their used oil into a collection tank.
- d. The designated site must be located on an impervious surface engineered to contain potential spills.

119.4(3) During noncollection hours, the tank must be secured to prevent the contamination of the collected used oil.

119.4(4) A sign shall be placed on or near the used oil collection tank which includes the statement: This tank is for used oil collection only. The depositing of other materials is prohibited.

119.4(5) Collectors of used oil shall ensure that the ultimate disposition of used oil collected is for recycling and reuse.

119.4(6) Used oil found to be contaminated shall be managed as a hazardous waste. There is no obligation to accept contaminated oil.

119.4(7) Used oil collectors shall comply with Iowa Code section 455B.386 when actual or imminent oil spills pose a threat to the public health or the environment.

119.4(8) Absorbent material shall be available at the site for use by the operator to control spillage or discharge of used oil.

567—119.5(455D,455B) Operational requirements for acceptance of used oil filters. Any person accepting used oil filters from customers shall comply with the following requirements:

119.5(1) The used oil filters shall be collected, stored and transported in a container designed and maintained to prevent the spillage or discharge of used oil from the filters.

119.5(2) The collection container shall be located on an impervious surface engineered to contain spills.

119.5(3) The collection container shall be protected from inclement weather.

119.5(4) The collection container shall be clearly labeled "used oil filters."

119.5(5) Used oil filter collectors shall comply with Iowa Code section 455B.386 when actual or imminent oil spills pose a threat to the public health or the environment.

119.5(6) Absorbent material shall be available at the site for use by the operator to control spillage or discharge of used oil from the used oil filters.

567—119.6(455D,455B) Oil retailer requirements. In addition to the requirements set forth in rules 119.4(455D,455B) and 119.5(455D,455B) relating to used oil and used oil filter collection, used oil retailers also shall comply with the following:

119.6(1) A durable, legible sign at least 8½" by 11" in size shall be placed near the point of sale which contains the following:

- a. Language informing the customer that it is unlawful to dispose of used oil at a sanitary landfill, and that the customer should return used oil to used oil collection sites for recycling and reuse;
- b. The language “RECYCLE USED OIL” in bold lettering;
- c. A list of the benefits from recycling used oil including, but not limited to, “conserves energy, reuses limited resources, and protects Iowa’s drinking water”;
- d. The language “used oil is a household hazardous material” and the household hazardous materials program symbol, at least 2 inches in length, as shown below;



- e. The warning that the disposal of used oil in a landfill or its deposit or discharge into any state waterway is unlawful;
- f. The name, address and location of at least one used oil collection site located within the county in which the retailer is located. If there is more than one used oil collection site located in the county, then the nearest collection site shall be listed on the posted sign.

119.6(2) Retailers may obtain the required signs upon request from the department. Retailers choosing to develop and post their own signs must obtain a variance from the departmental rules. Signs must be at least 8½" by 11" in size and contain the information stipulated above. To request a variance, retailers should forward to the department for review the sign they wish to substitute for the departmental sign.

119.6(3) Retailers are not required to collect used oil generated by commercial or municipal establishments.

119.6(4) Used oil shall be accepted during normal business hours.

119.6(5) Those retailers who do not sell any other household hazardous materials except for motor oil may comply with the household hazardous materials informational sign posting requirement of 567—Chapter 144 through compliance with subrule 119.6(1).

567—119.7(455D,455B) Oil filter retailer requirements. In addition to the requirements set forth in rules 119.4(455D,455B) to 119.6(455D,455B) relating to used oil and used oil filter collection, oil filter retailers also shall comply with the following:

119.7(1) A durable, legible sign at least 8½" by 11" in size shall be placed near the point of sale which contains the following:

- a. The language “RECYCLE USED OIL FILTERS” in bold lettering;
- b. A list of the benefits from recycling used oil filters including, but not limited to, “conserves energy, reuses limited resources, and protects Iowa’s drinking water”;
- c. The language “used oil filters are a household hazardous material” and the household hazardous materials program symbol, at least 2 inches in length, as shown below;



- d. The name, address and location of at least one used oil filter collection site located within the county in which the retailer is located. If there is more than one used oil filter collection site located in the county, then the nearest collection site shall be listed on the posted sign.

119.7(2) Retailers who choose to collect used oil filters shall accept used oil filters generated by residential households or farmers, but are not required to collect used oil filters generated by commercial or municipal establishments.

119.7(3) Used oil filters shall be accepted during normal business hours.

119.7(4) Those retailers who do not sell any other household hazardous materials except for oil filters may comply with the household hazardous materials informational sign posting requirement of 567—Chapter 144 through compliance with subrule 119.7(1).

567—119.8(455D,455B) Tanks.

119.8(1) *Aboveground.* In addition to the requirements imposed by the office of the state fire marshal, the following standards are applicable to aboveground used oil collection tanks:

a. The tank shall be of sufficient size to handle the projected quantities of used oil to be returned to this specific collection site.

b. The tank shall be designed and maintained to prevent the spillage or discharge of used oil. Tanks must be set upon an impermeable surface engineered to contain potential spills.

c. Absorbent material shall be available at the tank site for use by the operator to control used oil spillage or discharge.

d. The tank shall have a level gauge or some other adequate means for checking the oil level within the tank.

e. The tank shall be constructed in accordance with American Petroleum Institute specifications and standards.

119.8(2) *Underground.* Underground storage tanks used to collect or store used oil shall comply with the standards in part 8 of division IV of Iowa Code chapter 455B, entitled “Underground Storage Tanks,” and the promulgated rules, Iowa Administrative Code, 567—Chapters 135 and 136.

567—119.9(455D,455B) Locating collection sites. If the retailer is unaware of any locations within the county where used oil or used oil filters are being accepted from customers, the retailer shall contact the department to determine if a collection site is located in the county. If no collection site is currently available in the county, the retailer shall accept used oil and used oil filters from customers.

These rules are intended to implement Iowa Code sections 455D.6(6) and 455D.13 and chapter 455B, division IV, part 1.

[Filed 4/26/90, Notice 2/7/90—published 5/16/90, effective 6/20/90]

[Filed 7/30/93, Notice 4/14/93—published 8/18/93, effective 9/22/93]

[Filed 2/1/02, Notice 10/17/01—published 2/20/02, effective 3/27/02]

[Filed 12/10/08, Notice 10/8/08—published 12/31/08, effective 2/4/09]

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.

CHAPTERS 1 to 3

Reserved

CHAPTER 4

BOARD ADMINISTRATIVE PROCESSES

- 4.1(17A) Definitions
- 4.2(17A) Purpose of board
- 4.3(17A,147,272C) Organization of board and proceedings
- 4.4(17A) Official communications
- 4.5(17A) Office hours
- 4.6(21) Public meetings
- 4.7(147) Licensure by reciprocal agreement
- 4.8(147) Duplicate certificate or wallet card
- 4.9(147) Reissued certificate or wallet card
- 4.10(17A,147,272C) License denial
- 4.11(272C) Audit of continuing education report
- 4.12(272C) Automatic exemption
- 4.13(272C) Grounds for disciplinary action
- 4.14(272C) Continuing education exemption for disability or illness
- 4.15(272C) Order for mental, physical, or clinical competency examination or alcohol or drug screening

CHAPTER 5

FEES

- 5.1(147,152D) Athletic training license fees
- 5.2(147,158) Barbering license fees
- 5.3(147,154D) Behavioral science license fees
- 5.4(151) Chiropractic license fees
- 5.5(147,157) Cosmetology arts and sciences license fees
- 5.6(147,152A) Dietetics license fees
- 5.7(147,154A) Hearing aid dispensers license fees
- 5.8(147) Massage therapy license fees
- 5.9(147,156) Mortuary science license fees
- 5.10(147,155) Nursing home administrators license fees
- 5.11(147,148B) Occupational therapy license fees
- 5.12(147,154) Optometry license fees
- 5.13(147,148A) Physical therapy license fees
- 5.14(148C) Physician assistants license fees
- 5.15(147,149) Podiatry license fees
- 5.16(147,154B) Psychology license fees
- 5.17(147,152B) Respiratory care license fees
- 5.18(147,154E) Sign language interpreters and transliterators license fees
- 5.19(147,154C) Social work license fees
- 5.20(147) Speech pathology and audiology license fees

CHAPTER 6
PETITIONS FOR RULE MAKING

- 6.1(17A) Petition for rule making
- 6.2(17A) Inquiries

CHAPTER 7
AGENCY PROCEDURE FOR RULE MAKING

- 7.1(17A) Adoption by reference

CHAPTER 8
DECLARATORY ORDERS
(Uniform Rules)

- 8.1(17A) Petition for declaratory order
- 8.2(17A) Notice of petition
- 8.3(17A) Intervention
- 8.5(17A) Inquiries

CHAPTER 9
COMPLAINTS AND INVESTIGATIONS

- 9.1(272C) Complaints
- 9.2(272C) Report of malpractice claims or actions or disciplinary actions
- 9.3(272C) Report of acts or omissions
- 9.4(272C) Investigation of complaints or reports
- 9.5(17A,272C) Issuance of investigatory subpoenas
- 9.6(272C) Peer review committees
- 9.7(17A) Appearance

CHAPTER 10
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
(Uniform Rules)

- 10.1(17A,22) Definitions
- 10.3(17A,22) Requests for access to records
- 10.5(17A,22) Request for treatment of a record as a confidential record and its withholding from examination
- 10.6(17A,22) Procedures by which additions, dissents, or objections may be entered into certain records
- 10.9(17A,22) Disclosures without the consent of the subject
- 10.10(17A,22) Routine use
- 10.11(17A,22) Consensual disclosure of confidential records
- 10.12(17A,22) Release to subject
- 10.13(17A,22) Availability of records
- 10.14(17A,22) Personally identifiable information
- 10.15(22) Other groups of records routinely available for public inspection
- 10.16(17A,22) Applicability

CHAPTER 11
CONTESTED CASES

- 11.1(17A) Scope and applicability
- 11.2(17A) Definitions
- 11.3(17A) Time requirements
- 11.4(17A) Probable cause
- 11.5(17A) Legal review
- 11.6(17A) Statement of charges and notice of hearing
- 11.7(17A,272C) Legal representation

11.8(17A,272C)	Presiding officer in a disciplinary contested case
11.9(17A)	Presiding officer in a nondisciplinary contested case
11.10(17A)	Disqualification
11.11(17A)	Consolidation—severance
11.12(17A)	Answer
11.13(17A)	Service and filing
11.14(17A)	Discovery
11.15(17A,272C)	Issuance of subpoenas in a contested case
11.16(17A)	Motions
11.17(17A)	Prehearing conferences
11.18(17A)	Continuances
11.19(17A,272C)	Hearing procedures
11.20(17A)	Evidence
11.21(17A)	Default
11.22(17A)	Ex parte communication
11.23(17A)	Recording costs
11.24(17A)	Interlocutory appeals
11.25(17A)	Applications for rehearing
11.26(17A)	Stays of agency actions
11.27(17A)	No factual dispute contested cases
11.28(17A)	Emergency adjudicative proceedings
11.29(17A)	Appeal
11.30(272C)	Publication of decisions
11.31(272C)	Reinstatement
11.32(17A,272C)	License denial

CHAPTER 12 INFORMAL SETTLEMENT

12.1(17A,272C)	Informal settlement
----------------	---------------------

CHAPTER 13 DISCIPLINE

13.1(272C)	Method of discipline
13.2(272C)	Discretion of board
13.3(272C)	Conduct of persons attending meetings

CHAPTER 14 CHILD SUPPORT NONCOMPLIANCE

14.1(252J)	Adoption by reference
------------	-----------------------

CHAPTER 15 NONCOMPLIANCE OF LOAN REPAYMENT

15.1(261)	Adoption by reference
-----------	-----------------------

CHAPTER 16 IMPAIRED PRACTITIONER REVIEW COMMITTEE

16.1(272C)	Definitions
16.2(272C)	Purpose
16.3(272C)	Composition of the committee
16.4(272C)	Organization of the committee
16.5(272)	Eligibility
16.6(272C)	Meetings
16.7(272C)	Terms of participation

- 16.8(272C) Noncompliance
- 16.9(272C) Practice restrictions
- 16.10(272C) Limitations
- 16.11(272C) Confidentiality

CHAPTER 17

MATERIALS FOR BOARD REVIEW

- 17.1(147) Materials for board review

CHAPTER 18

WAIVERS OR VARIANCES FROM ADMINISTRATIVE RULES

- 18.1(17A,147,272C) Definitions
- 18.2(17A,147,272C) Scope of chapter
- 18.3(17A,147,272C) Applicability of chapter
- 18.4(17A,147,272C) Criteria for waiver or variance
- 18.5(17A,147,272C) Filing of petition
- 18.6(17A,147,272C) Content of petition
- 18.7(17A,147,272C) Additional information
- 18.8(17A,147,272C) Notice
- 18.9(17A,147,272C) Hearing procedures
- 18.10(17A,147,272C) Ruling
- 18.11(17A,147,272C) Public availability
- 18.12(17A,147,272C) Summary reports
- 18.13(17A,147,272C) Cancellation of a waiver
- 18.14(17A,147,272C) Violations
- 18.15(17A,147,272C) Defense
- 18.16(17A,147,272C) Judicial review

CHAPTER 19

Reserved

BARBERS

CHAPTER 20

ADMINISTRATIVE AND REGULATORY AUTHORITY
FOR THE BOARD OF BARBERING

- 20.1(17A) Definitions
- 20.2(17A) Purpose of board
- 20.3(17A,147,272C) Organization of board and proceedings
- 20.4(17A) Official communications
- 20.5(17A) Office hours
- 20.6(21) Public meetings

CHAPTER 21

LICENSURE OF BARBERS

- 21.1(158) Definitions
- 21.2(158) Requirements for licensure
- 21.3(158) Examination requirements for barbers and barber instructors
- 21.4(158) Educational qualifications
- 21.5(158) Licensure by endorsement
- 21.6(158) Licensure by reciprocal agreement
- 21.7(158) Temporary permits to practice barbering
- 21.8(158) Demonstrator's permit
- 21.9(158) License renewal

- 21.10 and 21.11 Reserved
- 21.12(158) Barbershop license renewal
- 21.13(147) Duplicate certificate or wallet card
- 21.14(147) Reissued certificate or wallet card
- 21.15(272C) License denial
- 21.16(17A,147,272C) License reactivation
- 21.17(17A,147,272C) License reinstatement

CHAPTER 22

SANITATION FOR BARBERSHOPS AND BARBER SCHOOLS

- 22.1(158) Definitions
- 22.2(158) Posting of sanitation rules and inspection report
- 22.3(147) Display of licenses
- 22.4(158) Responsibilities of barbershop owner and supervisor
- 22.5(158) Building standards
- 22.6(158) Barbershops in residential buildings
- 22.7(158) Barbershops adjacent to other businesses
- 22.8(158) Smoking
- 22.9(158) Personal cleanliness
- 22.10(158) Universal precautions
- 22.11(158) Minimum equipment and supplies
- 22.12(158) Disinfecting nonelectrical instruments and equipment
- 22.13(158) Disinfecting electrical instruments
- 22.14(158) Instruments and supplies that cannot be disinfected
- 22.15(158) Semisolids, dusters, and styptics
- 22.16(158) Disposal of materials
- 22.17(158) Prohibited hazardous substances and use of products
- 22.18(158) Proper protection of neck
- 22.19(158) Proper laundering and storage
- 22.20(158) Pets
- 22.21(158) Records

CHAPTER 23

BARBER SCHOOLS

- 23.1(158) Definitions
- 23.2(158) Licensing for barber schools
- 23.3(158) School license renewal
- 23.4(272C) Inactive school license
- 23.5(147) Duplicate certificate or wallet card
- 23.6(158) Physical requirements for barber schools
- 23.7(158) Minimum equipment requirements
- 23.8(158) Course of study requirements
- 23.9(158) Instructors
- 23.10(158) Students
- 23.11(158) Attendance requirements
- 23.12(158) Graduate of a barber school
- 23.13(147) Records requirements
- 23.14(158) Public notice
- 23.15(158) Apprenticeship

CHAPTER 24
CONTINUING EDUCATION FOR BARBERS

24.1(158)	Definitions
24.2(158)	Continuing education requirements
24.3(158,272C)	Standards
24.4(158,272C)	Audit of continuing education report
24.5(158,272C)	Automatic exemption
24.6(158,272C)	Continuing education exemption for disability or illness
24.7(158,272C)	Grounds for disciplinary action

CHAPTER 25
DISCIPLINE FOR BARBERS, BARBER INSTRUCTORS,
BARBERSHOPS AND BARBER SCHOOLS

25.1(158)	Definitions
25.2(272C)	Grounds for discipline
25.3(158,272C)	Method of discipline
25.4(272C)	Discretion of board
25.5(158)	Order for mental, physical, or clinical competency examination or alcohol or drug screening

CHAPTER 26
FEES

26.1(147,158)	License fees
---------------	--------------

CHAPTERS 27 to 29
Reserved

BEHAVIORAL SCIENTISTS

CHAPTER 30
ADMINISTRATIVE AND REGULATORY AUTHORITY
FOR THE BOARD OF BEHAVIORAL SCIENCE EXAMINERS

30.1(17A,154D)	Definitions
30.2(17A,154D)	Purpose of board
30.3(17A,147,272C)	Organization of board and proceedings
30.4(17A)	Official communications
30.5(17A)	Office hours
30.6(21)	Public meetings

CHAPTER 31
LICENSURE OF MARITAL AND FAMILY THERAPISTS
AND MENTAL HEALTH COUNSELORS

31.1(154D)	Definitions
31.2(154D)	Requirements for licensure
31.3(154D)	Examination requirements
31.4(154D)	Educational qualifications for marital and family therapists
31.5(154D)	Clinical experience requirements for marital and family therapists
31.6(154D)	Educational qualifications for mental health counselors
31.7(154D)	Clinical experience requirements for mental health counselors
31.8(154D)	Licensure by endorsement
31.9(147)	Licensure by reciprocal agreement
31.10(147)	License renewal
31.11	Reserved
31.12(147)	Licensee record keeping

- 31.13(147) Duplicate certificate or wallet card
- 31.14(147) Reissued certificate or wallet card
- 31.15(17A,147,272C) License denial
- 31.16(17A,147,272C) License reactivation
- 31.17(17A,147,272C) License reinstatement
- 31.18(154D) Marital and family therapy and mental health counselor services subject to regulation

CHAPTER 32

CONTINUING EDUCATION FOR MARITAL AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS

- 32.1(272C) Definitions
- 32.2(272C) Continuing education requirements
- 32.3(154D,272C) Standards
- 32.4(154D,272C) Audit of continuing education report
- 32.5(154D,272C) Automatic exemption
- 32.6(154D,272C) Grounds for disciplinary action
- 32.7 and 32.8 Reserved
- 32.9(154D,272C) Continuing education exemption for disability or illness

CHAPTER 33

DISCIPLINE FOR MARITAL AND FAMILY THERAPISTS AND MENTAL HEALTH COUNSELORS

- 33.1(154D) Definitions
- 33.2(154D,272C) Grounds for discipline
- 33.3(147,272C) Method of discipline
- 33.4(272C) Discretion of board
- 33.5(154D) Order for mental, physical, or clinical competency examination or alcohol or drug screening

CHAPTER 34

FEES

- 34.1(147,154D) License fees

CHAPTERS 35 to 39

Reserved

CHIROPRACTIC

CHAPTER 40

Reserved

CHAPTER 41

LICENSURE OF CHIROPRACTIC PHYSICIANS

- 41.1(151) Definitions
- 41.2(151) Requirements for licensure
- 41.3(151) Examination requirements
- 41.4(151) Educational qualifications
- 41.5(151) Temporary certificate
- 41.6(151) Licensure by endorsement
- 41.7 Reserved
- 41.8(151) License renewal
- 41.9 to 41.13 Reserved

- 41.14(17A,147,272C) License reactivation
- 41.15(17A,147,272C) License reinstatement

CHAPTER 42

COLLEGES FOR CHIROPRACTIC PHYSICIANS

- 42.1(151) Definitions
- 42.2(151) Board-approved chiropractic colleges
- 42.3(151) Practice by chiropractic interns and chiropractic residents
- 42.4(151) Approved chiropractic preceptorship program
- 42.5(151) Approved chiropractic physician preceptors
- 42.6(151) Termination of preceptorship

CHAPTER 43

PRACTICE OF CHIROPRACTIC PHYSICIANS

- 43.1(151) Definitions
- 43.2(147,272C) Principles of chiropractic ethics
- 43.3(514F) Utilization and cost control review
- 43.4(151) Chiropractic insurance consultant
- 43.5(151) Acupuncture
- 43.6 Reserved
- 43.7(151) Adjunctive procedures
- 43.8(151) Physical examination
- 43.9(151) Gonad shielding
- 43.10(151) Record keeping
- 43.11(151) Billing procedures
- 43.12(151) Chiropractic assistants

CHAPTER 44

CONTINUING EDUCATION FOR CHIROPRACTIC PHYSICIANS

- 44.1(151) Definitions
- 44.2(272C) Continuing education requirements
- 44.3(151,272C) Standards

CHAPTER 45

DISCIPLINE FOR CHIROPRACTIC PHYSICIANS

- 45.1(151) Definitions
- 45.2(151,272C) Grounds for discipline
- 45.3(147,272C) Method of discipline
- 45.4(272C) Discretion of board

CHAPTERS 46 to 59

Reserved

COSMETOLOGISTS

CHAPTER 60

LICENSURE OF COSMETOLOGISTS, ELECTROLOGISTS, ESTHETICIANS,
MANICURISTS, NAIL TECHNOLOGISTS, AND INSTRUCTORS
OF COSMETOLOGY ARTS AND SCIENCES

- 60.1(157) Definitions
- 60.2(157) Requirements for licensure
- 60.3(157) Criteria for licensure in specific practice disciplines
- 60.4(157) Practice-specific training requirements
- 60.5(157) Licensure restrictions relating to practice

60.6(157)	Consent form requirements
60.7(157)	Licensure by endorsement
60.8(157)	License renewal
60.9(157)	Temporary permits
60.10 to 60.16	Reserved
60.17(17A,147,272C)	License reactivation
60.18(17A,147,272C)	License reinstatement

CHAPTER 61

LICENSURE OF SALONS AND SCHOOLS
OF COSMETOLOGY ARTS AND SCIENCES

61.1(157)	Definitions
61.2(157)	Salon licensing
61.3(157)	Salon license renewal
61.4(272C)	Inactive salon license
61.5(157)	Display requirements for salons
61.6(147)	Duplicate certificate or wallet card for salons
61.7(157)	Licensure for schools of cosmetology arts and sciences
61.8(157)	School license renewal
61.9(272C)	Inactive school license
61.10(157)	Display requirements for schools
61.11	Reserved
61.12(157)	Physical requirements for schools of cosmetology arts and sciences
61.13(157)	Minimum equipment requirements
61.14(157)	Course of study requirements
61.15(157)	Instructors
61.16(157)	Student instructors
61.17(157)	Students
61.18(157)	Attendance requirements
61.19(157)	Accelerated learning
61.20(157)	Mentoring program
61.21(157)	Graduate of a school of cosmetology arts and sciences
61.22(157)	Records requirements
61.23(157)	Classrooms used for other educational purposes
61.24(157)	Public notice

CHAPTER 62

Reserved

CHAPTER 63

SANITATION FOR SALONS AND SCHOOLS OF
COSMETOLOGY ARTS AND SCIENCES

63.1(157)	Definitions
63.2(157)	Posting of sanitation rules and inspection report
63.3	Reserved
63.4(157)	Responsibilities of salon owners and independent contractors
63.5(157)	Building standards
63.6(157)	Salons in residential buildings
63.7(157)	Salons adjacent to other businesses
63.8(157)	Smoking
63.9(157)	Personal cleanliness
63.10(157)	Universal precautions
63.11(157)	Minimum equipment and supplies

63.12(157)	Disinfecting nonelectrical instruments and equipment
63.13(157)	Disinfecting electrical instruments
63.14(157)	Instruments and supplies that cannot be disinfected
63.15(157)	Sterilizing instruments
63.16(157)	Sanitary method for creams, cosmetics, dusters and styptics
63.17(157)	Disposal of materials
63.18(157)	Prohibited hazardous substances and use of products and equipment
63.19(157)	Proper protection of neck
63.20(157)	Proper laundering and storage
63.21(157)	Pets
63.22(157)	Workstations
63.23(157)	Records
63.24(157)	Salons providing electrology or esthetics
63.25(157)	Cleaning and disinfecting whirlpool foot spas and hydrotherapy baths

CHAPTER 64

CONTINUING EDUCATION FOR COSMETOLOGY ARTS AND SCIENCES

64.1(157)	Definitions
64.2(157)	Continuing education requirements
64.3(157,272C)	Standards

CHAPTER 65

DISCIPLINE FOR COSMETOLOGY ARTS AND SCIENCES LICENSEES,
INSTRUCTORS, SALONS, AND SCHOOLS

65.1(157,272C)	Definitions
65.2(157,272C)	Grounds for discipline
65.3(157,272C)	Method of discipline
65.4(272C)	Discretion of board
65.5(157)	Civil penalties against nonlicensees

CHAPTERS 66 to 79

Reserved

DIETITIANS

CHAPTER 80

ADMINISTRATIVE AND REGULATORY AUTHORITY
FOR THE BOARD OF DIETETIC EXAMINERS

80.1(17A,152A)	Definitions
80.2(17A)	Purpose of board
80.3(17A,152A,272C)	Organization of board and proceedings
80.4(17A)	Official communications
80.5(17A)	Office hours
80.6(17A)	Public meetings

CHAPTER 81

LICENSURE OF DIETITIANS

81.1(152A)	Definitions
81.2(152A)	Nutrition care
81.3(152A,272C)	Principles
81.4(152A)	Requirements for licensure
81.5(152A)	Educational qualifications
81.6(152A)	Supervised experience
81.7(152A)	Licensure by endorsement

81.8(152A)	Licensure by reciprocal agreement
81.9(152A)	License renewal
81.10	Reserved
81.11(147)	Duplicate certificate or wallet card
81.12(147)	Reissued certificate or wallet card
81.13	Reserved
81.14(17A,147,272C)	License denial
81.15(17A,147,272C)	License reactivation
81.16(17A,147,272C)	License reinstatement

CHAPTER 82

CONTINUING EDUCATION FOR DIETITIANS

82.1(152A)	Definitions
82.2(152A)	Continuing education requirements
82.3(152A,272C)	Standards
82.4(152A,272C)	Audit of continuing education report
82.5(152A,272C)	Automatic exemption
82.6(152A,272C)	Grounds for disciplinary action
82.7 and 82.8	Reserved
82.9(152A,272C)	Continuing education exemption for disability or illness

CHAPTER 83

DISCIPLINE FOR DIETITIANS

83.1(152A)	Definitions
83.2(152A,272C)	Grounds for discipline
83.3(152A,272C)	Method of discipline
83.4(272C)	Discretion of board
83.5(152A)	Order for mental, physical, or clinical competency examination or alcohol or drug screening

CHAPTER 84

FEES

84.1(147,152A)	License fees
----------------	--------------

CHAPTERS 85 to 99

Reserved

FUNERAL DIRECTORS

CHAPTER 100

PRACTICE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS, AND CREMATION ESTABLISHMENTS

100.1(156)	Definitions
100.2(156)	Funeral director duties
100.3(156)	Permanent identification tag
100.4(142,156)	Removal and transfer of dead human remains and fetuses
100.5(135,144)	Burial transit permits
100.6(156)	Preparation and embalming activities
100.7(156)	Arranging and directing funeral and memorial ceremonies
100.8(142,156)	Unclaimed dead human remains for scientific use
100.9(144)	Disinterments
100.10(156)	Cremation of human remains and fetuses

CHAPTER 101
LICENSURE OF FUNERAL DIRECTORS, FUNERAL ESTABLISHMENTS, AND
CREMATION ESTABLISHMENTS

- 101.1(156) Definitions
- 101.2(156) Requirements for licensure
- 101.3(156) Educational qualifications
- 101.4(156) Examination requirements
- 101.5(147,156) Internship and preceptorship
- 101.6(156) Student practicum
- 101.7(156) Funeral establishment license or cremation establishment license or both establishment licenses
- 101.8(156) Licensure by endorsement
- 101.9 Reserved
- 101.10(156) License renewal
- 101.11 and 101.12 Reserved
- 101.13(272C) Renewal of a funeral establishment license or cremation establishment license or both establishment licenses
- 101.14(272C) Inactive funeral establishment license or cremation establishment license or both establishment licenses
- 101.15(17A,147,272C) License reinstatement
- 101.16 and 101.17 Reserved
- 101.18(17A,147,272C) License reactivation
- 101.19(17A,147,272C) License reinstatement

CHAPTER 102
CONTINUING EDUCATION FOR FUNERAL DIRECTORS

- 102.1(272C) Definitions
- 102.2(272C) Continuing education requirements
- 102.3(156,272C) Standards

CHAPTER 103
DISCIPLINARY PROCEEDINGS

- 103.1(156) Definitions
- 103.2(17A,147,156,272C) Disciplinary authority
- 103.3(17A,147,156,272C) Grounds for discipline against funeral directors
- 103.4(17A,147,156,272C) Grounds for discipline against funeral establishments and cremation establishments
- 103.5(17A,147,156,272C) Method of discipline
- 103.6(17A,147,156,272C) Board discretion in imposing disciplinary sanctions
- 103.7(156) Order for mental, physical, or clinical competency examination or alcohol or drug screening
- 103.8(17A,147,156,272C) Informal discussion

CHAPTER 104
ENFORCEMENT PROCEEDINGS AGAINST NONLICENSEES

- 104.1(156) Civil penalties against nonlicensees
- 104.2(156) Unlawful practices
- 104.3(156) Investigations
- 104.4(156) Subpoenas
- 104.5(156) Notice of intent to impose civil penalties
- 104.6(156) Requests for hearings
- 104.7(156) Factors to consider
- 104.8(156) Enforcement options

CHAPTERS 105 to 119

Reserved

HEARING AID DISPENSERS

CHAPTER 120

ADMINISTRATIVE AND REGULATORY AUTHORITY FOR THE BOARD OF EXAMINERS
FOR THE LICENSING AND REGULATION OF HEARING AID DISPENSERS

- 120.1(17A,154A) Definitions
- 120.2(17A,154A) Purpose of board
- 120.3(17A,154A) Organization of board and proceedings
- 120.4(17A) Official communications
- 120.5(154A) Office hours
- 120.6(21) Public meetings

CHAPTER 121

LICENSURE OF HEARING AID DISPENSERS

- 121.1(154A) Definitions
- 121.2(154A) Temporary permits
- 121.3(154A) Supervision requirements
- 121.4(154A) Requirements for initial licensure
- 121.5(154A) Examination requirements
- 121.6(154A) Licensure by endorsement
- 121.7(154A) Licensure by reciprocal agreement
- 121.8(154A) Display of license
- 121.9(154A) License renewal
- 121.10 and 121.11 Reserved
- 121.12(154A,147) Duplicate certificate or wallet card
- 121.13(272C) License denial
- 121.14(17A,147,272C) License reactivation
- 121.15(17A,147,272C) License reinstatement

CHAPTER 122

CONTINUING EDUCATION FOR HEARING AID DISPENSERS

- 122.1(154A) Definitions
- 122.2(154A) Continuing education requirements
- 122.3(154A,272C) Standards
- 122.4(154A,272C) Audit of continuing education report
- 122.5(154A,272C) Automatic exemption
- 122.6(154A,272C) Continuing education exemption for disability or illness
- 122.7(154A,272C) Grounds for disciplinary action

CHAPTER 123

Reserved

CHAPTER 124

DISCIPLINE FOR HEARING AID DISPENSERS

- 124.1(154A,272C) Definitions
- 124.2(154A,272C) Grounds for discipline
- 124.3(154A,272C) Method of discipline
- 124.4(272C) Discretion of board
- 124.5(154A) Order for mental, physical, or clinical competency examination or alcohol or drug screening

CHAPTER 125
FEES

125.1(147,154A) License fees

CHAPTERS 126 to 130
Reserved

MASSAGE THERAPISTS

CHAPTER 131
LICENSURE OF MASSAGE THERAPISTS

131.1(152C) Definitions
131.2(152C) Requirements for licensure
131.3(152C) Educational qualifications
131.4(152C) Examination requirements
131.5(152C) Temporary licensure of a licensee from another state
131.6(152C) Licensure by endorsement
131.7 Reserved
131.8(152C) License renewal
131.9 to 131.13 Reserved
131.14(17A,147,272C) License reactivation
131.15(17A,147,272C) License reinstatement

CHAPTER 132
MASSAGE THERAPY EDUCATION CURRICULUM

132.1(152C) Definitions
132.2(152C) Application for approval of massage therapy education curriculum
132.3(152C) Curriculum requirements
132.4(152C) Student clinical practicum standards
132.5(152C) School certificate or diploma
132.6(152C) School records retention
132.7(152C) Massage school curriculum compliance
132.8(152C) Denial or withdrawal of approval

CHAPTER 133
CONTINUING EDUCATION FOR MASSAGE THERAPISTS

133.1(152C) Definitions
133.2(152C) Continuing education requirements
133.3(152C,272C) Continuing education criteria

CHAPTER 134
DISCIPLINE FOR MASSAGE THERAPISTS

134.1(152C) Definitions
134.2(152C,272C) Grounds for discipline
134.3(147,272C) Method of discipline
134.4(272C) Discretion of board
134.5(152C) Civil penalties

CHAPTERS 135 to 139
Reserved

*NURSING HOME ADMINISTRATORS*CHAPTER 140
ADMINISTRATIVE AND REGULATORY AUTHORITY FOR THE
BOARD OF EXAMINERS FOR NURSING HOME ADMINISTRATORS

- 140.1(17A,155) Definitions
- 140.2(17A,155) Purpose of board
- 140.3(17A,147,272C) Organization of board and proceedings
- 140.4(17A) Official communications
- 140.5(17A) Office hours
- 140.6(21) Public meetings

CHAPTER 141
LICENSURE OF NURSING HOME ADMINISTRATORS

- 141.1(155) Definitions
- 141.2(155) Requirements for licensure
- 141.3(155) Examination requirements
- 141.4(155) Educational qualifications
- 141.5(155) Practicum experience
- 141.6(155) Provisional administrator
- 141.7(155) Licensure by endorsement
- 141.8(155) Licensure by reciprocal agreement
- 141.9(155) License renewal
- 141.10 and 141.11 Reserved
- 141.12(155) Duplicate certificate or wallet card
- 141.13(155) Reissued certificate or wallet card
- 141.14(272C) License denial
- 141.15(17A,147,272C) License reactivation
- 141.16(17A,147,272C) License reinstatement

CHAPTER 142
ReservedCHAPTER 143
CONTINUING EDUCATION FOR NURSING HOME ADMINISTRATION

- 143.1(272C) Definitions
- 143.2(272C) Continuing education requirements
- 143.3(155,272C) Standards
- 143.4(155,272C) Audit of continuing education report
- 143.5(155,272C) Automatic exemption
- 143.6(272C) Continuing education exemption for disability or illness
- 143.7(155,272C) Grounds for disciplinary action

CHAPTER 144
DISCIPLINE FOR NURSING HOME ADMINISTRATORS

- 144.1(155) Definitions
- 144.2(155,272C) Grounds for discipline
- 144.3(155,272C) Method of discipline
- 144.4(272C) Discretion of board
- 144.5(155) Order for mental, physical, or clinical competency examination or alcohol or drug screening

CHAPTER 145
FEES

145.1(147,155) License fees

CHAPTERS 146 to 179
Reserved

OPTOMETRISTS

CHAPTER 180
LICENSURE OF OPTOMETRISTS

180.1(154) Definitions
180.2(154) Requirements for licensure
180.3(154) Licensure by endorsement
180.4 Reserved
180.5(154) License renewal
180.6 to 180.10 Reserved
180.11(17A,147,272C) License reactivation
180.12(17A,147,272C) License reinstatement

CHAPTER 181
CONTINUING EDUCATION FOR OPTOMETRISTS

181.1(154) Definitions
181.2(154) Continuing education requirements
181.3(154,272C) Standards

CHAPTER 182
PRACTICE OF OPTOMETRISTS

182.1(154) Code of ethics
182.2(154,272C) Record keeping
182.3(154) Furnishing prescriptions
182.4(155A) Prescription drug orders

CHAPTER 183
DISCIPLINE FOR OPTOMETRISTS

183.1(154) Definitions
183.2(154,272C) Grounds for discipline
183.3(147,272C) Method of discipline
183.4(272C) Discretion of board

CHAPTERS 184 to 199
Reserved

PHYSICAL AND OCCUPATIONAL THERAPISTS

CHAPTER 200
LICENSURE OF PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

200.1(147) Definitions
200.2(147) Requirements for licensure
200.3 Reserved
200.4(147) Examination requirements for physical therapists and physical therapist assistants
200.5(147) Educational qualifications
200.6(272C) Supervision requirements
200.7(147) Licensure by endorsement
200.8 Reserved

- 200.9(147) License renewal
- 200.10 to 200.14 Reserved
- 200.15(17A,147,272C) License reactivation
- 200.16(17A,147,272C) License reinstatement

CHAPTER 201

PRACTICE OF PHYSICAL THERAPISTS
AND PHYSICAL THERAPIST ASSISTANTS

- 201.1(148A,272C) Code of ethics for physical therapists and physical therapist assistants
- 201.2(147) Record keeping

CHAPTER 202

DISCIPLINE FOR PHYSICAL THERAPISTS AND PHYSICAL THERAPIST ASSISTANTS

- 202.1(148A) Definitions
- 202.2(272C) Grounds for discipline
- 202.3(147,272C) Method of discipline
- 202.4(272C) Discretion of board

CHAPTER 203

CONTINUING EDUCATION FOR PHYSICAL THERAPISTS
AND PHYSICAL THERAPIST ASSISTANTS

- 203.1(272C) Definitions
- 203.2(148A) Continuing education requirements
- 203.3(148A,272C) Standards

CHAPTERS 204 and 205

Reserved

CHAPTER 206

LICENSURE OF OCCUPATIONAL THERAPISTS
AND OCCUPATIONAL THERAPY ASSISTANTS

- 206.1(147) Definitions
- 206.2(147) Requirements for licensure
- 206.3(147) Limited permit to practice pending licensure
- 206.4(147) Applicant occupational therapist and occupational therapy assistant
- 206.5(147) Practice of occupational therapy limited permit holders and endorsement applicants prior to licensure
- 206.6(147) Examination requirements
- 206.7(147) Educational qualifications
- 206.8(272C) Supervision requirements
- 206.9(147) Occupational therapy assistant responsibilities
- 206.10(147) Licensure by endorsement
- 206.11 Reserved
- 206.12(147) License renewal
- 206.13 to 206.17 Reserved
- 206.18(17A,147,272C) License reactivation
- 206.19(17A,147,272C) License reinstatement

CHAPTER 207

CONTINUING EDUCATION FOR OCCUPATIONAL THERAPISTS
AND OCCUPATIONAL THERAPY ASSISTANTS

- 207.1(148B) Definitions
- 207.2(272C) Continuing education requirements
- 207.3(148B,272C) Standards

CHAPTER 208
PRACTICE OF OCCUPATIONAL THERAPISTS
AND OCCUPATIONAL THERAPY ASSISTANTS

- 208.1(148B,272C) Code of ethics for occupational therapists and occupational therapy assistants
208.2(147) Record keeping

CHAPTER 209
DISCIPLINE FOR OCCUPATIONAL THERAPISTS
AND OCCUPATIONAL THERAPY ASSISTANTS

- 209.1(148B) Definitions
209.2(272C) Grounds for discipline
209.3(147,272C) Method of discipline
209.4(272C) Discretion of board

CHAPTERS 210 to 219
Reserved

PODIATRISTS

CHAPTER 220
LICENSURE OF PODIATRISTS

- 220.1(149) Definitions
220.2(149) Requirements for licensure
220.3(149) Written examinations
220.4(149) Educational qualifications
220.5(149) Title designations
220.6(147,149) Temporary license
220.7(149) Licensure by endorsement
220.8 Reserved
220.9(149) License renewal
220.10 to 220.14 Reserved
220.15(17A,147,272C) License reactivation
220.16(17A,147,272C) License reinstatement

CHAPTER 221
Reserved

CHAPTER 222
CONTINUING EDUCATION FOR PODIATRISTS

- 222.1(149,272C) Definitions
222.2(149,272C) Continuing education requirements
222.3(149,272C) Standards

CHAPTER 223
PRACTICE OF PODIATRY

- 223.1(149) Definitions
223.2(149) Requirements for administering conscious sedation
223.3(139A) Preventing HIV and HBV transmission
223.4(149) Unlicensed graduate of a podiatric college

CHAPTER 224
DISCIPLINE FOR PODIATRISTS

- 224.1(149) Definitions
224.2(149,272C) Grounds for discipline

- 224.3(147,272C) Method of discipline
 224.4(272C) Discretion of board

CHAPTERS 225 to 239

Reserved

PSYCHOLOGISTS

CHAPTER 240

LICENSURE OF PSYCHOLOGISTS

- 240.1(154B) Definitions
 240.2(154B) Requirements for licensure
 240.3(154B) Educational qualifications
 240.4(154B) Examination requirements
 240.5(154B) Title designations
 240.6(154B) Supervised professional experience
 240.7(154B) Certified health service provider in psychology
 240.8(154B) Exemption to licensure
 240.9(154B) Psychologists' supervision of unlicensed persons in a practice setting
 240.10(147) Licensure by endorsement
 240.11(147) Licensure by reciprocal agreement
 240.12(147) License renewal
 240.13 to 240.17 Reserved
 240.18(17A,147,272C) License reactivation
 240.19(17A,147,272C) License reinstatement

CHAPTER 241

CONTINUING EDUCATION FOR PSYCHOLOGISTS

- 241.1(272C) Definitions
 241.2(272C) Continuing education requirements
 241.3(154B,272C) Standards

CHAPTER 242

DISCIPLINE FOR PSYCHOLOGISTS

- 242.1(154B) Definitions
 242.2(147,272C) Grounds for discipline
 242.3(147,272C) Method of discipline
 242.4(272C) Discretion of board
 242.5(154B) Order for mental, physical, or clinical competency examination or alcohol or drug screening

CHAPTERS 243 to 260

Reserved

RESPIRATORY CARE PRACTITIONERS

CHAPTER 261

LICENSURE OF RESPIRATORY CARE PRACTITIONERS

- 261.1(152B) Definitions
 261.2(152B) Requirements for licensure
 261.3(152B) Educational qualifications
 261.4(152B) Examination requirements
 261.5(152B) Students
 261.6(152B) Licensure by endorsement
 261.7 Reserved

- 261.8(152B) License renewal
- 261.9 to 261.13 Reserved
- 261.14(17A,147,272C) License reactivation
- 261.15(17A,147,272C) License reinstatement

CHAPTER 262

CONTINUING EDUCATION FOR RESPIRATORY CARE PRACTITIONERS

- 262.1(152B,272C) Definitions
- 262.2(152B,272C) Continuing education requirements
- 262.3(152B,272C) Standards
- 262.4(152B,272C) Audit of continuing education report
- 262.5(152B,272C) Automatic exemption
- 262.6(152B,272C) Grounds for disciplinary action
- 262.7(152B,272C) Continuing education exemption for disability or illness

CHAPTER 263

DISCIPLINE FOR RESPIRATORY CARE PRACTITIONERS

- 263.1(152B) Definitions
- 263.2(152B,272C) Grounds for discipline
- 263.3(147,272C) Method of discipline
- 263.4(272C) Discretion of board

CHAPTER 264

Reserved

CHAPTER 265

PRACTICE OF RESPIRATORY CARE PRACTITIONERS

- 265.1(152B,272C) Code of ethics
- 265.2(152B,272C) Intravenous administration

CHAPTERS 266 to 278

Reserved

SOCIAL WORKERS

CHAPTER 279

ADMINISTRATIVE AND REGULATORY AUTHORITY
FOR THE BOARD OF SOCIAL WORK EXAMINERS

- 279.1(17A) Definitions
- 279.2(17A) Purpose of board
- 279.3(17A,147,272C) Organization of board and proceedings
- 279.4(17A) Official communications
- 279.5(17A) Office hours
- 279.6(21) Public meetings

CHAPTER 280

LICENSURE OF SOCIAL WORKERS

- 280.1(154C) Definitions
- 280.2(154C) Social work services subject to regulation
- 280.3(154C) Requirements for licensure
- 280.4(154C) Written examination
- 280.5(154C) Educational qualifications
- 280.6(154C) Supervised professional practice for the LISW
- 280.7(154C) Licensure by endorsement
- 280.8(154C) Licensure by reciprocal agreement

- 280.9(154C) License renewal
- 280.10 and 280.11 Reserved
- 280.12(272C) Duplicate certificate or wallet card
- 280.13(17A,147,272C) License denial
- 280.14(17A,147,272C) License reactivation
- 280.15(17A,147,272C) License reinstatement

CHAPTER 281

CONTINUING EDUCATION FOR SOCIAL WORKERS

- 281.1(154C) Definitions
- 281.2(154C) Continuing education requirements
- 281.3(154C,272C) Standards
- 281.4(154C,272C) Audit of continuing education report
- 281.5(154C,272C) Automatic exemption
- 281.6(154C,272C) Continuing education exemption for disability or illness
- 281.7(154C,272C) Grounds for disciplinary action

CHAPTER 282

PRACTICE OF SOCIAL WORKERS

- 282.1(154C) Definitions
- 282.2(154C) Rules of conduct

CHAPTER 283

DISCIPLINE FOR SOCIAL WORKERS

- 283.1(154B) Definitions
- 283.2(272C) Grounds for discipline
- 283.3(147,272C) Method of discipline
- 283.4(272C) Discretion of board
- 283.5(154C) Order for mental, physical, or clinical competency examination or alcohol or drug screening

CHAPTER 284

FEES

- 284.1(147,154C) License fees

CHAPTERS 285 to 298

Reserved

SPEECH PATHOLOGISTS AND AUDIOLOGISTS

CHAPTER 299

ADMINISTRATIVE AND REGULATORY AUTHORITY FOR THE BOARD OF SPEECH PATHOLOGY AND AUDIOLOGY EXAMINERS

- 299.1(17A,147) Definitions
- 299.2(17A) Purpose of board
- 299.3(17A,272C) Organization of board and proceedings
- 299.4(17A) Official communication
- 299.5(17A) Office hours
- 299.6(21) Public meetings
- 299.7(147) Hearing tests supervised by a physician

CHAPTER 300

LICENSURE OF SPEECH PATHOLOGISTS AND AUDIOLOGISTS

- 300.1(147) Definitions
- 300.2(147) Speech pathology and audiology services subject to regulation
- 300.3(147) Requirements for licensure
- 300.4(147) Educational qualifications
- 300.5(147) Examination requirements
- 300.6(147) Temporary clinical license
- 300.7(147) Temporary permit
- 300.8(147) Use of assistants
- 300.9(147) Licensure by endorsement
- 300.10(147) Licensure by reciprocal agreement
- 300.11(147) License renewal
- 300.12 and 300.13 Reserved
- 300.14(147) Duplicate certificate or wallet card
- 300.15(147) Reissued certificate or wallet card
- 300.16(17A,147,272C) License denial
- 300.17(17A,147,272C) License reactivation
- 300.18(17A,147,272C) License reinstatement

CHAPTERS 301 and 302

Reserved

CHAPTER 303

CONTINUING EDUCATION FOR SPEECH PATHOLOGISTS
AND AUDIOLOGISTS

- 303.1(147) Definitions
- 303.2(147) Continuing education requirements
- 303.3(147,272C) Standards
- 303.4(147,272C) Audit of continuing education report
- 303.5(147,272C) Automatic exemption
- 303.6(147,272C) Continuing education exemption for disability or illness
- 303.7(147,272C) Grounds for disciplinary action

CHAPTER 304

DISCIPLINE FOR SPEECH PATHOLOGISTS AND AUDIOLOGISTS

- 304.1(147) Definitions
- 304.2(272C) Grounds for discipline
- 304.3(272C) Method of discipline
- 304.4(272C) Discretion of board
- 304.5(147) Order for mental, physical, or clinical competency examination or alcohol or drug screening

CHAPTER 305

FEES

- 305.1(147) License fees

CHAPTERS 306 to 325

Reserved

PHYSICIAN ASSISTANTS

CHAPTER 326

LICENSURE OF PHYSICIAN ASSISTANTS

- 326.1(148C) Definitions
- 326.2(148C) Requirements for licensure
- 326.3(148C) Temporary licensure
- 326.4(148C) Licensure by endorsement
- 326.5 Reserved
- 326.6(148C) Examination requirements
- 326.7(148C) Educational qualifications
- 326.8(148C) Supervision requirements
- 326.9(148C) License renewal
- 326.10 to 326.14 Reserved
- 326.15(148C) Use of title
- 326.16(148C) Address change
- 326.17(148C) Student physician assistant
- 326.18(148C) Recognition of an approved program
- 326.19(17A,147,272C) License reactivation
- 326.20(17A,147,272C) License reinstatement

CHAPTER 327

PRACTICE OF PHYSICIAN ASSISTANTS

- 327.1(148C) Duties
- 327.2(148C) Prohibition
- 327.3 Reserved
- 327.4(148C) Remote medical site
- 327.5(147) Identification as a physician assistant
- 327.6(147) Prescription requirements
- 327.7(147) Supplying—requirements for containers, labeling, and records

CHAPTER 328

CONTINUING EDUCATION FOR PHYSICIAN ASSISTANTS

- 328.1(148C) Definitions
- 328.2(148C) Continuing education requirements
- 328.3(148C,272C) Standards

CHAPTER 329

DISCIPLINE FOR PHYSICIAN ASSISTANTS

- 329.1(148C) Definitions
- 329.2(148C,272C) Grounds for discipline
- 329.3(147,272C) Method of discipline
- 329.4(272C) Discretion of board

CHAPTERS 330 to 350

Reserved

ATHLETIC TRAINERS

CHAPTER 351

LICENSURE OF ATHLETIC TRAINERS

- 351.1(152D) Definitions
- 351.2(152D) Requirements for licensure
- 351.3(152D) Educational qualifications

351.4(152D)	Examination requirements
351.5(152D)	Documentation of physician direction
351.6(152D)	Athletic training plan for direct service
351.7(152D)	Licensure by endorsement
351.8	Reserved
351.9(147)	License renewal
351.10(272C)	Exemptions for inactive practitioners
351.11 and 351.12	Reserved
351.13(272C)	Lapsed licenses
351.14	Reserved
351.15(17A,147,272C)	License reactivation
351.16(17A,147,272C)	License reinstatement

CHAPTER 352

CONTINUING EDUCATION FOR ATHLETIC TRAINERS

352.1(272C)	Definitions
352.2(152D)	Continuing education requirements
352.3(152D,272C)	Standards
352.4(152D,272C)	Audit of continuing education report
352.5 and 352.6	Reserved
352.7(152D,272C)	Continuing education waiver for active practitioners
352.8(152D,272C)	Continuing education exemption for inactive practitioners
352.9	Reserved
352.10(152D,272C)	Reinstatement of inactive practitioners
352.11(272C)	Hearings

CHAPTER 353

DISCIPLINE FOR ATHLETIC TRAINERS

353.1(152D)	Definitions
353.2(152D,272C)	Grounds for discipline
353.3(152D,272C)	Method of discipline
353.4(272C)	Discretion of board

CHAPTERS 354 to 360

Reserved

SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS

CHAPTER 361

LICENSURE OF SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS

361.1(154E)	Definitions
361.2(154E)	Requirements for licensure
361.3(154E)	Licensure by endorsement
361.4	Reserved
361.5(154E)	License renewal
361.6 to 361.8	Reserved
361.9(17A,147,272C)	License reactivation
361.10(17A,147,272C)	License reinstatement

CHAPTER 362
CONTINUING EDUCATION FOR SIGN LANGUAGE INTERPRETERS AND
TRANSLITERATORS

- 362.1(154E,272C) Definitions
- 362.2(154E,272C) Continuing education requirements
- 362.3(154E,272C) Standards

CHAPTER 363
DISCIPLINE FOR SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS

- 363.1(154E) Definitions
- 363.2(154E,272C) Grounds for discipline
- 363.3(147,272C) Method of discipline
- 363.4(272C) Discretion of board

CHAPTER 46

FEES

[Prior to 7/24/02, see 645—40.14(151)]

Rescinded IAB 8/13/08, effective 9/17/08

CHAPTERS 47 and 48

Reserved

CHAPTER 49

PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

Rescinded IAB 6/16/99, effective 7/21/99

CHAPTERS 50 to 58

Reserved

CHAPTER 59

ADMINISTRATIVE AND REGULATORY AUTHORITY
FOR THE BOARD OF COSMETOLOGY ARTS AND SCIENCES

Rescinded IAB 12/31/08, effective 2/4/09

COSMETOLOGISTS

CHAPTER 60	LICENSURE OF COSMETOLOGISTS, ELECTROLOGISTS, ESTHETICIANS, MANICURISTS, NAIL TECHNOLOGISTS, AND INSTRUCTORS OF COSMETOLOGY ARTS AND SCIENCES
CHAPTER 61	LICENSURE OF SALONS AND SCHOOLS OF COSMETOLOGY ARTS AND SCIENCES
CHAPTER 62	RESERVED
CHAPTER 63	SANITATION FOR SALONS AND SCHOOLS OF COSMETOLOGY ARTS AND SCIENCES
CHAPTER 64	CONTINUING EDUCATION FOR COSMETOLOGY ARTS AND SCIENCES
CHAPTER 65	DISCIPLINE FOR COSMETOLOGY ARTS AND SCIENCES LICENSEES, INSTRUCTORS, SALONS, AND SCHOOLS

CHAPTER 60

LICENSURE OF COSMETOLOGISTS, ELECTROLOGISTS, ESTHETICIANS,
 MANICURISTS, NAIL TECHNOLOGISTS, AND INSTRUCTORS
 OF COSMETOLOGY ARTS AND SCIENCES

[Prior to 7/29/87, Health Department[470] Ch 149]

645—60.1(157) 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 cosmetology arts and sciences.

“*Certified laser product*” means a product which is certified by a manufacturer pursuant to the requirements of 21 Code of Federal Regulations (CFR) Part 1040.

“*Chemical exfoliation*” means the removal of surface epidermal cells of the skin by using only non-medical-strength cosmetic preparations consistent with labeled instructions and as specified by rule. This procedure is not intended to elicit viable epidermal or dermal wounding, injury, or destruction.

“*Core curriculum*” means the basic core life sciences curriculum that is required for completion of any course of study of the cosmetology arts and sciences except for manicuring.

“*Cosmetology arts and sciences*” means any or all of the following disciplines performed with or without compensation by a licensee: cosmetology, electrology, esthetics, nail technology and manicuring.

“*Depilatory*” means an agent used for the temporary removal of superfluous hair by dissolving it at the epidermal surface.

“*Examination*” means any of the tests used to determine minimum competency prior to the issuance of a cosmetology arts and sciences license.

“*Exfoliation*” means the process whereby the superficial epidermal cells are removed from the skin.

“*General supervision*” means the supervising physician is not onsite for laser procedures or use of an intense pulsed light device for hair removal conducted on minors, but is available for direct communication, either in person or by telephone, radio, radiotelephone, television, or similar means.

“*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.

“*Intense pulsed light device*” means a device that uses incoherent light to destroy the vein of the hair bulb.

“*Laser*” means light amplification by the stimulated emission of radiation.

“*Licensee*” means any person or entity licensed to practice pursuant to Iowa Code chapter 157 and 645—Chapters 60 to 65, Iowa Administrative Code.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice cosmetology to an applicant who is or has been licensed in another state for 12 months during the last 24 months.

“*Mechanical exfoliation*” means the physical removal of surface epidermal cells by means that include but are not limited to brushing machines, granulated scrubs, peel-off masques, peeling creams or drying preparations that are rubbed off, and microdermabrasion.

“*Mentor*” means a licensee providing guidance in a mentoring program.

“*Mentoring*” means a program allowing students to experience cosmetology arts and sciences in a licensed salon under the guidance of a mentor.

“*Microdermabrasion*” means mechanical exfoliation using an abrasive material or apparatus to remove surface epidermal cells with a machine which is specified by rule.

“*Minor*” means an unmarried person who is under the age of 18 years.

“*NIC*” means the National-Interstate Council of State Boards of Cosmetology, Inc.

“*Pedicuring*” means the practice of cleaning, shaping or polishing the toenails.

“*Practice discipline*” means the practice of electrology, esthetics, nail technology, manicuring or cosmetology as recognized by the board of cosmetology arts and sciences.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 60.17(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice cosmetology to an applicant who is currently licensed in another state and which state has a mutual agreement to license persons who have the same or similar qualifications to those required in Iowa.

“*Reinstatement*” means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who 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.

“*Testing service*” means a national testing service selected by the board.

“*Trainee*” means any person who completes the requirements listed in Iowa Code section 157.3 for licensure in the cosmetology arts and sciences, except for the examination, and who has a temporary permit.

645—60.2(157) Requirements for licensure.

60.2(1) Requirements for licensure. All persons providing services in one or more cosmetology arts and sciences disciplines shall hold a license issued by the board. The applicant shall:

a. Submit a completed, board-approved application for licensure. Application forms may be obtained from the board’s Web site (www.idph.state.ia.us/licensure) or directly from the board office. Completed applications and appropriate fees shall be sent to Board of Cosmetology Arts and Sciences, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

b. Direct the educational program to submit to the board a diploma or an official transcript of grades in each practice discipline for which the applicant is requesting licensure. If the applicant graduated from a school that is not licensed by the board, the applicant shall direct the school to provide an official transcript showing completion of a course of study that meets the requirements of rule 645—61.14(157). If educated outside the United States, the applicant shall attach an original evaluation of the applicant’s education from World Education Services (WES) or any other accredited evaluation service. An applicant may obtain an application for evaluation by contacting WES at (212)966-6311, or by writing to WES, P.O. Box 5087, Bowling Green Station, New York, New York 10274-5087.

c. Pass a national examination as prescribed by the board for the particular practice discipline with a score of 75 percent or greater.

(1) If applying for licensure by examination on or after January 1, 2008, submit the test registration and registration fee directly to the test service. NIC examinations are administered according to guidelines set forth by the National-Interstate Council of State Boards of Cosmetology.

(2) If applying for licensure by endorsement, complete the requirements set forth in rule 645—60.7(157).

60.2(2) Requirements for an instructor’s license. An applicant for an instructor’s license shall:

a. Submit a completed application for licensure and the appropriate fee to the board;

- b.* Be licensed in the state of Iowa in the specific practice discipline to be taught or be licensed as a cosmetologist who possesses the skill and knowledge required to instruct in that practice discipline;
- c.* Provide documentation of completion of 1,000 hours of instructor's training or two years' active practice in the field of cosmetology within six years prior to application;
- d.* Submit proof of completion of an instructor methods training course consisting of at least 16 hours;
- e.* Submit proof of 60 hours of practical experience, excluding school hours, in the area of electrolysis prior to application for an instructor of electrolysis license.
- f.* Pass an instructor's national examination, which, effective January 1, 2008, shall be the NIC instructor examination unless the applicant is applying for an instructor's license by endorsement as outlined in rule 645—60.7(157).

60.2(3) Conditions. The following conditions apply for all cosmetology arts and sciences licenses.

- a.* Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed.
- b.* The licensure fee is nonrefundable.
- c.* Licensees who were issued their initial licenses within six months prior to the license renewal beginning date shall not be required to renew their licenses until the renewal month two years later.
- d.* Beginning April 1, 2008, a new license granted by the board of cosmetology arts and sciences to an individual who holds multiple active licenses with the board shall have the same license expiration date as the licensee's existing license(s). If the licensee holds only one active license with the board, the license expiration date shall be in the current renewal period unless licensure is issued within six months of the end of the renewal cycle, in which case subrule 60.8(2) shall apply.

645—60.3(157) Criteria for licensure in specific practice disciplines.

60.3(1) A cosmetology license is not a requirement for an electrolysis, esthetics, nail technology or manicurist license.

60.3(2) Core life sciences curriculum hours shall be transferable in their entirety from one practice discipline to another practice discipline.

60.3(3) Theory hours earned in each practice discipline of cosmetology arts and sciences may be used in applying for a cosmetology license.

60.3(4) A cosmetologist licensed after July 1, 2005, is not eligible to be certified in chemical peels, microdermabrasion, laser or intense pulsed light (IPL) and shall not provide those services.

60.3(5) Pedicuring shall only be done by a cosmetologist or nail technologist.

60.3(6) Facial waxing shall only be done by a cosmetologist or esthetician.

60.3(7) An initial license to practice manicuring shall not be issued by the board after December 31, 2007. A manicurist license issued on or before December 31, 2007, may be renewed subject to licensure requirements identified by statute and administrative rule unless the license becomes inactive. A manicurist license that becomes inactive cannot be reactivated or renewed.

645—60.4(157) Practice-specific training requirements. The board shall approve a licensee to provide the appropriate services once a licensee has complied with training requirements and submitted a completed application, the required supporting evidence, and applicable fees as specified in these rules. The applicant shall receive a certification card following board approval.

60.4(1) Microdermabrasion.

a. Microdermabrasion shall only be performed by a licensed, certified esthetician or a cosmetologist who was licensed prior to July 1, 2005, and is certified by the board.

b. To be eligible to perform microdermabrasion services, the licensee shall:

(1) Complete 14 contact hours of education specific to the material or apparatus used for microdermabrasion. Before an additional material or apparatus is utilized in the licensee's practice, the licensee shall provide official certification of training on the material or apparatus.

(2) Obtain from the program a certification of training that contains the following information:

1. Date, location, course title;

2. Number of contact hours; and
 3. Specific identifying description of the microdermabrasion machine covered by the course.
- (3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 62.1(19). The fee is nonrefundable.

60.4(2) Chemical exfoliation.

a. Chemical exfoliation shall only be performed by a cosmetologist who was licensed prior to July 1, 2005, and is certified by the board to perform those services. Additional certification is not required for licensed estheticians.

b. Chemical exfoliation procedures are limited to the removal of surface epidermal cells of the skin by using only non-medical-strength cosmetic preparations consistent with labeled instructions and as specified by these rules. This procedure is not intended to elicit viable epidermal or dermal wounding, injury, or destruction.

c. To be eligible to perform chemical peels, a cosmetologist who was licensed prior to July 1, 2005, shall:

(1) Complete 21 hours of training specific to the process and products to be used for chemical peels. Before an additional process or product is utilized in the licensee's practice, the licensee shall provide official certification of training on the new process or product.

(2) Obtain from the program a certification of training that contains the following information:

1. Date, location, course title;
2. Number of contact hours; and
3. Specific identifying description of the chemical peel process and products covered by the course.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 62.1(19). The fee is nonrefundable.

60.4(3) Laser services.

a. A cosmetologist licensed after July 1, 2005, shall not use laser products.

b. An electrologist shall only provide hair removal services when using a laser.

c. Estheticians and cosmetologists shall use laser for cosmetic purposes only.

d. Cosmetologists licensed prior to July 1, 2005, electrologists and estheticians must be certified to perform laser services.

e. When a laser service is provided to a minor by a licensed cosmetologist, esthetician or electrologist who has been certified by the board, the licensee shall work under the general supervision of a physician. The parent or guardian shall sign a consent form prior to services being provided. Written permission shall remain in the client's permanent record for a period of five years.

f. To be eligible to perform laser services, a cosmetologist who was licensed on or before July 1, 2005, an electrologist, or an esthetician shall:

(1) Complete 40 hours of training specific to each laser machine, model or device to be used for laser services. Before an additional machine, model or device is utilized in the licensee's practice, the licensee shall submit official certification of training on the new machine, model or device.

(2) Obtain from the program a certification of training that contains the following information:

1. Date, location, course title;
2. Number of contact hours;
3. Specific identifying description of the laser equipment; and
4. Evidence that the training program includes a safety training component which provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 62.1(19). The fee is nonrefundable.

60.4(4) IPL hair removal treatments.

- a. A cosmetologist licensed after July 1, 2005, shall not use IPL devices.
- b. An IPL device shall only be used for hair removal.
- c. Cosmetologists licensed prior to July 1, 2005, electrologists and estheticians must be certified to perform IPL services.

d. When IPL hair removal services are provided to a minor by a licensed cosmetologist, esthetician or electrologist who has been certified by the board, the licensee shall work under the general supervision of a physician. The parent or guardian shall sign a consent form prior to services being provided. Written permission shall remain in the client's permanent record for a period of five years.

e. To be eligible to perform IPL hair removal services, a cosmetologist who was licensed on or before July 1, 2005, an electrologist, or an esthetician shall:

(1) Complete 40 hours of training specific to each IPL machine, model or device to be used for IPL hair removal services. Before an additional machine, model or device is utilized in the licensee's practice, the licensee shall submit official certification of training on the new machine, model or device.

(2) Obtain from the program a certification of training that contains the following information:

1. Date, location, course title;
2. Number of contact hours;
3. Specific identifying description of the IPL hair removal equipment; and
4. Evidence that the training program includes a safety training component which provides a thorough understanding of the procedures to be performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

(3) Complete a board-approved certification application form and submit to the board office the completed form, a copy of the certification of training, and the required fee pursuant to 645—subrule 62.1(19). The fee is nonrefundable.

60.4(5) Health history and incident reporting.

a. Prior to providing laser or IPL hair removal, microdermabrasion or chemical peel services, the cosmetologist, esthetician, and electrologist shall complete a client health history of conditions related to the application for services and include it with the client's records. The history shall include but is not limited to items listed in paragraph 60.4(5) "b."

b. A licensed cosmetologist, esthetician, or electrologist who provides services related to the use of a certified laser product, IPL device, chemical peel, or microdermabrasion shall submit a report to the board within 30 days of any incident in which provision of such services resulted in physical injury requiring medical attention. Failure to comply with this requirement shall result in disciplinary action by the board. The report shall include the following:

- (1) A description of procedures;
- (2) A description of the physical condition of the client;
- (3) A description of any adverse occurrence, including:
 1. Symptoms of any complications including, but not limited to, onset and type of symptoms;
 2. A description of the services provided that caused the adverse occurrence;
 3. A description of the procedure that was followed by the licensee;
- (4) A description of the client's condition on termination of any procedures undertaken;
- (5) If a client is referred to a physician, a statement providing the physician's name and office location, if known;
- (6) A copy of the consent form.

60.4(6) Failure to report. Failure to comply with paragraph 60.4(5) "b" when the adverse occurrence is related to the use of any procedure or device noted in the attestation may result in the licensee's loss of authorization to administer the procedure or device noted in the attestation or may result in other sanctions provided by law.

60.4(7) A licensee shall not provide any services that constitute the practice of medicine.

645—60.5(157) Licensure restrictions relating to practice.

60.5(1) A certified laser product or an intense pulsed light device shall only be used on surface epidermal layers of the skin except for hair removal.

60.5(2) A laser hair removal product or an intense pulsed light device shall not be used on a minor unless the minor is accompanied by a parent or guardian and then shall be used only under general supervision of a physician.

60.5(3) Persons licensed under Iowa Code chapter 157 shall not administer any practice of removing skin by means of a razor-edged instrument.

60.5(4) Persons licensed under this chapter who provide hair removal, manicuring and nail technology services shall not administer any procedure in which human tissue is cut, shaped, vaporized, or otherwise structurally altered, except for the use of a cuticle nipper.

60.5(5) Board-certified licensees providing microdermabrasion, chemical peels, laser or IPL hair removal treatments in a salon or barbershop setting shall not include any practice, activity, or treatment that constitutes the practice of medicine, osteopathic medicine, chiropractic or acupuncture.

645—60.6(157) Consent form requirements. A licensed esthetician, cosmetologist, or electrologist, prior to providing services relating to a certified laser product, intense pulsed light device, chemical peel, or microdermabrasion, shall obtain from a client a consent form that:

1. Specifies in general terms the nature and purpose of the procedure(s);
2. Lists known risks associated with the procedure(s) if reasonably determinable;
3. States an acknowledgment that disclosure of information has been made and that questions asked about the procedure(s) have been satisfactorily answered;
4. Includes a signature of either the client for whom the procedure is performed or, if that client for any reason lacks legal capacity to consent, includes the signature of a person who has legal authority to consent on behalf of that client in those circumstances.

645—60.7(157) Licensure by endorsement.

1. The board may issue a license by endorsement to any applicant from the District of Columbia or another state, territory, province or foreign country who meets the requirements of rule 645—60.2(157).

2. An applicant for licensure by endorsement shall provide verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Verifications of current licensure in the practice discipline in another state for at least 12 months in the 24-month period preceding the submission of the application must be sent from each state, territory, province or foreign country or the District of Columbia. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- Licensee's name;
- Date of initial licensure;
- Current licensure status; and
- Any disciplinary action taken against the license.

645—60.8(157) License renewal.

60.8(1) Biennial license renewal period for a license to practice cosmetology arts and sciences.

a. Prior to April 1, 2008:

(1) The renewal period shall begin on April 1 of one year and end on March 31 two years later. All licensees shall renew on a biennial basis.

(2) The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.

(3) The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

b. Beginning April 1, 2008:

(1) A licensee who has a license due for renewal in an even-numbered year shall renew all active licenses with the board by April 1, 2008. If one or more licenses are due for renewal in an odd-numbered

year, the renewal fee for those licenses shall be prorated. Such prorated license fees shall apply only during the April 1, 2008, renewal period.

(2) The renewal period shall begin on April 1 of one year and end on March 31 two years later. All licenses shall renew on a biennial basis.

(3) The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license.

(4) The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

(5) Licensees who renew their licenses one year early shall be subject to continuing education requirements by April 1, 2010. This extension does not apply to a license(s) originally scheduled for renewal on April 1, 2008.

(6) A new or reactivated license granted by the board to a licensee who holds a current license in another practice discipline in cosmetology shall have the same license expiration date as the licensee's other license(s). If the licensee does not have another active license with the board, the license expiration date shall be in the current renewal period unless the license is issued within six months of the end of the renewal cycle and subrule 60.8(2) applies.

60.8(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 two years later.

60.8(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—64.2(157). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

c. Licensees currently licensed in Iowa but practicing exclusively in another state may comply with Iowa continuing education requirements for license renewal by meeting the continuing education requirements of the state where the licensee practices. Those licensees living and practicing exclusively in a state which has no continuing education requirement for renewal of a license shall not be required to meet Iowa's continuing education requirement but shall pay all renewal fees when due.

60.8(4) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

60.8(5) 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 62.1(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

60.8(6) 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 cosmetology arts and sciences in Iowa until the license is reactivated. A licensee who practices cosmetology arts and sciences 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.

60.8(7) 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.

645—60.9(157) Temporary permits. The board may issue a temporary permit for the purpose of demonstrating cosmetology arts and sciences services to the consuming public or for providing cosmetology arts and sciences services to the consuming public at not-for-profit events.

1. The permit shall be valid for (name of a specific event) for a salon, school, or person. The location, purpose and duration of the permit shall be stated on the permit. The permit shall be posted and visible to the public at the location where the services are provided.

2. The permit shall be valid for no more than 12 days.
3. A completed application shall be submitted on a form provided by the board at least 30 days in advance of the intended use date(s).
4. An application fee shall be submitted as set forth in these rules.
5. No more than four permits shall be issued to any applicant during a calendar year.
6. For not-for-profit events, individuals providing services must hold a current license provided by the board pursuant to rule 60.2(157).

645—60.10(157) Demonstrator’s permit. Rescinded IAB 11/23/05, effective 12/28/05.

645—60.11(157) License renewal. Rescinded IAB 11/23/05, effective 12/28/05.

645—60.12(147) Reissued certificate or wallet card. Rescinded IAB 12/31/08, effective 2/4/09.

645—60.13(272C) Exemptions for inactive practitioners. Rescinded IAB 8/31/05, effective 10/5/05.

645—60.14(272C) Lapsed licenses. Rescinded IAB 8/31/05, effective 10/5/05.

645—60.15(147) Duplicate certificate or wallet card. Rescinded IAB 12/31/08, effective 2/4/09.

645—60.16(272C) License denial. Rescinded IAB 12/31/08, effective 2/4/09.

645—60.17(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

60.17(1) Submit a reactivation application on a form provided by the board.

60.17(2) Pay the reactivation fee that is due as specified in rule 645—62.1(147,157).

60.17(3) Provide verification of current competence to practice cosmetology arts and sciences 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 8 hours of continuing education that meet the continuing education standards defined in rule 645—64.3(157,272C) 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 16 hours of continuing education that meet the continuing education standards defined in rule 645—64.3(157,272C) within two years of application for reactivation.

(3) Rescinded IAB 11/21/07, effective 1/1/08.

60.17(4) Licensees who are instructors of cosmetology arts and sciences shall obtain an additional 8 hours of continuing education in teaching methodology.

645—60.18(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 60.17(17A,147,272C) prior to practicing cosmetology arts and sciences in this state.

These rules are intended to implement Iowa Code chapters 272C and 157.

[Filed prior to 7/1/52; amended 4/21/53, 5/15/53, 10/1/59, 4/19/71]
 [Filed 8/5/77, Notice 6/1/77—published 8/24/77, effective 10/1/77]
 [Filed 4/28/78, Notice 12/28/77—published 5/17/78, effective 6/21/78]
 [Filed 10/19/79, Notice 8/22/79—published 11/14/79, effective 12/21/79]
 [Filed 2/27/81, Notice 12/10/80—published 3/18/81, effective 4/22/81]
 [Filed 11/15/82, Notice 9/1/82—published 12/8/82, effective 1/15/83]
 [Filed 10/6/83, Notice 7/20/83—published 10/26/83, effective 11/30/83]
 [Filed 4/15/85, Notice 2/27/85—published 5/8/85, effective 6/12/85]
 [Filed 8/5/85, Notice 6/5/85—published 8/28/85, effective 10/2/85]
 [Filed emergency 7/10/87—published 7/29/87, effective 7/10/87]
 [Filed 4/29/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]
 [Filed 8/4/89, Notice 6/14/89—published 8/23/89, effective 9/27/89]
 [Filed 9/29/89, Notice 8/23/89—published 10/18/89, effective 11/22/89]
 [Filed 2/2/90, Notice 12/27/89—published 2/21/90, effective 3/28/90]
 [Filed 9/27/91, Notice 6/12/91—published 10/16/91, effective 11/20/91]
 [Filed 1/3/92, Notice 9/4/91—published 1/22/92, effective 2/26/92]¹
 [Filed 12/4/92, Notice 8/5/92—published 12/23/92, effective 1/29/93]
 [Filed 2/11/94, Notice 10/27/93—published 3/2/94, effective 4/6/94]
 [Filed 4/19/95, Notice 2/1/95—published 5/10/95, effective 6/14/95]
 [Filed 11/2/95, Notice 9/13/95—published 11/22/95, effective 12/27/95]
 [Filed 11/15/96, Notice 9/11/96—published 12/4/96, effective 1/8/97]
 [Filed 2/6/98, Notice 11/19/97—published 2/25/98, effective 4/1/98]
 [Filed 2/19/99, Notice 12/2/98—published 3/10/99, effective 4/14/99]
 [Filed 5/28/99, Notice 1/27/99—published 6/16/99, effective 7/21/99]
 [Filed 2/1/01, Notice 11/29/00—published 2/21/01, effective 3/28/01]
 [Filed 2/13/02, Notice 11/28/01—published 3/6/02, effective 4/10/02]
 [Filed 8/14/02, Notice 5/29/02—published 9/4/02, effective 10/9/02]
 [Filed 2/12/03, Notice 12/25/02—published 3/5/03, effective 4/9/03]
 [Filed 8/14/03, Notice 5/28/03—published 9/3/03, effective 10/8/03]
 [Filed 2/10/04, Notice 11/26/03—published 3/3/04, effective 4/7/04]
 [Filed 2/3/05, Notice 11/24/04—published 3/2/05, effective 4/6/05]
 [Filed 8/5/05, Notice 5/25/05—published 8/31/05, effective 10/5/05]
 [Filed 11/4/05, Notice 9/14/05—published 11/23/05, effective 12/28/05][◇]
 [Filed 11/4/05, Notice 9/28/05—published 11/23/05, effective 12/28/05][◇]
 [Filed 2/1/06, Notice 12/7/05—published 3/1/06, effective 4/5/06]
 [Filed without Notice 8/22/07—published 9/12/07, effective 1/1/08]
 [Filed 10/24/07, Notice 9/12/07—published 11/21/07, effective 1/1/08]
 [Filed 12/5/08, Notice 10/8/08—published 12/31/08, effective 2/4/09]

[◇] Two or more ARCs

¹ Effective date of 2/26/92 delayed until adjournment of the 1992 General Assembly by the Administrative Rules Review Committee at its meeting held February 3, 1992.

CHAPTER 61
LICENSURE OF SALONS AND SCHOOLS
OF COSMETOLOGY ARTS AND SCIENCES

[Prior to 7/29/87, Health Department[470] Ch 149]

[Prior to 12/23/92, see 645—Chapter 60]

645—61.1(157) Definitions.

“*Clinic area*” means the area of the school where the paying customers will receive services.

“*Dispensary*” means a separate area to be used for storing and dispensing of supplies and sanitizing of all implements.

“*Inactive license*” means a salon license or a school license that has not been renewed as required or the license of a salon or school that has failed to meet stated obligations for renewal within a stated time.

“*Mentor*” means a licensee providing guidance in a mentoring program.

“*Mentoring*” means a program allowing students to experience cosmetology arts and sciences in a licensed salon under the guidance of a mentor.

“*Salon license*” means an establishment licensed to provide cosmetology services to paying customers.

“*School*” means a school of cosmetology arts and sciences.

“*School license*” means a license issued to an establishment to instruct students in cosmetology arts and sciences.

645—61.2(157) Salon licensing.

61.2(1) The owner shall complete a board-approved application form. 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 submitted to the Board of Cosmetology Arts and Sciences, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

a. The application shall be completed according to the instructions contained in the application and submitted 30 days prior to the anticipated opening day. If the application is not completed according to the instructions, the application will not be reviewed by the board.

b. Each application shall be accompanied by the appropriate fees payable by check or money order to the Board of Cosmetology Arts and Sciences. The fees are nonrefundable.

61.2(2) Each salon shall meet the requirements for sanitary conditions established in 645—Chapter 63 to be eligible for licensing. The salon shall be inspected for compliance with sanitation rules within 12 months following the issuance of the salon license.

61.2(3) Business may commence at the salon following receipt of the license.

61.2(4) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records will be maintained after two years only if the applicant submits a written request to the board.

61.2(5) A salon license shall be issued for a specific location. A change in location or site of a salon shall require submission of an application for a new license and payment of the fee required by 645—subrule 62.1(16). A change of address without change of actual location shall not be construed as a new site.

61.2(6) A salon license is not transferable.

a. A change in ownership of a salon shall require the issuance of a new license. “Change in ownership” means any change of controlling interest in any corporation or any change of name of sole proprietorship or partnership.

b. A salon cannot be sold if disciplinary actions are pending.

c. If a salon owner sells the salon, that owner must send the license certificate and a report of the sale to the board within 10 days of the date on which the sale is final. The owner of the salon on record shall retain responsibility for the salon until the notice of sale is received in the board office.

d. The board may request legal proof of the ownership transfer.

e. The owner shall notify the board in writing of a change of name or address within 30 days after the occurrence and, in addition, shall return the current certificate and pay the reissued certificate fee as specified in rule 645—62.1(147,157).

645—61.3(157) Salon license renewal.

61.3(1) The biennial license renewal period for a salon license shall begin on January 1 of every odd-numbered year and end on December 31 two years later.

61.3(2) A renewal of license application shall be mailed to the owner of the salon at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the owner of the obligation to pay the biennial renewal fee on or before the renewal date.

61.3(3) A salon that is issued a license within six months of the license renewal date will not be required to renew the license until the next renewal two years later.

61.3(4) The salon owner shall submit the completed application with the renewal fee to the board office before the license expiration date.

61.3(5) A salon shall be in full compliance with this chapter and 645—Chapter 63 to be eligible for renewal. When all requirements for license renewal are met, the salon shall be sent a license renewal card by regular mail.

61.3(6) If the renewal fee and renewal application are postmarked after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

645—61.4(272C) Inactive salon license.

61.4(1) If the renewal application and fee are not postmarked within 30 days after the license expiration date, the salon license is inactive. To reactivate a salon license, the reactivation application and fee shall be submitted to the board office.

61.4(2) A salon that has not renewed the salon license within the required time frame will have an inactive license and shall not provide cosmetology services until the license is reactivated.

645—61.5(157) Display requirements for salons.

61.5(1) Every salon shall have a sign visible outside the entrance designating the place of business.

61.5(2) A salon license and the current renewal card shall be posted and visible to the public in the reception area at eye level.

61.5(3) The original license certificate, duplicate certificate, or reissued certificate for each licensee working in the salon shall be visibly displayed in the reception area at eye level.

61.5(4) Each licensee shall:

a. Display the current license card with the certificate or have the current wallet card in the licensee's possession; and

b. Have a valid U.S. government-issued photo ID to provide to an agent of the board upon request as proof of identity.

645—61.6(147) Duplicate certificate or wallet card for salons.

61.6(1) A duplicate wallet card or duplicate certificate shall be required if the current wallet card or certificate is lost, stolen or destroyed. A duplicate wallet card or duplicate certificate shall only be issued under such circumstances.

61.6(2) A duplicate salon wallet card or certificate shall be issued upon receipt of a completed application and receipt of the fee as specified in 645—subrule 62.1(5).

61.6(3) If the board receives a completed application stating that the owner of the salon has not received the wallet card or certificate within 60 days after the card or certificate is mailed by the board, no fee shall be required for issuing the duplicate wallet card or certificate.

645—61.7(157) Licensure for schools of cosmetology arts and sciences. The board shall grant approval for the issuance of an original school of cosmetology arts and sciences license to be issued by the department when the following conditions have been met:

61.7(1) An application shall be submitted to the Board of Cosmetology Arts and Sciences, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The following information shall be submitted with the application:

a. A complete plan of the physical facilities and an explanation detailing how the facilities will be utilized relative to classroom, clinic space and mentoring program; and

b. A list of the names of licensed instructors for the proposed school. The number of instructors must meet the requirement outlined in Iowa Code section 157.8, with the exception of instructors for the mentoring program.

61.7(2) The application shall be completed according to the instructions contained in the application and submitted 30 days prior to the anticipated opening day. If the application is not completed according to the instructions, the application will not be reviewed by the board.

61.7(3) The school owner may be interviewed by the board before an original license is issued.

61.7(4) The school shall not accept students until the school is licensed.

61.7(5) The original license shall be granted for the location(s) identified in the school's application.

a. A change of location shall require submission of an application for a new school license and payment of the license fee.

b. A change of address without change of actual location shall not be construed as a new site.

61.7(6) A school license is not transferable. A change in ownership of a school shall require the issuance of a new license. "Change in ownership" means any change of controlling interest in any corporation or any change of name of sole proprietorship or partnership.

a. A school cannot be sold if disciplinary actions are pending.

b. The board may request legal proof of the ownership transfer.

c. If a school owner sells the school, that owner must send the license certificate and a report of the sale to the board within 10 days of the date on which the sale is final. The owner of the school on record shall retain responsibility for the school until the notice of sale is received in the board office.

d. The owner shall notify the board in writing of a change of name or address within 30 days after the occurrence and, in addition, shall return the current certificate and pay the reissued certificate fee as specified in rule 645—62.1(147,157).

61.7(7) The school shall be inspected prior to the issuance of the school license and shall meet the requirements of this chapter and 645—Chapter 63.

61.7(8) Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records will be maintained after two years only if the applicant submits a written request to the board.

645—61.8(157) School license renewal.

61.8(1) The annual license renewal period for a school license shall begin on July 1 and end on June 30 one year later.

61.8(2) A renewal of license application shall be mailed to the school at least 60 days prior to the expiration of the license. Failure to receive the renewal application shall not relieve the school of the obligation to pay the annual renewal fee on or before the renewal date.

a. The renewal application and renewal fee shall be submitted to the board office before the license expiration date.

b. Schools shall be in full compliance with this chapter and 645—Chapter 63 to be eligible for renewal. When all requirements for license renewal are met, the school shall be sent a license renewal card by regular mail.

61.8(3) A school that is issued a license within six months of the license renewal date will not be required to renew the license until the next renewal one year later.

61.8(4) If the renewal fee and renewal application are postmarked after the license expiration date, but within 30 days following the expiration date, the late fee for failure to renew before expiration shall be charged.

645—61.9(272C) Inactive school license.

61.9(1) If the renewal application and fee are not postmarked within 30 days after the license expiration date, the school license is inactive. To reactivate the school license, the reactivation application and fee shall be submitted to the board.

61.9(2) A school that has not renewed the school license within the required time frame will have an inactive license and shall not provide schooling or services until the license is reactivated.

645—61.10(157) Display requirements for schools.

61.10(1) Every school shall have a sign visible outside the entrance designating the place of business.

61.10(2) A school license and the current renewal card shall be posted and visible to the public in the reception area at eye level.

61.10(3) The original license certificate, duplicate certificate, or reissued certificate for each instructor working at the school shall be visibly displayed in the reception area at eye level.

645—61.11(147) Duplicate certificate or wallet card for schools. Rescinded IAB 12/31/08, effective 2/4/09.

645—61.12(157) Physical requirements for schools of cosmetology arts and sciences. The school shall meet the following physical requirements:

61.12(1) The school premises shall have a minimum floor space of 3000 square feet and, when the enrollment in a school exceeds 30 students, additional floor space of 30 square feet shall be required for each additional student enrolled in the school.

61.12(2) Each licensed school shall provide at least one clinic area where the paying public will receive services. The clinic area shall be confined to the premises occupied by the school.

61.12(3) A school shall provide a theory classroom(s) separate from the clinic area.

61.12(4) Each school shall maintain a library for students consisting of textbooks, current trade publications and business management materials.

61.12(5) The school shall have a separate area to be used as a dispensary. The dispensary shall be equipped with lavatory, shelves or drawers for storing chemicals and sanitized articles, a wet sterilizer and any other sanitation items required in 645—Chapter 63.

61.12(6) Two restrooms shall be equipped with toilets, lavatories, soap and towel dispensers.

61.12(7) A laundry room shall be separated from the clinic area by a full wall or partition.

61.12(8) A separate room shall be equipped for the practice of esthetics and electrology.

61.12(9) Each licensed school shall have an administrative office.

645—61.13(157) Minimum equipment requirements. Each school of cosmetology arts and sciences shall have the following minimum equipment:

1. Workstations equipped with chair, dresserette, closed drawer or container for sanitized articles, and mirror (maximum of two students per unit);
2. One set of textbooks for each student and instructor;
3. Shampoo bowls located in the clinic area and readily accessible for students and clients if the school offers a curriculum course in cosmetology;
4. Audiovisual equipment available for each classroom;
5. Chair and table area for each student in the classroom; and
6. Labeled bottles and containers showing intended use of the contents.

645—61.14(157) Course of study requirements. A school of cosmetology arts and sciences shall not be approved by the board of cosmetology arts and sciences unless it complies with the course of study requirements as provided below.

61.14(1) Requirements for hours.

COSMETOLOGY CURRICULUM

Core life sciences	150 hours	
Cosmetology theory (Including business and management related to the practice of cosmetology.)	615 hours	
Total core life sciences and cosmetology theory is 765 hours.		
Applied practical instruction	1335 hours	
Total course of study		2100 hours (70 semester credit hours)

ELECTROLOGY CURRICULUM

Core life sciences	150 hours	
Electrology theory	50 hours	
Applied practical instruction	225 hours	
Total course of study		425 hours (14 semester credit hours)

ESTHETICS CURRICULUM

Core life sciences	150 hours	
Esthetics theory	115 hours	
Applied practical instruction	335 hours	
Total course of study		600 hours (20 semester credit hours)

NAIL TECHNOLOGY CURRICULUM

Core life sciences	150 hours	
Nail technology theory	50 hours	
Applied practical instruction	125 hours	
Total course of study		325 hours (11 semester credit hours)

Proof of curriculum requirements may be submitted to the board by either the clock hour or semester credit hour standard. Semester credit hours or the equivalent thereof shall be determined pursuant to administrative rules and regulations promulgated by the U.S. Department of Education.

61.14(2) Curriculum requirements.

a. Theory instruction shall be taught from a standard approved textbook, but may be supplemented by other related textbooks.

b. Course subjects taught in the school curriculum, including skills and business management, shall relate to the specific practice discipline.

c. Required hours for theory and applied practical hours do not have to be obtained from one school.

d. Core life sciences curriculum hours shall be transferable in their entirety from one practice discipline to another practice discipline.

e. Only hours from accredited or board-approved school programs will be accepted.

61.14(3) Core life sciences curriculum. The core life sciences curriculum shall contain the following instruction:

- a.* Human anatomy and physiology:
Cell, metabolism and body systems,
Human anatomy;
- b.* Bacteriology;

- c.* Infection control practices:
 - Universal precautions,
 - Sanitation,
 - Sterilization,
 - Disinfection;
- d.* Basic chemistry;
- e.* Matter;
- f.* Elements:
 - Compounds and mixtures;
- g.* Basic electricity;
- h.* Electrical measurements:
 - Reproduction of light rays,
 - Infrared rays,
 - Ultraviolet rays,
 - Visible rays/spectrum;
- i.* Safety;
- j.* Hygiene and grooming:
 - Personal and professional health;
- k.* Professional ethics;
- l.* Public relations; and
- m.* State and federal law, administrative rules and standards.

Clock hours may be converted to credit hours using a standard, recognized method of conversion.

61.14(4) The school shall maintain a copy of the curriculum plan for two years after the curriculum plan was taught by the school.

645—61.15(157) Instructors. All instructors in a school of cosmetology arts and sciences shall be licensed by the department.

61.15(1) An instructor teaching a course in electrology, esthetics or nail technology shall also hold a license in that practice or hold a cosmetology license that shows proof of having completed training in those practices equivalent to that of a license holder in that practice.

61.15(2) An instructor teaching a course in microdermabrasion, chemical peels, IPLs and lasers shall be certified by the state of Iowa to provide each of the services, as set forth in rule 645—60.4(157).

61.15(3) The number of instructors for each school of cosmetology arts and sciences shall be based upon total enrollment, with a minimum of 2 instructors employed on a full-time basis for up to 30 students and an additional instructor for each additional 15 students. The school shall make every effort to have 2 instructors on duty during school hours. However, a school operated by an area community college prior to September 1, 1982, with only 1 instructor per 15 students is not subject to this subrule and may continue to operate with the ratio of 1 instructor to 15 students.

61.15(4) An instructor shall:

- a.* Be responsible for and in direct charge of all theory and practical classrooms and clinics at all times;
- b.* Familiarize students with the different standard supplies and equipment used in salons; and
- c.* Not perform cosmetology services, with or without compensation, on the school premises except for demonstration purposes.

645—61.16(157) Student instructors. A student instructor shall be a graduate of an approved school of cosmetology arts and sciences. Each student instructor shall be under the direct supervision of a licensed instructor at all times.

645—61.17(157) Students.

61.17(1) A school of cosmetology arts and sciences shall, prior to the time a student is obligated for payment, inform the student of all provisions set forth in Iowa Code section 714.25. The school shall

retain a copy of the signed statement for two years following the student's graduating or leaving the program.

61.17(2) Students shall:

- a.* Wear clean and neat uniforms at all times during school hours and during the mentoring program;
- b.* Be supervised by a licensed instructor at all times except in a mentoring program when the students shall be under the guidance of a mentor;
- c.* Be provided regularly scheduled breaks and a minimum of 30 minutes for lunch;
- d.* Attend school no more than eight hours a day. Schools may offer additional hours to students who submit a written request for additional hours;
- e.* Receive no compensation from the school for services performed on clients;
- f.* Provide services to the public only after completion of a minimum of 10 percent of the course of study;
- g.* Not be called from theory class to provide services to the public;
- h.* Not be required to perform janitorial services or be allowed to volunteer for such services. Sanitation of the bathroom area shall be limited to replacing products and disinfecting the vanity and mirror surfaces. Sanitation of the toilet and bathroom floor areas is not to be performed by the student and is excluded from student sanitation duty; and
- i.* Receive no credit or hours for decorating for marketing or merchandising events or for participating in demonstrations of cosmetology arts and sciences when the sole purpose of the event is to recruit students and the event is outside the curriculum course.

645—61.18(157) Attendance requirements. A school of cosmetology arts and sciences shall have a written, published attendance policy.

61.18(1) When determining student hours, a school may define its attendance requirements to include 100 percent attendance for the course length or may allow excused absences for not more than 10 percent of the course length for satisfactory completion.

- a.* Student attendance policies shall be applied uniformly and fairly.
- b.* Appropriate credit shall be given for all hours earned.
- c.* All retake tests, projects to be redone and makeup work shall be completed without benefit of additional hours earned, and it shall be at the school's discretion to schedule the time.
- d.* Hours or credit shall not be added to the accumulative student record as an award, or deducted from the accumulative student record as a penalty.

61.18(2) The school must maintain each student's attendance records for two years to verify that the minimum attendance standard set by the school is being met.

645—61.19(157) Accelerated learning.

61.19(1) A school may adopt an accelerated learning policy which includes the acceptance of life experience, prior knowledge learned and test-out procedures.

61.19(2) If the school has an accelerated learning policy, the policy shall be a written, published policy that clearly outlines the criteria for acceptance and hours or credit granted or for test-out procedures. The hours or credit granted for accelerated learning shall not exceed 15 percent of the student's entire course of study and shall be documented in the participating student's file.

- a.* After completion of all entrance requirements, a student may elect to sit for one or more academic written tests to evaluate the knowledge about subject matter gained from life experience or prior learning experience.
- b.* A student in a cosmetology arts and sciences course of study may be allowed to test out of a subject by sitting for final examinations covering the basic knowledge gained by a student who attends class sessions, or the school may accept and grant hours for prior or concurrent education and life experience.

c. A student who wishes to receive test-out credit or be granted hours for prior or concurrent education or life experience shall have maintained the academic grades and attendance policy standards set by the school.

d. The school may limit the number of times a student is allowed to sit for a test-out examination of a subject.

645—61.20(157) Mentoring program. Each cosmetology school must have a contract between the student, the school and the salon mentor that includes scheduling, liability insurance and purpose of the mentoring program.

61.20(1) Students shall not begin the mentoring program until they have completed a minimum of 50 percent of the total contact or credit hours and other requirements of the mentoring program established by the school.

61.20(2) Students may participate in a mentoring program for no more than 5 percent of the total contact or credit hours.

61.20(3) Students shall be under supervision of the mentor at all times. Students may perform the following: drape, shampoo, remove color and perm chemicals, remove perm rods, remove rollers, apply temporary rinses, apply reconditioners and rebuilders with the recommendation of the mentor, remove nail polish, file nails, perform hand and arm massage, remove cosmetic preparations, act as receptionist, handle retail sales, sanitize salon, consult with client (chairside manners), perform inventory, order supplies, prepare payroll and pay monthly bills, and hand equipment to the stylist.

61.20(4) The salon mentor's responsibilities include the following: introduce the student to the salon and the client, record the time of the student's attendance in salon, prepare evaluation, discuss performance, and allow the student to shadow.

61.20(5) A salon or school shall not compensate students when the students are participating in the mentoring program.

645—61.21(157) Graduate of a school of cosmetology arts and sciences.

61.21(1) A student shall be considered a graduate when the student has completed the required course of study and met the minimum attendance standard.

61.21(2) Students shall be given a final examination upon completion of the course of study but before graduation.

61.21(3) After passage of the final examination and completion of the entire course of study including all project sheets, students shall be issued a certificate of completion of hours required for the course of study.

645—61.22(157) Records requirements.

61.22(1) Each school of cosmetology arts and sciences shall maintain a complete set of student records. Individual student hours shall be kept on file at the school for two years following graduation.

61.22(2) Each school shall maintain daily teaching logs for all instructors, which shall be kept on file at the school for two years.

61.22(3) Prior to closure, the controlling school shall establish agreements with another school to maintain student and graduate transcripts and records. Prior to closure, the controlling school shall also notify the board of the location of student records as established by the maintenance agreements. Provisions in the agreement must include maintenance of student transcript records for a period of no less than two years.

645—61.23(157) Classrooms used for other educational purposes.

61.23(1) The licensed school of cosmetology arts and sciences shall not be used during scheduled instruction time or work experience time for any use other than for student instruction.

61.23(2) Persons attending other educational classes may not (en masse) pass through a classroom or clinic area while it is in use.

61.23(3) Noise level must not be disruptive to other classes.

61.23(4) Use of classrooms shall not usurp the space available for cosmetology instruction.

645—61.24(157) Public notice.

61.24(1) Advertisements shall indicate that all services are performed by students under the supervision of instructors.

61.24(2) A sign shall be clearly displayed in the entrance of the school that indicates in prominent lettering that students perform all services under the supervision of instructors.

These rules are intended to implement Iowa Code chapters 272C and 157.

[Filed prior to 7/1/52; amended 4/21/53, 5/15/53, 10/1/59, 4/19/71]

[Filed 8/5/77, Notice 6/1/77—published 8/24/77, effective 10/1/77]

[Filed 4/28/78, Notice 12/28/77—published 5/17/78, effective 6/21/78]

[Filed 2/12/82, Notice 12/23/81—published 3/3/82, effective 4/9/82]

[Filed 10/6/83, Notice 7/20/83—published 10/26/83, effective 11/30/83]

[Filed 1/23/84, Notice 12/7/83—published 2/15/84, effective 5/2/84]

[Filed 11/15/84, Notice 9/26/84—published 12/5/84, effective 1/9/85]

[Filed emergency 7/10/87—published 7/29/87, effective 7/10/87]

[Filed 4/29/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]

[Filed 8/4/89, Notice 6/14/89—published 8/23/89, effective 9/27/89]

[Filed 12/4/92, Notice 8/5/92—published 12/23/92, effective 1/29/93]

[Filed 11/2/95, Notice 9/13/95—published 11/22/95, effective 12/27/95]

[Filed 11/15/96, Notice 9/11/96—published 12/4/96, effective 1/8/97]

[Filed 2/6/98, Notice 11/19/97—published 2/25/98, effective 4/1/98]

[Filed 11/24/99, Notice 8/11/99—published 12/15/99, effective 1/19/00]

[Filed 2/13/02, Notice 11/28/01—published 3/6/02, effective 4/10/02]

[Filed 2/12/03, Notice 12/25/02—published 3/5/03, effective 4/9/03]

[Filed 8/14/03, Notice 5/28/03—published 9/3/03, effective 10/8/03]

[Filed 2/3/05, Notice 11/24/04—published 3/2/05, effective 4/6/05]

[Filed 11/4/05, Notice 9/28/05—published 11/23/05, effective 12/28/05]

[Filed 2/1/06, Notice 12/7/05—published 3/1/06, effective 4/5/06]

[Filed 10/24/07, Notice 9/12/07—published 11/21/07, effective 1/1/08]

[Filed 12/5/08, Notice 10/8/08—published 12/31/08, effective 2/4/09]

CHAPTER 62

FEES

[Prior to 7/29/87, Health Department[470] Ch 149]

[Prior to 12/23/92, see 645—60.14(157) for Fees]

Rescinded IAB 12/31/08, effective 2/4/09

CHAPTER 63
SANITATION FOR SALONS AND SCHOOLS OF
COSMETOLOGY ARTS AND SCIENCES

[Prior to 7/29/87, Health Department[470] Chs 149, 150]

[Prior to IAC 12/23/92, see 645—Chapters 60, 61]

645—63.1(157) Definitions. For purposes of these rules, the following definitions shall apply:

“*Disinfectant*” means an agent intended to destroy or irreversibly inactivate specific viruses, bacteria, or pathogenic fungi, but not necessarily their spores, on inanimate surfaces.

“*Disinfection*” means the procedure that kills pathogenic microorganisms, but not necessarily their spores.

“*Dispensary*” means a separate area to be used for storing and dispensing of supplies and sanitizing of all implements.

“*FDA*” means the federal Food and Drug Administration.

“*Germicide*” means an agent that destroys germs.

“*Sanitization*” means the procedure that reduces the level of microbial contamination so that the item or surface is considered safe.

“*School*” means a school of cosmetology arts and sciences.

“*Sterilization*” means the procedure that kills all microorganisms, including their spores.

“*Universal precautions*” means practices consistently used to prevent exposure to blood-borne pathogens and the transmission of disease.

645—63.2(157) Posting of sanitation rules and inspection report. A copy of the most current sanitation rules and the most recent inspection report shall be posted in the reception area at eye level in the salon or school for the information and guidance of all persons employed or studying therein and the general public.

645—63.3(157) Display of licenses. Rescinded IAB 11/21/07, effective 1/1/08.

645—63.4(157) Responsibilities of salon owners and independent contractors.

63.4(1) Each salon owner shall ensure that:

a. Individuals employed for cosmetology arts and sciences services hold a current and active license issued by either the board of cosmetology arts and sciences or the board of barbering; and

b. Licensees employed by the salon or other licensees working in the salon do not exceed their scope of practice; and

c. Licenses and certificates are properly displayed and visible to the public in the reception area at eye level for all individuals employed for cosmetology arts and sciences services. No license which has expired or become invalid for any reason shall be displayed in connection with the practices of the salon.

63.4(2) The salon owner is responsible for all common areas, any employee areas and leased areas.

63.4(3) Independent contractors are responsible:

a. For their own permanently assigned station areas;

b. For common areas on an equal basis;

c. For holding a current and active license issued by the board of cosmetology arts and sciences or the board of barbering; and

d. For ensuring that they do not exceed their scope of practice.

645—63.5(157) Building standards. Salons and schools shall provide:

1. A service area that is equipped with exhaust fans or air filtration equipment that is of sufficient capacity to be capable of removing chemical fumes from the air;

2. A separate area for storing and dispensing of supplies and sanitizing of all implements;

3. A separate area to be used as a reception area;

4. A supply of hot and cold running water and clean lavatory facilities;

5. A supply of safe drinking water;
6. Hand-washing facilities;
7. Adequate lighting; and
8. Work surfaces that are easily cleaned.

645—63.6(157) Salons in residential buildings.

63.6(1) A salon located in a residential building shall comply with all requirements in rule 645—63.5(157).

63.6(2) A separate entrance shall be maintained for salon rooms in a residential building. An exception is that an entrance may allow passage through a non-living area of the residence, i.e., hall, garage or stairway. Any door leading directly from the licensed salon to any portion of the living area of the residence shall be closed at all times during business hours.

645—63.7(157) Salons adjacent to other businesses. A salon operated adjacent to any other business shall be separated by at least a partial partition. When the salon is operated immediately adjacent to a business where food is handled, such establishment shall be entirely separated and any doors between the salon and the business shall be rendered unusable except in an emergency.

645—63.8(157) Smoking. All salons licensed by the board shall comply with the smokefree air Act, 2008 Iowa Acts, House File 2212.

645—63.9(157) Personal cleanliness.

63.9(1) All licensees or students that engage in serving the public shall be neat and clean in person and attire.

63.9(2) All licensees performing services shall thoroughly wash their hands with soap and water or any equally effective cleansing agent immediately before serving each patron.

645—63.10(157) Universal precautions. All licensees shall practice universal precautions consistently by observing the following:

1. Place used needles, razor blades and other sharp instruments in a puncture-resistant container for disposal. These containers shall be located as close to the use area as is practical.
2. Wear disposable gloves to prevent exposure to blood, body fluids containing visible blood, or body fluids to which universal precautions apply.
3. Immediately and thoroughly wash hands and other skin surfaces that are contaminated with blood and other body fluids to which universal precautions apply.
4. Refrain from all direct client care and from handling client-care equipment if the licensee has weeping dermatitis or draining lesions.
5. Any disposable sharp objects that come in contact with blood or other body fluids shall be disposed of in a red, sealable, rigid container (punctureproof) that is clearly labeled for disposal of hazardous waste sharps. Disposable sharp objects include electrology needles which shall be immediately disposed of after use.
6. Disinfect all instruments or implements that do not penetrate or puncture the skin.

645—63.11(157) Minimum equipment and supplies. Salons and schools shall provide:

1. Receptacles to hold all soiled towels, gowns and sheets;
2. Clean storage area to hold all clean towels; and
3. Disinfectant solution that shall be stored in the dispensary area or at each work station for disinfecting instruments and equipment.

645—63.12(157) Disinfecting nonelectrical instruments and equipment.

63.12(1) Before use upon a client, all nonelectrical instruments shall be disinfected by an EPA-registered, hospital-grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity and used according to the manufacturer's instructions.

- a. All disinfected instruments shall be stored in a clean, covered place.
- b. All instruments that have been used on a client or soiled in any manner shall be placed in a proper receptacle.
- c. Disinfectant solutions shall be changed at least once per week and whenever visibly cloudy or dirty.

63.12(2) If the nonelectrical instruments and equipment specified in this rule are sterilized in accordance with the requirements outlined in rule 645—63.15(157), the requirements of this rule shall be fulfilled.

645—63.13(157) Disinfecting electrical instruments.

63.13(1) *Disinfection of clippers.* Clippers shall be disinfected prior to each use with an EPA-registered, hospital-grade disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity and used according to the manufacturer's instructions.

63.13(2) *Cleaning and disinfection standards for electric file bits.*

- a. After each use, diamond, carbide, natural and metal bits shall be cleaned by either:
 - (1) Using an ultrasonic cleaner; or
 - (2) Immersing each bit in acetone for five to ten minutes.
- b. Immediately after the cleaning of all visible debris, diamond, carbide, natural and metal bits shall be disinfected by complete immersion in an appropriate disinfectant before use on the next client.
- c. Buffing bits and chamois shall be cleaned with soap and water or washed with detergent in a dishwasher or washing machine following use on each client.
- d. Arbor or sanding bands or sleeves are single-use items and shall be discarded immediately after use.

645—63.14(157) Instruments and supplies that cannot be disinfected. All instruments and supplies that come into direct contact with a patron and cannot be disinfected, for example, cotton pads, sponges, emery boards, and neck strips, shall be disposed of in a waste receptacle immediately after use.

645—63.15(157) Sterilizing instruments. Before use upon a patron in schools and salons, cuticle nippers, tweezers and comedone extractors shall first be cleaned with detergent and water and then sterilized by one of the following methods:

1. Steam sterilizer, registered and listed with the FDA and used according to the manufacturer's instructions;
2. Dry heat sterilizer, registered and listed with the FDA and used according to the manufacturer's instructions; or
3. Sterilization equipment, calibrated to ensure that it reaches the temperature required by manufacturer's instructions.

645—63.16(157) Sanitary method for creams, cosmetics, dusters and styptics.

63.16(1) Liquids, creams, powders and cosmetics used for patrons must be kept in closed, labeled containers. All creams, makeups and other semisolid substances shall be removed from containers with a clean, sanitized applicator. Applicators made of a washable, nonabsorbent material shall be sanitized before being used again. Applicators made of wood shall be discarded after one use.

63.16(2) The use of a styptic pencil is strictly prohibited; its presence in the workplace shall be prima facie evidence of its use. Any material used to stop the flow of blood shall be used in liquid or powder form.

63.16(3) Rescinded IAB 3/1/06, effective 4/5/06.

63.16(4) All fluids, semifluids and powders must be dispensed with an applicator or from a shaker, dispenser pump, or spray-type container.

645—63.17(157) Disposal of materials.

63.17(1) Any disposable material that would release blood or other potentially infectious materials in a liquid or semiliquid state if compressed shall be placed in a red hazardous waste bag and disposed of in accordance with the regulation for removal of hazardous waste.

63.17(2) Any disposable sharp objects that come in contact with blood or other body fluids shall be disposed of in a red, sealable, rigid container (punctureproof) that is clearly labeled for disposal of hazardous waste sharps.

63.17(3) Hazardous waste containers and bags shall be available for use at all times when services are being performed. The absence of containers shall be prima facie evidence of noncompliance.

63.17(4) Emery boards, cosmetic sponges, cosmetic applicators, toe separators and orangewood sticks must be discarded after use or given to the client.

645—63.18(157) Prohibited hazardous substances and use of products and equipment.

63.18(1) No salon or school shall have on the premises cosmetic products containing substances which have been banned or otherwise deemed hazardous or deleterious by the FDA for use in cosmetic products. Prohibited products include, but are not limited to, any product containing liquid methyl methacrylate monomer and methylene chloride. No product shall be used in a manner that is not approved by the FDA. The presence of the product in a salon or school is prima facie evidence of that product's use in the salon or school.

63.18(2) No salon or school shall have on the premises any razor-edged device or tool which is designed to remove skin with the exception of cuticle nippers used for manicure or pedicure services. If such equipment is on site, it shall be prima facie evidence of its use.

63.18(3) Nail buffers.

a. A nail buffer that can be sanitized may be used more than once, but it must be sanitized before use on the next client.

b. If a nail buffer cannot be sanitized, the nail buffer shall not be used for more than one client.

c. The presence of chamois buffers in the workplace shall be prima facie evidence of their use.

645—63.19(157) Proper protection of neck. A shampoo apron, haircloth, or similar article shall not be placed directly against the neck of the patron but shall be kept from direct contact with the patron by means of a paper neckband or clean towel. A neckband of paper shall not be used more than once. Towels or cloth neckbands shall not be used more than once without proper laundering.

645—63.20(157) Proper laundering and storage. All cloth towels, robes and similar items shall be laundered in a washing machine with laundry detergent used according to manufacturer's directions. A clean storage area shall be provided for clean towels and linen, and a hamper or receptacle must be provided for all soiled towels, robes and linens.

645—63.21(157) Pets. Dogs (except dogs providing assistance to individuals with physical disabilities), cats, birds, or other animals shall not be permitted in a salon. This rule does not apply to fish in an aquarium provided the aquarium is maintained in a sanitary condition.

645—63.22(157) Workstations.

63.22(1) All workstations shall be covered with nonabsorbent, washable material.

63.22(2) Workstations and flooring in work areas shall be kept clean and in good repair.

645—63.23(157) Records. Client records and appointment records shall be maintained for a period of no less than three years following the last date of entry. Proper safeguards shall be provided to ensure the safety of these records from destructive elements.

645—63.24(157) Salons providing electrology or esthetics. A salon in which electrology or esthetics is practiced shall follow the sanitation rules and requirements pertaining to all salons and shall also meet the following requirements:

1. The electrology or esthetics room shall have adequate space, lighting and ventilation.
2. The floors in the immediate area where the electrology or esthetics is performed shall have an impervious, smooth, washable surface.
3. All service table surfaces shall be constructed of impervious, easily cleanable material.
4. Needles, probes and lancets shall be single-client use and disposable.

645—63.25(157) Cleaning and disinfecting whirlpool foot spas and hydrotherapy baths.

63.25(1) As used in this rule, “whirlpool foot spa,” “foot spa,” “whirlpool,” or “spa” is defined as any basin using circulating or still water.

63.25(2) After use for each patron, each whirlpool foot spa shall be cleaned and disinfected in the following manner:

- a. All water shall be drained and all debris shall be removed from the spa basin.
- b. The spa basin must be cleaned with soap or detergent and water.
- c. The spa basin must be disinfected with an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer’s instructions.
- d. The spa basin and hydrotherapy bath must be wiped dry with a clean towel.

63.25(3) At the end of each day, each whirlpool foot spa shall be cleaned and disinfected in the following manner:

- a. The screen shall be removed, all debris trapped behind the screen shall be removed, and the screen and the inlet shall be washed with soap or detergent and water.
- b. Before the screen is replaced, it shall be completely immersed in an EPA-registered disinfectant with demonstrated bactericidal, fungicidal, and virucidal activity which must be used according to the manufacturer’s instructions.
- c. The spa system shall be flushed with low sudsing soap and warm water for at least ten minutes, after which the spa shall be rinsed and drained.

63.25(4) Every other week (biweekly), after being cleaned and disinfected as provided in subrule 63.25(3), each whirlpool foot spa and hydrotherapy bath shall be cleaned and disinfected in the following manner:

- a. The spa basin and hydrotherapy bath shall be filled completely with water and one teaspoon of 5.25 percent bleach or recommended whirlpool disinfectant for each one gallon of water, or a solution of sodium hypochlorite (bleach) of approximately 50 ppm used according to the manufacturer’s instructions.
- b. The spa or bath system shall be flushed with the bleach or recommended whirlpool disinfectant and water solution, or sodium hypochlorite (bleach) solution, for five to ten minutes and allowed to sit for six to ten hours.
- c. The spa or bath system shall be drained and flushed with water before use for a patron.

63.25(5) For each foot spa and hydrotherapy bath, a record shall be made of the date and time of each cleaning and disinfecting as required by subrules 63.25(3) and 63.25(4), and shall indicate whether the cleaning was a daily or biweekly cleaning. This record shall be made at or near the time of cleaning and disinfecting. Records of cleaning and disinfecting shall be made available upon request by a patron, inspector or investigator. The record must be signed by a licensee and include the licensee’s license number beside each recorded cleaning event.

63.25(6) A violation of this rule may result in an administrative fine or disciplinary action or both. A separate violation may result for each foot spa and hydrotherapy bath that is not in compliance with this rule.

63.25(7) A licensee who provides services related to whirlpool foot spas and hydrotherapy baths shall submit a report to the board within 30 days of any incident in which provision of such services resulted in physical injury requiring medical attention. Failure to comply with this requirement shall result in disciplinary action by the board. The report shall include a description of the following:

- a. The procedures;
- b. The physical condition of client;

c. The adverse occurrence, including:

- (1) Symptoms of any complications including, but not limited to, onset and type of symptoms;
- (2) A description of the services provided that caused the situation;
- (3) A description of the procedure that was followed by the licensee;
- (4) A description of the client's condition on termination of any procedures undertaken;
- (5) If a client is referred to a physician, a statement providing the physician's name and address if known.

known.

These rules are intended to implement Iowa Code sections 147.7, 147.46, 157.6, and 157.14.

[Filed 10/13/67]

[Filed 9/2/77, Notice 7/13/77—published 9/21/77, effective 11/1/77]

[Filed 4/24/79, Notice 2/7/79—published 5/16/79, effective 7/1/79]

[Filed 11/15/84, Notice 9/26/84—published 12/5/84, effective 1/9/85]

[Filed 11/15/84, Notice 10/10/84—published 12/5/84, effective 1/9/85]

[Filed 5/12/87, Notice 12/3/87—published 6/3/87, effective 7/8/87]

[Filed emergency 7/10/87—published 7/29/87, effective 7/10/87]

[Filed 4/29/88, Notice 3/23/88—published 5/18/88, effective 6/22/88]

[Filed 8/4/89, Notice 6/14/89—published 8/23/89, effective 9/27/89]

[Filed 2/2/90, Notice 12/27/89—published 2/21/90, effective 3/28/90]

[Filed 12/4/92, Notice 8/5/92—published 12/23/92, effective 1/29/93]

[Filed 2/11/94, Notice 10/27/93—published 3/2/94, effective 4/6/94]

[Filed 4/19/95, Notice 2/1/95—published 5/10/95, effective 6/14/95]

[Filed 11/2/95, Notice 9/13/95—published 11/22/95, effective 12/27/95]

[Filed 11/15/96, Notice 9/11/96—published 12/4/96, effective 1/8/97]

[Filed 2/19/99, Notice 12/30/98—published 3/10/99, effective 4/14/99]

[Filed 8/14/02, Notice 5/29/02—published 9/4/02, effective 10/9/02]

[Filed 8/14/03, Notice 5/28/03—published 9/3/03, effective 10/8/03]

[Filed 2/1/06, Notice 12/7/05—published 3/1/06, effective 4/5/06]

[Filed 10/24/07, Notice 9/12/07—published 11/21/07, effective 1/1/08]

[Filed 12/5/08, Notice 10/8/08—published 12/31/08, effective 2/4/09]

CHAPTER 64
CONTINUING EDUCATION FOR COSMETOLOGY ARTS AND SCIENCES

[Prior to 7/29/87, Health Department[470] Ch 151]

[Prior to 12/23/92, see 645—Chapter 62]

645—64.1(157) Definitions. For the purpose of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Approved program/activity*” means a continuing education program/activity meeting the standards set forth in these rules.

“*Audit*” means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period.

“*Board*” means the board of cosmetology arts and sciences.

“*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 or entity licensed to practice pursuant to Iowa Code chapter 157 and 645—Chapters 60 to 65, Iowa Administrative Code.

“*Prescribed practice*” means an area of specialty within the scope of cosmetology arts and sciences.

645—64.2(157) Continuing education requirements.

64.2(1) The biennial continuing education compliance period shall begin on April 1 of one year and end on March 31 two years later.

64.2(2) Beginning April 1, 2008, a license that is renewed on April 1, 2008, that was originally scheduled to be renewed one year later as described in 645—paragraph 60.8(1) “b” shall not be required to meet continuing education requirements until April 1, 2010. This extension does not apply to a license(s) originally due for renewal on April 1, 2008.

64.2(3) Each biennium:

a. A licensee in this state shall be required to complete a minimum of 8 hours of board-approved continuing education, of which 4 hours shall be in the prescribed practice discipline. A minimum of 2 hours of the 8 hours shall be in the content areas of Iowa cosmetology law and rules and sanitation. Individuals holding more than one active license shall obtain 4 hours of board-approved continuing education in each prescribed practice discipline and an additional 2 hours in the content areas of Iowa cosmetology law and rules and sanitation.

b. A licensee who is an instructor of cosmetology arts and sciences shall obtain 8 hours in teaching methodology in addition to meeting all continuing education requirements for renewal of the instructor’s practice license. A licensee must comply with all conditions of licensure including obtaining a minimum of 2 hours each biennium specific to Iowa cosmetology law and administrative rules as specified in subrule 64.3(2), paragraph “i.”

c. A licensee currently licensed in Iowa but practicing exclusively in another state may comply with Iowa continuing education requirements for license renewal by meeting the continuing education requirements of the state or states where the licensee practices. The licensee living and practicing in a state which has no continuing education requirement for renewal of a license shall not be required to meet Iowa’s continuing education requirement but shall pay all renewal fees when due.

64.2(4) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used.

64.2(5) 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.

64.2(6) No hours of continuing education shall be carried over into the next biennium. A licensee whose license was reactivated during the current renewal compliance period may use continuing education earned during the compliance period for the first renewal following reactivation.

64.2(7) It is the responsibility of each licensee to finance the cost of continuing education.

645—64.3(157,272C) Standards.

64.3(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, 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.

64.3(2) *Specific criteria.*

a. Continuing education hours of credit may be obtained by attending continuing education activities.

b. The licensee may attend programs on product knowledge, methods, and systems. Continuing education shall be directly related to the technique and theory specific to the practice of cosmetology arts and sciences. Business classes specific to owning or managing a salon are acceptable. No direct selling of products is allowed as part of a continuing education offering.

c. The licensee may participate in continuing education courses/programs that are approved by the board of barbering providing criteria in these rules are met.

d. The licensee may participate in independent study as defined in 645—64.1(157). A maximum of two hours of independent study per biennium will be allowed. Independent study must be related to either Iowa cosmetology law and administrative rules or sanitation.

e. In addition to fulfilling the requirements in 64.2(1), those persons holding an instructor's license must complete a minimum of eight hours of continuing education approved by the board in the area of teaching methodology.

f. The licensee shall obtain at least four hours in each area of prescribed practice for each cosmetology license held.

g. Continuing education shall be obtained by attending programs that meet the criteria in subrule 64.3(1) and are approved or offered by the following organizations. Other individuals or groups may offer through one of the organizations listed in this paragraph continuing education programs that meet the criteria in rule 645—64.3(157,272C).

- (1) National, state or local associations of cosmetology arts and sciences;
- (2) Schools and institutes of cosmetology arts and sciences;
- (3) Universities, colleges or community colleges;
- (4) National, state or local associations of barbers;
- (5) Barber schools or institutes;

- (6) Manufacturers of laser or microdermabrasion products;
- (7) Institutes of laser technology.

h. Two hours of continuing education per biennium must be specific to Iowa cosmetology law and administrative rules.

i. A licensee who is a presenter of a continuing education program that meets criteria in 645—64.3(157,272C) may receive credit once per biennium for the initial presentation of the program. The licensee may receive the same number of hours granted the attendees.

645—64.4(157,272C) Audit of continuing education report. Rescinded IAB 12/31/08, effective 2/4/09.

645—64.5(157,272C) Automatic exemption. Rescinded IAB 12/31/08, effective 2/4/09.

645—64.6(157,272C) Grounds for disciplinary action. Rescinded IAB 12/31/08, effective 2/4/09.

645—64.7(157,272C) Continuing education waiver for active practitioners. Rescinded IAB 8/31/05, effective 10/5/05.

645—64.8(157,272C) Continuing education exemption for inactive practitioners. Rescinded IAB 8/31/05, effective 10/5/05.

645—64.9(157,272C) Continuing education exemption for disability or illness. Rescinded IAB 12/31/08, effective 2/4/09.

645—64.10(157,272C) Reinstatement of inactive practitioners. Rescinded IAB 8/31/05, effective 10/5/05.

645—64.11(272C) Hearings. Rescinded IAB 8/31/05, effective 10/5/05.

These rules are intended to implement Iowa Code section 272C.2 and chapter 157.

[Filed 6/20/78, Notice 5/3/78—published 7/12/78, effective 8/16/78]

[Filed 8/3/79, Notice 6/27/79—published 8/22/79, effective 9/26/79]

[Filed 2/12/82, Notice 12/23/81—published 3/3/82, effective 4/9/82]

[Filed 10/6/83, Notice 7/20/83—published 10/26/83, effective 11/30/83]

[Filed emergency 8/31/84—published 9/26/84, effective 8/31/84]

[Filed 10/4/85, Notice 8/28/85—published 10/23/85, effective 11/27/85]

[Filed emergency 7/10/87—published 7/29/87, effective 7/10/87]

[Filed 5/25/89, Notice 4/5/89—published 6/14/89, effective 7/19/89]

[Filed 8/4/89, Notice 6/14/89—published 8/23/89, effective 9/27/89]

[Filed 2/2/90, Notice 12/27/89—published 2/21/90, effective 3/28/90]

[Filed 12/4/92, Notice 8/5/92—published 12/23/92, effective 1/29/93]

[Filed 2/11/94, Notice 10/27/93—published 3/2/94, effective 4/6/94]

[Filed 4/19/95, Notice 2/1/95—published 5/10/95, effective 6/14/95]

[Filed 11/2/95, Notice 9/13/95—published 11/22/95, effective 12/27/95]

[Filed 11/15/96, Notice 9/11/96—published 12/4/96, effective 1/8/97]

[Filed 2/19/99, Notice 12/2/98—published 3/10/99, effective 4/14/99]

[Filed 2/1/01, Notice 11/29/00—published 2/21/01, effective 3/28/01]

[Filed 2/13/02, Notice 11/28/01—published 3/6/02, effective 4/10/02]

[Filed 8/5/05, Notice 5/25/05—published 8/31/05, effective 10/5/05][◇]

[Filed 11/4/05, Notice 9/28/05—published 11/23/05, effective 12/28/05]
[Filed 1/11/07, Notice 11/22/06—published 1/31/07, effective 3/7/07]
[Filed 10/24/07, Notice 9/12/07—published 11/21/07, effective 1/1/08]
[Filed 12/5/08, Notice 10/8/08—published 12/31/08, effective 2/4/09]

◊ Two or more ARCs

CHAPTER 65
DISCIPLINE FOR COSMETOLOGY ARTS AND SCIENCES LICENSEES,
INSTRUCTORS, SALONS, AND SCHOOLS

[Prior to 7/29/87, Health Department[470] Ch 151]

[Prior to IAC 12/23/92, see 645—Chapter 62]

645—65.1(157,272C) Definitions.

“*Board*” means the board of cosmetology arts and sciences.

“*Discipline*” means any sanction the board may impose upon cosmetology arts and sciences licensees, instructors, salons, and schools.

“*Licensure*” means the granting of a license to any person or entity licensed to practice pursuant to Iowa Code chapter 157 and 645—Chapters 60 to 65, Iowa Administrative Code.

645—65.2(157,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions provided in rule 645—65.3(157,272C) when the board determines that any of the following acts or offenses have occurred:

65.2(1) Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, the following:

- a. An intentional perversion of the truth in making application for a license to practice in this state;
- b. 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
- c. 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.

65.2(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 licensees 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 licensee acting in the same or similar circumstances;
- d. Failure to conform to the minimal standard of acceptable and prevailing practice in this state.

65.2(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.

65.2(4) The use of untruthful or improbable statements in advertisements. Use of untruthful or improbable statements in advertisements includes, but is not limited to, acts which constitute making false, deceptive, misleading or fraudulent representations in the practice of the profession.

65.2(5) Practice outside the scope of the profession.

65.2(6) Habitual intoxication or addiction to the use of drugs.

a. The inability of a licensee to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

b. The excessive use of drugs which may impair a licensee’s ability to practice with reasonable skill or safety.

65.2(7) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

65.2(8) Falsification of client records.

65.2(9) Acceptance of any fee by fraud or misrepresentation.

65.2(10) Misappropriation of funds.

65.2(11) Negligence in the practice of the profession. Negligence in the practice of the profession includes a failure to exercise due care, including improper delegation of duties or supervision of

employees or other individuals, whether or not injury results; or any conduct, practice or conditions which impair a practitioner's ability to safely and skillfully practice the profession.

65.2(12) Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

65.2(13) Violation of a regulation, rule, or law of this state, another state, or the United States, which relates to the practice of the profession.

65.2(14) Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory or country; or failure to report such action within 30 days of the final action by such licensing authority. 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, such report shall be expunged from the records of the board.

65.2(15) Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the individual's practice of the profession in another state, district, territory or country.

65.2(16) Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

65.2(17) Failure to notify the board within 30 days after occurrence of any judgment or settlement of a malpractice claim or action.

65.2(18) Engaging in any conduct that subverts or attempts to subvert a board investigation.

65.2(19) Failure to comply with a subpoena issued by the board or failure to cooperate with an investigation of the board.

65.2(20) Failure to respond within 30 days of receipt of communication from the board which was sent by registered or certified mail.

65.2(21) Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

65.2(22) Failure to pay costs assessed in any disciplinary action.

65.2(23) Knowingly aiding, assisting, or advising a person to unlawfully practice the profession.

65.2(24) Failure to report a change of name or address within 30 days after the occurrence.

65.2(25) Failure to return the salon license to the board within 30 days of discontinuance of business under that license.

65.2(26) Representing oneself as a licensed individual or entity when one's license has been suspended or revoked, or when one's license is on inactive status.

65.2(27) Permitting another person to use one's license for any purpose.

65.2(28) Permitting an unlicensed employee or person under the licensee's or the licensed school's or salon's control to perform activities that require a license.

65.2(29) Permitting a licensed person under the licensee's or the licensed school's or salon's control to practice outside the scope of the person's license.

65.2(30) Submission of a false report of continuing education or failure to submit the biennial report of continuing education.

65.2(31) Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

65.2(32) 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 is not limited to, the following:

- a. Verbally or physically abusing a client or coworker.
- b. Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a client or coworker.
- c. Betrayal of a professional confidence.
- d. Engaging in a professional conflict of interest.
- e. Mental or physical inability reasonably related to and adversely affecting the licensee's ability to practice in a safe and competent manner.

f. Being adjudged mentally incompetent by a court of competent jurisdiction.

65.2(33) Performing any of those practices coming within the jurisdiction of the board pursuant to Iowa Code chapter 157, with or without compensation, in any place other than a licensed salon, a licensed school of cosmetology arts and sciences, or a licensed barbershop as defined in Iowa Code section 158.1. EXCEPTION: A licensee may practice at a location that is not a licensed salon or school of cosmetology arts and sciences when extenuating circumstances related to the physical or mental disability or death of a customer prevent the customer from seeking services at the licensed salon or school.

65.2(34) Repeated failure to comply with standard 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.

65.2(35) 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.

65.2(36) A person is determined by the investigator to be providing cosmetology services and leaving a salon at the time of inspection, which shall be prima facie evidence that an unlicensed person is providing services for which a license is required.

645—65.3(157,272C) 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—65.4(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 for 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—65.5(157) Civil penalties against nonlicensees. The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 157.13(1). In addition to the procedures set forth in Iowa Code chapter 157, this chapter shall apply.

65.5(1) Unlawful practices. Practices by an unlicensed person or establishment which are subject to civil penalties include, but are not limited to:

- a.* Acts or practices by unlicensed persons which require licensure to practice cosmetology arts and sciences under Iowa Code chapter 157.

- b.* Acts or practices by unlicensed establishments which require licensure as a salon or school of cosmetology arts and sciences under Iowa Code chapter 157.
- c.* Use or attempted use of a licensee's certificate or use or attempted use of an expired, suspended, revoked, or nonexistent certificate.
- d.* Falsely impersonating a person licensed under Iowa Code chapter 157.
- e.* Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.
- f.* Other violations of Iowa Code chapter 157.
- g.* Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

65.5(2) Investigations. The board is authorized by Iowa Code subsection 17A.13(1) and Iowa Code chapter 157 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

65.5(3) Subpoenas. Pursuant to Iowa Code section 17A.13(1) and Iowa Code chapter 157, the board is authorized in connection with an investigation of an unlicensed person or establishment to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in 645—9.5(17A,272C).

65.5(4) Notice of intent to impose civil penalties. The notice of the board's intent to issue an order to require compliance with Iowa Code chapter 157 and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice shall include the following:

- a.* A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b.* Reference to the particular sections of the statutes and rules involved.
- c.* A short, plain statement of the alleged unlawful practices.
- d.* The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 157.
- e.* Notice of the nonlicensee's right to a hearing and the time frame in which the hearing must be requested.
- f.* The address to which written request for hearing must be made.

65.5(5) Requests for hearings.

a. Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa Rule of Civil Procedure 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

b. If a request for hearing is not timely made, the board chair or the chair's designee may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 157, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

c. If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

d. A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 157 at any stage of the proceeding upon mutual consent of the board.

e. The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published. Hearings shall be open to the public.

65.5(6) Factors for board consideration. The board may consider the following when determining the amount of civil penalty to impose, if any:

- a.* Whether the amount imposed will be a substantial economic deterrent to the violation.
- b.* The circumstances leading to or resulting in the violation.
- c.* The severity of the violation and the risk of harm to the public.
- d.* The economic benefits gained by the violator as a result of noncompliance.
- e.* The welfare or best interest of the public.

65.5(7) Enforcement options. In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent agreement as provided in Iowa Code chapter 157.

65.5(8) Judicial review.

a. A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.

b. The board shall notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.

c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

d. An action to enforce an order under this rule may be joined with an action for an injunction pursuant to Iowa Code section 147.83.

645—65.6(157) Order for mental, physical, or clinical competency examination or alcohol or drug screening. Rescinded IAB 12/31/08, effective 2/4/09.

These rules are intended to implement Iowa Code chapters 147, 157 and 272C.

[Filed 10/4/85, Notice 8/28/85—published 10/23/85, effective 11/27/85]

[Filed emergency 7/10/87—published 7/29/87, effective 7/10/87]

[Filed 8/4/89, Notice 6/14/89—published 8/23/89, effective 9/27/89]

[Filed 2/2/90, Notice 12/27/89—published 2/21/90, effective 3/28/90]

[Filed 9/27/91, Notice 6/12/91—published 10/16/91, effective 11/20/91]

[Filed 12/4/92, Notice 8/5/92—published 12/23/92, effective 1/29/93]

[Filed 2/11/94, Notice 10/27/93—published 3/2/94, effective 4/6/94]

[Filed 5/28/99, Notice 4/7/99—published 6/16/99, effective 7/21/99]

[Filed 2/1/01, Notice 11/29/00—published 2/21/01, effective 3/28/01]

[Filed 8/14/03, Notice 5/28/03—published 9/3/03, effective 10/8/03]

[Filed 2/3/05, Notice 11/24/04—published 3/2/05, effective 4/6/05]

[Filed 8/5/05, Notice 5/25/05—published 8/31/05, effective 10/5/05]

[Filed 11/4/05, Notice 8/31/05—published 11/23/05, effective 12/28/05]

[Filed 2/1/06, Notice 11/23/05—published 3/1/06, effective 4/5/06]

[Filed 2/1/06, Notice 12/7/05—published 3/1/06, effective 4/5/06]

[Filed 10/24/07, Notice 9/12/07—published 11/21/07, effective 1/1/08]

[Filed 12/5/08, Notice 10/8/08—published 12/31/08, effective 2/4/09]

CHAPTER 10

INTEREST, PENALTY, EXCEPTIONS TO PENALTY, AND JEOPARDY ASSESSMENTS

[Prior to 12/17/86, Revenue Department[730]]

Rules 701—10.20(421) to 701—10.111(422A) are excerpted from 701—Chs 12, 30, 44, 46, 52, 58, 63, 81, 86, 88, 89, 104, IAB 1/23/91

701—10.1(421) Definitions. As used in the rules contained herein, the following definitions apply unless the context otherwise requires:

10.1(1) “*Department*” means the department of revenue.

10.1(2) “*Director*” means the director of the department or authorized representative.

10.1(3) “*Taxes*” means all taxes and charges arising under Title X of the Iowa Code, which include but are not limited to individual income, withholding, corporate income, franchise, sales, use, hotel/motel, railroad fuel, equipment car, replacement tax, statewide property tax, motor vehicle fuel, inheritance, estate and generation skipping transfer taxes and the environmental protection charge imposed upon petroleum diminution due and payable to the state of Iowa.

701—10.2(421) Interest. Except where a different rate of interest is provided by Title X of the Iowa Code, the rate of interest on interest-bearing taxes and interest-bearing refunds arising under Title X is fixed for each calendar year by the director. In addition to any penalty computed, there shall be added interest as provided by law from the original due date of the return. Any portion of the tax imposed by statute which has been erroneously refunded and is recoverable by the department shall bear interest as provided in Iowa Code section 421.7, subsection 2, from the date of payment of the refund, considering each fraction of a month as an entire month. Interest which is not judgment interest is not payable on sales and use tax, local option tax, and hotel and motel tax refunds. *Herman M. Brown v. Johnson*, 248 Iowa 1143, 82 N.W.2d 134 (1957); *United Telephone Co. v. Iowa Department of Revenue*, 365 N.W.2d 647 (Iowa 1985). However, interest which is not judgment interest accrues on such refunds on or after January 1, 1995, and is payable on sales and use tax, local option tax and hotel and motel tax refunds on or after January 1, 1995.

10.2(1) Calendar year 1982. The rate of interest upon all unpaid taxes which are due as of January 1, 1982, will be 17 percent per annum (1.4% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after, January 1, 1982. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1982. This interest rate of 17 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1982.

EXAMPLES:

1. The taxpayer, X corporation, owes corporate income taxes assessed to it for the year 1975. The assessment was made by the department in 1977. On January 1, 1982, that assessment had not been paid. The rate of interest on the unpaid tax assessed has accrued at the rate of 9 percent per annum (0.75% per month) through December 31, 1981. Commencing on January 1, 1982, the rate of interest on the unpaid tax will thereafter accrue at the rate of 17 percent per annum for 1982 (1.4% per month). If the tax liability is not paid in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

2. The taxpayer, Y, owes retail sales taxes assessed to it for the audit period January 1, 1979, through December 31, 1982. The assessment is made on March 1, 1983. For the tax periods in which the tax became due prior to January 1, 1982, the interest rate on such unpaid sales taxes accrued at 9 percent per annum (0.75% per month). Commencing on January 1, 1982, the entire unpaid portion of the tax assessed which was delinquent at that time will begin to accrue interest at the rate of 17 percent per annum. Those portions of the tax assessed first becoming delinquent in 1982 will bear interest at the rate of 17 percent per annum (1.4% per month). In the event that any portion of the tax assessed remains unpaid on January 1, 1983, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

3. The taxpayer, Z, files a refund claim for 1978 individual income taxes in March 1982. The refund claim is allowed in May 1982, and is paid. Z is entitled to receive interest at the rate of 9 percent per annum (0.75% per month) upon the refunded tax accruing through December 31, 1981, and is entitled

to interest at the rate of 17 percent per annum (1.4% per month) upon such tax from January 1, 1982, until the refund is paid.

4. A's 1981 individual income tax liability becomes delinquent on May 1, 1982. A owes interest, commencing on May 1, 1982, at the rate of 17 percent per annum (1.4% per month). In the event that A does not pay the liability in 1982, the rate of interest will then accrue in 1983 in accordance with the rate fixed by the director as set forth in Iowa Code section 421.7.

5. Decedent died December 15, 1976. The inheritance tax was due 12 months after death, or December 15, 1977. Prior to the due date, the estate was granted an extension of time, until September 1, 1978, to file the return and pay the tax due. The tax, however, was paid March 15, 1982. Interest accrues on the unpaid tax during the period of the extension of time (December 15, 1977, to September 1, 1978) at the rate of 6 percent per annum. Interest accrues on the delinquent tax from September 1, 1978, through December 31, 1981, at the rate of 8 percent per annum. Interest accrues on the delinquent tax from January 1, 1982, to the date of payment on March 15, 1982, at the rate of 17 percent per annum.

6. B files a refund for sales taxes paid for the periods January 1, 1979, through December 31, 1982, in March 1983. The refund is allowed in May 1983. Since no interest is payable on sales tax refunds, B is not entitled to any interest. *Herman M. Brown Co. v. Johnson*, 248 Iowa 1143 (1957). However, interest accrues and is payable on and after January 1, 1995.

The examples set forth in these rules are not meant to be all-inclusive. In addition, other rules set forth the precise circumstance when interest begins to accrue and whether interest accrues for each month or fraction of a month or annually as provided by law. Interest accrues as provided by law, regardless of whether the department has made a formal assessment of tax.

10.2(2) Calendar year 1983. The rate of interest upon all unpaid taxes which are due as of January 1, 1983, will be 14 percent per annum (1.2% per month). This interest rate will accrue on taxes which were due and unpaid as of, or after January 1, 1983. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1983. This interest rate of 14 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1983.

10.2(3) Calendar year 1984. The rate of interest upon all unpaid taxes which are due as of January 1, 1984, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1984. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1984. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1984.

10.2(4) Calendar year 1985. The rate of interest upon all unpaid taxes which are due as of January 1, 1985, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1985. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1985. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1985.

10.2(5) Calendar year 1986. The interest upon all unpaid taxes which are due as of January 1, 1986, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1986. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1986. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1986.

10.2(6) Calendar year 1987. The interest upon all unpaid taxes which are due as of January 1, 1987, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1987. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1987. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1987.

10.2(7) *Calendar year 1988.* The interest upon all unpaid taxes which are due as of January 1, 1988, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1988. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1988. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1988.

10.2(8) *Calendar year 1989.* The interest upon all unpaid taxes which are due as of January 1, 1989, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1989. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1989. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1989.

10.2(9) *Calendar year 1990.* The interest upon all unpaid taxes which are due as of January 1, 1990, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after January 1, 1990. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1990. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1990.

10.2(10) *Calendar year 1991.* The interest upon all unpaid taxes which are due as of January 1, 1991, will be 12 percent per annum (1.0% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1991. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1991. This interest rate of 12 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1991.

10.2(11) *Calendar year 1992.* The interest upon all unpaid taxes which are due as of January 1, 1992, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1992. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1992. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1992.

10.2(12) *Calendar year 1993.* The interest upon all unpaid taxes which are due as of January 1, 1993, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1993. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1993. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1993.

10.2(13) *Calendar year 1994.* The interest upon all unpaid taxes which are due as of January 1, 1994, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1994. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1994. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1994.

10.2(14) *Calendar year 1995.* The interest upon all unpaid taxes which are due as of January 1, 1995, will be 9 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1995. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after January 1, 1995. This interest rate of 9 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1995.

10.2(15) *Calendar year 1996.* The interest upon all unpaid taxes which are due as of January 1, 1996, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1996. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before, on, or after

January 1, 1996. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1996.

10.2(16) *Calendar year 1997.* The interest rate upon all unpaid taxes which are due as of January 1, 1997, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1997. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1997. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1997.

10.2(17) *Calendar year 1998.* The interest rate upon all unpaid taxes which are due as of January 1, 1998, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1998. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1998. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1998.

10.2(18) *Calendar year 1999.* The interest rate upon all unpaid taxes which are due as of January 1, 1999, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 1999. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 1999. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 1999.

10.2(19) *Calendar year 2000.* The interest rate upon all unpaid taxes which are due as of January 1, 2000, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2000. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2000. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2000.

10.2(20) *Calendar year 2001.* The interest rate upon all unpaid taxes which are due as of January 1, 2001, will be 11 percent per annum (0.9% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2001. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2001. This interest rate of 11 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2001.

10.2(21) *Calendar year 2002.* The interest rate upon all unpaid taxes which are due as of January 1, 2002, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2002. In addition, this interest rate will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2002. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2002.

10.2(22) *Calendar year 2003.* The interest rate upon all unpaid taxes which are due as of January 1, 2003, will be 7 percent per annum (0.6% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2003. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2003. This interest rate of 7 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2003.

10.2(23) *Calendar year 2004.* The interest rate upon all unpaid taxes which are due as of January 1, 2004, will be 6 percent per annum (0.5% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2004. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2004. This interest rate of 6 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2004.

10.2(24) *Calendar year 2005.* The interest rate upon all unpaid taxes which are due as of January 1, 2005, will be 6 percent per annum (0.5% per month). This interest rate will accrue on taxes which are

due and unpaid as of, or after, January 1, 2005. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2005. This interest rate of 6 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2005.

10.2(25) Calendar year 2006. The interest rate upon all unpaid taxes which are due as of January 1, 2006, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2006. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2006. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2006.

10.2(26) Calendar year 2007. The interest rate upon all unpaid taxes which are due as of January 1, 2007, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2007. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2007. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2007.

10.2(27) Calendar year 2008. The interest rate upon all unpaid taxes which are due as of January 1, 2008, will be 10 percent per annum (0.8% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2008. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2008. This interest rate of 10 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2008.

10.2(28) Calendar year 2009. The interest rate upon all unpaid taxes which are due as of January 1, 2009, will be 8 percent per annum (0.7% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2009. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2009. This interest rate of 8 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2009.

This rule is intended to implement Iowa Code section 421.7.

701—10.3(422,450,452A) Interest on refunds. For those taxes on which interest accrues on refunds under Iowa Code sections 422.25(3), 422.28, 450.94, and 452A.65, interest shall accrue through the month in which the refund is mailed to the taxpayer and no further interest will accrue unless the department did not use the most current address as shown on the latest return or refund claim filed with the department.

This rule is intended to implement Iowa Code sections 422.25(3), 422.28, 450.94 and 452A.65.

701—10.4(421) Frivolous return penalty. A \$500 civil penalty is imposed on the return of a taxpayer that is considered to be a “frivolous return.” A “frivolous return” is: (1) A return which lacks sufficient information from which the substantial correctness of the amount of tax liability can be determined or contains information that on its face indicates that the amount of tax shown is substantially incorrect, or (2) a return which reflects a position of law which is frivolous or is intended to delay or impede the administration of the tax laws of this state.

If the frivolous return penalty is applicable, the penalty will be imposed in addition to any other penalty which has been assessed. If the frivolous return penalty is relevant, the penalty may be imposed even under circumstances when it is determined that there is no tax liability on the return.

The frivolous return penalty is virtually identical to the penalty for frivolous income tax returns which is authorized in Section 6702 of the Internal Revenue Code. The department will follow federal guidelines and court cases when determining whether or not the frivolous return penalty should be imposed.

The frivolous return penalty may be imposed on all returns filed with the department and not just individual income tax returns. The penalty may be imposed on an amended return as well as an original return. The penalty may be imposed on each return filed with the department.

10.4(1) *Nonexclusive examples of circumstances under which the frivolous return penalty may be imposed.* The following are examples of returns filed in circumstances under which the frivolous return penalty may be imposed:

a. A return claiming a deduction against income or a credit against tax liability which is clearly not allowed such as a “war,” “religious,” “conscientious objector” deduction or tax credit.

b. A blank or partially completed return that was prepared on the theory that filing a complete return and providing required financial data would violate the Fifth Amendment privilege against self-incrimination or other rights guaranteed by the Constitution.

c. An unsigned return where the taxpayer refused to sign because the signature requirement was “incomprehensible or unconstitutional” or the taxpayer was not liable for state tax since the taxpayer had not signed the return.

d. A return which contained personal and financial information on the proper lines but where the words “true, correct and complete” were crossed out above the taxpayer’s signature and where the taxpayer claimed the taxpayer’s income was not legal tender and was exempt from tax.

e. A return where the taxpayer claimed that income was not “constructively received” and the taxpayer was the nominee-agent for a trust.

f. A return with clearly inconsistent information such as when 99 exemptions were claimed but only several dependents were shown.

g. A document filed for refund of taxes erroneously collected with the contention that the document was not a return and that no wage income was earned. This was inconsistent with attached W-2 Forms reporting wages.

10.4(2) *Nonexclusive examples where the frivolous return penalty is not applicable.* The following examples illustrate situations where the frivolous return penalty would not be applicable:

a. A return which includes a deduction, credit, or other item which may constitute a valid item of dispute between the taxpayer and the department.

b. A return which includes innocent or inadvertent mathematical or clerical errors, such as an error in addition, subtraction, multiplication, or division or the incorrect use of a table provided by the department.

c. A return which includes a statement of protest or objection, provided the return contains all required information.

d. A return which shows the correct amount of tax due, but the tax due is not paid.

This rule is intended to implement Iowa Code section 421.8.

701—10.5(421) Exceptions from penalty provisions for taxes due and payable on or after January 1, 1987, and for tax periods ending on or before December 31, 1990. Rescinded IAB 11/10/04, effective 12/15/04.

PENALTY FOR TAX PERIOD BEGINNING AFTER JANUARY 1, 1991

701—10.6(421) Penalties. A penalty shall be assessed upon all tax and deposits due under the following circumstances:

1. For failure to timely file a return or deposit form there is a 10 percent penalty. This penalty, once imposed, will be assessed on all subsequent amounts due or required to be shown due on the return or deposit form.

EXAMPLE: The taxpayer fails to timely file a return and fails to timely pay the tax due. The department will assess a 10 percent penalty for failure to timely file the return but will not assess a 5 percent penalty for failure to timely pay. The department subsequently audits the untimely filed return and determines additional tax is due. The department shall assess a 10 percent penalty on the additional tax found due by an audit.

2. For failure to timely pay the tax due on a return or deposit form, there is a 5 percent penalty.
3. For a deficiency of tax due on a return or deposit form found during an audit, there is a 5 percent penalty. For purposes of this penalty, the audit deficiency shall be assessed only when there is a timely filed return or deposit form.

Audit deficiency occurs when the department determines additional tax is due.

4. For willful failure to file a return or deposit form with the intent to evade tax, or in the case of willfully filing a false return or deposit form with the intent to evade tax, there is a 75 percent penalty.

The penalty rates are uniform for all taxes and deposits due under this chapter.

The penalty for failure to timely file will take precedence over the penalty for failure to timely pay or an audit deficiency when more than one penalty is applicable.

5. Examples to illustrate the computation of penalty for tax periods beginning on or after January 1, 1991.

The following are examples to illustrate the computation of penalties imposed under rule 10.7(421). For purposes of these examples, interest has been computed at the rate of 12 percent per year or 1 percent per month. The tax due amounts are assumed to be the total amounts required to be shown due when considering whether the failure to pay penalty should be assessed on the basis that less than 90 percent of the tax was paid.

Example (a) — Failure to File

- a. Tax due is \$100.
 b. Return filed 3 months and 10 days after the due date.
 c. \$100 paid with the return.

The calculation for additional tax due is shown below:

Tax	\$100
Penalty	10 (10% failure to timely file)
Interest	4 (4 months interest)
Total	<u>\$114</u>
Less payment	100
Additional tax due	<u>\$ 14</u>

Example (b) — Failure to Pay

- a. Tax due is \$100.
 b. Return is timely filed.
 c. \$0 paid.

The calculation for the total amount due 5 months after the due date is shown below:

Tax	\$100
Penalty	5
Interest	5 (5 months interest)
Total	<u>\$110</u>

Example (c) — Failure to File and Failure to Pay

- a. Tax due is \$100.
 b. Return is filed 2 months and 10 days after the due date.
 c. \$0 paid.

The calculation for the total amount due 3 months after the due date is shown below:

Tax	\$100
Penalty	10 (10% for failure to file)
Interest	<u>3</u> (3 months interest)
Total due in 3rd month	\$113

Example (d) — Audit on Timely Filed Return

- \$100 in additional tax found due.
- Timely filed return.
- Audit completed 8 months after the due date of the return.
- Return showed \$100 as the computed tax, which was paid with the return.

The calculation for the total amount due is shown below:

Computed tax after audit	\$200
Less tax paid with return	<u>100</u>
Additional tax due	\$100
Penalty	5 (5% for audit deficiency)
Interest	<u>8</u> (8 months interest)
Total due	\$113

Example (e) — Audit on Late Return Granted an Exception From Failure to File

- Tax due is \$100.
- Return filed 3 months and 10 days after the due date.
- \$100 paid with the return.
- Taxpayer is granted an exception from penalty for failure to file. (Return is then considered timely filed.)
- Audit completed 8 months after the due date of the return. \$100 additional tax found due.
- Return showed \$100 as the computed tax which was paid with the return.

The computation for the total amount due is shown below:

Computed tax after audit	\$200
Less tax paid with return	<u>100</u>
Additional tax due	\$100
Penalty	5 (5% for audit deficiency. No penalty for failure to file.)
Interest	<u>8</u> (8 months interest)
Total due	\$113

Example (f) — Audit on Late Filed Return No Pay Return

- \$100 claimed as tax on the return.
- \$100 in additional tax found due.
- Return filed 3 months and 10 days after the due date.
- Audit completed 8 months after the due date.

The computation for the total amount due is shown below:

Computed tax after audit	\$200
Penalty	20 (10% for failure to file)
Interest	<u>16</u> (8 months interest)
Total due	\$236

701—10.7(421) Waiver of penalty—definitions. A penalty, if assessed, shall be waived by the department upon a showing of the circumstances stated below.

10.7(1) For purposes of these rules, the following definitions apply:

“Act of God” means an unusual and extraordinary manifestation of nature which could not reasonably be anticipated or foreseen and cannot be prevented by human care, skill, or foresight. There is a rebuttable presumption that an “act of God” that precedes the due date of the return or form by 30 days is not an act of God for purposes of an exception to penalty.

“Immediate family” includes the spouse, children, or parents of the taxpayer. There is a rebuttable presumption that relatives of the taxpayer beyond the relation of spouse, children, or parents of the taxpayer are not within the taxpayer’s immediate family for purposes of the waiver exceptions.

“Sanctioned self-audit program” means an audit performed by the taxpayer with forms provided by the department as a result of contact by the department to the taxpayer prior to voluntary filing or payment of the tax. Filing voluntarily without contact by the department does not constitute a sanctioned self-audit.

“Serious, long-term illness or hospitalization” means an illness or hospitalization, documented by written evidence, which precedes the due date of the return or form by no later than 30 days and continues through the due date of the return or form and interferes with the timely filing of the return or form. There is a rebuttable presumption that an illness or hospitalization that precedes the due date of the return or form by more than 30 days is not an illness or hospitalization for purposes of an exception to penalty. The taxpayer will be provided an automatic extension of 30 days from the date the return or form is originally due or the termination of the serious, long-term illness or hospitalization whichever is later without incurring penalty. The taxpayer has the burden of proof on whether or not a serious, long-term illness or hospitalization has occurred.

“Substantial authority” means the weight of authorities for the tax treatment of an item is substantial in relation to the weight of authorities supporting contrary positions.

In determining whether there is substantial authority, only the following will be considered authority: applicable provisions of Iowa statutes; the Internal Revenue Code; Iowa administrative rules construing those statutes; court cases; administrative rulings; legal periodicals; department newsletters and tax return and deposit form instruction booklets; tax treaties and regulations; and legislative intent as reflected in committee reports.

Conclusions reached in treaties, legal opinions rendered by other tax professionals, descriptions of statutes prepared by legislative staff, legal counsel memoranda, and proposed rules and regulations are not authority.

There is substantial authority for the tax treatment of an item if there is substantial authority at the time the return containing the item is due to be filed or there was substantial authority on the last day of the taxable year to which the return relates.

The taxpayer must notify the department at the time the return, deposit form, or payment is originally due of the substantial authority the taxpayer is relying upon for not filing the return or deposit form or paying the tax due.

10.7(2) Reserved.

701—10.8(421) Penalty exceptions. Under certain circumstances the penalty for failure to timely file a return or deposit, failure to timely pay the tax shown due, or the tax required to be shown due with the filing of a return or a deposit form, or failure to pay following an audit by the department is waived.

When an exception is granted under subrule 10.9(1), the return or deposit form is considered timely filed for purposes of nonimposition of penalty only.

10.8(1) For failure to timely file a return or deposit form, the 10 percent penalty is waived upon a showing of the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date of the tax return or deposit form.

b. One late return allowed. A taxpayer required to file a return or deposit form quarterly, monthly, or semimonthly is allowed one untimely filed return or deposit form within a three-year period. The use by the taxpayer of any other penalty exception under this subrule will not count as a late return or deposit form for purposes of this subrule.

The exception for one late return in a three-year period is determined on the basis of the tax period for which the return or form is due and not the date on which the return is filed.

c. Death of a taxpayer, member of the immediate family of the taxpayer, or death of the person directly responsible for filing the return and paying the tax, when the death interferes with timely filing. There is a rebuttable presumption that a death which occurs more than 30 days before the original date the return or form is due does not interfere with timely filing.

d. The onset of serious, long-term illness or hospitalization of the taxpayer, a member of the taxpayer's immediate family, or the person directly responsible for filing the return and paying the tax.

e. Destruction of records by fire, flood, or act of God.

f. The taxpayer presents proof that the taxpayer at the due date of the return, deposit form, or payment relied upon applicable, documented, written advice made specifically to the taxpayer, the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service. The advice should be relevant to the agency offering the advice and not beyond the scope of the agency's area of expertise and knowledge. The advice must be current and not superseded by a court decision, ruling of a quasi-judicial body such as an administrative law judge, the director, or the state board of tax review, or by the adoption, amendment, or repeal of a rule or law.

g. Reliance upon the results of a previous audit was a direct cause for failure to file or pay where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision or by adoption, amendment, or repeal of a rule or law.

h. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return or deposit form. These types of errors will not be considered as penalty exceptions.

i. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

j. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

k. The failure to file was discovered through a sanctioned self-audit program conducted by the department.

10.8(2) For failure to timely pay the tax due on a return or deposit form, the 5 percent penalty is waived upon a showing of the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date of the tax return or deposit form.

b. The taxpayer voluntarily files an amended return and pays all tax shown to be due on the return prior to any contact by the department, except under a sanctioned self-audit program conducted by the department.

c. The taxpayer provides written notification to the department of a federal audit while it is in progress and voluntarily files an amended return which includes a copy of the federal document showing the final disposition or final federal adjustments within 60 days of the final disposition of the federal government's audit.

d. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

e. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

f. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return or deposit form. These types of errors will not be considered as penalty exceptions.

g. The return, deposit form, or payment is timely, but erroneously, mailed with adequate postage to the Internal Revenue Service, another state agency, or a local government agency and the taxpayer provides proof of timely mailing with adequate postage. The taxpayer must provide competent evidence of the mailing as stated in Iowa Code section 622.105.

h. The tax has been paid by the wrong licensee and the payments were timely remitted to the department for one or more tax periods prior to notification by the department.

10.8(3) For a deficiency of tax due on a return or deposit form found during an audit, the 5 percent penalty is waived under the following exceptions:

a. At least 90 percent of the tax required to be shown due has been paid by the due date.

b. The taxpayer presents proof that the taxpayer relied upon applicable, documented, written advice specifically made to the taxpayer, to the taxpayer's preparer, or to an association representative of the taxpayer from the department, state department of transportation, county treasurer, or federal Internal Revenue Service, whichever is appropriate, that has not been superseded by a court decision, ruling by a quasi-judicial body, or the adoption, amendment, or repeal of a rule or law.

c. Reliance upon results in a previous audit was a direct cause for the failure to pay the tax shown due or required to be shown due where the previous audit expressly and clearly addressed the issue and the previous audit results have not been superseded by a court decision, or the adoption, amendment, or repeal of a rule or law.

d. The taxpayer presents documented proof of substantial authority to rely upon a particular position or upon proof that all facts and circumstances are disclosed on a return or deposit form. Mathematical, computation, or transposition errors are not considered as facts and circumstances disclosed on a return or deposit form. These types of errors will not be considered as penalty exceptions.

701—10.9(421) Notice of penalty exception for one late return in a three-year period. The penalty exception for one late return in a three-year period will automatically be applied to a return or deposit form by the department if the taxpayer is eligible for the exception.

The exception for one late return in a three-year period is applied to the returns or deposit forms in the order they are processed and not in the order which the returns or deposit forms should have been filed.

701—10.10 to 10.19 Reserved.

RETAIL SALES

[Prior to 1/23/91, see 701—12.10(422,423) and 12.11(422, 423)]

701—10.20(422,423) Penalty and interest computation.

10.20(1) *Computations for tax periods where the due date occurs after December 31, 1980.* The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed, unless it is shown that such failure was due to reasonable cause. Iowa Code section 422.58(1) provides a penalty for failure to file a permit holder's semimonthly or monthly tax deposit or a return or, if a permit holder fails to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return, excepting the period between the completion of an examination of the books and records of a taxpayer and the giving of notice to the taxpayer that a tax or additional tax is due. The rate of penalty shall be 5 percent per month or fraction thereof, not to exceed 25 percent in the aggregate for failure to file a deposit or return and for failure to pay at least 90 percent of the tax due.

In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay if, after the return is filed, there is a continued failure to

pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or pay shall not exceed 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See 701—subrule 44.3(3) for examples of the penalty computation. These examples would also apply to sales and use tax unless 90 percent of the tax is remitted timely, then no penalty applies.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due in the order specified.

In addition to the penalty, interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposit was required to be filed until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

10.20(2) *Computations for tax periods for taxes initially due and payable on or after January 1, 1985, but before January 1, 1987.*

a. Penalty for failure to file return. Subsequent to December 31, 1984, a permit holder or other person who fails to file a semimonthly or monthly tax deposit form or a quarterly or annual return shall be subject to penalty for this failure only if the failure to file is willful. The penalty for willful failure to file a deposit form or return is 50 percent of the amount required to be shown on the deposit form or return, see Iowa Code section 422.58(1). When it is appropriate to impose this 50 percent penalty, it shall be in lieu of the penalty described in 701—subrule 12.10(4), paragraph “b.”

b. Penalty for failure to timely remit tax. If a permit holder or other person fails to remit with the deposit form or pay with the return at least 90 percent of the tax due and owing, there shall be added to the amount of tax required to be shown on the deposit form or return a penalty of 10 percent of the tax due. Under Iowa Code section 422.58(1), the director cannot waive payment of this penalty. Thus, the equitable doctrine of waiver is not available to a permit holder or other person seeking relief from the penalty.

Also, that portion of the statute allowing the right to demonstrate that failure to timely pay has been due to reasonable cause has been repealed, House File 2507 supra. No statutory basis for remission of the 10 percent penalty now exists. Therefore, if it is shown that a fixed amount of tax was due to be paid upon a date certain and less than 90 percent of that amount has been paid, the director may not excuse payment of penalty. The penalty described in this subrule shall include a penalty for additional tax shown to be due and owing as the result of an audit. See 701—subrule 44.3(5) for examples which illustrate the computation of penalty for tax due on or after January 1, 1985.

c. Application of payments. All payments shall be first applied to penalty, then interest, and the balance, if any, to the amount of tax then due in the order specified. If penalty, interest, and tax are due and owing for more than one tax period, any payment shall be applied first to the penalty, then the interest, then the tax for the oldest tax period; then to the penalty, interest and tax to the period immediately subsequent, and so on until the payment is exhausted.

EXAMPLE: A permit holder is an annual filer. As a result of audit, it is determined that the permit holder owes penalty, interest, and tax for the years 1984, 1983, and 1982. The total amount owed for tax, penalty and interest for the three years is \$1,200. \$200 of this amount is tax for the year 1984. The permit holder remits a single payment of \$1,000. The payment would be applied first to the penalty, then interest, then tax owing for 1982. The same application would then be made to penalty, interest and tax owing for 1983. Any amount remaining would be applied first to penalty and then interest owing for 1984. The \$200 in tax due for the year 1984 would remain to be paid.

d. Computation of penalty for taxes initially due and payable prior to January 1, 1985, and overdue and payable on that date. The date upon which the tax initially became delinquent (taking into consideration any extension of time to pay the tax due) determines which penalty applied. If the initial delinquency occurs prior to January 1, 1985, the aggregating penalty applies. If the initial delinquency occurs on or after January 1, 1985, only the flat rate penalties of 5 or 10 percent apply.

10.20(3) *Computations for tax periods for taxes initially due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991.*

a. Penalty for failure to file return. Subsequent to December 31, 1986, a permit holder or other person who willfully fails to file a semimonthly or monthly tax deposit form or a quarterly or annual return will be subject to penalty for this failure. The penalty for willful failure to file a deposit form or return is 75 percent of the amount required to be shown on the deposit form or return, see Iowa Code section 422.58(1). When it is appropriate to impose this 75 percent penalty, it will be in lieu of the penalty described in paragraph 10.20(3) “*b.*”

b. Penalty for failure to timely remit tax. If a permit holder or other person fails to remit with the deposit form or pay with the return at least 90 percent of the tax due and owing on or before the due date of the deposit or return, there will be added to the amount of tax required to be shown on the deposit form or return a penalty of 15 percent of the tax due. Under Iowa Code section 422.58(1), the director cannot waive payment of this penalty. Thus, the equitable doctrine of waiver is not available to a permit holder or other person seeking relief from the penalty.

Also, that portion of the statute allowing the right to demonstrate that failure to timely pay has been due to reasonable cause has been repealed. No statutory basis for remission of the 15 percent penalty now exists. Therefore, if it is shown that a fixed amount of tax was due to be paid upon a date certain and less than 90 percent of that amount has been paid, the director may not excuse payment of penalty. The penalty described in this subrule will include a penalty for additional tax shown to be due and owing as the result of an audit. See subrule 10.41(6) for examples which illustrate the computation of penalty for tax due on or after January 1, 1987, but for tax years ending before January 1, 1991.

c. Application of payments. All payments must be first applied to penalty, then interest, and the balance, if any, to the amount of tax then due in the order specified. See *Ashland Oil Inc. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). If penalty, interest, and tax are due and owing for more than one tax period, any payment must be applied first to the penalty, then the interest, then the tax for the oldest tax period; then to the penalty, interest, and tax to the period immediately subsequent, and so on until the payment is exhausted.

EXAMPLE: A permit holder is an annual filer. As a result of audit, it is determined that the permit holder owes penalty, interest, and tax for the years 1984, 1983, and 1982. The total amount owed for tax, penalty, and interest for the three years is \$1,200. \$200 of this amount is tax for the year 1984. The permit holder remits a single payment of \$1,000. The payment would be applied first to the penalty, then interest, then tax owing for 1982. The same application would then be made to penalty, interest, and tax owing for 1983. Any amount remaining would be applied first to penalty and then interest owing for 1984. The \$200 in tax due for the year 1984 would remain to be paid and would continue to accrue interest.

d. Computation of penalty for taxes initially due and payable prior to January 1, 1987, and overdue and payable on that date. The date upon which the tax initially became delinquent determines which penalty applied. If the initial delinquency occurs prior to January 1, 1987, the 10 percent penalty applies. If the initial delinquency occurs on or after January 1, 1987, but for tax periods ending before January 1, 1991, only the flat rate penalties of 7.5 or 15 percent apply. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

See rule 701—10.5(421) for statutory exemptions to penalty for tax due and payable on or after January 1, 1987. See rule 701—10.8(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 422.58(1).

701—10.21(422,423) Request for waiver of penalty. Any taxpayer who has good reason to object to any penalty imposed by the department for failure to timely file returns, monthly deposits or pay the tax may submit a request for waiver seeking that the penalty be waived for taxes initially due and payable prior to January 1, 1985. If it can be shown to the director’s satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer’s failure to file the return, monthly

deposit or pay the tax as required by law. The following are examples of situations that may be accepted by the director as being reasonable cause:

1. Where the return, monthly deposit or payment was filed on time, but filed erroneously with another state agency or the Internal Revenue Service.
2. A showing that the completed return, monthly deposit was mailed in time to reach the department in the normal course of mails, within the legal period. If the due date is a Saturday, Sunday or legal holiday, the following business day is within the legal period.
3. Where the delay was caused by death or serious illness of the taxpayer responsible for filing.
4. Where the delay was caused by prolonged unavoidable absence of the taxpayer responsible for filing.
5. Where the delinquency was caused by destruction by fire or other casualty of the taxpayer's records.
6. A showing that the delay or failure was due to erroneous information given the taxpayer by an employee of the department.
7. The department will allow without penalty one late return or monthly deposit, or one timely filed return containing a mathematical error if the taxpayer has had no reported delinquencies in the past 36 months. (Not applicable to penalty established by audit.)

8. Where the taxpayer exercised ordinary business care and prudence and was nevertheless unable to file the return or monthly deposit within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the taxpayer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the taxpayer's liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the taxpayer paid on the due date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. v. Iowa Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

A request for waiver of penalty on an assessment will be treated as timely filed with the department, if filed no later than 30 days following the date of the notice of assessment. See rule 701—11.6(422,423) regarding notices of adjustment and assessment.

This rule is intended to implement Iowa Code sections 422.58 and 423.18.

701—10.22 to 10.29 Reserved.

USE

[Prior to 1/23/91, see 701—30.10(423)]

701—10.30(423) Penalties for late filing of a monthly tax deposit or use tax returns. Use tax monthly deposits shall be filed on or before the twentieth of the month following the month in which the tax was collected. Use tax quarterly returns shall be required to be filed on or before the last day of the month following the close of each quarterly period.

10.30(1) For taxes initially due and payable prior to January 1, 1985, failure to file a monthly deposit or use tax return or a corrected return or to pay use tax due on or before the due date shall result in a delinquent deposit or return and be subject to penalty and interest. See subrules 10.20(1), 10.20(2), and 10.20(3) for computation of penalty.

10.30(2) For taxes initially due and payable on or after January 1, 1985, but before January 1, 1987, only willful failure to file a monthly deposit or use tax return or a corrected return will be subject to penalty. Persons who fail to timely pay use tax are subject to a penalty which cannot be waived by the director and may not be excused for reasonable cause. If the person who fails to timely pay use tax is a retailer maintaining a place of business in this state, the penalty for failure to pay will be 10 percent of the tax required to be paid. Rule 701—30.1(423) describes in detail the persons who are subject to this 10 percent penalty. For any person who is not a retailer, the penalty for failure to timely pay use tax is 5 percent of the tax required to be paid.

See rule 10.20(422,423) for computation of penalty and interest before January 1, 1991. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

10.30(3) For taxes initially due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991, only willful failure to file a monthly deposit or use tax return or a corrected return will be subject to penalty. Persons who fail to timely pay use tax are subject to a penalty which cannot be waived by the director and may not be excused for reasonable cause. If the person who fails to timely pay use tax is a retailer maintaining a place of business in this state, the penalty for failure to pay is 15 percent of the tax required to be paid. Rule 701—30.1(423) describes in detail the persons who are subject to this 15 percent penalty. For any person who is not a retailer, the penalty for failure to timely pay use tax is 7.5 percent of the tax required to be paid. See rule 701—10.5(421) for statutory exemptions to penalty for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 10.20(422,423) for computation of penalty and interest for taxes due and payable on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code sections 422.58 and 423.18.

701—10.31 to 10.39 Reserved.

INDIVIDUAL INCOME

[Prior to 1/23/91, see 44.1(422), 44.3(422), 44.7(422) and 44.8(422)]

701—10.40(422) General rule. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.41(422) Computation for tax payments due on or after January 1, 1981, but before January 1, 1982. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.42(422) Interest commencing on or after January 1, 1982. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.43(422) Request for waiver of penalty. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.44 to 10.49 Reserved.

WITHHOLDING

[Prior to 1/23/91, see 701—46.5(422)]

701—10.50(422) Penalty and interest. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.51 to 10.55 Reserved.

CORPORATE

[Prior to 1/23/91, see subrule 701—52.5(3) and rule 701—52.10(422)]

701—10.56(422) and 10.57(422) Penalty and interest. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.58(422) Waiver of penalty and interest. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.59 to 10.65 Reserved.

FINANCIAL INSTITUTIONS

[Prior to 1/23/91, see 701—58.6(422)]

701—10.66(422) Penalty and interest. Rescinded IAB 11/24/04, effective 12/29/04.

701—10.67 to 10.70 Reserved.

MOTOR FUEL

[Prior to 1/23/91, see 701—63.8(324) and 63.10(324)]

701—10.71(421) Penalty and enforcement provisions.

10.71(1) *Illegal use of dyed fuel.* The illegal use of dyed fuel in the supply tank of a motor vehicle shall result in a civil penalty assessed against the owner or operator of the motor vehicle as follows:

- a. A \$200 fine for the first violation.
- b. A \$500 fine for a second violation within three years of the first violation.
- c. A \$1,000 fine for third and subsequent violations within three years of the first violation.

10.71(2) *Illegal importation of untaxed fuel.* A person who illegally imports motor fuel or undyed special fuel without a valid importer's license or supplier's license shall be assessed a civil penalty as stated below. However, the owner or operator of the importing vehicle shall not be guilty of violating the illegal import provision if it is shown by the owner or operator that the owner or operator reasonably did not know or reasonably should not have known of the illegal importation.

a. For a first violation, the importing vehicle shall be detained and a fine of \$2,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable for payment of the fine.

b. For a second violation, the importing vehicle shall be detained and a fine of \$5,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

c. For third and subsequent violations, the importing vehicle and the fuel shall be seized and a fine of \$10,000 shall be paid before the vehicle will be released. The owner or operator of the importing vehicle or the owner of the fuel may be held liable to pay the fine.

d. If the owner or operator of the importing vehicle or the owner of the fuel fails to pay the tax and fine for a first or second offense, the importing vehicle and the fuel may be seized. The Iowa department of revenue, the Iowa department of transportation, or any peace officer, at the request of either department, may seize the vehicle and the fuel.

e. If the operator or owner of the importing vehicle or the owner of the fuel moves the vehicle or the fuel after the vehicle has been detained and a sticker has been placed on the vehicle stating that "this vehicle cannot be moved until the tax, penalty, and interest have been paid to the department of revenue," an additional penalty of \$5,000 shall be assessed against the operator or owner of the importing vehicle or the owner of the fuel.

10.71(3) *Improper receipt of fuel credit or refund.* If a person files an incorrect refund claim, in addition to the amount of the excess claim, a penalty of 10 percent shall be added to the amount by which the amount claimed and refunded exceeds the amount actually due and shall be paid to the department. If a person knowingly files a fraudulent refund claim with the intent to evade the tax, the penalty shall be 75 percent in lieu of the 10 percent. The person shall also pay interest on the excess refunded at the rate per month specified in Iowa Code section 421.7, counting each fraction of a month as an entire month, computed from the date the refund was issued to the date the excess refund is repaid to the state.

10.71(4) *Illegal heating of fuel.* The deliberate heating of taxable motor fuel or special fuel by dealers prior to consumer sale is a simple misdemeanor.

10.71(5) *Prevention of inspection.* The Iowa department of revenue or the Iowa department of transportation may conduct inspections for coloration, markers, and shipping papers at any place where taxable fuel is or may be loaded into transport vehicles, produced, or stored. Any attempts by a person to prevent, stop, or delay an inspection of fuel or shipping papers by authorized personnel shall be subject to a civil penalty of not more than \$1,000 per occurrence. Any law enforcement officer requested by the Iowa department of revenue or Iowa department of transportation may physically inspect, examine, or otherwise search any tank, fuel supply tank of a vehicle, reservoir, or other container that can or may be used for the production, storage, or transportation of any type of fuel.

10.71(6) *Failure to conspicuously label a fuel pump.* A retailer who does not conspicuously label a pump or other delivery facility as required by the Internal Revenue Service, that dispenses dyed diesel

fuel so as to notify customers that it contains dyed fuel, shall pay to the department of revenue a penalty of \$100 per occurrence.

10.71(7) False or fraudulent return. Any person, including an officer of a corporation or a manager of a limited liability company, who is required to make, render, sign, or verify any report or return required by this chapter and who makes a false or fraudulent report, or who fails to file a report or return with the intent to evade the tax, shall be guilty of a fraudulent practice. Any person who aids, abets, or assists another person in making any false or fraudulent return or false statement in any return with the intent to evade payment of tax shall be guilty of a fraudulent practice.

This rule is intended to implement 1995 Iowa Acts, chapter 155, section 36.

701—10.72(452A) Interest. Interest at the rate of three-fourths of one percent per month, based on the tax due, shall be assessed against the taxpayer for each month such tax remains unpaid prior to January 1, 1982. The interest shall accrue from the date the return was required to be filed. Interest shall not apply to penalty. Each fraction of a month shall be considered a full month for the computation of interest. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

Refunds on reports or returns filed on or after July 1, 1986, but before July 1, 1997, will accrue interest beginning on the first day of the third calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later, at the rate in effect under Iowa Code section 421.7, counting each fraction of a month as an entire month. Refunds on reports or returns filed on or after July 1, 1997, will accrue interest beginning on the first day of the second calendar month following the date of payment or the date the return was filed or due to be filed, whichever is later. Claims for refund filed under Iowa Code sections 452A.17 and 452A.21 will accrue interest beginning with the first day of the second calendar month following the date the refund claim is received by the department. See rule 10.3(422,450,452A).

This rule is intended to implement Iowa Code section 452A.65 as amended by 1997 Iowa Acts, House File 266.

701—10.73 to 10.75 Reserved.

CIGARETTES AND TOBACCO

[Prior to 1/23/91, see 701—81.8(98), 81.9(98), and 81.15(98)]

701—10.76(453A) Penalties.

10.76(1) Cigarettes. The following is a list of offenses which subject the violator to a penalty:

1. The failure of a permit holder to maintain proper records;
2. The sale of taxable cigarettes without a permit;
3. The filing of a late, false or incomplete report with the intent to evade tax by a cigarette distributor, distributing agent or wholesaler;
4. Acting as a distributing agent without a valid permit; and
5. A violation of any provision of Iowa Code chapter 453A or these rules.

Penalties for these offenses are as follows:

- A \$200 penalty for the first violation.
- A \$500 penalty for a second violation within three years of the first violation.
- A \$1,000 penalty for a third or subsequent violation within three years of the first violation.

Penalties for possession of unstamped cigarettes are as follows:

- A \$200 penalty for the first violation if a person is in possession of more than 40 but not more than 400 unstamped cigarettes.
- A \$500 penalty for the first violation if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes.
- A \$1,000 penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A \$25 per pack penalty for the first violation if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

- For a second violation within three years of the first violation, the penalty is \$400 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; \$1,000 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and \$2,000 if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A \$35 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

- For a third or subsequent violation within three years of the first violation, the penalty is \$600 if a person is in possession of more than 40 but not more than 400 unstamped cigarettes; \$1,500 if a person is in possession of more than 400 but not more than 2,000 unstamped cigarettes; and \$3,000 if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring prior to July 1, 2004. A \$45 per pack penalty applies if a person is in possession of more than 2,000 unstamped cigarettes for violations occurring on or after July 1, 2004.

See rule 701—10.6(421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax. If, upon audit, it is determined that any person has failed to pay at least 90 percent of the tax imposed by Iowa Code chapter 453A, division I, which failure was not the result of a violation enumerated above, a penalty of 5 percent of the tax deficiency shall be imposed. This penalty is not subject to waiver for reasonable cause.

See rule 701—10.8(421) for statutory exceptions to penalty.

10.76(2) Tobacco.

See rule 701—10.6(421) for penalties related to failure to timely file a return, failure to timely pay the tax due, audit deficiency, and willful failure to file a return with the intent to evade the tax.

See rule 701—10.8(421) for statutory exceptions to penalty.

This rule is intended to implement Iowa Code sections 453A.28, 453A.31 and 453A.46 as amended by 2004 Iowa Acts, Senate File 2296.

701—10.77(453A) Interest.

10.77(1) Cigarettes. There shall be assessed interest at the rate established by rule 701—10.2(421) from the due date of the tax to the date of payment counting each fraction of a month as an entire month. For the purpose of computing the due date of any unpaid tax, a FIFO inventory method shall be used for cigarettes and stamps. See rule 701—10.6(421) for examples of penalty and interest.

10.77(2) Tobacco. The interest rate on delinquent tobacco tax is the rate established by rule 701—10.2(421) counting each fraction of a month as an entire month. If an assessment for taxes due is not allocated to any given month, the interest shall accrue from the date of assessment. See rule 701—10.6(421) for examples of penalty and interest.

This rule is intended to implement Iowa Code sections 453A.28 and 453A.46.

701—10.78(453A) Waiver of penalty or interest. Rescinded IAB 11/10/04, effective 12/15/04.

701—10.79(453A) Request for statutory exception to penalty. Any taxpayer who believes there is a good reason to object to any penalty imposed by the department for failure to timely file returns or pay the tax may submit a request for exception seeking that the penalty be waived. The request must be in the form of a letter or affidavit and must contain all facts alleged by the taxpayer and a reason for why the taxpayer qualifies for the exceptions. See rule 701—10.8(421).

This rule is intended to implement Iowa Code sections 453A.31 and 453A.46.

701—10.80 to 10.84 Reserved.

INHERITANCE

[Prior to 1/23/91, see 701—subrules 86.2(14) to 86.2(20)]

701—10.85(422) Penalty—delinquent returns and payment. This subrule only applies to returns and taxes due and payable prior to January 1, 1985. Effective for estates of decedents dying on or after

January 1, 1981, a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file the return or failure to pay 90 percent of the tax required to be shown as due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. A request for waiver of penalty must be in writing and submitted to the Iowa Department of Revenue, Hoover State Office Building, Des Moines, Iowa 50319 and must identify the estate and set forth the reasons for the failure. Delinquent returns draw interest at the rate of 8 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. All payments are first credited to penalty and interest and the balance, if any, to the tax due. For estates of decedents dying prior to January 1, 1981, all tax not paid within the time prescribed by law (taking into consideration any extensions of time to file and pay) shall draw interest at the rate of 8 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. There is no penalty for failure to file and pay the tax for estates of decedents dying prior to January 1, 1981.

10.85(1) *What constitutes reasonable cause.* This subrule only applies to returns and taxes due and payable prior to January 1, 1985. What constitutes reasonable cause for failure to timely file the return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause are, but not limited to:

a. When the return and payment of the tax was timely filed, but filed erroneously with the Internal Revenue Service or another state agency.

b. When the return and payment were timely mailed, but were not received by the department until after the due date (if the due date falls on a Saturday, Sunday or holiday, the due date shall be the next day which is not a Saturday, Sunday or holiday).

c. When the delay was caused by the death or serious illness of the taxpayer.

d. When the delay was caused by the prolonged unavoidable absence of the taxpayer.

e. When the delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

f. When the taxpayer has good reason to believe that the gross share of none of the heirs, beneficiaries, transferees or joint tenants is of a sufficient amount for a tax to be owing.

g. When the taxpayer exercised ordinary business care and prudence in providing for the timely filing of the return and payment of the tax due. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

10.85(2) *What does not constitute reasonable cause.* This subrule only applies to returns and taxes due and payable prior to January 1, 1985. Factors which do not tend to establish reasonable cause are, but not limited to:

a. Lack of sufficient liquid assets to timely pay the tax due and file the return, when the taxpayer had ample time to request an extension of time to file the return and pay the tax, but failed to do so.

b. Failure to exercise ordinary business care and prudence in providing for the filing of the return and payment of the tax liability within the time prescribed by law.

10.85(3) *Interest—during an extension of time.* During the period of an extension of time, any unpaid tax shall draw interest at the rate of 6 percent per annum until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Payments made during an extension of time shall first be credited to interest and the balance, if any, to the tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). Any outstanding tax obligation remaining after the expiration of an extension of time shall be deemed delinquent and shall be subject to penalty and draw interest at the rate of 8 percent per annum from the date of the extension expiration until paid, if paid on or before December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

10.85(4) *Computation of interest.* Beginning May 1, 1985, interest accruing on tax due and on refunds of excessive tax paid is computed on a calendar monthly basis with each fraction of a month considered a full month. Interest accrued through April 30, 1985, both on tax due and on refunds of

excessive tax paid, is computed on a daily basis using a 365-day year. If interest accrues for periods of time both before and after May 1, 1985, the rule applicable for the respective period of time before and after May 1, 1985, shall govern the interest computation.

This subrule can be illustrated by the following:

EXAMPLE:

For the purpose of illustration only the interest rate used for 1985 is 10 percent per year or 0.8 percent per month. The original due date of January 15, 1985, was extended to May 31, 1985. The tax due is \$100. The amount due for tax and interest is \$103.68 with interest computed through May 31, 1985. The interest is computed as follows:

1. Interest from January 15, 1985, through April 30, 1985 (105 days) is computed on a daily basis.

$$\$100 \text{ times } 10\% \text{ times } \frac{105}{365} = \$2.88$$

2. Interest for May 1985 (one month) is computed on a monthly basis.

$$\$100 \text{ times } .8\% \text{ times } 1 = \$.80$$

3. Total interest is \$3.68 (\$2.88 plus \$.80)

In this example interest is charged for the full month of May even though the tax and interest may be paid anytime during the month.

10.85(5) Penalty—failure to pay the tax due on or after January 1, 1985, but before January 1, 1987. Effective for tax due and payable on or after January 1, 1985, the cumulative dual penalties for failure to timely file the return and pay 90 percent of the tax required to be shown as due, without reasonable cause, are abolished. In lieu of the dual penalties, a single noncumulative penalty of 5 percent is imposed for failure to timely pay at least 90 percent of the tax due with the filing of the return. The 5 percent penalty is computed on the amount of the tax that is required to be shown as due (as distinguished from tax shown to be due) that is not timely paid, taking into consideration any extensions of time granted to pay the tax due. Reasonable cause for the delinquency is not relevant. The fact the tax is delinquent alone determines the imposition of the penalty. The director cannot waive the penalty.

While the penalty for failure to file the return is abolished, the duty of the personal representative and the taxpayer, as defined in Iowa Code section 450.5, to file the return and pay the tax due remains in full force and effect. The noncumulative penalty of 5 percent only applies to tax that is initially due and payable (taking into consideration any extensions of time granted to file the return and pay the tax due) after December 31, 1984.

However, the repeal of the cumulative penalties for tax that is initially delinquent after December 31, 1984, does not preclude the imposition of the cumulative penalties for failure to timely file or pay 90 percent of the tax due, if the tax was initially delinquent prior to January 1, 1985, even though the delinquency continues for periods of time after December 31, 1984. When the tax initially became delinquent (taking into consideration any extensions of time granted to file the return and pay the tax due) determines which penalty applies. If the initial delinquency occurs prior to January 1, 1985, the cumulative penalties apply. If the initial delinquency occurs after December 31, 1984, only the noncumulative penalty of 5 percent applies.

10.85(6) Penalty—failure to pay the tax due on or after January 1, 1987, but for deaths occurring before January 1, 1991. A penalty of 7.5 percent is imposed for failure to timely pay at least 90 percent of the tax due with the filing of the return. The 7.5 percent penalty is computed on the amount of tax that is required to be shown due (as distinguished from the tax shown due) that is not timely paid, taking into consideration any extensions of time granted to pay the tax due. Reasonable cause for the delinquency is not relevant. The fact the tax is delinquent alone determines the imposition of the penalty. The director cannot waive the penalty.

While the penalty for failure to file the return is abolished, the duty of the personal representative and the taxpayer as defined in Iowa Code section 450.5 to file a return and pay the tax due remains in full force and effect.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due and payable on or after January 1, 1987, but for deaths occurring before January 1, 1991. See rule 701—10.8(421) for statutory exceptions for deaths occurring on or after January 1, 1991.

701—10.86 to 10.89 Reserved.

IOWA ESTATE

[Prior to 1/23/91, see 701—subrules 87.3(9) to 87.3(12)]

701—10.90(451) Penalty—delinquent return and payment. This rule applies only to Iowa estate tax due and payable prior to January 1, 1985. Effective for estates of decedents dying on or after January 1, 1981, a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file the return or failure to pay the tax due within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless the failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. The penalty imposed is based on the tax due and is in addition to the penalties imposed by Iowa Code chapter 450 for failure to file or pay the inheritance tax due. A request for waiver of penalty must be in writing and submitted to Fiduciary and Inheritance Tax Processing, P.O. Box 10467, Des Moines, Iowa 50306, and must identify the estate and set forth the reasons for the failure. All tax not paid within the time prescribed by law (taking into consideration any extensions of time to pay) draws interest at the rate of 8 percent per annum. All payments are first credited to penalty and interest and the balance, if any, to the tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). For estates of decedents dying prior to January 1, 1981, all tax not paid within the time prescribed by law (taking into consideration any extensions of time to file and pay) shall draw interest at the rate of 8 percent per annum. There is no penalty for failure to file and pay the tax for estates of decedents dying prior to January 1, 1981. For interest accruing after January 1, 1982, see rule 701—10.2(421) for the statutory interest rate.

10.90(1) What constitutes reasonable cause. This subrule applies only to Iowa estate tax due and payable prior to January 1, 1985. What constitutes reasonable cause for failure to timely file the return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause are, but not limited to:

a. When the return and payment of the tax was timely filed, but filed erroneously with the Internal Revenue Service or another state agency.

b. When the return and payment were timely mailed, but were not received by the department until after the due date (if the due date falls on a Saturday, Sunday or holiday, the due date shall be the next day which is not a Saturday, Sunday or holiday).

c. When the delay was caused by the death or serious illness of the taxpayer.

d. When the delay was caused by the prolonged unavoidable absence of the taxpayer.

e. When the delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

f. When no Iowa estate tax was shown to be due when the federal estate tax return was filed and the taxpayer had reasonable cause to believe none was due, but then as a result of either a federal audit or an audit of the inheritance tax return, an estate tax, or additional estate tax, was due.

g. When the taxpayer exercised ordinary business care and prudence in providing for the timely filing of the return and payment of the tax due. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

10.90(2) What does not constitute reasonable cause. This subrule applies only to Iowa estate tax due and payable prior to January 1, 1985. Factors which do not tend to establish reasonable cause are, but not limited to:

Failure to exercise ordinary business care and prudence in providing for the filing of the return and payment of the tax liability within the time prescribed by law.

10.90(3) Penalty—failure to pay the tax due on or after January 1, 1985. Department of revenue subrules 10.85(5) and 10.85(6) implementing the penalty for failure to timely pay the inheritance tax due are also the rules implementing the penalty for failure to pay the Iowa estate tax due. See rule 701—10.6(421) for penalty for failure to pay the tax due for deaths occurring on or after January 1, 1991.

701—10.91 to 10.95 Reserved.

GENERATION SKIPPING

[Prior to 1/23/91, see 701—subrules 88.3(14) and 88.3(15)]

701—10.96(450A) Penalty—delinquent return and payment for deaths occurring before January 1, 1991. Effective for generation skipping transfers which are eligible for the federal credit for state generation skipping transfer tax under Section 2604 of the Internal Revenue Code, a penalty of 7.5 percent of the tax due is imposed for failure to pay at least 90 percent of the tax due on or before the date prescribed for payment, taking into consideration any extension of time granted to pay the tax due. The penalty imposed cannot be waived by the director. However, penalty cannot be imposed if any of the five exceptions enumerated in Iowa Code section 421.27 are established by the taxpayer. The term “tax due” means the correct amount of tax due which may, due to an audit or an adjustment in the amount of the federal generation skipping transfer tax, be a different amount than the tax shown as due on the return. If a penalty is applicable, it is computed on the amount of the tax that has not been timely paid, taking into consideration any extension of time granted to pay the tax due. See rule 701—10.6(421) for penalty for delinquent return and payment of tax due for deaths occurring on or after January 1, 1991.

701—10.97(422) Interest on tax due. All tax which has not been paid on or before the last day of the ninth month following the death of the individual whose death is the event imposing the federal generation skipping transfer tax draws interest at the rate prescribed by Iowa Code section 421.7, to be computed on a monthly basis with each fraction of a month counted as a full month. See rule 701—10.2(421) for the interest rate to use for a specific calendar year. Interest applies equally to tax that is delinquent and tax that is due under an extension of time to pay.

701—10.98 to 10.100 Reserved.

FIDUCIARY INCOME

[Prior to 1/23/91, see 701—89.6(422) and 89.7(422)]

701—10.101(422) Penalties.

10.101(1) Negligence penalty—delinquent returns and payment. This subrule is only applicable to tax that is due and payable prior to January 1, 1985. Effective for fiduciary income tax returns and tax due on or after January 1, 1981, a penalty of 5 percent per month, not to exceed 25 percent in the aggregate, is imposed for failure to file a fiduciary income tax return or to pay the tax required to be shown as due, within the time prescribed by law (taking into consideration any extensions of time to file and pay), unless the failure is due to reasonable cause. In case there is both a failure to file and a failure to pay, the penalty for failure to file shall be in lieu of the penalty for failure to pay. However, the imposition of the penalty for failure to file does not preclude the imposition of a penalty for failure to pay if, after the return is filed, there is a continued failure to pay during the five-month period after the tax was due (taking into consideration any extensions of time to file and pay). The combined penalties for failure to file or to pay shall not exceed 25 percent of the tax due. The penalties are computed on the amount of the tax remaining unpaid that is required to be shown as due on the return as distinguished from the amount of the tax shown to be due on the return. Therefore, if an audit of a fiduciary return results in an additional tax which was required to be shown as due on the return, the additional tax is subject to the penalty for failure to pay, unless the failure was due to reasonable cause. See rules 10.40(422) and 10.41(422) for individual income tax penalties and subrule 10.41(2) for examples of penalty computation for tax periods

ending before January 1, 1991. See rule 701—10.6(421) for individual income tax penalties and subrule 10.6(5) for examples of penalty computation for tax periods beginning on or after January 1, 1991.

10.101(2) *Fraud penalty for tax returns ending before January 1, 1991.* If the failure to file the fiduciary income tax return is willful or deliberate with the intention of evading tax or if a false return is willfully or deliberately filed for the purpose of evading the correct tax due, a penalty of 50 percent of the amount of the tax required to be shown as due is imposed. The penalty for fraud shall be in lieu of the penalties provided in subrule 10.101(1).

10.101(3) *Waiver of penalty.* This subrule is only applicable to tax that is due and payable prior to January 1, 1985. A request for waiver of penalty must be in writing, in the form of an affidavit, and be submitted to Fiduciary and Inheritance Tax Processing, P.O. Box 10467, Des Moines, Iowa 50306. It must identify the fiduciary income tax return, the taxable year for which the delinquency occurred and state the reasons for the failure. It is not sufficient for the taxpayer to simply establish that the failure was not willful. The reasons why the failure was reasonable must also be established. The affidavit must contain the facts on which a conclusion can be reached that the penalty should be waived. A mere statement of conclusions is not sufficient. See rule 701—10.8(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

10.101(4) *Reasonable cause.* This subrule is only applicable to tax that is due and payable prior to January 1, 1985. What constitutes reasonable cause for failure to timely file the fiduciary return and pay the tax due depends on the facts and circumstances in each particular case. Factors which tend to establish reasonable cause include, but are not limited to:

a. The return filing and payment were timely, but erroneously submitted to the Internal Revenue Service or another state agency.

b. When the return and payment were mailed on or before the due date, but were not received by the department until after the due date. If the due date falls on a Saturday, Sunday or holiday, the due date is the next day which is not a Saturday, Sunday or holiday. See Iowa Code section 622.106 for what constitutes proof of the mailing date.

c. The estate's right to the income is subject to litigation and the personal representative of the estate either has not received the income, or is prohibited from disbursing the income received.

d. The condition of the decedent's books and records prevent the compilation of the data necessary to file a return.

e. The delay was caused by the death or serious illness of the taxpayer.

f. The delay was caused by the prolonged unavoidable absence of the taxpayer.

g. The delay was caused by the destruction of the taxpayer's records due to fire or other unavoidable casualty.

h. Ordinary business care and prudence was exercised to provide for the timely filing of the return and payment of the tax due, but the filing or payment was nevertheless delinquent. What constitutes ordinary business care and prudence must be determined by the particular facts and circumstances in each case. See *Armstrong v. Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

10.101(5) *What does not constitute reasonable cause.* This subrule is only applicable to tax that is due and payable prior to January 1, 1985. Factors which do not tend to establish reasonable cause include, but are not limited to:

Failure to exercise the generally accepted standards of fiduciary responsibility in providing for the timely filing of the return and payment of the tax due.

10.101(6) *Interest cannot be waived.* Interest due on unpaid tax is not a penalty, but rather it is compensation to the government for the period it was deprived of the use of money. Therefore, interest due cannot be waived. *Vick v. Phinney*, 414 F.2d 444, 448 (5th CA 1969); *Time, Inc. v. United States*, 226 F.Supp. 680, 686 (S.D. N.Y. 1964); *In Re Jeffco Power Systems*, Dep't of Revenue Hearing Officer decision, Docket No. 77-9-6A-A (1978).

701—10.102(422) Penalty. Tax due and payable after December 31, 1984, but for tax periods ending before January 1, 1991. See subrules 10.41(3) to 10.41(6) for the penalty for tax that is due and payable after December 31, 1984, but for tax periods ending before January 1, 1991.

This rule is intended to implement Iowa Code sections 4.1, 422.25, 622.106, and 1990 Iowa Acts, chapter 1172. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

701—10.103(422) Interest on unpaid tax. Tax not paid within the time prescribed by law, including the period during an extension of time, draws interest at the rate of three-fourths of one percent per month for each month, or fraction of a month, that the tax liability remains unpaid until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982. Payments made are first credited to penalty and interest due and then to the tax liability. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990).

701—10.104 to 10.109 Reserved.

HOTEL AND MOTEL

[Prior to 1/23/91, see 701—104.8(422A) and 104.9(422A)]

701—10.110(423A) Interest and penalty.

10.110(1) Computation for tax due after December 31, 1979, but before January 1, 1985. The filing of the tax return within the period prescribed by law and the payment of the tax required to be shown thereon are simultaneous acts and if either condition is not met, a penalty shall be assessed. Section 422.58(1) of the Iowa Code provides a penalty for failure to file a permitholder's monthly tax deposit or a return or, if a permitholder fails to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return. Only the penalty for a failure to file a return will be added when both a failure to file a return and a failure to remit at least 90 percent of the tax due or to pay less than 90 percent of the tax required to be shown on the return occurs. The penalty for failure to pay at least 90 percent of the tax due is 5 percent of the tax due. Penalty is computed on the amount required to be shown as tax with the filing of the deposit or return. For purposes of computing the penalty in case of failure to file or to pay at least 90 percent of the amount of tax required to be shown on the return, the tax shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return. If a return is determined to be delinquent, then the penalty shall continue to be assessed on any additional amounts of tax determined to be due. The percent of penalty applied to additional amounts of tax determined to be due shall be the percentage which had accumulated when the initial penalty was assessed and paid on the delinquent return.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax then due.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. Interest accrues on the tax or additional tax at the rate of three-fourths of one percent per month, counting each fraction of a month as an entire month, computed from the date the return or deposit was required to be filed until December 31, 1981. See rule 701—10.2(421) for the statutory interest rate commencing on or after January 1, 1982.

10.110(2) Computation for tax due on or after January 1, 1985, but before January 1, 1987. Iowa Code section 422.58(1) provides for a penalty of 10 percent for the failure to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of any tax required to be shown on the return. For purposes of computing the penalty in case of failure to pay at least 90 percent of the amount required to be shown on the return, the tax shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown on the return is not subject to waiver.

All payments shall be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). See subrule 10.41(4) for examples of computation of penalty and interest for tax periods ending before January 1, 1991. See subrule 10.6(5) for examples of penalty computation for tax periods beginning on or after January 1, 1991.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. See rule 701—10.2(421) for the statutory interest rate.

10.110(3) *Computation for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991.* Iowa Code section 422.58(1) provides for a penalty of 15 percent for the failure to remit at least 90 percent of the tax due with the filing of the return or pay less than 90 percent of the tax required to be shown on the return. For purposes of computing the penalty in case of failure to pay at least 90 percent of the amount required to be shown on the return, the tax will be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may legally be claimed on the return.

The penalty for failure to pay at least 90 percent of the tax required to be shown on the return is not subject to waiver.

All payments must be first applied to the penalty and then to the interest, and the balance, if any, to the amount of tax due. See *Ashland Oil Co. v. Iowa Department of Revenue and Finance*, 452 N.W.2d 162 (Iowa 1990). See subrule 10.41(6) for examples of computation of penalty and interest.

In addition to the penalty computed above, there shall be added interest as provided by law from the due date of the return. See rule 701—10.2(421) for the statutory interest rate.

See rule 701—10.5(421) for statutory exceptions to penalty for tax due on or after January 1, 1987, but for tax periods ending before January 1, 1991. See rule 701—10.6(421) for penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 423.40 and 2005 Iowa Code Supplement section 423A.1.

701—10.111(423A) Request for waiver of penalty. This rule is only applicable to tax due on or before December 31, 1984. Any taxpayer who believes there is good reason to object to any penalty imposed by the department for failure to timely file returns, or pay the tax must submit a request for waiver seeking that the penalty be waived. If it can be shown to the director's satisfaction that the failure was due to reasonable cause, the penalty will be adjusted accordingly. The request must be in the form of an affidavit and must contain all facts alleged as reasonable cause for the taxpayer's failure to file the return, or pay the tax as required by law. The following are examples of situations that may be accepted by the director as being reasonable cause:

1. Where the return, monthly deposit or payment was filed on time, but filed erroneously with another state agency or the Internal Revenue Service.

2. A showing that the completed return was mailed in time to reach the department in the normal course of mails, within the legal period. If the due date is a Saturday, Sunday or legal holiday, the following business day is within the legal period.

3. Where the delay was caused by death or serious illness of the person responsible for filing.

4. Where the delay was caused by prolonged unavoidable absence of the person responsible for filing.

5. Where the delinquency was caused by destruction by fire or other casualty of the retailer's records.

6. A showing that the delay or failure was due to erroneous information given the retailer by an employee of the department.

7. Where the retailer exercised ordinary business care and prudence and was nevertheless unable to file the return within the prescribed time, then the delay is due to reasonable cause. A failure to pay will be considered to be due to reasonable cause to the extent that the retailer has made a satisfactory showing that ordinary business care and prudence were exercised in providing for payment of the liability and was nevertheless either unable to pay the tax or would suffer an undue hardship if the retailer paid on the due

date. What constitutes ordinary business care and prudence must be determined by the particular facts of a particular case, *Armstrong's Inc. v. Iowa Department of Revenue*, 320 N.W.2d 623 (Iowa 1982).

8. If the retailer has had no reported delinquencies or late payments in the past 36 months. However, this does not apply to a penalty established by audit.

9. If the return is filed on time, but the face of the return contained a mathematical error, if the retailer has had no reported delinquencies, including mathematical errors, in the past 36 months. However, this does not apply to a penalty established by audit.

See rule 701—10.6(421) for exceptions to penalty for tax periods beginning on or after January 1, 1991.

This rule is intended to implement Iowa Code section 423.40 and 2005 Iowa Code Supplement section 423A.1.

701—10.112 to 10.114 Reserved.

ALL TAXES

701—10.115(421) Application of payments to penalty, interest, and then tax due for payments made on or after January 1, 1995, unless otherwise designated by the taxpayer. The department will not reapply prior payments made by the taxpayer to penalty or interest determined to be due after the date of those prior payments. However, the department will apply payments to penalty and interest which were due at the time the payment was made.

Example (a) — Delinquent Return

- a. Tax due is \$1,000.
- b. Return filed two months late.
- c. \$1,000 paid with the return.
- d. The department bills the additional tax in the third month after the due date. The taxpayer pays the assessment in the third month.

The computation of additional tax is shown below:

Tax	\$1,000.00	
Penalty	100.00	(10% failure to file penalty)
Interest	14.00	(2 months interest)
Total	\$1,114.00	
Less payment	1,000.00	
Additional tax due	\$ 114.00	
Interest	.80	(1 month interest)
Total due	\$ 114.80	

Two years after the due date, the Internal Revenue Service conducts an audit and increases the taxpayer's taxable income. The department redetermines the taxpayer's liability 26 months after the due date as follows:

Tax as redetermined by the department	\$1,100.00	
Less paid with return	1,000.00	
Additional tax	\$ 100.00	
Penalty	10.00	(10% failure to file penalty)
Interest	18.20	(26 months interest)
Total due	\$ 128.20	

Example (b) — Timely Filed No Remit

- a. Tax due is \$1,000.
- b. Return timely filed.
- c. \$0 paid.

The calculation for the total amount due five months after the due date is shown below:

Tax	\$1,000.00	
Penalty	50.00	(5% failure to pay penalty)
Interest	35.00	(5 months interest)
Total due	<u>\$1,085.00</u>	

The department bills the additional tax in the fifth month after the due date and the taxpayer pays the additional amount in the eighth month after the due date. The payment is applied as follows:

Tax	\$1,000.00	
Penalty	50.00	(5% failure to pay penalty)
Interest	56.00	(8 months interest)
Total due	<u>\$1,106.00</u>	
Amount paid	\$1,085.00	

Balance tax due \$21.00 subject to interest until paid.

The balance due was not paid.

Three years after the due date the taxpayer forwards a copy of an Internal Revenue Service audit which increases the taxpayer's income to the department. The department recomputes the taxpayer's liability as follows:

Tax as redetermined by the department	\$1,200.00	
Less paid per prior audit	<u>979.00</u>	
Balance due	\$ 221.00	(includes the balance due of \$21)
Penalty	10.00	(5% failure to pay penalty on \$200, the \$21.00 already bears penalty)
Interest	54.52	(36 months interest on \$200 and 28 months interest on \$21)
Total due	<u>\$ 285.52</u>	

10.115(1) Refunds. In those instances where an audit reduced the amount of tax, penalty, and interest due over the amount paid, the department will reapply payments so that amount refunded is tax on which interest will accrue as set forth in the Iowa Code.

10.115(2) Partial payments made after notices of assessments issued. Where partial payments are made after a notice of assessment is issued, the department will reapply payments to penalty, interest, and then to tax due until the entire assessed amount is paid.

Where there are both agreed and unagreed to items as a result of an examination, the taxpayer and the department may agree to apply payments to the penalty, interest, and then to tax due on the agreed to items of the examination when all of the penalty, interest, and tax on the agreed to items are paid. In these instances, subsequent payments will not be applied to penalty and interest accrued on the agreed to items of the examination.

This rule is intended to implement 1994 Iowa Acts, chapter 1133, section 1.

JEOPARDY ASSESSMENTS

701—10.116(422,453B) Jeopardy assessments. A jeopardy assessment may be made where a return has been filed and the director believes for any reason that assessment or collection of the tax will be

jeopardized by delay, or where a taxpayer fails to file a return, whether or not formally called upon to file a return. In addition, all assessments made pursuant to Iowa Code chapter 453B are jeopardy assessments. The department is authorized to estimate the applicable tax base and the tax upon the basis of available information, add penalty and interest, and demand immediate payment.

A jeopardy assessment is due and payable when the notice of the assessment is served upon the taxpayer. Proceedings to enforce the payment of the assessment by seizure or sale of any property of the taxpayer may be instituted immediately.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—10.117(422,453B) Procedure for posting bond. In the event a taxpayer seeks to post a bond in lieu of summary collection of a jeopardy assessment, pending final determination of the amount of tax legally due, an original and four copies of a separate written bond application conspicuously titled “Jeopardy Assessment Bond Request” must be filed with the clerk of the hearings section for the department. Thereafter, if the taxpayer and the department agree on an appropriate bond, the clerk of the hearings section for the department shall be notified and the bond shall be approved by the clerk of the hearings section for the department.

If the clerk of the hearings section for the department has not been notified that an agreement on the bond has been reached within ten days after the date upon which the bond request was filed, the clerk of the hearings section for the department shall transfer the file to the director who shall promptly schedule a hearing on the bond request with written notice to be given the taxpayer and the department at least ten days prior to the hearing.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.118(422,453B) Time limits. Bond requests may be made anytime after a timely protest to the jeopardy assessment has been filed with the clerk of the hearings section for the department, except that any bond request whereby the taxpayer seeks to postpone a scheduled sale of assets seized by or on behalf of the department must be filed with the clerk of the hearings section for the department no later than ten days from the date on which notice of the sale was mailed to, or otherwise served upon, the taxpayer. Portions of an assessment which are undisputed must be paid in full at the time a bond request is filed.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.119(422,453B) Amount of bond. In the event no agreement on the bond is reached, bonds must be posted in an amount to be determined by the director consistent with the following:

10.119(1) If property has been seized or a lien has been filed and the taxpayer seeks only to postpone the sale of property, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the expected depreciation loss, storage cost, insurance costs and any and all other costs associated with the distraint and storage of the property pending such final determination.

10.119(2) If property has been seized or a lien has been filed and the taxpayer seeks to prevent the sale of property and to have the property returned for the taxpayer’s own use, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the sale price the department can reasonably expect to realize on any property seized plus all costs related to the distraint and storage of the property.

10.119(3) If a taxpayer seeks to prevent the department from seizing property or placing a lien upon property, pending final determination of the amount of tax legally due, the bond shall be in an amount equal to the total amount of the department’s assessment including interest to the date of the bond.

Bonds may not be required in excess of double the amount of the department’s jeopardy assessment.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.120(422,453B) Posting of bond. If the taxpayer fails to post the bond as agreed upon within 15 days from the date the bond is approved by the clerk of the hearings section for the department, no bond will be allowed and the director shall dismiss the bond request. If no agreement was reached and a bond order is issued by the director, the taxpayer has ten days to post the bond. If the bond is not posted within the ten-day period, the director shall dismiss the bond request.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.121(422,453B) Order. The director’s order shall be in writing and shall include findings of fact based solely on the evidence in the record and on matters officially noticed in the record and shall include conclusions of law. The findings of fact and conclusions of law shall be separately stated. Findings of fact shall be prefaced by a concise and explicit statement of underlying facts supporting the findings. Each conclusion of law shall be supported by cited authority or by a reasoned opinion.

Orders will be issued within a reasonable time after termination of the hearing. Parties shall be promptly notified of each order by delivery to them of a copy of the order by personal service or by ordinary mail.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.122(422,453B) Director’s order. The director’s order constitutes the final order of the department for purposes of judicial review. Parties shall be promptly notified of the director’s order by delivery to them of a copy of the order by personal service or by ordinary mail.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.123(422,453B) Type of bond. The bond shall be payable to the department for the use of the state of Iowa and shall be conditioned upon the full payment of the tax, penalty, interest, or fees that are found to be due which remain unpaid upon the resolution of the contested case proceedings up to the amount of the bond. Upon application of the taxpayer or the department, the director may, upon hearing, fix a greater or lesser amount to reflect changed circumstances, but only after ten days’ prior notice is given to the department or the taxpayer as the case may be.

A personal bond, without a surety, is only permitted if the taxpayer posts with the clerk of the hearings section for the department, cash, a cashier’s check, a certificate of deposit, or other marketable securities which are approved by the director with a readily ascertainable value which is equal in value to the total amount of the bond required. If a surety bond is posted, the surety on the bond may be either personal or corporate. The provisions of Iowa Code chapter 636 relating to personal and corporate sureties shall govern to the extent not inconsistent with the provisions of this subrule.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

701—10.124(422,453B) Form of surety bond. The surety bond posted shall be in substantially the following form:

BEFORE THE IOWA STATE DEPARTMENT OF REVENUE
HOOVER STATE OFFICE BUILDING
DES MOINES, IOWA

<u>IN THE MATTER OF</u>	*	
	*	
(Taxpayer’s Name, Address and	*	<u>SURETY BOND</u>

designate proceeding, e.g., *
 income, sales, etc.) * DOCKET NO.
 *

KNOW ALL PERSONS BY THESE PRESENTS:

That we _____ (taxpayer) _____ as principal, and _____ (surety) _____, as surety, of the county of _____, and State of Iowa, are held and firmly bound unto the Iowa Department of Revenue for the use of the State of Iowa, in the sum of \$ _____ dollars, lawful money of the United States, for the payment of which sum we jointly and severally bind ourselves, our heirs, devisees, successors and assigns firmly by these presents. The condition of the foregoing obligations are, that, whereas the above-named principal has protested an assessment of tax, penalty, interest, or fees or any combination of them, made by the Iowa Department of Revenue, now if the principal _____ shall promptly pay the amount of the assessed tax, penalty, interest or fees found to be due upon the resolution of the contested case proceedings, then this bond shall be void, otherwise to remain in full force and effect.

Dated this _____ day of _____, _____.

 Principal

 Surety

 Surety

(corporate acknowledgment if surety is a corporation)

AFFIDAVIT OF PERSONAL SURETY

STATE OF IOWA)
 COUNTY OF) ss

I hereby swear or affirm that I am a resident of Iowa and am worth beyond my debts the amount set opposite my signature below in the column entitled, "Worth Beyond Debts," and that I have property in the State of Iowa, liable to execution equal to the amount set opposite my signature in the column entitled "Property in Iowa Liable to Execution."

Signature	Worth Beyond Debts	Property in Iowa Liable to Execution
_____	\$ _____	\$ _____
Surety (type name)		
_____	\$ _____	\$ _____
Surety (type name)		

Subscribed and sworn to before me the undersigned Notary Public this _____ day of _____, _____.

(Seal)

 Notary Public in and
 for the State of Iowa

701—10.125(422,453B) Duration of the bond. The bond shall remain in full force and effect until the conditions of the bond have been fulfilled or until the bond is otherwise exonerated as provided by law.

This rule is intended to implement Iowa Code sections 422.30 and 453B.9.

701—10.126(422,453B) Exoneration of the bond. Upon conclusion of the contested case administrative proceedings, the bond shall be exonerated by the director when any of the following events occur: upon full payment of the tax, penalty, interest, costs or fees found to be due; upon filing a bond for the purposes of judicial review which bond is sufficient to secure the unpaid tax penalty, interest, costs and fees; or if no additional tax, penalty, interest, costs or fees are found to be due that have not been previously paid, upon entry of a final unappealable order which resolves the underlying protest.

This rule is intended to implement Iowa Code chapter 17A as amended by 1998 Iowa Acts, chapter 1202, and sections 422.30 and 453B.9.

- [Filed 12/31/81, Notice 11/25/81—published 1/20/82, effective 2/24/82]
- [Filed 12/17/82, Notice 11/10/82—published 1/5/83, effective 2/9/83]
- [Filed 12/16/83, Notice 11/9/83—published 1/4/84, effective 2/8/84]
- [Filed 12/14/84, Notice 11/7/84—published 1/2/85, effective 2/6/85]
- [Filed 8/23/85, Notice 7/17/85—published 9/11/85, effective 10/16/85]
- [Filed 12/2/85, Notice 10/23/85—published 12/18/85, effective 1/22/86]
- [Filed 9/5/86, Notice 7/30/86—published 9/24/86, effective 10/29/86]
- [Filed emergency 11/14/86—published 12/17/86, effective 11/14/86]
- [Filed 11/26/86, Notice 10/22/86—published 12/17/86, effective 1/21/87]
- [Filed 12/11/87, Notice 11/4/87—published 12/30/87, effective 2/3/88]
- [Filed 12/9/88, Notice 11/2/88—published 12/28/88, effective 2/1/89]
- [Filed without Notice 6/12/89—published 6/28/89, effective 8/2/89]
- [Filed 11/22/89, Notice 10/18/89—published 12/13/89, effective 1/17/90]
- [Filed 11/21/90, Notice 10/17/90—published 12/12/90, effective 1/16/91]
- [Filed 1/4/91, Notice 11/28/90—published 1/23/91, effective 2/27/91]
- [Filed 12/6/91, Notice 10/30/91—published 12/25/91, effective 1/29/92]
- [Filed 9/11/92, Notice 8/5/92—published 9/30/92, effective 11/4/92]
- [Filed 12/4/92, Notice 10/28/92—published 12/23/92, effective 1/27/93]
- [Filed 12/3/93, Notice 10/27/93—published 12/22/93, effective 1/26/94]
- [Filed 11/18/94, Notice 10/12/94—published 12/7/94, effective 1/11/95]
- [Filed 12/2/94, Notice 10/26/94—published 12/21/94, effective 1/25/95]
- [Filed 11/3/95, Notice 9/27/95—published 11/22/95, effective 12/27/95]
- [Filed 12/1/95, Notice 10/25/95—published 12/20/95, effective 1/24/96]
- [Filed emergency 3/11/96—published 3/27/96, effective 3/11/96]
- [Filed 12/13/96, Notice 11/6/96—published 1/1/97, effective 2/5/97]
- [Filed 9/5/97, Notice 7/30/97—published 9/24/97, effective 10/29/97]
- [Filed 10/17/97, Notice 9/10/97—published 11/5/97, effective 12/10/97]
- [Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]
- [Filed 12/11/98, Notice 11/4/98—published 12/30/98, effective 2/3/99]
- [Filed 4/30/99, Notice 3/24/99—published 5/19/99, effective 6/23/99]
- [Filed 9/3/99, Notice 7/28/99—published 9/22/99, effective 10/27/99]
- [Filed 12/10/99, Notice 11/3/99—published 12/29/99, effective 2/2/00]◊
- [Filed 12/22/00, Notice 11/15/00—published 1/10/01, effective 2/14/01]
- [Filed 12/7/01, Notice 10/31/01—published 12/26/01, effective 1/30/02]
- [Filed 3/15/02, Notice 2/6/02—published 4/3/02, effective 5/8/02]
- [Filed 5/9/03, Notice 11/27/02—published 5/28/03, effective 7/2/03]
- [Filed 1/30/04, Notice 12/10/03—published 2/18/04, effective 3/24/04]
- [Filed 10/22/04, Notice 9/15/04—published 11/10/04, effective 12/15/04]
- [Filed 11/4/04, Notice 9/29/04—published 11/24/04, effective 12/29/04]

[Filed 12/30/04, Notice 11/24/04—published 1/19/05, effective 2/23/05]
[Filed 12/30/05, Notice 11/23/05—published 1/18/06, effective 2/22/06]
[Filed 5/5/06, Notice 3/29/06—published 5/24/06, effective 6/28/06]
[Filed 12/13/06, Notice 11/8/06—published 1/3/07, effective 2/7/07]
[Filed 2/8/08, Notice 1/2/08—published 2/27/08, effective 4/2/08]
[Filed 3/7/08, Notice 1/30/08—published 3/26/08, effective 4/30/08]
[Filed 12/10/08, Notice 11/5/08—published 12/31/08, effective 2/4/09]

⁰ Two or more ARCs

¹ Inadvertently omitted IAC 12/20/95; inserted 2/14/96.

CHAPTER 21
ELECTION FORMS AND INSTRUCTIONS

[Prior to 7/13/88, see Secretary of State(750), Ch 11]

DIVISION I
GENERAL ADMINISTRATIVE PROCEDURES

721—21.1(47) Emergency election procedures. The state commissioner of elections may exercise emergency powers over any election being held in a district in which either a natural or other disaster or extremely inclement weather has occurred. The state commissioner may also exercise emergency powers during an armed conflict involving United States armed forces, or mobilization of those forces, or if an election contest court finds that there were errors in the conduct of an election making it impossible to determine the result.

21.1(1) Definitions.

“*Commissioner*” means the county commissioner of elections.

“*Election contest court*” means any of the courts specified in Iowa Code sections 57.1, 58.4, 61.1, 62.1 and 376.10.

“*Extremely inclement weather*” means a natural occurrence, such as a rainstorm, windstorm, ice storm, blizzard, tornado or other weather conditions, which makes travel extremely dangerous or which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

“*Natural disaster*” means a natural occurrence, such as a fire, flood, blizzard, earthquake, tornado, windstorm, ice storm, or other events, which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

“*Other disaster*” means an occurrence caused by machines or people, such as fire, hazardous substance or nuclear power plant accident or incident, which threatens the public peace, health and safety of the people or which damages and destroys public and private property.

“*State commissioner*” means the state commissioner of elections.

21.1(2) Notice of natural or other disaster or extremely inclement weather. The county commissioner of elections, or the commissioner’s designee, may notify the state commissioner of elections that due to a natural or other disaster or extremely inclement weather an election cannot safely be conducted in the time or place for which the election is scheduled to be held. If the commissioner or the commissioner’s designee is unable to transmit notice of the hazardous conditions, the notice may be given by any elected county official. Verification of the commissioner’s agreement with the severity of the conditions and the danger to the election process shall be transmitted to the state commissioner as soon as possible. Notice may be given by telephone or by facsimile machine, but a signed notice shall also be delivered to the state commissioner.

21.1(3) Declaration of emergency due to natural or other disaster or extremely inclement weather. After receiving notice of hazardous conditions, the state commissioner of elections, or the state commissioner’s designee, may declare that an emergency exists in the affected precinct or precincts. A copy of the declaration of the emergency shall be provided to the commissioner.

21.1(4) Emergency modifications to conduct of elections. When the state commissioner of elections has declared that an emergency exists due to a natural or other disaster or to extremely inclement weather, the county commissioner of elections, or the commissioner’s designee, shall consult with the state commissioner to develop a plan to conduct the election under the emergency conditions. All modifications to the usual method for conducting elections shall be approved in advance by the state commissioner unless prior approval is impossible to obtain.

Modifications may be made to the method for conducting the election including relocation of the polling place, postponement of the hour of opening the polls, postponement of the date of the election if no candidates for federal offices are on the ballot, reduction in the number of precinct election officials in nonpartisan elections, or other reasonable and prudent modifications that will permit the election to be conducted.

21.1(5) *Relocation of polling place.* The substitute polling place shall be as close as possible to the usual polling place and shall be within the same precinct if possible. Preference shall be given to buildings which are accessible to the elderly and disabled. Buildings supported by taxation shall be made available without charge by the authorities responsible for their administration. If it is necessary, more than one precinct may be located in the same room.

A notice of the location of the substitute polling place shall be posted on the door of the former polling place not later than one hour before the scheduled time for opening the polls or as soon as possible. If it is unsafe or impossible to post the sign on the door of the former polling place, the notice shall be posted in some other visible place at or near the site of the former polling place. If time permits, notice of the relocation of the polling place shall be published in the same newspaper in which notice of election was published, otherwise notice of relocation may be published in any newspaper of general circulation in the political subdivision which will appear on or before election day. The commissioner shall inform all broadcast media and print news organizations serving the jurisdiction of the modifications.

21.1(6) *Postponement of election.* An election may be postponed until the following Tuesday. If the election involves more than one precinct, the postponement must include all precincts within the political subdivision. If the election is postponed, ballots shall not be reprinted to reflect the modification in the election date. The date of the close of voter registration for the election shall not be extended. Precinct election registers prepared for the original election date may be used or reprinted at the commissioner's discretion.

On the day that the postponed election is actually held all election day procedures must be repeated.

21.1(7) *Absentee voting in postponed elections.* Absentee ballots shall be delivered to voters until the date the election is actually held. Absentee ballots shall be accepted at the commissioner's office until the hour the polls close on the date the election is held. Absentee ballots which are postmarked no later than the day before the election is actually held shall be accepted if received no later than the time prescribed by the Iowa Code for the usual conduct of the election. The time shall be calculated from the date on which the election is held, not the date for which the election was originally scheduled.

21.1(8) *Special precinct board in postponed elections.* The special precinct board shall meet to consider special ballots at the times specified in Iowa Code sections 50.22 and 52.23, calculated from the date the election is held. No absentee ballots shall be counted until the date the election is held.

21.1(9) *Canvass of votes in postponed elections.* The canvass of votes shall also be rescheduled for one week following the original date.

21.1(10) *Postponements made on election day.* If the emergency is declared while the polls are open and the decision is made to postpone the election, each precinct polling place in the political subdivision shall be notified to close its doors and to halt all voting immediately. People present in the polling place who are waiting to vote shall not be given ballots or admitted to the voting machines, as appropriate. People who have received ballots shall deposit them in the ballot box; unmarked ballots may be returned to the precinct election officials.

The precinct election officials shall seal all ballots which were cast before the declaration of the emergency in secure containers. The containers shall be clearly marked as ballots from the postponed election. If it is safe to do so, the ballot containers, election register, and other election supplies shall be transported to the commissioner's office. The ballots shall be stored in a secure place. If it is unsafe to travel to the commissioner's office, the chairperson of the precinct election board shall see that the ballots and the election register are securely stored until it is safe to return them to the commissioner. If no contest is pending six months after the canvass for the election is completed, the unopened ballot containers shall be destroyed.

If voting machines or automatic tabulating equipment is used, the machines or automatic tabulating equipment shall be closed and sealed without printing the results. Before the date the election is held, the machines or automatic tabulating equipment shall be reset to zero. Any documents showing the progress of the count, including paper records required by 2007 Iowa Acts, Senate File 369, section 7, subsection 2, shall be sealed and stored. No one shall reveal the progress of the count. After six months, the envelope containing the vote totals shall be destroyed if no contest is pending.

21.1(11) *Records kept.* The state commissioner of elections shall maintain records of each emergency declaration. The records shall include the following information:

- a. The county in which the emergency occurred.
- b. The date and time the emergency declaration was requested.
- c. The name and title of the person making the request.
- d. Name and date of the election affected.
- e. The jurisdiction for which the election is to be conducted (school, city, county, or other).
- f. The number of precincts in the jurisdiction.
- g. The number of precincts affected by the emergency.
- h. The nature of the emergency, i.e., natural or other disaster, or extremely inclement weather.
- i. The date or dates of the occurrence of the natural or other disaster or extremely inclement weather.
- j. Conditions affecting the conduct of the election.
- k. Whether the polling places may safely be opened on time.
- l. Action taken: such as moving the polling place, change voting system, postpone election until the following Tuesday.
- m. Method to be used to inform the public of changes made in the election procedure.
- n. The signature of the state commissioner or the state commissioner's designee who was responsible for declaring the emergency.

21.1(12) *Federal elections.*

a. If an emergency occurs that will adversely affect the conduct of an election at which candidates for federal office will appear on the ballot, the election shall not be postponed or delayed. Emergency measures shall be limited to relocation of polling places, modification of the method of voting, reduction of the number of precinct election officials at a precinct and other modifications of prescribed election procedures which will enable the election to be conducted on the date and during the hours required by law.

The primary election held in June of even-numbered years and the general election held in November of even-numbered years shall not be postponed. Special elections called by the governor pursuant to Iowa Code section 69.14 shall not be postponed unless no federal office appears on the ballot.

b. If a federal or state court order or any other order extends the time established for closing the polls pursuant to Iowa Code section 49.73, any person who votes after the statutory hour for closing the polls shall vote only by casting a provisional ballot pursuant to Iowa Code section 49.81. Provisional ballots cast after the statutory hour for closing the polls shall be sealed in a separate envelope from provisional ballots cast during the statutory polling hours. The absentee and special voters precinct board shall tabulate and report the results of the two sets of provisional ballots separately.

21.1(13) *Report to state commissioner.* A report of the actions taken and recommendations for future situations shall be prepared by the commissioner and sent to the state commissioner of elections not later than one week following the canvass of the election.

21.1(14) *Military emergencies.* A voter who is entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces," may return an absentee ballot via electronic transmission only if the voter is located in an area designated by the U.S. Department of Defense to be an imminent danger pay area. The list of imminent danger pay areas can be found at www.defenselink.mil/comptroller/fmr/07a/07a_10.pdf. Procedures for the return of absentee ballots by electronic transmission are described in subrule 21.320(4).

21.1(15) *Election contest emergency.* If an election contest court finds that there were errors in the conduct of an election which make it impossible to determine the result of the election, the contest court shall notify the state commissioner of elections of its finding. The state commissioner shall order a new election to be held. The election date shall be set by the state commissioner. The repeat election shall be conducted under the state commissioner's supervision.

The repeat election shall be held at the earliest possible time, but it shall not be held earlier than 14 days after the date the election was set aside. Voter registration, publication, equipment testing and other applicable deadlines shall be calculated from the date of the repeat election.

The repeat election shall be conducted under the same procedures required for the election that was set aside, except that all known errors in preparation and procedure shall be corrected. The nominations from the initial election shall be used in the repeat election unless the contest court specifically rejects the initial nomination process in its findings. Precinct election officials for the repeat election may be replaced at the discretion of the auditor.

The following materials prepared for the original election shall be used or reconstructed for the repeat election:

Ballots (showing the date of repeat election). This may be stamped on ballots printed for the original election.

Notice of election (showing the date of repeat election).

This rule is intended to implement Iowa Code section 47.1.

721—21.2(47) Facsimile documents. Certain documents may be submitted via facsimile machine.

21.2(1) *Facsimile documents accepted for filing.* Assuming that all other legal requirements are met, the following documents may be submitted by facsimile machine if presented to the appropriate filing officer as facsimiles of the original and if subrule 21.2(2) is complied with:

- a. Affidavits of candidacy required by Iowa Code chapters 43, 44, 45, 161A, 260C, 277, 376, and 420.
- b. Applications for absentee ballots pursuant to Iowa Code chapter 53.
- c. Certificates of nomination by convention under Iowa Code chapters 43, 44 and 54.
- d. Judicial declarations of candidacy required under Iowa Code chapter 46.
- e. Lists of presidential electors required by Iowa Code chapters 43 and 54.
- f. Notices of intent to contest elections filed under Iowa Code chapters 61, 62 and 376.
- g. Objections to nomination papers filed under Iowa Code chapters 43, 44, and 277.
- h. Resignation notice by elected or appointed officials filed under Iowa Code section 69.4.
- i. Requests for recounts filed under Iowa Code chapters 43 and 50.
- j. Withdrawal notices by candidates filed under Iowa Code chapters 43, 44, 50.46 and 277.
- k. Abstracts of votes filed with the state commissioner of elections.

21.2(2) *Original documents.* The original copy of documents submitted by facsimile machine shall also be filed. The original shall be mailed to the appropriate commissioner. The envelope bearing the original document shall be postmarked not later than the last day to file the document.

a. The filing shall be void if the original of a document filed by facsimile machine is not received within seven days after the filing deadline for the original document.

b. The filing shall be void if the postmark on the envelope containing the original document is later than the filing deadline date.

c. If a filing is voided because the original of a document submitted by facsimile machine was postmarked too late or arrives too late, the person who filed the document shall be notified immediately in writing.

21.2(3) *Documents not acceptable by facsimile.* Only the original of the following documents will be accepted for filing:

a. Absentee ballots and any affidavit required to accompany an absentee ballot under Iowa Code chapter 53.

b. Nomination petitions filed under Iowa Code chapters 43, 45, 161A, 277, 280A, and 376.

This rule implements Iowa Code sections 43.6, 43.11, 43.16, 43.19, 43.21, 43.23, 43.24, 43.54, 43.56, 43.60, 43.67, 43.76, 43.78, 43.80, 43.88, 43.115, 43.116, 44.3, 44.4, 44.9, 44.16, 45.3, 45.4, 46.20, 47.1, 47.2, 50.30, 50.31, 50.32, 50.33, 50.46, 50.48, 53.2, 53.8, 53.11, 53.17, 53.21, 53.22, 53.40, 53.45, 54.5, 61.3, 62.5, 69.4, 161A.5, 260C.15, 277.4, 277.5, 376.4, 376.10, 376.11, and 420.130.

721—21.3(49,48A) Voter identification documents.

21.3(1) *Optional identification.* A precinct election official may require identification from any person whom the official does not know.

21.3(2) *Required identification.* Precinct election officials shall require identification under the following circumstances:

a. From any person offering to vote whose name does not appear on the election register as an active voter.

b. From any person whose name appears on the election register as an inactive voter.

c. From any person offering to vote whose name is not on the election register and who wants to report a change of address from one precinct to another within the same county.

d. From any person who applies to register to vote on election day pursuant to 2007 Iowa Acts, House File 653, section 2.

21.3(3) *Identification documents for persons other than election day registrants.* Unless the person is registering to vote at the polls on election day, precinct election officials shall accept the following identification documents from any person who is asked to present ID:

a. Current and valid photo identification card; or

b. A copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

21.3(4) *Identification for election day registrants.*

a. A person who applies to register to vote on election day shall provide proof of identity and residence in the precinct where the person is applying to register and vote.

(1) Proof of identity must be a photo ID card that is current and valid and includes an expiration date. The following forms of identification are acceptable: an Iowa driver's license or nonoperator's ID, an out-of-state driver's license or nonoperator's ID, a United States passport, a United States military identification card, an identification card issued by an employer, or a student identification card issued by an Iowa high school or an Iowa postsecondary educational institution. If the photo ID does not show the person's address in the appropriate precinct, the person must show proof of residence.

(2) Proof of residence may be any of the following documents provided that the document shows the person's name and address in the precinct: residential lease, property tax statement, utility bill, bank statement, paycheck, government check, or other government document.

b. Any registered voter who attests for another person registering to vote at the polls on election day shall be a registered voter of the same precinct. The registered voter may be a precinct election official or a pollwatcher, but may not attest for more than one person applying to register at the same election.

21.3(5) *Current and valid identification.*

a. "Current and valid" or "ID," for the purposes of this rule, means identification that meets the following criteria:

(1) The expiration date on the ID has not passed. An ID is still valid on the expiration date. An Iowa nonoperator's ID that shows "none" as the expiration date shall be considered current and valid.

(2) The ID has not been revoked or suspended.

b. A current and valid ID may include a former address.

21.3(6) *ID not provided.* A person who has been requested to provide identification and does not provide it shall vote only by provisional ballot pursuant to Iowa Code section 49.81. However, a person who is registering to vote on election day pursuant to 2007 Iowa Acts, House File 653, section 2, may establish identity and residency in the precinct by written oath of a person who is registered to vote in the precinct.

This rule is intended to implement Iowa Code section 49.77, 2007 Iowa Acts, House File 653, section 2, and P.L. 107-252, Section 303.

721—21.4(49) Changes of address at the polls. An Iowa voter who has moved from one precinct to another in the county where the person is registered to vote may report a change of address at the polls on election day.

21.4(1) To qualify to vote in the election being held that day the voter shall:

- a. Go to the polling place for the precinct where the voter lives on election day.
- b. Complete a registration by mail form showing the person's current address in the precinct.
- c. Present proof of identity as required by subrule 21.3(3).

21.4(2) The officials shall require a person who is reporting a change of address at the polls to cast a special ballot if the person's registration in the county cannot be verified. Registration may be verified by:

- a. Telephoning the office of the county commissioner of elections, or
- b. Consulting a printed list of all registered voters who are qualified to vote in the county for the election being held that day, or
- c. Consulting the county's voter registration records by use of a computer.

21.4(3) In precincts where the voter's declaration of eligibility is included in the election register pursuant to rule 721—21.5(49) and Iowa Code section 49.77 as amended by 2006 Iowa Acts, House File 2050, section 3, the commissioner shall provide to each precinct one of the two following methods for recording changes of address:

a. The voter shall be provided with a form that includes both the eligibility declaration and the voter registration form. The instructions for the voter registration form shall be printed in large type on a separate sheet of paper and shall be provided to each person who completes a voter registration form at the polls. In lieu of signing in the election register, the voter who is reporting a change of address shall complete the required fields on both the eligibility declaration form and the registration form.

b. The commissioner shall provide blank lines on the election register for the precinct election officials to record the voter's name, address, and, if provided, telephone number, and, in primary elections, political party affiliation. The voter shall also complete a voter registration form showing the voter's current address.

This rule is intended to implement Iowa Code section 49.77(3).

721—21.5(49) Eligibility declarations in the election register. To compensate for the absence of a separate declaration of eligibility form, the commissioner shall provide to each precinct a voter roster with space for each person who appears at the precinct to vote to print the following information: first and last name, address, and, at the voter's option, telephone number, and, in primary elections, political party affiliation.

The roster forms shall include the name and date of the election and the name of the precinct, and may be provided on paper that makes carbonless copies. If the multicopy form is used, the commissioner shall retain the original copy of the voter roster with other records of the election.

This rule is intended to implement Iowa Code section 49.77 as amended by 2006 Iowa Acts, House File 2050, section 3.

721—21.6(43,50) Turnout reports. For all elections, the commissioner shall prepare a report of the number of people who voted. The board of supervisors shall certify the turnout at the canvass of votes.

21.6(1) This report shall provide a single number that includes the number of persons:

- a. Who voted at the polls on election day,
- b. Whose absentee ballots were accepted for counting, and
- c. Whose provisional ballots were accepted for counting.

21.6(2) The report shall not include the number of persons whose absentee ballots or provisional ballots were not accepted for counting.

21.6(3) In primary elections, the report shall include the number of persons who voted in each political party and the total number of persons who voted in the county.

This rule is intended to implement Iowa Code sections 43.59 and 50.24.

721—21.7(48A) Election day registration. In addition to complying with the identification provisions in rule 721—21.3(49,48A), precinct election officials shall comply with the following requirements:

21.7(1) Precinct election officials shall inspect the identification documents presented by election day registrants to verify the following:

- a. The photograph shows the person who is registering to vote.
- b. The name on the identification document is the same as the name of the applicant.
- c. The address on the identification document is in the precinct where the person is registering to vote.

21.7(2) Precinct election officials shall verify that each person who attempts to attest to the identity and residence of a person who is registering to vote on election day is a registered voter in the precinct and has not attested for any other voter in the election. The officials shall note in the “remarks” column of the election register that the person has attested for an election day registrant.

21.7(3) Precinct election officials shall permit any person who is in line to vote at the time the polls close to register and vote on election day if the person otherwise meets all of the election day registration requirements.

This rule is intended to implement 2007 Iowa Acts, House File 653.

721—21.8(48A) Notice to election day registrant. The commissioner shall send to each person who registers to vote on election day, pursuant to 2007 Iowa Acts, House File 653, section 2, an acknowledgment of the registration by nonforwardable mail. If the postal service returns the acknowledgment as undeliverable, the commissioner shall send a notice to the voter by forwardable mail. The notice shall be in substantially the following form:

Dear [name of voter],

You have registered and voted under Iowa’s Election Day registration law. On [date], this office mailed an acknowledgment to you at the address you used on the voter registration form. The United States Postal Service has returned that acknowledgment to us as undeliverable.

Please return the enclosed response form no later than [date]. If we do not receive your response by [date], your voter registration record will be made inactive and we will notify the county attorney and the State Registrar of Voters.

Please note that voter registration fraud is a felony under Iowa law. Registration fraud includes submitting a voter registration application that is known by the person to be materially false, fictitious, forged, or fraudulent.

County Auditor and Commissioner of Elections

Date: _____

Response Form

Please confirm your residence at:

[address on registration]

OR

Explain why the Postal Service does not deliver your mail to that address.

There appears to be an error in recording my address. My correct address is: _____

I receive mail at a different address. My mailing address is: _____

My address has changed since election day. My current address is: _____

The Postal Service made a mistake. I do reside at [list registration address]: _____

Other, please explain: _____

Signature of registrant

Date: _____

This rule is intended to implement 2007 Iowa Acts, House File 653.

721—21.9(49) “Vote here” signs.

1. Size. The signs shall be no smaller than 16 inches by 24 inches.
2. Exceptions. If a driveway leads away from the entrance to the voting area, or if the driveway is located in such a way that posting a “vote here” sign at the driveway entrance would not help potential voters find the voting area, no “vote here” sign shall be posted at the entrance to that driveway.

This rule is intended to implement Iowa Code section 49.21.

721—21.10(43) Application for status as a political party. A political organization which is not currently qualified as a political party may file an application for determination of political party status with the state commissioner of elections. The application may be filed after the completion of the executive council’s canvass of votes for the general election, but not later than one year after the date of the election at which the organization’s candidate for President of the United States or governor received at least 2 percent of the vote.

21.10(1) Application form. The application shall be in substantially the following form:

STATE OF IOWA
APPLICATION FOR POLITICAL PARTY STATUS

To the State Commissioner of Elections:

At the General Election held on November ____, _____, a candidate of the political organization named below received at least 2 percent of the total number of votes cast for the office of

- President of the United States
- Governor of Iowa

Pursuant to the requirements of Iowa Code section 43.2, we hereby request that the State Commissioner of Elections notify the state registrar of voters, the voter registration commission and the 99 counties of Iowa that the political organization named below qualifies as a political party under Iowa law.

Political organization name: _____

(Please print the party name in the form it should appear on ballots, voter registration forms, and other records.)

Name of candidate for President or Governor: _____

Signed: _____

Candidate

Address: _____

Telephone: _____

Signed: _____
Chairperson of Political Organization

Address: _____

Telephone: _____

Date submitted: _____

Office use only:

- Office of President of the United States
- Governor of Iowa

Total number of votes received for office: _____

Number of votes received by applicant: _____

Percentage of total: _____

- The application is rejected.
- approved, effective 21 days from date of approval.

Secretary of State and State Commissioner of Elections

Date: _____

21.10(2) Response. If the political organization meets the requirements established in Iowa Code section 43.2, the commissioner shall declare that the organization has qualified as a political party, effective 21 days after the application is approved. If the organization does not meet the requirements, the state commissioner shall immediately notify the applicant in writing of the reason for the rejection of the application.

21.10(3) Disqualification of political party. If at the close of nominations for the general election a political party has not nominated a candidate for the office of President of the United States, or for governor, as the case may be, the political party shall be disqualified immediately.

If the candidate of a political party for President of the United States or for governor, as the case may be, does not receive 2 percent of the votes cast for that office at a general election, the political party shall be disqualified. The effective date of the disqualification shall be the date of the completion of the state canvass of votes.

When a political party is disqualified, the state commissioner shall immediately notify the chairperson or central committee of the disqualified political party.

21.10(4) Notice of qualification and disqualification of political parties. The state commissioner of elections shall immediately notify the state registrar of voters, the voter registration commission, and the county commissioners of elections when a political party is qualified or disqualified. The notice shall include the name of the political party and the date upon which change in political party status becomes effective.

The state commissioner of elections shall also publish notice of the qualification or disqualification of a political party in a newspaper of general circulation in each congressional district. The publication shall be made within 30 days of the approval of an application for qualification or within 30 days of the effective date of a disqualification.

This rule is intended to implement Iowa Code sections 43.2 and 47.1.

721—21.11(44) Nonparty political organizations—nominations by petition. Rescinded IAB 9/10/97, effective 10/15/97.

721—21.12 to 21.19 Reserved.

721—21.20(62) Election contest costs. In determining the amount of the bond for election contests, the commissioner shall consider the following aspects of the cost of the election contest proceedings:

1. Fees as provided in Iowa Code section 62.22.
2. Fees for judges as provided in Iowa Code section 62.23.
3. The cost of making an official record of the proceedings.

721—21.21(62) Limitations. The amount of the bond shall not include costs not directly related to the contest court proceedings. Specifically, the amount of the bond shall not be intended to replace any potential lost income to the county caused by the delay in implementing the decision of the voters at the election being contested.

Rules 721—21.20(62) and 721—21.21(62) are intended to implement Iowa Code sections 62.6, 62.22, 62.23, and 62.24.

721—21.22 to 21.24 Reserved.

721—21.25(50) Administrative recounts. When the commissioner suspects that voting equipment used in the election malfunctioned or that programming errors may have affected the outcome of the election, the commissioner may request an administrative recount after the day of the election but not later than three days after the canvass of votes. The request shall be made in writing to the board of supervisors explaining the nature of the problem and listing the precincts to be recounted and which offices and questions shall be included in the administrative recount.

The recount shall be conducted by members of the special precinct board following the provisions of Iowa Code section 50.48 as amended by 2007 Iowa Acts, Senate File 369, section 3, Iowa Code section 50.49 and 721—Chapter 26. The recount board may use a computer program board which was not used in the election to compare with the suspected defective one.

If direct recording electronic voting machines were used in the election, the paper record required by 2007 Iowa Acts, Senate File 369, section 7, subsection 2, shall be used in the recount. However, if the commissioner believes or knows that the paper records produced from a machine have been compromised due to damage, mischief, malfunction, or other cause, the printed ballot images produced from the internal audit log for that machine shall be the official record used in the recount. In addition to the external paper record, the internal audit log required by 2007 Iowa Acts, Senate File 369, section 7, subsection 1, paragraph "k," shall be available for use in the recount and shall be used if the paper record has been compromised.

This rule is intended to implement Iowa Code section 50.48 as amended by 2007 Iowa Acts, Senate File 369, section 3, and Iowa Code section 50.49.

721—21.26 to 21.29 Reserved.

721—21.30(49) Inclusion of annexed territory in city reprecincting and redistricting plans. If a city has annexed territory after January 1 of a year ending in zero and before the completion of the redrawing of precinct and ward boundaries during a year ending in one, the city shall include the annexed land in precincts drawn pursuant to Iowa Code sections 49.3 and 49.5.

21.30(1) When the city council draws precinct and ward boundaries, if any, the city shall use the population of the annexed territory as certified by the city to the state treasurer pursuant to Iowa Code section 312.3(4).

21.30(2) When the board of supervisors, or the temporary county redistricting commission, draws precinct and county supervisor district boundaries, if any, it shall subtract from the population of the adjacent unincorporated area the population of the annexed territory as certified by the city to the state treasurer pursuant to Iowa Code section 312.3(4).

21.30(3) The use of population figures for reprecincting or redistricting shall not affect the official population of the city or the county. Only the U.S. Bureau of the Census may adjust the official population figures, by corrections or by conducting special censuses. See Iowa Code section 9F.6.

This rule is intended to implement Iowa Code sections 49.3 and 49.5.

721—21.31 to 21.49 Reserved.

721—21.50(49) Polling place accessibility standards.

21.50(1) Inspection required. Before any building may be designated for use as a polling place, the county commissioner of elections or the commissioner’s designee shall inspect the building to determine whether it is accessible to persons with disabilities.

21.50(2) Frequency of inspection. Polling places that have been inspected using the Polling Place Accessibility Survey Form prescribed in subrule 21.50(4) shall be reinspected if structural changes are made to the building or if the location of the polling place inside the building is changed.

21.50(3) Review of accessibility. Not less than 90 days before each primary election, the commissioner shall determine whether each polling place needs to be reinspected.

21.50(4) Standards for determining polling place accessibility. The following survey form shall be used to evaluate polling places for accessibility to persons with disabilities.

The term “off-street parking” used in the polling place accessibility survey means parking places in lots separated from the street and includes angle parking along the street if the accessible route from the parking place to the polling place is entirely out of the path of traffic. Parking arrangements that require either the driver or passengers of the vehicle to go into the traveled part of the street are not accessible.

An access aisle at street level that is at least 60 inches wide and the same length as each accessible parking space shall be provided. An accessible public sidewalk curb ramp shall connect the access aisle to the continuous passage to the polling place. At least one parking place shall be van-accessible with a 96-inch access aisle connected to the continuous passage to the polling place by an accessible public sidewalk curb ramp. Two accessible parking spaces may share a common access aisle.

Polling Place Accessibility Survey Form

County: _____

Polling place name or number: _____

Polling place address/location:

INSTRUCTIONS

Purpose. This form shall be used to evaluate the accessibility of polling places to persons with disabilities.

How to use this form. Inspect each potential polling place by going from the parking area to the voting area. You will need a yardstick, a tape measure and about 30 minutes.

Answer every question on the form by marking either “YES,” “NO,” or “N/A” (NOT APPLICABLE), as appropriate. Items on the survey with clear (unshaded) boxes are **required**. If a required item is marked “NO,” the polling place is **inaccessible**. The survey questions in shaded boxes are recommended. If a recommended item is marked “NO,” the polling place is **accessible, but inconvenient**, if all other responses are “YES” or “N/A.”

Polling places may be inaccessible for more than one reason. Please respond to every item and summarize the responses by category on the back page.

1. Name, address, and telephone number of person(s) completing this form:

2. Date of inspection: _____

Category I: Parking	YES	NO	N/A
1. Are there off-street parking spaces either permanently or temporarily designated for the handicapped?			
2. Accessible off-street parking:			
a. Are designated parking spaces at least 13 feet wide, with at least one space van-accessible? (Parking space = 8 ft., aisle = 5 ft.; van-accessible parking space = 8 ft., aisle = 8 ft.)			
b. Are parking spaces on level ground (with a slope no greater than a rise of 1 foot in 50 feet)?			
c. Is the parking area surface stable, firm, and slip-resistant (concrete, asphalt, etc.)?			
d. Are the parking places within a reasonable travel distance (200 feet maximum) from the building?			
e. Is there a curb cut to connect these parking spaces to an accessible walk or to the building entrance?			
f. Are these parking spaces designated by post-mounted signs bearing the symbol of accessibility? (Signs should be high enough to be seen even when a vehicle is parked in the space.)			
3. Is there a relatively level passenger drop-off zone at least 4 feet wide with a curb cut connecting it to an accessible walk or to the building entrance?			

End of Category I

Please go to next category 

Category II: Walkways or pathways to the building	YES	NO	N/A
1. Is the surface of the walkway or pathway to the building stable, firm, and slip-resistant (concrete, asphalt, etc.)?			
2. Is the walkway or pathway to the building at least 48 inches wide?			
3. Are all curbs along the pathway to the building cut or ramped with at least 36 inches clear width and with slopes of no more than a 1-inch rise in 12 inches?			
4. Are all stairs or steps along the walkway or pathway to the building either ramped (with a slope of no more than a 1-foot rise in 20 feet) or else provided with a suitable alternative means of access?			
5. Do stairsteps along the walkway or pathway to the building have non-slip surfaces and handrails?			
6. Is the walkway or pathway to the building entrance:			
a. Free of protrusions (such as fire hydrants, tree trunks, or other obstacles) which narrow the passage to less than 48 inches?			
b. Free of any abrupt edges or breaks in the surface where the difference is over ¼ inch in height (such as where it crosses a driveway, parking lot, or another walkway, etc.)?			
c. Free of any overhanging objects (such as tree branches, signs, etc.) which hang lower than 80 inches?			
d. Free of any grating with openings of over ½ inch wide?			
7. Are walkways always well-lighted?			
8. Are provisions made to ensure that walkways are free of such hazards as ice, snow, leaves, or other debris on the day of election?			
9. Are there signs which identify the accessible route of travel if that route is different from the primary route of travel to the building?			

End of Category II

Please go to next category 

Category III: Ramps and elevators entering or inside the building	YES	NO	N/A
1. Are building stairs or steps which are over ¾ inch high (either at the entrance or between the entrance and the voting area) provided either with a ramp, with an elevator, or with an alternative means of unassisted passage (such as a chairlift or an alternative route of travel)?			
2. Ramps:			
a. Do all ramps have a slope no greater than a rise of 1 foot in 12 feet?			
b. Are ramps provided with non-slip surfaces?			
c. Is a handrail provided for any ramp rising more than 6 inches or longer than 72 inches?			
d. Are handrails at least 32 inches above ramp surface?			
e. Can handrails be gripped?			
f. Are ramps and landing areas with drop-offs provided with at least a 2-inch curb at the side to prevent slipping off the ramps?			
g. If there is a door at the top of a ramp, is there a level space of at least 5 feet by 5 feet where a wheelchair can rest while the door is opened (if the door opens toward the ramp)?			
3. Elevators (if elevators are the only accessible route):			
a. Is the elevator cab at least 68 inches by 51 inches wide?			
b. Do elevator doors provide at least 36 inches clear width?			

Category III: Ramps and elevators entering or inside the building	YES	NO	N/A
c. Are elevator controls less than 54 inches high (i.e., can a person in a chair operate the controls)?			
d. Are control panels marked with raised lettering?			
e. Is the elevator in close proximity to the entrance of the building?			

End of Category III

Please go to next category



Category IV: Other architectural features	YES	NO	N/A
1. Doors along the route of travel:			
a. Do all doors have an opening which clears at least 32 inches wide?			
b. Are all door thresholds less than ½ inch high (¾ inch if the building was erected before 1979)?			
c. Are all doors equipped with either arch or lever-type handles, pushplates, or automatic openers (so that twisting a doorknob is not required)?			
d. Where an automatic door is used, does the door remain open at least 3 seconds?			
e. Are glass doors marked with safety seals?			
2. Stairs along the route:			
a. Do stairs have non-slip surfaces?			
b. Do stairs have handrails at least 34 to 38 inches above the step level?			
c. Can handrails be gripped?			
d. Do all steps have risers (the vertical wall at the back of each step)?			
e. Do all steps have tread areas at least 11 inches deep?			
f. Are all steps less than 7 inches in height?			
g. Are stairs well-lighted?			
h. Are stairs free of obstacles?			
3. Corridors:			
a. Is the corridor at least 44 inches wide?			
b. Is the corridor free of obstacles or protrusions (such as boxes, water fountains, etc.) which extend more than 12 inches from the wall?			
c. Is there sufficient lighting at all points along the route?			
d. In any corridor longer than 30 feet is there a seating or rest area?			
e. Does the corridor have a non-slip surface?			
f. Are all rugs and mats securely fastened?			

End of Category IV

Please go to next category



Category V: Features within the voting area	YES	NO	N/A
1. Are instructions for voting printed in 14-point or larger type, in simple language, and plainly displayed?			
2. Is there sufficient space for reasonable movement of voters in wheelchairs?			
3. Can all necessary parts of the voting equipment be reached by a person seated in a chair or, at least, is an alternative means of casting a ballot provided?			

Category V: Features within the voting area	YES	NO	N/A
4. Are magnifying devices available for those who request them?			
5. Is there adequate lighting in the voting area?			
6. Is seating available for elderly or handicapped voters awaiting their turn to vote?			

End of Category V

Please go to next category 

Category VI: If there are other reasons for inaccessibility, please describe:

You may attach additional sheets, if necessary.

Please complete the summary of accessibility on the next page.

Summary of Accessibility by Categories			
Please review the responses within each category on the previous pages and indicate below whether each category is:			
<ul style="list-style-type: none"> ● INACCESSIBLE (if there is a “NO” response in any unshaded box in the category) ● ACCESSIBLE, BUT INCONVENIENT (if all “NO” responses in the category are only in shaded boxes and all the responses in the unshaded boxes are either “YES” or “N/A”) ● FULLY ACCESSIBLE (if all responses in the category are either “YES” or “N/A”) 			
Category	Inaccessible	Accessible, but inconvenient	Fully accessible
I. Parking			
II. Walkways or pathways to the building			
III. Ramps and elevators entering or inside the building			
IV. Other architectural features			
V. Features within the voting area			
VI. Other			
Overall determination of polling place accessibility			
If one or more of the categories are marked “INACCESSIBLE,” then the polling place is INACCESSIBLE <input type="checkbox"/>			
If no category is marked “INACCESSIBLE,” but one or more are marked “ACCESSIBLE, BUT INCONVENIENT” then the polling place is ACCESSIBLE, BUT INCONVENIENT <input type="checkbox"/>			
If all categories above are marked “FULLY ACCESSIBLE,” then the polling place is FULLY ACCESSIBLE <input type="checkbox"/>			
Disposition of inaccessible polling place			
If the polling place is INACCESSIBLE		YES	NO
A. Has an alternative accessible facility been sought?			
B. Are permanent or temporary alterations planned to render the polling place accessible in the coming election?			

21.50(5) Temporary waiver of accessibility requirements. Notwithstanding the waiver provisions of 721—Chapter 10, if the county commissioner is unable to provide an accessible polling place for any precinct, the commissioner shall apply for a temporary waiver of accessibility requirements pursuant to this subrule. Applications shall be filed with the secretary of state not later than 60 days before the date of any scheduled election. If a waiver is granted, it shall be valid for two years from the date of approval by the secretary of state.

- a. Each application shall include the following documents:

- (1) Application for Temporary Waiver of Accessibility Requirements.
- (2) A copy of the Polling Place Accessibility Survey Form for the polling place to be used.
- (3) A copy of the Polling Place Accessibility Survey Form for any other buildings that were surveyed and rejected as possible polling place sites for the precinct.

b. If an accessible place becomes available at least 30 days before an election, the commissioner shall change polling places and shall notify the secretary of state. The notice shall include a copy of the Polling Place Accessibility Survey Form for the new polling place.

21.50(6) *Emergency waivers.* During the 60 days preceding an election, if a polling place becomes unavailable for use due to fire, flood, or changes made to the building, or for other reasons, the commissioner must apply for an emergency waiver of accessibility requirements in order to move the polling place to an inaccessible building. Emergency waiver applications must be filed with the secretary of state as soon as possible before election day. To apply for an emergency waiver, the commissioner shall send the following documents:

- a.* Application for Temporary Waiver of Accessibility Requirements.
- b.* A copy of the Polling Place Accessibility Survey Form for the polling place selected.
- c.* A copy of the Polling Place Accessibility Survey Form for any other buildings that were surveyed and rejected as possible polling place sites for this precinct.

21.50(7) *Application form.* The following form shall be used to apply for a temporary waiver of accessibility requirements.

State of Iowa Application for Temporary Waiver of Accessibility Requirements

Instructions

Send a separate application for each precinct. Do not list more than one precinct on a waiver form.

Include copies of surveys. With each application you must send copies (you keep the originals) of the **Polling Place Accessibility Survey Form** for the polling place you would like to use, as well as for any buildings you surveyed and rejected.

Complete section A or section B, but not both.

Section A. No Accessible Place. If you cannot provide an accessible polling place for a precinct because no accessible buildings are available and no available building can be modified to be accessible on election day, you must apply for a temporary waiver of accessibility requirements.

1. Describe why you are unable to provide an accessible polling place for the precinct.
 - a.* Include the reasons that the polling place you have selected cannot be made accessible for the next election. Remember, the polling place must be accessible on election days. Buildings used for polling places are not necessarily required to be permanently accessible.
 - b.* Include letters from three elected officials from governing bodies that include this precinct (city officials, county supervisors, or township officials) supporting your finding that there is no accessible place within the precinct that can be used for a polling place.
 - c.* Explain why it is not reasonable to move this polling place to another, accessible location outside the precinct or to combine this precinct with another adjacent precinct that has an accessible polling location.
2. List other potential polling places you examined and rejected. Enclose a copy of the Polling Place Accessibility Survey Form for each place you list. You keep the original copy of the survey form.
3. List the name and address of the polling place you propose to use. Enclose a copy of the Polling Place Accessibility Survey Form for this place. You keep the original survey form.
4. If a waiver is granted, it will apply to all elections held for two years after the date the waiver is approved by the Secretary of State.

Section B. Emergency Use. Use this section to report changes in polling places during the two months before a federal election. For example, you may need to change from an accessible polling place to an inaccessible one because the building has become unusable due to an emergency, such as a fire or flood.

1. Describe the emergency that made it necessary to move the polling place to an inaccessible site.
2. List the name and address of the polling place you propose to use. Enclose a copy of the Polling Place Accessibility Survey Form for this place. You keep the original survey form.

Review the application form carefully, sign and date it.

**State of Iowa Application for
Temporary Waiver of Accessibility Requirements**

County: _____ **Precinct:** _____

Section A—No Accessible Place.

I have surveyed all potential polling places in the precinct listed above and hereby certify that no accessible place is available in or for the precinct. I further certify that this county is unable to make a polling place temporarily accessible in the precinct for the following reasons:

Other potential polling places that have been surveyed and rejected as inaccessible are:

I request permission to use the following building as a polling place until an accessible place becomes available, or for two years, whichever is sooner:

Section B—Emergency Use.

Due to emergency conditions, no accessible polling place will be available for the precinct listed above for the next election. The emergency conditions are as follows:

I request permission to use the following building as a polling place for the election to be held on ___/___/20__:

Statement by Commissioner:

Copies of the surveys for all polling places examined and rejected and for the polling place that will be used are included. Any voters with disabilities who are assigned to this precinct and who are unable to enter the polling place will be provided with ballots delivered to their vehicles by the two election officials selected to assist voters. I hereby apply for a determination from the State Commissioner of Elections that an inaccessible polling place may be used in this precinct for the period requested above.

Signed: _____, County Auditor and Commissioner of Elections

Date: _____

21.50(8) Evaluation of waivers. When the secretary of state receives waiver applications, the applications shall be reviewed carefully. A response shall be sent to the commissioner within one week

by E-mail or by fax to notify the commissioner when the waiver request was received and whether additional information is needed.

21.50(9) *Granting waivers.* If the secretary of state determines from the documents filed with the waiver request that conditions justify the use of a polling place that does not meet accessibility standards, the secretary of state shall grant the waiver of accessibility requirements. If the secretary of state determines from the documents filed with the waiver request that all potential polling places have been surveyed and no accessible place is available, and the available building cannot be made temporarily accessible, the waiver shall be granted.

21.50(10) *Notice required.* Each notice of election published pursuant to Iowa Code section 49.53 shall clearly describe which polling places are inaccessible. The notice shall include a description of the services available to persons with disabilities who live in precincts with inaccessible polling places. The notice shall be in substantially the following form:

Any voter who is physically unable to enter a polling place has the right to vote in the voter's vehicle. For further information, please contact the county auditor's office at the telephone or TTY number or E-mail address listed below:

Telephone: _____ TTY: _____ E-mail address: _____

21.50(11) *Denial of waiver requests.* The secretary of state shall review each waiver request. The secretary of state shall consider the totality of the circumstances as shown by the information on the waiver request, information contained in previous applications for waivers for the same precinct and for other precincts in the county, and other relevant available information. The waiver request may be denied if it appears that the commissioner has not made a good-faith effort to find an accessible polling place. If the waiver request is denied, the secretary of state shall notify the commissioner in writing of the reason for denying the request.

This rule is intended to implement Iowa Code section 49.21.

721—21.51 to 21.74 Reserved.

721—21.75(49) *Voting centers for certain elections.* The commissioner may establish voting centers for the regular city election, city primary election, city runoff election, regular school election, and special elections.

21.75(1) *Definition.*

“*Voting center*” means a location established by the commissioner for the purpose of providing ballots to all registered voters who are qualified to vote in a particular jurisdiction for a regular city election, city primary election, city runoff election, regular school election, or special election.

21.75(2) *Minimum requirements.*

a. Establishment. One or more voting centers may be established in lieu of precinct polling places for the elections at which the use of voting centers is permitted.

b. Choices. Regular polling place sites that are accessible to people with disabilities may be used as voting centers for any election at which the use of voting centers is permitted. Other suitable locations may also be used.

c. Accessibility. A voting center is subject to the requirements of Iowa Code section 49.21 relating to accessibility to persons who are elderly and persons with disabilities and relating to the posting of signs.

21.75(3) *Hours.* Voting center hours shall be the same as permitted for an election pursuant to Iowa Code Supplement section 49.67. Except for school elections, a voting center that serves a jurisdiction which includes both unincorporated territory and a city with a population in excess of 3500 shall open at 7 a.m.

21.75(4) *Publications.* The location of each voting center shall be published in the notice of election by the commissioner in the same manner as the location of polling places is required to be published. The notice of election shall also include a description of the voting center in substantially the following form:

For the _____ election to be held on [date], voting centers will be available. Any registered voter of [jurisdiction name] may vote at any of the following places in this election:

[List addresses of voting centers.]

21.75(5) *I-Voters use prohibited.* The commissioner shall not provide direct access from voting centers to the I-Voters system on election day.

21.75(6) *Operation of voting centers.*

a. Election registers and voter lists. Each voting center shall have a list of all registered voters who are eligible to vote in that election. The voter list may be a paper list or may be available on computers in an electronic format, rather than as an interactive connection to I-Voters.

b. Election day registration at voting centers. A person who needs to register to vote may register and vote at a voting center provided that the person has appropriate identification and is a resident of the jurisdiction served by the voting center.

c. Ballots. Each voting center shall have all ballot styles necessary to provide a ballot to any voter who is eligible to vote in the election for the jurisdiction served by the voting center.

d. Precinct election officials. Voting centers shall be administered by a minimum of five precinct election officials selected pursuant to Iowa Code sections 49.12 to 49.16. These officials shall be trained before each election and shall have specific instructions regarding the differences between voting centers and polling places.

21.75(7) *Postelection review of voter participation.*

a. Within 30 days after the election, the commissioner shall review the signed declarations of eligibility or the signed election registers from each voting center, and if any person is found to have voted in more than one voting center in the election, the commissioner shall immediately notify the county attorney.

b. The notice to the county attorney shall include a copy of the person's voter registration record and copies of the declarations of eligibility signed by the voter. The notice shall also include a reference to 2008 Iowa Acts, House File 2620, section 23(1A) "*d.*" which reads as follows: "*d.* Pursuant to section 39A.2, subsection 1, paragraph "b", subparagraph (3), a person commits the crime of election misconduct in the first degree if the person knowingly votes or attempts to vote at more than one voting center for the same election." The notice shall also include a reference to Iowa Code section 39A.2(2), which reads as follows: "2. Election misconduct in the first degree is a class 'D' felony."

This rule is intended to implement 2008 Iowa Acts, House File 2620, division II.

721—21.76 to 21.199 Reserved.

DIVISION II
BALLOT PREPARATION

721—21.200(49) Constitutional amendments and public measures.

21.200(1) The order of placement on the ballot for constitutional amendments and statewide public measures to be voted upon at a single election shall be determined by the state commissioner, and a number shall be assigned to each constitutional amendment or statewide public measure by the state commissioner.

a. The number assigned by the state commissioner to each constitutional amendment or statewide public measure to appear on the ballot for a single election shall be printed on the ballot immediately preceding and above the words "Shall the following amendment to the Constitution (or public measure) be adopted?" or the words "Shall there be a Convention to revise the Constitution, and propose amendment or amendments to same?"

b. The number assigned by the state commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

c. Even if only one constitutional amendment or statewide public measure is to appear on a ballot to be voted upon at a single election, an identifying number shall be assigned by the state commissioner and shall be printed on the ballot in the prescribed manner.

21.200(2) The order of placement on the ballot for each local public measure to be voted upon at a single election shall be determined by the commissioner, and a letter shall be assigned to each local public measure by the commissioner.

a. The letter assigned by the commissioner to each local public measure to appear on a ballot for a single election shall be printed on the ballot immediately preceding and above the words “Shall the following public measure be adopted?”.

b. The letter assigned by the commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

c. Even if only one public measure is to appear on a ballot to be voted upon at a single election, an identifying letter shall be assigned by the commissioner and shall be printed on the ballot in the prescribed manner.

21.200(3) The words describing proposed constitutional amendments and statewide public measures when they appear on the ballot shall be determined by the state commissioner. The state commissioner shall select the words describing the proposed constitutional amendments and statewide public measures in the following manner:

a. Not less than 150 days prior to the election at which a proposed constitutional amendment or statewide public measure is to be voted on by the voters, the state commissioner shall prepare a proposed description to be used on the ballots in administrative rule form and shall file the proposed rules with the administrative rules coordinator for publication in the Iowa Administrative Bulletin.

b. The rules shall provide that written comments regarding the proposed description will be accepted by the state commissioner for a period of time not less than 20 days after the date of publication in the Iowa Administrative Bulletin.

c. The state commissioner shall review any written comments which have been timely received and make any changes deemed to be warranted in the description to be printed on the ballots.

This rule is intended to implement Iowa Code sections 47.1 and 49.44.

721—21.201(44) Competing nominations by nonparty political organizations.

21.201(1) *Nominations by convention and by petitions.* If one or more nomination petitions are received from nonparty political organization candidates for an office for which the same organization has also nominated one candidate by convention, the candidate nominated by convention shall be considered the nominee of the organization. The names of the other candidates shall appear on the ballot as candidates “nominated by petition,” and those candidates shall be notified in writing not later than seven days after the close of the filing period.

21.201(2) *Multiple nomination petitions.* If nomination petitions are received from more than one candidate from the same nonparty political organization for the same office and the organization has not nominated a candidate for the office by convention, the name of each of these candidates shall be written on a separate piece of paper, all of which shall be as nearly uniform in size and material as possible and placed in a receptacle so that the names cannot be seen. On the next working day following the close of the nomination period, all affected candidates shall be notified of the time and place of the drawing. The candidates shall be invited to attend or to send a representative. In the presence of witnesses, the state commissioner of elections or the county commissioner, as appropriate, or a designee of the state or county commissioner, shall publicly draw one of the names; and that person shall be declared to be the nominee of the nonparty political organization. The names of the other candidates shall appear on the ballot as candidates “nominated by petition.” A copy of the written record of the result of the drawing shall be kept with the nomination petition of each affected candidate, and each candidate shall be sent a copy for the candidate’s records not later than seven days after the close of the filing period.

21.201(3) *Multiple nomination certificates.* If more than one nomination certificate is received for the same office from groups with the same nonparty political organization name, the name of each of these candidates shall be written on a separate piece of paper, all of which shall be as nearly uniform in size and material as possible and placed in a receptacle so that the names cannot be seen. On the next working day following the close of the nomination period, all affected candidates shall be notified of the time and place of the drawing. The candidates shall be invited to attend or to send a representative.

In the presence of witnesses, the state commissioner of elections or the county commissioner, as appropriate, or a designee of the state or county commissioner, shall publicly draw one of the names; and that person shall be declared to be the nominee of the nonparty political organization. The names of the other candidates, including any candidate who filed nomination petitions, shall appear on the ballot as candidates “nominated by petition.” A copy of the written record of the result of the drawing shall be kept with the nomination certificate of each affected candidate, and each candidate shall be sent a copy for the candidate’s records not later than seven days after the close of the filing period.

This rule is intended to implement Iowa Code section 44.17.

721—21.202 to 21.299 Reserved.

DIVISION III
ABSENTEE VOTING

721—21.300(53) Satellite absentee voting stations. The county commissioner of elections may designate locations in the county for absentee voting stations. If the commissioner receives a petition requesting that a satellite absentee voting station be established at a location described on the petition, the commissioner shall provide the requested station if the petition was properly signed and filed. The petition shall be rejected if the site chosen is not accessible to elderly and disabled voters or has other physical limitations that make it impossible to meet the requirements for ballot security and secret voting, or if the owner of the site refuses permission to locate the satellite absentee voting station at the site named on the petition. The commissioner may also refuse to conduct satellite voting for the runoff election if a special election is scheduled to be held between the regular city election and a city runoff election. The petition may be refused if the owner of the site demands payment for its use.

The petition shall be signed by not less than 100 eligible electors of the county. The petition shall be filed with the commissioner no later than the deadline specified in Iowa Code section 53.11 for the election.

Satellite absentee voting stations established by petition shall be open for at least one day for a minimum of six hours. Satellite absentee voting stations shall be accessible to elderly and disabled voters.

Only ballots from the county in which the site is located may be provided at the satellite absentee voting station. However, it is not necessary to provide ballots from all of the precincts in the county.

21.300(1) Form of petition. The petition requesting that a satellite absentee voting station be established at a specific location shall be in substantially the following form:

STATE OF IOWA
PETITION FOR ABSENTEE VOTING STATION

Instructions: This petition may be signed by people who

- are U.S. citizens,
- are at least 18 years old,
- have not been convicted of a felony,
- have not been declared mentally incompetent by a court,
- and who live in this county.

They do not need to be registered voters.

The petition must be taken to the county auditor’s office before 5 p.m. on _____.

Date of election: _____

We, the people of _____

County, request that there be an absentee voting station at the place described below.

[Instructions: Give the address of the building, and the name of the building, if it has a name. Elderly and disabled voters must be able to get into the building to vote.]

Signature	Address, including street and number, if any	Date signed
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		
25.		

page ____ of ____

21.300(2) Notice provided. Notice shall be published at least seven days before the opening of any satellite absentee voting station. If more than one satellite absentee voting station will be provided, a single publication may be used to notify the public of their availability.

A notice shall also be posted at each satellite absentee voting station at least seven days before the opening of the satellite absentee voting station. The notice shall remain posted as long as the satellite absentee voting station is scheduled for service. If it is not possible to post the notice at least seven days before the station opens due to the receipt of a petition, the notice shall be posted as soon as possible.

Both the published and posted notices shall include the following information:

- a. The name and date of the election for which ballots will be available.
- b. The location(s) of the satellite absentee voting station(s).
- c. The dates and times that the station(s) will be open.
- d. The precincts for which ballots will be available.
- e. An announcement that voter registration forms will be available for new registrations in the county until the time registration closes before the election and that changes in the registration records of people who are currently registered within the county may be made at any time.

If the satellite absentee voting station is located in a building with more than one public entrance, brief notices of the location of the satellite absentee voting station shall be posted on building directories, bulletin boards, or doors. These notices shall be posted no later than the time the station opens and shall be removed immediately after the satellite absentee voting station has ceased operation for an election.

21.300(3) Staff. Satellite absentee voting station workers may be selected from among the staff members of the commissioner’s office, from the election board panel drawn up pursuant to Iowa Code sections 49.15 and 49.16, or a combination of these two sources. Compensation of workers selected from the election board panel shall be at the rate provided in Iowa Code section 49.20.

At least three people shall be assigned to work at each satellite absentee voting station; more workers may be added at the commissioner’s discretion. All workers must be registered voters of the county, and for primary and general elections the workers must be registered with a political party. No more than a simple majority of the workers shall be members of the same political party.

People who are prohibited from working at the polls pursuant to Iowa Code section 49.16 may not work at satellite absentee voting stations.

21.300(4) Oath required. Before the first day of service at a satellite absentee voting station each worker shall take the following oath:

I, _____ (name) _____, do solemnly swear or affirm that I will impartially, and to the best of my knowledge and ability, perform the duties of satellite absentee voting station worker, and will endeavor to prevent fraud, deceit and abuse in performing those duties.

Signature of worker

Address

Officer administering oath

Date

The oath must be taken before each election.

21.300(5) Supplies needed for each satellite absentee voting station. Each satellite absentee voting station shall be provided with the following supplies:

- a. Voter registration forms for new registrations and changes of registration information.
- b. Absentee ballot application forms.
- c. An absentee voters’ log in which to record the names of electors casting absentee ballots, the serial numbers on their applications and affidavit envelopes, and the date the ballots are returned. The log may also be used to record the return of absentee ballots which were mailed.
- d. Affidavit envelopes for absentee ballots.
- e. Secrecy envelopes or folders, if needed for use with electronic voting systems.
- f. Absentee ballots in sealed container(s).
- g. Marking devices appropriate for the voting system that will be used to tabulate the ballots.
- h. Two or more voting booths, at least one of which shall be suitable for use by a person seated in a chair or wheelchair.
- i. One or more ballot boxes equipped with locks and keys, or tamperproof seals.
- j. Table and chairs for workers.
- k. Two or more chairs for voters.
- l. Barricade system to control access to voting area.
- m. Secure containers for returning unused ballots. Containers used to send ballots to the satellite absentee voting station may be reused.
- n. Paper clips, tape or rubber bands to attach request forms to affidavit envelopes.
- o. Pens and other supplies for the workers.
- p. Instructions in large type explaining the proper method of marking the ballot.
- q. A list of other satellite absentee voting stations in the county, if any, and their addresses and scheduled times of operation.
- r. Precinct finder.
- s. Sample ballots for each precinct served by the satellite absentee voting station.
- t. Envelope to return spoiled ballots.
- u. Special ballot envelopes and return envelope.

21.300(6) Ballot transport and storage. At the commissioner’s discretion the ballots may be transported between the commissioner’s office and the satellite absentee voting station by the workers who will be on duty that day, or by two people of different political parties who have been designated as couriers by the commissioner. It is not necessary for the same people to transport the ballots in both directions.

If the ballots are transported by the satellite absentee voting station workers, two workers who are members of different political parties and the ballots must travel together in the same vehicle.

Ballots may be stored at the satellite absentee voting station during hours when the station is closed only if they are kept in a locked cabinet or container. The cabinet must be located in a room which is kept locked when not in use. Voted absentee ballots must be delivered to the commissioner’s office at least once each week.

21.300(7) Ballot receipts. Satellite absentee voting station workers shall sign receipts for the ballots taken to the remote absentee voting site. The receipt shall be in substantially the following form:

SATELLITE ABSENTEE VOTING STATION BALLOT RECORD AND RECEIPT					
Precincts voting at satellite station: _____					
Location of satellite station: _____					
Satellite station address: _____					
BALLOTS DELIVERED TO THE SATELLITE ABSENTEE VOTING STATION					
Type of Ballot	Number Delivered	Delivered to: (print name)	(signature of each worker)		
TOTAL DELIVERED *	DATE: _____		TIME: _____ a.m. p.m.		
BALLOTS RETURNED FROM THE SATELLITE ABSENTEE VOTING STATION					
Type of Ballot	Voted	Spoiled	Special	Not Voted	Returned
TOTAL NUMBER OF BALLOTS RETURNED: _____ *					
*The number of ballots returned must equal the number delivered.					
Number of ballots issued by mail and returned to this station: _____					
Print name		Signature			
Ballots received from: _____					

a.m.					
RECEIVED BY: _____ DATE: _____ TIME: _____ p.m.					

A copy of the ballot record and receipt shall be retained in the commissioner's office. The original shall be sent with the ballots to the satellite absentee voting station.

21.300(8) *Arrangement of the satellite absentee voting station.* Protection of the security of the ballots (both voted and unvoted) and the secrecy of each person's vote shall be considered in the arranging of the satellite absentee voting station.

a. Security. The satellite absentee voting station shall be arranged so that ballots are protected against removal from the station by unauthorized people.

b. Voting area. Voting booths without curtains shall be placed so that passersby and other voters may not walk directly behind a person using the booth. At least one voting booth must be accessible to the disabled. The booth must be designed to accommodate a person seated in a chair or wheelchair. A chair must be provided for voters who wish to sit down while voting.

c. Electioneering. No signs supporting or opposing any candidate or question on the ballot shall be posted within 300 feet of the satellite absentee voting station. No electioneering shall be allowed within the sight or hearing of voters while they are at the satellite absentee voting station.

d. Chair provided. One or more chairs must be available for use by elderly or disabled voters waiting in line.

21.300(9) *Operation of the satellite absentee voting station.* At all times the station shall have at least two workers present to preserve the security of the ballots, both voted and unvoted. At satellite absentee voting stations used for primary and general elections, no more than a simple majority of the workers shall be registered with the same political party.

21.300(10) *Voter registration at the satellite absentee voting station.* Each satellite absentee voting station shall provide forms necessary to register voters and to record changes in voter registration records. Workers shall also be provided with a method of verifying whether people applying for absentee ballots are registered voters.

The commissioner may provide a list of registered voters in the precincts served by the station. The list may be on paper, microfiche or other media.

As an alternative, the commissioner may provide a computer connection with the commissioner's office.

21.300(11) *Procedure for issuing absentee ballot.* The following instructions for absentee voting are to be provided to all satellite absentee voting station workers:

HOW TO ISSUE ABSENTEE BALLOTS

1. Application. Each person who wishes to vote shall complete an application for an absentee ballot.

2. Check precinct. Check to be sure that the applicant's address is in a precinct served by this station.

3. Check registration. Check to see whether the applicant is a registered voter at the applicant's current address. People who live in (county name) County but who are not currently registered to vote in the county may register to vote at the satellite absentee voting station until (the date registration closes for the election). Changes of name, address, telephone number or party affiliation may be submitted at any time.

After (date registration closes), anyone who requests an absentee ballot and who is not a registered voter in the county may register to vote if the person provides proof of identity and residence in the precinct in which the voter intends to vote. The voter must also complete an oath of person registering on election day. Otherwise, the person may cast only a provisional ballot. Use the provisional ballot envelopes.

Proof of identity must be a photo ID card that is current and valid and includes an expiration date. An ID is still current on the date it expires. An Iowa nonoperator's ID card that shows "none" as an expiration date is considered current and valid. The following forms of identification are acceptable: an Iowa driver's license or nonoperator's ID, an out-of-state driver's license or nonoperator's ID, a United States passport, a United States military identification card, an identification card issued by an employer, or a student identification card issued by an Iowa high school or an Iowa postsecondary educational

institution. If the photo ID does not show the person's address in the appropriate precinct, the person must show proof of residence.

Proof of residence may be any of the following documents provided that the document shows the person's name and address in the precinct: residential lease, property tax statement, utility bill, bank statement, paycheck, government check, or other government document.

A voter who does not have appropriate identification documents may have another registered voter from the same precinct attest to the person's identity and residence. An attester must be a registered voter whose identity and residence have not been established by the attestation of another registered voter and must live in the same precinct as the applicant. The attester shall not attest to the identity of more than one person. The commissioner shall keep a list of all persons who have attested for in-person absentee registrants and shall send the list to the polling place on election day with the list of absentee voters required by Iowa Code section 49.72.

4. Affidavit envelope. Have the voter complete the affidavit envelope before you issue the ballot.

5. Voters may ask for help. Anyone who is unable to mark a ballot without help may be helped by any person chosen by the voter. EXCEPTIONS: The following people may not help a voter—the voter's employer, an agent of the employer, or an officer or agent of the voter's union.

The voter may also request help from the satellite absentee voting station workers. Two workers from different political parties must assist the voter.

WARNING: Do not tell anyone how the person voted.

6. Issue ballot. When a voting booth is available, give the voter the appropriate ballot. Ballots must be voted at the satellite absentee voting station. Ballots may not be taken away from the station.

7. Instruct voter. Instruct each voter to use only the pen or pencil provided by you, how to mark the ballot so that it can be counted, to enclose the ballot in the secrecy folder (if any), and to place the ballot in the affidavit envelope and seal it before returning it to the workers.

8. Send voter to booth. Each voter must use a voting booth. Do not permit anyone to vote anywhere else.

9. When the ballot is returned: Number the request form and the affidavit envelope with serial number and record the serial number in the log of absentee voters.

10. Storing voted ballots and applications. Attach the application to the sealed affidavit envelope and insert them in the locked ballot box.

21.300(12) Closing the station. The following instructions for closing the absentee voting station are to be provided to all satellite absentee voting station workers:

INSTRUCTIONS FOR CLOSING THE SATELLITE ABSENTEE VOTING STATION

At the end of each day, after everyone has voted who arrived before the time established to close the station, close the satellite absentee voting station. Each task on the list must be completed.

DO NOT OPEN ANY AFFIDAVIT ENVELOPES. These ballots will be opened and counted on election day.

1. Count the number of ballots of each type which have not been voted.
2. Record number of unvoted ballots by precinct on the ballot receipt form.
3. Place the ballots in the container provided and securely seal or lock the container.
4. Record the number of spoiled ballots by precinct on the ballot receipt form.
5. Count the number of spoiled ballots by precinct and place in the envelope provided. Enter this number on the ballot receipt form. Securely seal the envelope. All officials must sign the envelope.
6. From the absentee voters' log determine how many ballots from each precinct have been voted.
7. Compare the total number of ballots in the ballot box with the number of voters listed in the log. If there is a discrepancy, you must resolve it before leaving the station. If you cannot discover the source of the discrepancy, write a detailed explanation of the problem. All workers must sign the report.
8. If couriers will be picking up the ballots, all workers must wait until both couriers arrive. Ask the couriers for identification before surrendering the ballots. If the workers are to return the ballots to

the commissioner's office, two workers who are members of different political parties and the ballots must travel together in the same vehicle to return the ballots.

9. Never leave any ballots unattended.

10. If the ballots will be stored at the satellite absentee voting station all workers must be present when the ballots are locked up. A daily log sheet shall be used to record the information requested above. When ballots are returned to the auditor's office the information on the daily log sheets shall be accumulated and entered on the ballot record and receipt form.

This rule is intended to implement Iowa Code section 53.11 as amended by 2007 Iowa Acts, Senate File 416.

721—21.301(53) Absentee ballot requests from voters whose registration records are inactive.

21.301(1) *In person.* Absentee voters whose registration records are inactive and who appear in person to vote, either at the office of the commissioner or at a satellite absentee voting station, shall be required to provide identification before voting. The voter may present any of the identification documents prescribed in subrule 21.3(3). If the voter does not have appropriate identification documents, the official or staff person receiving the application shall challenge the ballot and notify the voter that the voter must provide a copy of the appropriate form of identification not later than the date upon which the absentee and special precinct board will meet to review provisional ballots after election day pursuant to Iowa Code section 50.21.

21.301(2) *By mail.* When a request for an absentee ballot is received by mail from a voter whose registration record has been made inactive pursuant to Iowa Code section 48A.29, the commissioner shall respond to the request.

a. Form. The commissioner shall send a voter registration form and the following notice:

Notice to the Voter:

Your request for an absentee ballot has been received and processed. However, our records show that your voter registration is not currently active. To restore your registration, please complete the enclosed voter registration form and return it to:

County Auditor
(Address)

Return the registration form separately. Do not enclose it with your absentee ballot.

This registration form must be received in my office no later than (the time the polls close) on (election day), or be postmarked no later than (the day before election day).

b. Instructions to commissioner. If the registration form is received by the deadline for receipt of absentee ballots as prescribed in Iowa Code section 53.17, and all other legal requirements are met, the ballot shall be counted. If the return carrier envelope is received before the registration form, the envelope shall not be opened but shall be held until the deadline for receipt of absentee ballots. If the registration form has not been received by the deadline, the officials of the absentee and special voters precinct board shall open the return carrier envelope. If the registration form is enclosed, and all other legal requirements are met, the ballots shall be counted. However, if the registration form is not enclosed in the return carrier envelope, the affidavit envelope containing the ballot shall not be opened.

This rule is intended to implement Iowa Code sections 48A.29 and 53.2.

721—21.302(48A) In-person absentee registration. After the close of voter registration for an election, a person who appears in person to apply for and vote an absentee ballot may register to vote if the person provides proof of identity and residence in the precinct in which the voter intends to vote. The voter must also complete an oath of person registering on election day. Otherwise, the person may cast only a provisional ballot. Provisional ballot envelopes shall be used.

21.302(1) Proof of identity must be a photo ID card that is current and valid and includes an expiration date. An ID is still current on the date it expires. An Iowa nonoperator's ID card that shows "none" as an expiration date is considered current and valid. The following forms of identification are acceptable: an Iowa driver's license or nonoperator's ID, an out-of-state driver's license or nonoperator's ID, a United States passport, a United States military identification card, an identification

card issued by an employer, or a student identification card issued by an Iowa high school or an Iowa postsecondary educational institution. If the photo ID does not show the person's address in the appropriate precinct, the person must show proof of residence.

21.302(2) Proof of residence may be any of the following documents provided that the document shows the person's name and address in the precinct: residential lease, property tax statement, utility bill, bank statement, paycheck, government check, or other government document.

21.302(3) A voter who does not have appropriate identification documents may have another registered voter from the same precinct attest to the person's identity and residence. An attester must be a registered voter and must live in the same precinct as the applicant. A person may not attest to the identity and residence of another voter for an election if the person registered to vote under the provisions of 2007 Iowa Acts, House File 653, section 2, for the same election and the person's identity and residence were established by the attestation of another registered voter. The attester shall not attest to the identity of more than one person. The commissioner shall keep a list of all persons who have attested for in-person absentee registrants and send the list to the polling place on election day with the list of absentee voters required by Iowa Code section 49.72.

This rule is intended to implement 2007 Iowa Acts, House File 653.

721—21.303(53) Mailing absentee ballots. The commissioner shall mail the following materials to each person who has requested an absentee ballot:

1. Ballot. The ballot that corresponds to the voter's residence, as indicated by the address on the absentee ballot application.

2. Public measure text. The full text of any public measures that are summarized on the ballot, but not printed in full.

3. Secrecy envelope. Secrecy envelope, if the ballot cannot be folded to cover all of the voting ovals, as required by Iowa Code section 53.8(1).

4. Affidavit envelope. The affidavit envelope, which shall be marked with the serial number used to identify the absentee request in the commissioner's records.

5. Return carrier envelope. The return carrier envelope, which shall be addressed to the commissioner's office and bear appropriate return postage or a postal permit guaranteeing that the commissioner will pay the return postage and which shall be marked with the I-Voters-assigned sequence number used to identify the absentee request in the commissioner's records.

6. Delivery envelope. The delivery envelope, which shall be addressed to the voter and bear the serial number used to identify the absentee request in the commissioner's records. All other materials shall be enclosed in the delivery envelope.

7. Instructions. Absentee voting instructions, which shall be in substantially the form prescribed by the state commissioner of elections.

8. Receipt. The receipt form required by 2007 Iowa Acts, Senate File 601, section 227, which may be printed on the instructions required by numbered paragraph "7" above.

This rule is intended to implement Iowa Code section 53.8 as amended by 2007 Iowa Acts, Senate File 601, section 223, and Iowa Code section 53.17 as amended by 2007 Iowa Acts, Senate File 601, section 227.

721—21.304 to 21.319 Reserved.

721—21.320(53) Absentee voting by UOCAVA voters. This rule applies only to absentee voting by persons who are entitled to vote by absentee ballot under the federal Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, "Absent Voting by Armed Forces."

21.320(1) Definitions. The following definitions apply to this rule:

"*Armed forces*," as used in this rule, is defined in Iowa Code section 53.37(3).

"*FPCA*" means the federal postcard absentee ballot application and voter registration form authorized for use in Iowa by Iowa Code section 53.38.

“*UOCAVA voter*” means any person who is entitled to vote by absentee ballot under the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) and Iowa Code chapter 53, division II, “Absent Voting by Armed Forces.”

21.320(2) Requests for absentee ballots. All requests for absentee ballots shall be made in writing. Additional requirements for requesting absentee ballots and for processing the requests are set forth below.

a. Forms. UOCAVA voters may use the following official forms to request absentee ballots:

- (1) A federal postcard absentee ballot application and voter registration form (FPCA).
- (2) A state of Iowa official absentee ballot request form.
- (3) For general elections only, a proxy absentee ballot application prescribed by the state commissioner of elections and submitted pursuant to Iowa Code Supplement section 53.40(1)“*b.*”

b. Form not required. UOCAVA voters may request absentee ballots in writing without using an official form. The written request shall be honored if it includes all of the following information about the voter:

- (1) Name.
- (2) Age or date of birth.
- (3) Iowa residence, including street address (if any) and city.
- (4) Address to which the ballot shall be sent.
- (5) Township of residence, if applicable.
- (6) County of residence.
- (7) Party affiliation, if the request is for a ballot for a primary election.
- (8) Signature of voter.
- (9) Statement explaining why the voter is eligible to receive ballots under the provisions of Iowa Code chapter 53, division II. For example, “I am a U.S. citizen living in France.”

c. Methods for transmitting absentee ballot requests. UOCAVA voters may transmit absentee ballot requests by any of the following methods:

- (1) Mail.
- (2) Personal delivery by the voter or a person designated by the voter.
- (3) Facsimile machine.
- (4) Scanned application form or letter transmitted by E-mail. Requests by E-mail that do not include either the physical signature or a digital signature shall not be accepted.

d. Original request not needed. If the request is sent by E-mail or by fax, it is not necessary for the UOCAVA voter to send to the commissioner the original copy of the FPCA or other official form or written request for an absentee ballot.

e. Multiple requests from the same person. Before the ballot is ready to mail, if the commissioner receives more than one request for an absentee ballot for a particular election (or series of elections) by or on behalf of a UOCAVA voter, the last request received shall be the one honored. However, if one of the requests is for a general election ballot and is made using the proxy absentee ballot application process permitted by Iowa Code Supplement section 53.40(1)“*b.*” the request received from the voter shall be the one honored, not the proxy request.

f. Subsequent request after ballot has been sent. Not more than one ballot shall be transmitted by the commissioner to any voter for a particular election unless, after the ballot has been mailed, the voter reports a change in the address to which the ballot should be sent. The commissioner shall void the original absentee ballot and include a comment in the voter’s registration record, noting the serial number of the original ballot and noting that a replacement ballot was sent to an updated address. The original ballot shall be counted only if the replacement ballot does not arrive.

g. Requests for absentee ballots for a period of two general elections. Iowa Code Supplement section 53.40 permits UOCAVA voters to request the commissioner to send absentee ballots for all elections as permitted by state law. In response to an absentee ballot request for all elections, the commissioner shall send the applicant a ballot for each election held after the application is received and through the next two general elections.

(1) When an absentee ballot for a UOCAVA voter who has requested absentee ballots for all elections through the next two general elections is returned as undeliverable by the United States Postal Service, the commissioner shall contact the Federal Voting Assistance Program (FVAP) to determine whether the voter has a forwarding address on file with that office. If so, the commissioner shall contact the voter by the best means available to notify the voter that the voter must provide the commissioner with a new address if the voter wishes to continue to receive absentee ballots until the end of the period for which the voter has requested ballots.

(2) The commissioner shall also send a written notice to the voter's residence address by forwardable mail. The notice shall advise the voter that the voter must provide the commissioner with a new address if the voter wishes to continue to receive absentee ballots until the end of the period for which the voter has requested ballots.

(3) If the voter provides a new address before election day, the commissioner shall enter the revised information in the voter's registration record and transmit the ballot. The voter may request that the commissioner transmit the ballot electronically pursuant to subrule 21.320(3).

(4) If the voter does not respond to either request for additional information within 30 days, the commissioner shall cancel the absentee ballot request and notify the voter.

21.320(3) *Electronic transmission of absentee ballots to UOCAVA voters.*

a. Electronic transmission of absentee ballots by facsimile machine or by E-mail is limited to UOCAVA voters who specifically ask for this service. A UOCAVA voter who asks for electronic transmission of an absentee ballot may request this service for all elections for which the person is qualified to vote or for specific elections either individually or for a specific period of time. The commissioner shall employ FVAP's secure transmission program to facilitate electronic transmission of absentee ballots to UOCAVA voters.

b. Forms. The state commissioner shall provide the following forms and instructions for the electronic transmission of absentee ballots to UOCAVA voters:

- (1) Instructions to the county commissioners of elections for providing this service.
- (2) Instructions to the voter for marking and returning the ballot.
- (3) The affidavit envelope form, which can be printed by the voter on an envelope and used for the voter's declaration of eligibility and voter registration application, if necessary.
- (4) The return envelope form, which can be printed by the voter on an envelope and used to return the ballot, postage paid through the FPO/APO postal service.

21.320(4) *Ballot return by electronic transmission.*

a. Electronic transmission of a voted absentee ballot from the voter to the commissioner is permitted only for UOCAVA voters who are in an area designated as an imminent danger pay area, as provided in subrule 21.1(14). The absentee ballot may be returned via electronic transmission if the voter waives the right to a secret ballot. In addition to signing the affidavit required by Iowa Code section 53.13, the voter shall sign a statement in substantially the following form: "I understand that by returning this ballot by electronic transmission my voted ballot will not be secret. I hereby waive my right to a secret ballot."

b. When an absentee ballot is received via electronic transmission, the person receiving the transmission shall examine it to determine that all pages have been received and are legible. The person receiving an electronic transmission shall not reveal how the voter voted.

c. The absentee ballot shall be sealed in an envelope marked with the voter's name. The affidavit of the voter and the application for the ballot shall be attached to the envelope. These materials shall be stored with other returned absentee ballots.

This rule is intended to implement Iowa Code section 53.46 and Iowa Code Supplement section 53.40.

721—21.321 to 21.349 Reserved.

721—21.350(53) Absentee ballot processing for elections held following July 1, 2007. Rescinded IAB 9/26/07, effective 9/7/07.

721—21.351(53) Receiving absentee ballots. The commissioner shall carefully account for and protect all absentee ballots returned to the office.

21.351(1) Note receipt. The commissioner shall write or file-stamp on the return carrier envelope the date that the ballot arrived in the commissioner's office. The commissioner shall also record receipt of the ballot in I-Voters.

21.351(2) Temporary storage. If necessary, the commissioner shall immediately put the ballot into a secure container, such as a locked ballot box, until the ballots can be moved to the secure storage area.

21.351(3) Secure area. The commissioner shall deliver the ballots to a secure area where returned absentee ballots will be reviewed for deficiencies.

721—21.352(53) Review of returned affidavit envelopes.

21.352(1) Personnel. The commissioner may assign staff members to complete the review of returned affidavit envelopes. Only persons who have been trained for this responsibility shall be authorized to review affidavit envelopes.

21.352(2) Affidavit envelopes reviewed. The affidavit envelopes of all absentee ballots returned to the commissioner's office shall be reviewed, including those of ballots returned by the bipartisan team delivering absentee ballots to health care facilities, such as hospitals and nursing homes. If a reviewer finds deficiencies in absentee affidavits returned from any health care facility, the commissioner shall send the bipartisan delivery team back to make any necessary corrections or to deliver any replacement ballots.

21.352(3) Instructions. Each reviewer shall receive instructions in substantially the form prescribed by the state commissioner of elections. The instructions shall provide basic security and procedural guidance and include a method for accounting for all returned absentee ballots. The prohibitions shall include:

- a. Not to leave unsecured ballots unattended.
- b. Not to alter any information on any affidavit.
- c. Not to add any information to any affidavit, except as specifically required to comply with the requirements of the law.
- d. Not to seal any affidavit envelope found open.
- e. Not to discard any return carrier envelopes, ballots, or affidavit envelopes returned by voters.

721—21.353(53) Opening the return carrier envelopes. The commissioner may direct a staff member to open the return carrier envelopes either manually or with an automatic letter opener, if one is available. Only a trained reviewer may remove the contents of the envelope.

721—21.354(53) Review process. A reviewer shall remove the contents from only one return carrier envelope at a time.

21.354(1) Return carrier envelopes preserved. The return carrier envelopes shall be stored in a manner that will facilitate their retrieval, if necessary. They shall be stored for 22 months for federal elections and 6 months for local elections.

21.354(2) Examination of affidavit envelope. The reviewer shall make sure that:

- a. The affidavit envelope is sealed, apparently with the ballot inside.
- b. The affidavit envelope has not been opened and resealed.
- c. The affidavit includes all of the following:
 - (1) An address.
 - (2) A signature.
 - (3) For primary elections only, political party affiliation.

21.354(3) No defects or deficiencies. If the reviewer finds no defects or deficiencies that would cause the absentee and special voters precinct board to reject the ballot, the reviewer shall put the affidavit envelope into a group of envelopes to be retained in the secure storage area with others that require no further attention until they are delivered to the absentee and special voters precinct board.

21.354(4) Defective and deficient affidavits. The commissioner shall contact the voter if the reviewer finds any of the following flaws in the affidavit or affidavit envelope:

a. The commissioner shall contact the voter immediately if the affidavit envelope is defective. An affidavit envelope is defective if:

- (1) The absentee ballot is not enclosed in the affidavit envelope.
- (2) The affidavit envelope is not sealed.
- (3) The affidavit envelope has been opened and resealed.

b. The commissioner shall contact the voter within 24 hours if the affidavit is deficient. A deficient affidavit lacks:

- (1) The signature of the voter.
- (2) The voter's address.
- (3) For primary elections only, political party affiliation.

c. If an affidavit envelope has flaws that are included in both paragraphs "a" and "b," the commissioner shall follow the process in paragraph "a."

21.354(5) Defective and deficient affidavits stored separately. The commissioner shall store the defective and deficient affidavit envelopes separately from other returned absentee ballot affidavit envelopes.

a. Deficient affidavit envelopes requiring voter correction must be available for retrieval when the voter comes to make corrections.

b. Defective (improperly closed) affidavit envelopes must be attached to the original application, replacement application and replacement ballot for review by the special precinct board.

721—21.355(53) Notice to voter. When the commissioner finds a deficiency in an absentee ballot affidavit or finds a defective (improperly closed) affidavit envelope, the commissioner shall notify the voter in writing and, if possible, by telephone or by E-mail. The commissioner shall keep a separate checklist for each voter showing the reasons for which the voter was contacted and the methods used to contact the voter.

21.355(1) Notice to voter—deficient ballot affidavit. Within 24 hours after receipt of an absentee ballot with a deficient affidavit, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include:

a. Reason for deficiency (lack of signature, address or, for primary elections only, political party affiliation).

b. The voter's options for correcting the affidavit as follows:

- (1) Completing the affidavit at the commissioner's office by 5 p.m. the day before the election; or
- (2) Casting a provisional ballot at the polls on election day.

c. Address of commissioner's office, business hours and contact information.

21.355(2) Notice to voter—defective ballot affidavit. Immediately after determining that an absentee ballot affidavit envelope was not properly closed, the commissioner shall send a notice to the voter at the address where the voter is registered to vote, as well as to the address where the ballot was sent, if it is a different address. The notice shall include the following information:

a. Reason for defect, such as envelope not sealed, envelope opened and resealed, or the ballot was outside the affidavit envelope.

b. The voter's options for correcting the defect as follows:

- (1) Applying for a replacement ballot; or
- (2) Casting a provisional ballot at the polls on election day.

c. Process for applying for a replacement ballot.

d. Address of commissioner's office, business hours and contact information.

21.355(3) Telephone contact. If the voter has provided a telephone number, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter by telephone. The commissioner shall keep a written record of the telephone conversation. The written record shall include the following information:

- a. Name of the person making the call.
- b. Date and time of the call.
- c. If a person answered the telephone, the name of that person.

21.355(4) E-mail contact. If the voter has provided an E-mail address, either on the absentee ballot application or on the voter's registration record, the commissioner shall also attempt to contact the voter by E-mail. The E-mail message shall be the same message that was mailed to the voter. A copy of the E-mail message shall be attached to the checklist.

Rules 21.351(53) through 21.355(53) are intended to implement Iowa Code section 53.18 as amended by 2007 Iowa Acts, Senate File 601, section 229.

721—21.356 to 21.358 Reserved.

721—21.359(53) Processing absentee ballots before election day. Only when the voters have been provided with secrecy envelopes may the commissioner direct the special precinct board to open affidavit envelopes on the day before election day.

21.359(1) The secrecy envelope shall be closed on at least two sides and shall completely cover the ballot. The envelope shall have the following message printed on it using at least 24-point type:

Secrecy Envelope
After you vote, put your ballot in here.

21.359(2) The special precinct board shall review voters' affidavits and applications to determine which ballots will be accepted for counting and prepare the notices to those voters whose ballots have been rejected. The affidavit envelopes containing ballots that will not be counted and the applications submitted for those ballots shall be stored in a secure location.

21.359(3) The affidavit envelopes containing the ballots that will be counted shall be stacked with the affidavits facing down. The envelopes shall be opened and the secrecy envelope containing the ballot shall be removed. The affidavit envelope and application shall be stored together.

21.359(4) If a voter has not enclosed the ballot in a secrecy envelope and the ballot has not been folded in a manner that conceals all votes marked on the ballot, the officials shall put the ballot in a secrecy envelope without examining the ballot. Two of the special precinct election officials, one from each of the political parties referred to in Iowa Code section 49.13(2), shall sign the secrecy envelope.

21.359(5) The following security procedures shall be followed:

- a. The process shall be witnessed by observers appointed by the county chairperson of each of the political parties referred to in Iowa Code section 49.13, subsection 2.
- b. No ballots shall be counted or examined before election day.
- c. The number of secrecy envelopes shall be recorded before the ballots are stored and the number shall be verified before any ballots are removed from the envelopes on election day. The ballots may be bundled and sealed in groups of a specified number to make counting easier.

This rule is intended to implement 1997 Iowa Acts, House File 636, section 73.

721—21.360(53) Failure to affix postmark date. For any absentee ballot referred to in Iowa Code section 53.17, if the officially authorized postal service fails to affix a postmark date on the return carrier envelope, or the postmark date is illegible, but the date of the affidavit envelope is a date no later than the day prior to the election, the ballot shall be counted as provided in Iowa Code section 53.17. If no date can be read on either the return carrier envelope or the affidavit envelope, the affidavit envelope shall not be opened, and the ballot shall be rejected as provided in Iowa Code section 53.25.

This rule is intended to implement Iowa Code section 53.17.

721—21.361(53) Rejection of absentee ballot. The special precinct election board shall reject absentee ballots without opening the affidavit envelope if any of the conditions cited below exist.

21.361(1) An absentee ballot shall be rejected if the absentee voter's affidavit is insufficient. An insufficient affidavit lacks one or more of the following:

- a. The signature of the voter,
- b. The voter's address,
- c. In primary elections only, the political party affiliation of the voter.

21.361(2) An absentee ballot shall be rejected if the applicant is not a duly registered voter in the precinct in which the ballot is cast. "Precinct" means a precinct established pursuant to Iowa Code sections 49.3 through 49.5.

21.361(3) An absentee ballot shall be rejected if the affidavit envelope is open.

21.361(4) An absentee ballot shall be rejected if the affidavit envelope has been opened and resealed.

21.361(5) An absentee ballot shall be rejected if the affidavit envelope contains more than one ballot of any kind. This includes all ballots contained in the affidavit envelope, whether or not they are enclosed in secrecy envelopes.

21.361(6) An absentee ballot shall be rejected if the voter has voted in person.

21.361(7) An absentee ballot shall be rejected if in primary elections the political party declared on the affidavit envelope is different from the political party whose ballot was requested on the application for the ballot.

21.361(8) Rescinded IAB 9/26/07, effective 9/7/07.

This rule is intended to implement Iowa Code sections 43.38, 49.9 and 53.25.

721—21.362 to 21.369 Reserved.

721—21.370(53) Training for absentee ballot couriers. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.371(53) Certificate. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.372(53) Frequency of training. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.373(53) Registration of absentee ballot couriers. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.374(53) County commissioner's duties. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.375(53) Absentee ballot courier training. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.376(53) Receiving absentee ballots. Rescinded IAB 8/1/07, effective 7/1/07.

721—21.377 to 21.399 Reserved.

DIVISION IV
INSTRUCTIONS FOR SPECIFIC ELECTIONS

721—21.400(376) Signature requirements for certain cities. This rule applies to cities which have all of the following characteristics:

1. Nomination procedures under Iowa Code section 376.3 are used. (This includes cities with primary or runoff election provisions. It does not include cities with nominations under Iowa Code chapter 44 or 45.)
2. Some or all council members are voted upon by the electors of wards, rather than by the electors of the entire city.
3. Ward boundaries have been changed since the last regular city election at which the ward seat was on the ballot.
4. The number of wards has not changed.

Calculation of the number of signatures for ward seats shall use the vote totals from the wards as the wards were configured at the time of the last regular city election at which the ward seat was on the ballot.

This rule is intended to implement Iowa Code section 376.4.

721—21.401(376) Signature requirements in cities with primary or runoff election provisions. In cities using the provisions of Iowa Code section 376.4 for nomination of candidates and in which more than one council member was elected at-large at the last preceding regular city election, the number of signatures shall be calculated by the following formula:

V = the total number of votes cast for all candidates for council member at-large at the last regular city election;

E = the number of people to be elected at the last regular city election;

$$\frac{V}{E} \times .02 = \text{the number of signatures needed by each candidate in the next regular city election.}$$

This rule is intended to implement Iowa Code section 376.4.

721—21.402(372) Filing deadline for charter commission appointment petition. If a special election has been called by a city to present to the voters the question of adopting a different form of city government, receipt by the city council of a petition requesting appointment of a charter commission shall stay the special election if the petition is received no later than 5 p.m. on the Friday preceding the date of the special election.

This rule is intended to implement Iowa Code section 372.3.

721—21.403(81GA, HF2282) Special elections to fill vacancies in elective city offices for cities that may be required to conduct primary elections.

21.403(1) Notice to the commissioner. At least 60 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election.

a. If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

b. No special city elections to fill vacancies for cities that may be required to conduct primary elections shall be held with the general election, with the primary election, or with the annual school election. To do so would be contrary to the provisions of Iowa Code section 39.2.

21.403(2) Election calendar. The election calendar shall be adjusted as follows:

a. The deadline for candidates to file nomination papers with the city clerk shall be not later than 12 noon on the fifty-third day before the election.

b. The city clerk shall deliver all nomination papers accepted by the clerk to the county commissioner of elections not later than 5 p.m. on the fifty-third day before the election.

c. A candidate who has filed nomination papers for the special election may withdraw not later than 5 p.m. on the fiftieth day before the election.

d. A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate's nomination papers or to the qualifications of the candidate for this special election not later than 12 noon on the fiftieth day before the election.

e. The hearing on the objection must be held within 24 hours of receipt of the objection.

This rule is intended to implement Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2.

721—21.404(81GA, HF2282) Special elections to fill vacancies in elective city offices for cities without primary election requirements. This rule applies to cities that have adopted by ordinance one

of the following options: nominations under Iowa Code chapter 44 or chapter 45, or a runoff election requirement if no candidate in the special election receives a majority of the votes cast.

21.404(1) Notice to the commissioner. At least 32 days before the proposed date of the special election, the city council shall give written notice to the commissioner who will be responsible for conducting the special election. If the commissioner finds no conflict with other previously scheduled elections, or with other limitations on the dates of special elections, the commissioner shall immediately notify the council that the date has been approved.

21.404(2) Special elections to fill vacancies held in conjunction with the general election. If the proposed date of the special election coincides with the date of the general election, the council shall give notice of the proposed date of the special city election not later than 76 days before the date of the general election. Candidates shall file nomination papers with the city clerk not later than 5 p.m. on the seventieth day before the general election. The city clerk shall deliver the nomination papers accepted by the clerk not later than 5 p.m. on the sixty-ninth day before the general election. Objection and withdrawal deadlines shall be 64 days before the general election, the same as the deadlines for candidates who file their nomination papers with the commissioner. Hearings on objections shall be held as soon as possible in order to facilitate printing of the general election ballot.

21.404(3) Election calendar. If the special election date is not the same as the date of the general election, the election calendar shall be adjusted as follows:

a. The deadline for candidates to file nomination papers with the city clerk shall be not later than 12 noon on the twenty-fifth day before the election.

b. The city clerk shall deliver all nomination papers accepted by the clerk to the county commissioner of elections not later than 5 p.m. on the twenty-fifth day before the election.

c. A candidate who has filed nomination papers for the special election may withdraw not later than 5 p.m. on the twenty-second day before the election.

d. A person who would have the right to vote for the office in question may file a written objection to the legal sufficiency of a candidate's nomination papers or to the qualifications of the candidate for this special election not later than 12 noon on the twenty-second day before the election.

e. The hearing on the objection must be held within 24 hours of receipt of the objection.

This rule is intended to implement Iowa Code section 372.13(2) as amended by 2006 Iowa Acts, House File 2282, section 2.

721—21.405 to 21.499 Reserved.

721—21.500(277) Signature requirements for school director candidates. The number of signatures required to be filed by candidates for the office of director in the regular school election shall be calculated from the number of registered voters in the district on May 1 of the year in which the election will be held. Candidates who are seeking election in districts with election plans as specified in Iowa Code section 275.12(2) "b" and "c," where the candidate must reside in a specific director district, but is voted upon by all of the electors of the school district, shall be required to file a number of signatures calculated from the number of registered voters in the whole school district. Candidates who will be voted upon only by the electors of a director district shall be required to file a number of signatures calculated from the number of registered voters in the director district in which the candidate resides and seeks to represent.

If a special election is to be held to fill a vacancy on the school board, the number of registered voters on the first day of the month preceding the date the commissioner receives notice of the special election shall be used to calculate the number of signatures required for the special election.

This rule is intended to implement Iowa Code sections 277.4 and 279.7.

721—21.501 to 21.599 Reserved.

721—21.600(43) Primary election signatures—plan three supervisor candidates. The minimum number of signatures needed by candidates for the office of county supervisor elected under plan three,

where candidates are voted upon only by the voters of the supervisor district, shall be determined by one of the two following methods.

21.600(1) If there were 5,000 or more votes cast in the supervisor district for a political party's candidate for governor or for president of the United States, the minimum number of signatures needed is 100.

21.600(2) If there were less than 5,000 votes cast in the supervisor district for a political party's candidate for governor or for president of the United States, the minimum number of signatures is determined by using one of the following formulas:

Democratic candidate's signature requirement: $([AD \div S] + VD) \times .02$

Republican candidate's signature requirement: $([AR \div S] + VR) \times .02$

AD = the number of absentee votes received in the entire county by the Democratic party's candidate for governor or for president of the United States in the previous general election.

AR = the number of absentee votes received in the entire county by the Republican party's candidate for governor or for president of the United States in the previous general election.

S = the number of supervisor districts in the county (3 or 5).

VD = the number of votes cast in the supervisor district for the Democratic party's candidate for governor or for president of the United States in the previous general election. (If this number is 5,000 or more, the minimum number of signatures needed is 100.)

VR = the number of votes cast in the supervisor district for the Republican party's candidate for governor or for president of the United States in the previous general election. (If this number is 5,000 or more, the minimum number of signatures needed is 100.)

This rule is intended to implement Iowa Code section 43.20(1) "d."

721—21.601(43) Plan III supervisor district candidate signatures after a change in the number of supervisors. After the number of supervisors has been increased or decreased pursuant to Iowa Code section 331.203 or 331.204, the signatures for candidates at the next primary and general elections shall be calculated as follows:

21.601(1) Primary election. Divide the total number of votes cast in the county at the previous general election for the office of president or for governor, as applicable, by the number of supervisor districts and multiply the quotient by .02. If the result of the calculation is less than 100, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 100, the minimum requirement shall be 100 signatures.

21.601(2) Nominations by petition. If the effective date of the change in the number of districts was later than the date specified in Iowa Code section 45.1(6), divide the total number of registered voters in the county on the date specified in Iowa Code section 45.1(6) by the number of supervisor districts and multiply the quotient by .01. If the result of the calculation is less than 150, the result shall be the minimum number of signatures required. If the result of the calculation is greater than or equal to 150, the minimum requirement shall be 150 signatures.

721—21.602(43) Primary election—nominations by write-in votes for certain offices.

21.602(1) The process described in subrule 21.602(2) shall be used to determine whether the primary election is conclusive and a candidate was nominated for partisan offices that are:

- a. Not mentioned in Iowa Code section 43.53 (township offices) or 43.66 (state representative and state senator), and
- b. For which no candidate's name was printed on the primary election ballot, and
- c. For which no candidate's name was printed on the primary election ballot in any previous primary election.

21.602(2) To be nominated by write-in votes, the person must receive at least 35 percent of the number of votes cast in the previous general election for that party's candidate for president of the United States or for governor, as the case may be, as follows:

- a. Statewide office: 35 percent of votes cast statewide.
- b. Congressional district: 35 percent of votes cast within the current boundaries of the Congressional district.
- c. County office, including plan II supervisors: 35 percent of the votes cast within the county.
- d. Plan III county supervisor: 35 percent of the votes cast within the supervisor district. If the boundaries of the supervisor district have changed since the previous general election, the number of votes cast within the county for the party candidate for president or for governor, as the case may be, shall be divided by the number of supervisor districts in the county; then the quotient shall be multiplied by 0.35.

21.602(3) If a write-in candidate is declared nominated at the canvass of votes, Iowa Code section 43.67, which requires the appropriate election commissioner to notify the candidate, shall apply.

This rule is intended to implement Iowa Code section 43.66.

721—21.603 to 21.799 Reserved.

721—21.800(422B) Local sales and services tax elections.

21.800(1) Petitions requesting imposition of local sales and services taxes shall be filed with the county board of supervisors.

a. The petition shall be signed by eligible electors equal in number to at least 5 percent of the persons in the whole county who voted at the last preceding state general election. Each petition shall include:

(1) A statement in substantially the following form: We the undersigned eligible electors of _____ County hereby request imposition of a local sales and services tax.

(2) Each person signing the petition shall add the person's address (including street number, if any) and the date that the person signed the petition.

b. Within 30 days after receipt of the petition, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition of a local sales and services tax. In the notice the supervisors shall propose a specific date for the election.

c. The proposed election date shall be at least 75 days, but not more than 90 days, after the date upon which notice is given to the commissioner. The local option tax election may be held in conjunction with a state general election, or at a special election held at any time other than the time of a city regular election. However, if the date proposed by the supervisors conflicts with another scheduled election as defined in Iowa Code section 47.6(2), the commissioner shall notify the supervisors of this fact. The supervisors shall propose another date for the special election within 7 days of receiving notice from the commissioner.

21.800(2) As an alternative to the method of initiating a local option tax election described in subrule 21.4(1), governing bodies of cities and the county may initiate a local option tax election by filing motions with the county auditor pursuant to Iowa Code section 422B.1(3) "b" requesting submission of a local option tax to the qualified electors. Within 30 days of receiving a sufficient number of motions, the county commissioner shall, in consultation with the governing bodies of the cities and with the board of supervisors, set a date for the local option tax election. The election shall be held no sooner than 105 days nor later than 120 days after the date upon which the commissioner received the motion triggering the election. If this would result in the special election being held at a time of a conflicting election as defined by Iowa Code section 47.6 or on a date upon which special elections are forbidden to be held by Iowa Code section 39.2(1), the election may be held on a date as close as possible to the required time period.

21.800(3) Notice of local sales and services tax election.

a. Not less than 60 days before the date that a local sales and services tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include sample ballots, but shall include all of the information that will appear on the ballot for each city and for the voters in the unincorporated areas of the county.

b. The city councils and the supervisors shall provide to the county commissioner the following information to be included in the notice and on the ballots:

- (1) The rate of the tax.
- (2) The date the tax will be imposed (which shall be the next implementation date provided in Iowa Code section 423B.6 following the date of the election and at least 90 days after the date of the election, except that an election to impose a local option tax on a date immediately following the scheduled repeal date of an existing similar tax may be held at any time that otherwise complies with the requirements of Iowa Code chapter 423B). The imposition date shall be uniform in all areas of the county voting on the tax at the same election.
- (3) The approximate amount of local option tax revenues that will be used for property tax relief in the jurisdiction.
- (4) A statement of the specific purposes other than property tax relief for which revenues will be expended in the jurisdiction.

c. The information to be included in the notice shall be provided to the commissioner by the city councils of each city in the county not later than 67 days before the date of the election. If a jurisdiction fails to provide the information in 21.4(3)“b”(3) and 21.4(3)“b”(4) above, the following information shall be substituted in the notice and on the ballot:

- (1) Zero percent (0%) for property tax relief.
- (2) The specific purpose for which the revenues will otherwise be expended is: Any lawful purpose of the city (or county).

d. The notice of election provided for in Iowa Code section 49.53 shall also be published at the time and in the manner specified in that section.

21.800(4) Definitions.

“Abstract of ballot” means abstract of votes.

This rule is intended to implement Iowa Code sections 422B.1 and 422B.9.

721—21.801(422B) Form of ballot for local option tax elections. If questions pertaining to more than one of the authorized local option taxes are submitted at a single election, all of the public measures shall be printed on the same ballot. The form of ballots to be used throughout the state of Iowa for the purpose of submitting questions pertaining to local option taxes shall be as follows:

21.801(1) Local sales and services tax propositions. Sales and services tax propositions shall be submitted to the voters of an entire county. If the election is being held for the voters to decide whether to impose the tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of imposition shall be voted upon in all parts of the county where the tax has not been approved. If the election is being held for the voters to decide whether to repeal the tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of repeal shall be voted upon in all parts of the county where the tax was previously imposed. If the election is being held for the voters to decide whether to change the rate or use of the tax in a county where a local option sales and services tax has previously been approved for part of the county, the question of rate or use change shall be voted upon in all parts of the county where the tax was previously imposed.

The ballot submitted to the voters of each incorporated area and the unincorporated area of the county shall show the intended uses for that jurisdiction. The ballot submitted to the voters in contiguous cities within a county shall show the intended uses and repeal dates, if not uniform, for each of the contiguous cities. The ballots shall be in substantially the following form:

a. Imposition question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

YES

NO

Summary: To authorize imposition of a local sales and services tax in the [city of _____] [unincorporated area of the county of _____], at the rate of _____ percent (_____ %) to be effective on _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

A local sales and services tax shall be imposed in the [city of _____] [unincorporated area of the county of _____] at the rate of _____ percent (_____ %) to be effective on _____ (month and day), _____ (year).

Revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

b. Imposition question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES NO

Summary: To authorize imposition of a local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____ %) to be effective on _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

A local sales and services tax shall be imposed in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____ %) to be effective on _____ (month and day), _____ (year).

Revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____: _____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

c. Imposition question with an automatic repeal date for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES
NO

Summary: To authorize imposition of a local sales and services tax in the [city of _____] [unincorporated area of the county of _____], at the rate of _____ percent (_____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

A local sales and services tax shall be imposed in the [city of _____] [unincorporated area of the county of _____] at the rate of _____ percent (_____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

Revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

d. Imposition question with an automatic repeal date for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES
NO

Summary: To authorize imposition of a local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

A local sales and services tax shall be imposed in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____%) to be effective from _____ (month and day), _____ (year), until _____ (month and day), _____ (year).

Revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

e. Repeal question for voters in a single city or the unincorporated area of the county:
(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES
NO

Summary: To authorize repeal of the _____ percent (_____%) local sales and services tax in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand

side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The _____ percent (_____%) local sales and services tax shall be repealed in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

Revenues from the sales and services tax have been allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

f. Repeal question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

YES

NO

Summary: To authorize repeal of the _____ percent (_____%) local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The _____ percent (_____%) local sales and services tax shall be repealed in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

Revenues from the sales and services tax have been allocated as follows:

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

FOR THE CITY OF _____:

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues were otherwise expended was (were):

(List specific purpose or purposes)

g. Rate change question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES
NO

Summary: To authorize an increase (or decrease) in the rate of the local sales and services tax to _____ percent (_____%) in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The rate of the local sales and services tax shall be increased (or decreased) to _____ percent (_____%) in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

The current rate is _____ percent (_____%).

Revenues from the sales and services tax are allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

h. Rate change question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES
NO

Summary: To authorize an increase (or decrease) in the rate of the local sales and services tax to _____ percent (_____%) in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The rate of the local sales and services tax shall be increased (or decreased) to _____ percent (_____%) in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

Revenues from the sales and services tax are allocated as follows:

FOR THE CITY OF _____: _____ for property tax relief (insert percentage or dollar amount) The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____: _____ for property tax relief (insert percentage or dollar amount) The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

FOR THE CITY OF _____: _____ for property tax relief (insert percentage or dollar amount) The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

i. Use change question for voters in a single city or the unincorporated area of the county:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES NO

Summary: To authorize a change in the use of the _____ percent (_____%) local sales and services tax in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The use of the _____ percent (_____%) local sales and services tax shall be changed in the [city of _____] [unincorporated area of the county of _____] effective _____ (month and day), _____ (year).

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax shall be allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

(List specific purpose or purposes)

CURRENT USES OF THE TAX:

Revenues from the sales and services tax are currently allocated as follows:

(Choose one or more of the following:)

[_____ for property tax relief (insert percentage or dollar amount)]

[_____ for property tax relief (insert percentage or dollar amount) in the unincorporated area of the county of _____]

[_____ for property tax relief (insert percentage or dollar amount) in the county of _____]

The specific purpose (or purposes) for which the revenues are otherwise expended is (are):

(List specific purpose or purposes)

j. Use change question for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED?

YES

NO

Summary: To authorize a change in the use of the _____ percent (____%) local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25. Counties using special paper ballots which are read by computerized tabulating equipment may summarize the question on the ballot and post the complete text as provided in Iowa Code section 52.25.)

The use of the _____ percent (____%) local sales and services tax shall be changed in the cities of _____, _____, _____, (list additional cities, if applicable) effective _____ (month and day), _____ (year).

PROPOSED USES OF THE TAX:

If the change is approved, revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):
(List specific purpose or purposes)

CURRENT USES OF THE TAX:

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues are otherwise expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues are otherwise expended is (are):
(List specific purpose or purposes)

FOR THE CITY OF _____:
_____ for property tax relief (insert percentage or dollar amount)
The specific purpose (or purposes) for which the revenues are otherwise expended is (are):
(List specific purpose or purposes)

k. Imposition question with differing automatic repeal dates for voters in contiguous cities:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES
NO

Summary: To authorize imposition of a local sales and services tax in the cities of _____, _____, _____, (list additional cities, if applicable) at the rate of _____ percent (_____%) to be effective from _____ (month/day/year) until automatic repeal date specified.

A local sales and services tax shall be imposed in the following cities at the rate of _____ percent (_____ %) to be effective from _____ (month/day/year) until the date specified below and the revenues from the sales and services tax are to be allocated as follows:

FOR THE CITY OF _____:

The tax shall be repealed on _____ (month/day/year).

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

FOR THE CITY OF _____:

The tax shall be repealed on _____ (month/day/year).

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

FOR THE CITY OF _____:

The tax shall be repealed on _____ (month/day/year).

_____ for property tax relief (insert percentage or dollar amount)

The specific purpose (or purposes) for which the revenues shall otherwise be expended is (are):

21.801(2) For a local vehicle tax:

(Insert letter to be assigned by the commissioner)

SHALL THE FOLLOWING PUBLIC MEASURE BE ADOPTED? YES
NO

Summary: To authorize the county of (insert name of county) to impose a local vehicle tax at the rate of _____ dollars (\$ _____) per vehicle and to exempt the following classes from the tax:

The revenues are to be expended as set forth in the text of the public measure.

(Insert in substantially the following form the entire text of the proposed public measure immediately below the summary on all paper ballots as provided in Iowa Code section 49.45, or place on the left-hand side inside the curtain of each voting machine as provided in Iowa Code section 52.25.)

The county of _____, Iowa shall be authorized to impose a local vehicle tax at the rate of _____ dollars (\$ _____) per vehicle and to exempt the following classes of vehicles from the tax:

(insert percentage or dollar amount) of the revenues is/are to be used for property tax relief.

The balance of the revenues is to be expended for:
(List purposes for which remaining revenues will be used)

721—21.802(422B) Local vehicle tax elections.

21.802(1) Petitions requesting imposition of local vehicle taxes shall be filed with the county board of supervisors.

a. The petition shall be signed by eligible electors equal in number to at least 5 percent of the persons in the whole county who voted at the last preceding state general election. Each petition shall include:

(1) A statement in substantially the following form: We the undersigned eligible electors of _____ County hereby request imposition of a local vehicle tax at a rate of _____ dollar(s) per vehicle with the following classes (if any) to be exempt: _____.

(2) Each person signing the petition shall add the person’s address (including street numbers, if any) and the date that the person signed the petition.

b. Within 30 days after receipt of the petition, the supervisors shall provide written notice to the county commissioner of elections directing that an election be held to present to the voters of the entire county the question of imposition of a local vehicle tax. In the notice the supervisors shall propose a specific date for the election.

c. The proposed election date shall be at least 75 days, but not more than 90 days, after the date upon which notice is given to the commissioner. The local option tax election may be held in conjunction with a state general election, or at a special election held at any time other than the time of a city regular election. However, if the date proposed by the supervisors conflicts with another scheduled election as defined in Iowa Code section 47.6(2), the commissioner shall notify the supervisors of this fact. The supervisors shall propose another date for the special election within 7 days of receiving notice from the commissioner.

21.802(2) Notice of local vehicle tax election. Not less than 60 days before the date that a local vehicle tax election will be held, the county commissioner of elections shall publish notice of the ballot proposition. The notice does not need to include a sample ballot, but shall include all of the information that will appear on the ballot. The notice of election provided for in Iowa Code section 49.53 shall also be published at the time and in the manner specified in that section.

721—21.803(82GA, HF2663) Revenue purpose statement ballots. When a school district wishes to adopt, amend or extend the revenue purpose statement specifying the uses of the funds received from the secure an advanced vision for education fund, which is also referred to as the “penny sales and services tax for schools,” the following ballot formats shall be used.

21.803(1) *Ballot to propose a revenue purpose statement.* The ballot for an election to propose a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

- YES
- NO

Summary: To adopt a revenue purpose statement specifying the use of money from the penny sales and services tax for schools received by _____ School District.

In the _____ School District, the following revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be adopted:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by 2008 Iowa Acts, House File 2663, section 29.)

21.803(2) *Ballot to amend a revenue purpose statement.* The ballot for an election to decide a change in the revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

- YES
- NO

Summary: To authorize a change in the use of money from the penny sales and services tax for schools received by _____ School District.

In the _____ School District, the revenue purpose statement, which specifies the use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) shall be changed.

Proposed uses. If the change is approved, the revenue purpose statement shall read as follows:

(Insert here the revenue purpose statement that was adopted by the school board and that states the intended uses of the funds by the school district. The use or uses must be among the approved uses of the tax that are authorized by 2008 Iowa Acts, House File 2663, section 29.)

Current uses. If the change is not approved, the funds shall continue to be used as follows:

(Insert here the current revenue purpose statement or list the current voter-approved uses of the funds by the school district, if the school infrastructure local option tax was adopted before the revenue purpose statement was required.)

21.803(3) *Ballot to extend a revenue purpose statement.* The ballot for an election to extend a revenue purpose statement specifying the use of funds received from the secure an advanced vision for education fund shall be in substantially the following form:

(Insert letter to be assigned by the commissioner.)

Shall the following public measure be adopted?

- YES
- NO

Summary: To authorize _____ School District to continue to spend money from the penny sales and services tax for schools for the previously approved uses until (specify date or insert amended date).

_____ School District is authorized to extend the current revenue purpose statement which specifies use of the penny sales and services tax for schools (sales and services tax funds from the secure an advanced vision for education fund for school infrastructure) received from (date) until (specify date or insert amended date). If an extension is not approved, the current revenue purpose statement will expire on (date). If an extension is approved, the revenue purpose statement will read as follows:

(Insert here the revenue purpose statement, including the new expiration date. If there is not a predicted expiration date, the ballot language must state that the revenue purpose statement will remain in effect until it is changed.)

This rule is intended to implement 2008 Iowa Acts, House File 2663, section 29.

each telephone subscriber’s monthly phone bill if provided within (description of the proposed service area). The surcharge shall be collected for not more than 24 months, after which the surcharge shall revert to one dollar per month for each line.

A map may be used to show the proposed E911 service area. If a map is used the public measure shall read as follows:

“Enhanced 911 emergency telephone service shall be funded, in whole or in part, by a temporary monthly surcharge increase to (an amount between one dollar and two dollars and fifty cents to be determined by the local joint E911 service board) on each telephone access line collected as part of each telephone subscriber’s monthly phone bill if provided within the proposed E911 service area shown on the map below. The surcharge shall be collected for not more than 24 months, after which the surcharge shall revert to one dollar per month for each line.”

This rule is intended to implement Iowa Code sections 34A.6 and 34A.6A.

721—21.811 to 21.819 Reserved.

721—21.820(99F) Gambling elections.

21.820(1) Petitions requesting elections to approve or disapprove the conduct of gambling games on an excursion gambling boat or at a gambling structure shall be filed with the county board of supervisors.

a. The petition shall be signed by eligible electors of the county equal in number to at least 10 percent of the votes cast in the county for the office of President of the United States or governor at the preceding general election.

b. Each petition shall be in substantially the following form:

STATE OF IOWA
PETITION REQUESTING ELECTION

_____ County

We, the undersigned eligible electors of _____ County, hereby request that an election be held on the proposition to approve or disapprove gambling games on an excursion gambling boat or at a gambling structure in the county.

Signature	Address, including street and number, if any	Date signed
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		
12.		
13.		
14.		
15.		
16.		
17.		
18.		
19.		

20.		
21.		
22.		
23.		
24.		
25.		

page ____ of ____

c. Within 10 days after receipt of a valid petition, the supervisors shall provide written notice to the county commissioner of elections directing the commissioner to submit to the qualified electors of the county a proposition to approve or disapprove the conduct of gambling games on an excursion gambling boat or at a gambling structure in the county. The election shall be held within 70 days of the receipt of the petition.

d. If a regularly scheduled or special election is to be held in the county on the date selected by the supervisors, notice shall be given to the commissioner no later than the last day upon which nomination papers may be filed for that election. If the excursion gambling boat or the gambling structure election is to be held with a local option tax election, the supervisors shall provide the commissioner at least 60 days' written notice. Otherwise, the supervisors shall give at least 32 days' written notice. If the commissioner finds that the date selected by the supervisors conflicts with another election to be held that day, the commissioner shall immediately notify the supervisors in writing. Within 7 days, the supervisors shall select another date and notify the commissioner in writing.

21.820(2) Form of ballot for election called by petition. Ballots shall be in substantially the following form:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

Gambling games on an excursion gambling boat or at a gambling structure in _____ County are approved.

21.820(3) Form of ballot for elections to continue gambling games on an excursion gambling boat or at a gambling structure:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

Summary: Gambling games on an excursion gambling boat or at a gambling structure in _____ County are approved.

Gambling games, with no wager or loss limits, on an excursion gambling boat or at a gambling structure in _____ County are approved. If approved by a majority of the voters, operation of gambling games with no wager or loss limits may continue until the question is voted upon again at the general election held in 2010. If disapproved by a majority of the voters, the operation of gambling games on an excursion gambling boat or at a gambling structure will end within 60 days of this election. (Iowa Code section 99F.7(10) "c")

21.820(4) Ballot form to permit gambling games at existing pari-mutuel racetracks:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

The operation of gambling games at (name of pari-mutuel racetrack) in _____ County is approved.

21.820(5) Canvass of votes. The canvass of votes for a special election regarding excursion boat gambling shall be held on the Monday following the election. A copy of the abstract of votes of the election shall be sent to the state racing and gaming commission.

21.820(6) Ballot form for general election for continuing operation of gambling games at pari-mutuel racetracks:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

Summary: The continued operation of gambling games at (name of pari-mutuel racetrack) in _____ County is approved.

The continued operation of gambling games at (name of pari-mutuel racetrack) in _____ County is approved. If approved by a majority of the voters, operation of gambling games may continue at (name of pari-mutuel racetrack) in _____ County until the question is voted on again at the general election in eight years. If disapproved by a majority of the voters, gambling games at (name of pari-mutuel racetrack) in _____ County will end.

21.820(7) Ballot form for general election for continuing gambling games on an excursion gambling boat or at a gambling structure:

(Insert letter to be assigned by the commissioner)

Shall the following public measure be adopted?

- YES
- NO

Summary: The continued operation of gambling games on an excursion gambling boat or at a gambling structure in _____ County is approved.

The continued operation of gambling games on an excursion gambling boat or at a gambling structure in _____ County is approved. If approved by a majority of the voters, operation of gambling games may continue on an excursion gambling boat or at a gambling structure in _____ County until the question is voted on again at the general election in eight years. If disapproved by a majority of voters, gambling games on an excursion gambling boat or at a gambling structure in _____ County will end nine years from the date of the original issue of the license to the current licensee.

This rule is intended to implement Iowa Code section 99F.7 and Iowa Code Supplement section 99F.4D.

721—21.821 to 21.829 Reserved.

721—21.830(357E) Benefited recreational lake district elections. Elections for benefited recreational lake districts shall be conducted according to the following procedures.

21.830(1) Conduct of election. It is not mandatory for the county commissioner of elections to conduct elections for a benefited recreational lake district. However, if both a public measure and a candidate election will be held on the same day in a benefited recreational lake district, the same person shall be responsible for conducting both elections. All elections must be held on a Tuesday.

21.830(2) Ballots. Ballots for benefited recreational lake district trustee elections shall be printed on opaque white paper, 8 by 11 inches in size. The ballots for the initial election for the office of trustee shall be in substantially the following form:

OFFICIAL BALLOT
BENEFITED RECREATIONAL LAKE DISTRICT
Election date
(facsimile signature of person responsible for printing ballots)

FOR TRUSTEE:

To vote: Neatly print the names of at least three people you would like to see elected to the office of Trustee of the Benefited Recreational Lake District. You may vote for as many people as you wish, but you must vote for at least three.

(At the bottom of the ballot a space shall be included for the endorsement of the precinct election official, like this:)

Precinct official's endorsement: _____

21.830(3) Canvass of votes. On the Monday following the election, the board of supervisors shall canvass the votes cast at the election. At the initial election the supervisors shall choose three trustees from among the five persons who received the most votes. The results of benefited recreational lake district elections shall be certified to the district board of trustees.

This rule is intended to implement Iowa Code section 357E.8.

[Filed emergency 4/22/76—published 5/17/76, effective 4/22/76]

[Filed emergency 6/2/76—published 6/28/76, effective 8/2/76]

[Filed 10/7/81, Notice 9/2/81—published 10/28/81, effective 12/2/81]

[Filed emergency 11/15/84—published 12/5/84, effective 11/15/84]

[Filed 1/22/85, Notice 12/5/84—published 2/13/85, effective 3/20/85]

[Filed 5/17/85, Notice 4/10/85—published 6/5/85, effective 7/10/85]

[Filed emergency 7/2/85—published 7/31/85, effective 7/2/85]

[Filed emergency 7/26/85—published 8/14/85, effective 7/26/85]

[Filed emergency 8/14/85—published 9/11/85, effective 8/14/85]

[Filed 9/6/85, Notice 7/31/85—published 9/25/85, effective 10/30/85]

[Filed 10/30/85, Notice 9/25/85—published 11/20/85, effective 12/25/85]

[Filed emergency 12/18/86—published 1/14/87, effective 12/18/86]

[Filed emergency 4/20/87—published 5/20/87, effective 4/20/87]^o

[Filed 6/23/88, Notice 5/18/88—published 7/13/88, effective 8/17/88]

[Filed 9/2/88, Notice 7/27/88—published 9/21/88, effective 10/26/88]

[Filed 3/1/89, Notice 1/25/89—published 3/22/89, effective 4/26/89]

[Filed emergency 5/10/89—published 5/31/89, effective 5/10/89]

[Filed emergency 6/9/89—published 6/28/89, effective 7/1/89]

[Filed emergency 6/22/89, after Notice of 5/31/89—published 7/12/89, effective 7/1/89]

[Filed 8/16/89, Notice 6/28/89—published 9/6/89, effective 10/11/89]

[Filed 11/9/89, Notice 10/4/89—published 11/29/89, effective 1/3/90]

[Filed 12/7/89, Notice 11/1/89—published 12/27/89, effective 1/31/90]

[Filed 3/26/92, Notice 2/5/92—published 4/15/92, effective 5/20/92]

- [Filed 11/19/92, Notice 9/30/92—published 12/9/92, effective 1/13/93]◊
- [Filed 1/14/93, Notice 12/9/92—published 2/3/93, effective 3/10/93]
- [Filed 6/4/93, Notice 4/28/93—published 6/23/93, effective 7/28/93]
- [Filed emergency 6/28/93—published 7/21/93, effective 7/1/93]
- [Filed 9/8/93, Notice 7/21/93—published 9/29/93, effective 11/3/93]
- [Filed 11/5/93, Notice 9/29/93—published 11/24/93, effective 12/29/93]
- [Filed emergency 4/4/94—published 4/27/94, effective 4/4/94]
- [Filed 7/1/94, Notice 5/25/94—published 7/20/94, effective 8/24/94]
- [Filed 6/30/95, Notice 5/24/95—published 7/19/95, effective 8/23/95]
- [Filed 2/8/96, Notice 1/3/96—published 2/28/96, effective 4/3/96]
- [Filed 5/31/96, Notice 4/10/96—published 6/19/96, effective 7/24/96]
- [Filed 6/13/96, Notice 5/8/96—published 7/3/96, effective 8/7/96]
- [Filed emergency 7/25/96 after Notice 6/19/96—published 8/14/96, effective 7/25/96]
- [Filed emergency 5/21/97—published 6/18/97, effective 5/21/97]
- [Filed emergency 7/30/97—published 8/27/97, effective 7/30/97]
- [Filed 8/22/97, Notice 7/16/97—published 9/10/97, effective 10/15/97]
- [Filed 12/12/97, Notice 11/5/97—published 12/31/97, effective 2/4/98]
- [Filed emergency 5/1/98—published 5/20/98, effective 5/1/98]◊
- [Filed emergency 8/7/98—published 8/26/98, effective 8/7/98]
- [Filed emergency 8/11/99—published 9/8/99, effective 8/11/99]
- [Filed 10/29/99, Notice 9/22/99—published 11/17/99, effective 12/22/99]
- [Filed emergency 12/22/99—published 1/12/00, effective 12/22/99]
- [Filed 2/3/00, Notice 12/29/99—published 2/23/00, effective 4/1/00]
- [Filed 5/26/00, Notice 4/19/00—published 6/14/00, effective 7/19/00]
- [Filed 9/14/00, Notice 8/9/00—published 10/4/00, effective 11/8/00]
- [Filed emergency 10/10/00 after Notice 8/9/00—published 11/1/00, effective 11/7/00]
- [Filed emergency 7/20/01 after Notice 6/13/01—published 8/8/01, effective 7/20/01]
- [Filed 2/1/02, Notice 8/8/01—published 2/20/02, effective 3/27/02]
- [Filed emergency 3/15/02—published 4/3/02, effective 3/15/02]
- [Filed emergency 7/19/02—published 8/7/02, effective 7/19/02]
- [Filed 2/13/03, Notice 12/25/02—published 3/5/03, effective 4/9/03]
- [Filed emergency 3/28/03—published 4/16/03, effective 3/28/03]
- [Filed 2/26/04, Notice 1/7/04—published 3/17/04, effective 4/21/04]◊
- [Filed 2/26/04, Notice 1/21/04—published 3/17/04, effective 4/21/04]
- [Filed emergency 8/27/04 after Notice 7/21/04—published 9/15/04, effective 8/27/04]
- [Filed emergency 10/12/04—published 11/10/04, effective 10/12/04]
- [Filed 1/25/06, Notice 12/21/05—published 2/15/06, effective 3/22/06]
- [Filed emergency 3/10/06—published 3/29/06, effective 3/10/06]
- [Filed emergency 5/5/06 after Notice 3/29/06—published 5/24/06, effective 5/5/06]
- [Filed emergency 8/25/06—published 9/27/06, effective 8/25/06]
- [Filed emergency 10/4/06 after Notice 8/30/06—published 10/25/06, effective 10/4/06]
- [Filed emergency 5/14/07—published 6/6/07, effective 5/14/07]
- [Filed emergency 6/27/07—published 8/1/07, effective 7/1/07]
- [Filed emergency 7/13/07—published 8/1/07, effective 7/13/07]
- [Filed emergency 9/7/07 after Notice 8/1/07—published 9/26/07, effective 9/7/07]
- [Filed emergency 12/18/07 after Notice 11/7/07—published 1/16/08, effective 1/1/08]
- [Filed emergency 1/9/08 after Notice 11/21/07—published 1/30/08, effective 1/9/08]◊

[Filed emergency 7/1/08—published 7/30/08, effective 7/1/08]
[Filed emergency 7/11/08—published 7/30/08, effective 7/11/08]
[Filed 7/17/08, Notice 6/4/08—published 8/13/08, effective 9/17/08]
[Filed 12/5/08, Notice 7/30/08—published 12/31/08, effective 2/4/09]

◊ Two or more ARCs

PACKING PLANTS

See *MEAT*

PAINT

See also *ENVIRONMENTAL PROTECTION COMMISSION: Hazardous Waste*

Emissions

Painting/surface coating **567**—23.4(13)

Permits, exemptions **567**—22.1(2)*w*, 22.1(2)*x*(15), 22.1(2)*dd,ii,ll*

Laboratory tests, arson **661**—150.3(12)

Lead, see *LEAD*

Spray booths, permit **567**—22.8

Stores, occupancy **661**—ch 5 Table 8-A p.29

Taxation **701**—19.1, 26.34

PAINTBALL GUNS

Prohibition **571**—51.3(2), 61.7(11)

PAINTINGS

See *ARTS*

PARAEDUCATORS

See *TEACHERS*

PARAMEDICS

See *EMERGENCY MEDICAL CARE*

PARI-MUTUEL WAGERING

See *RACING AND GAMING: Mutuel Departments*

PARKING

See also *HEALTH CARE FACILITIES; HOSPITALS*

Campgrounds/recreation areas **371**—3.4; **571**—61.4(5)*j*, 61.7(8), 61.8(2)

Capitol complex **11**—ch 101; **286**—4.12

Disabled **11**—101.1(2), 101.2, 101.4, 101.9(3), 101.12(1); **281**—21.9(5); **571**—61.2, 61.4(5)*j*, 61.7(12); **661**—ch 18, 302.4(4); **681**—4.6(1-3), 4.30(1-4), 4.70(1-3); **761**—ch 411

Employees, state **11**—ch 101

Facilities

Public improvements **761**—ch 180

Taxation **701**—26.35

Fairgrounds **371**—ch 2, 3.4

PARKING (cont'd)

Fees, gambling boat licensees **701**—17.25
 Iowa State University, *see IOWA STATE UNIVERSITY (AMES)*
 Lots, construction materials, subbase **567**—108.3, 108.4
 Signs, highway **761**—131.9
 State vehicles, expense vouchers **11**—41.8
 University of Iowa, *see UNIVERSITY OF IOWA (IOWA CITY)*
 University of Northern Iowa, *see UNIVERSITY OF NORTHERN IOWA (CEDAR FALLS)*

PARKS/RECREATION AREAS

See also FORESTS; LAKES; RECREATION

Animal restrictions **571**—61.7(1), 61.8(4)
 Cabin/yurt rental **571**—61.2, 61.5(1)*a,b*, 61.5(3,4)
 Camping/campgrounds **571**—61.2—61.4, 61.5(1)*g,h*, 61.5(3), 61.7(9,10), 61.8(4), 63.3, 63.4
 Concessions **561**—ch 14; **571**—ch 14, 61.7(16)*c*
 Definitions **571**—61.2
 Education center, Springbrook **571**—61.5(1)*h*
 Firearms **571**—52.1(2), 61.7(5)
 Firewood sales **571**—14.3(2)*f*
 Fireworks, permits **571**—ch 65
 Fishing **571**—55.1(4), 61.2, 61.7(6), 61.8(2,4), 61.10—61.12, *see also FISH AND FISHING*

Funds

See also Grants, City/County below

Grow Iowa values fund **261**—165.1, 165.4, 165.4(3)
 Restore outdoors program **571**—61.14

Garbage, *see Refuse below*

Grants, city/county **571**—ch 33
 Honey Creek Resort **571**—61.2, 61.5(1)*a*, 61.15
 Hours **571**—61.7(9,10), 61.8, 61.10—61.12
 Hunting **571**—ch 52, 61.7(5,15), 61.9, 67.2, 67.8(3), 105.3, 105.4, 105.7
 Keg beer parties **571**—ch 63
 Location **571**—61.2
 Lodges, *see Shelters/Lodges below*
 Maintenance, tax exemption **701**—17.1(1)*c*
 Management **561**—1.2(9), 1.3(2)*d*; **571**—61.2, 61.15
 Metal detectors **571**—ch 64
 Mines of Spain **571**—61.2, 61.8(3), 61.9
 Motor vehicles **571**—61.7(8,12), 66.4, 67.8(2), *see also Snowmobiles below*

PARKS/RECREATION AREAS (cont'd)

Mushroom/asparagus/fruit/nut removal **571**—ch 54, *see also* *PLANTS*
 Noise restrictions **571**—61.7(9)
 Offices, district **561**—1.4(4)
 Permits, special events **571**—61.7(16), 66.4(4)
 Pesticide application **21**—45.50(3,8)
 Picnic sites **571**—61.7(12)
 Refuges, wildlife **571**—ch 52, 66.2
 Preserves, state **571**—33.40, ch 52, 61.2; **575**—chs 1–3
 Refuse **571**—61.2, 61.7(7)
 Restrictions, *generally* **571**—61.7, 61.8
 Roads **761**—163.4, 163.11
 Rock climbing/rappelling **571**—51.11, 61.2, 61.7(13)
 Shelters/lodges **571**—61.2, 61.5(1)c–f, 61.5(3)h,i, 61.5(4), 61.7(12)b, *see also* *Cabin/
 Yurt Rental above*
 Signs **571**—67.5, 67.7(2); **761**—131.1, 131.8
 Snowmobiles **561**—1.2(9); **571**—66.4, 67.5, 67.8(1)
 Swimming/diving **571**—61.2, 61.7(2), 61.8(1,4)
 Trails **571**—33.40(1), chs 66, 67; **761**—ch 165
 Vendors **571**—14.3(2,3)
 Wastes, land application **567**—121.6(1)(5)

PAROLE

See also *CORRECTIONS DEPARTMENT*

Appeals **205**—11.8, ch 15

Board

Address **205**—1.3
 Appearances **205**—15.5, 15.6
 Clemency, *see* *Clemency below*
 Communications, public **205**—6.2
 Decisions **205**—8.6(3), 8.7, 8.10, 8.15, 8.16, ch 15
 Declaratory orders **205**—ch 4
 Hearings **201**—20.15(8); **205**—11.7–11.11, 14.6(2)f, 16.9
 Interviews, inmate **201**—20.13; **205**—7.6, 8.6(2,6), 8.8, 8.9, 8.12, 8.14, 14.1
 Meetings **205**—1.4
 Members **205**—1.1
 Probation, revocation **205**—ch 11
 Procurements **541**—ch 10, *see also* *ADMINISTRATIVE SERVICES DEPARTMENT
 (DAS)*
 Records, *generally*, public/fair information **205**—chs 5, 6, 16.11

PAROLE (*cont'd*)

Board

- Reports/notifications **205**—8.7, 14.6(3)c, 16.12; **541**—10.3
- Retirement, IPERS (Iowa public employees' retirement system) **495**—5.2(29)
- Rule making **205**—chs 2, 3, 5.14(1), ch 16
- Clemency **201**—45.6(3); **205**—ch 14
- Discharges **201**—20.15(2), 45.6; **205**—ch 13
- DNA profiling **61**—ch 8
- Eligibility **205**—8.2, 8.4, 8.5, *see also Board: Interviews, Inmate above*
- Employment, small businesses, tax deductions **701**—40.21, 53.11, 59.8
- Felons **205**—14.1, 14.2, 14.5, 14.6, *see also Employment, Small Businesses, Tax Deductions above*
- Interstate compact **201**—ch 46; **205**—8.2(4), 11.9
- Interviews, *see Board above*
- Officers, retirement **495**—4.6(4)h, *see also Board above*
- Pardons/remissions **205**—14.3
- Restitution **201**—45.3, *see also Work Release below*
- Return, offenders **201**—45.5, 47.2(11), *see also Termination, Voluntary below*
- Revocation **201**—45.4, 47.2(11); **205**—ch 11
- Sex offenders **201**—38.3(3)c
- Supervision **201**—45.1(1), 45.2, 45.4(3), 45.6(2), 45.7, ch 46; **205**—ch 10, 13.1, *see also Work Release below*
- Termination, voluntary **205**—11.1
- Victim notification **201**—20.15; **205**—ch 7, 14.6(2,3)
- Violations **201**—20.18, 42.1(6), 45.4, 46.4(4); **205**—ch 11, 13.2, 16.14; **493**—12.1(1), 12.2(1)b(2), 12.4(4), 12.6(1)
- Work release
- Appeals **205**—ch 15
 - Board, duties **205**—1.2, ch 8, 14.1, 14.5(3), 14.6(4), ch 15
 - Decisions, *see Board above*
 - DNA profiling **61**—ch 8
 - Eligibility **205**—8.2, 8.4, 8.6, 14.1
 - Employment **201**—44.4, 44.8; **701**—53.11(7)a(4), 59.8(7)a(4); **871**—24.22(2)g
 - Home placement **201**—44.9; **441**—75.53(4)
 - Interviews, *see Board above*
 - Restitution **201**—44.3, 44.9(1)f(2), 44.9(2)
 - Revocation **201**—47.2(11); **205**—11.2
 - Services **201**—44.2
 - Supervision **201**—44.1(1), 44.7, 44.9(1,5); **205**—ch 10
 - Violations **201**—20.18, 44.6, 44.9(4)

PARTNERSHIPS

Agricultural

Family farm, definition 27—13.20; 701—80.11, *see also TAXATION*
Property loans 25—4.3(7)b, 4.3(8)b, 4.4(1)b, 4.7(1,2)

Contracts, residential service 191—54.20

Engineers 193C—8.5

Limited, identification, documents 721—40.3

Lottery retailers 531—12.16(2)

Motor vehicle registration 761—400.61(4)

Racing/gaming 491—5.4(13)a(2), 6.19, 10.6(5)b

Real estate 193E—7.1(5,6), 7.2(1–3), 7.3(2), 8.3, 19.3

Securities programs, registration 191—50.66(4)

Taxation, *see TAXATION subheadings Fiduciary Income: Reportable Income; Income Tax, Corporation; Income Tax, Individual; Property: Real Estate*

Telecommunications network 751—17.4

Warehouses/dealers, grain 21—90.8(9), 90.11(3)b, 91.8(9), 91.14(3)

PASSENGERS

Boats, *see BOATS AND BOATING*

Buses, school 281—43.10(6), 43.44(3)

Carriers, intrastate motor 761—524.8, 524.10, 524.11, 524.16

Disabled, seat belt exemption 761—600.16

Elevators 875—72.3, 73.2, 73.3, 76.6

PASTORS

See RELIGION

PATENTS

Engineers/land surveyors 193C—7.3(1)

Income, taxation 701—40.16(5), 89.8(7)g

Library collection 286—1.3(2)

Preparation, land office 721—1.5

PATERNITY

Birth certificates, *see BIRTH*

Child support 441—41.22(3)a, 75.14, 95.19, 95.20, 99.10, 99.21–99.32, 99.36–99.39,
99.83(2)b

Medicaid members 441—75.1(15), 75.14

Registry 641—ch 105

PATROL

See *HIGHWAY PATROL*

PAWNBROKERS

Taxation **701**—16.33

PEACE OFFICERS

See also *BUREAU OF CRIMINAL IDENTIFICATION; CRIME; FIREARMS; HIGHWAY PATROL; LAW ENFORCEMENT ACADEMY; POLICE; PUBLIC SAFETY DEPARTMENT; SHERIFFS*

Alcohol/drug tests **657**—10.4; **661**—ch 157

Appeals, dismissal **486**—ch 6

Board of trustees **661**—400.10, 402.305

Capitol complex **11**—101.2, 101.11; **486**—6.1

Cardiopulmonary resuscitation (CPR), certification **501**—10.10

Casinos, firearm possession **491**—5.4(6)

Complaints **661**—ch 35

CPR, see *Cardiopulmonary Resuscitation (CPR), Certification above*

Death, see *Retirement/Disability/Death Benefits below*

Disease exposure **641**—11.45–11.53

Emergency care providers **641**—ch 139

Employment

Leaves, sick **11**—63.3, 64.16

Prerequisites **501**—2.3

Explosives, disposition **661**—95.10

Game refuge entry **571**—52.1(2)

LEATAC, see *Telecommunications Advisory Committee (LEATAC) below*

Medical examiner investigators **641**—127.7(2)a

Missing persons **661**—ch 89

Motor vehicles

Carriers, safety, audits/compliance **761**—520.5(1)

Impoundment **11**—101.11(5–9); **661**—ch 6

Inspection **761**—425.60

Plate removal **761**—400.70

Salvage theft examinations **501**—ch 11; **761**—405.15

Undercover officers, licenses **761**—ch 625

Quarantines **641**—1.13(8)c,d

Records, access **441**—9.10(15,16)

PEACE OFFICERS (cont'd)

Reports, investigative, confidentiality **21**—6.12(1)c; **185**—18.12(1)c; **187**—7.12(1)c;
189—25.12(1)c; **193B**—6.12(1)c; **193C**—5.12(1)c; **197**—1.12(1)c;
281—5.12(1)c; **282**—5.12(1)c; **283**—6.11“3”; **284**—5.12(1)c; **286**—2.12(1)c;
288—3.12(1)c; **351**—10.12(1)c; **561**—2.12(1)c; **641**—175.12(1)c; **761**—4.9(4)

Reserve

Agencies, intergovernmental agreements **501**—10.103

Duties, simultaneous **501**—10.8, 10.101, 10.102

First aid **501**—10.10

Qualifications **501**—10.100–10.105

Training/certification

Generally **501**—10.200–10.208

Instructors **501**—10.209–10.212

Weapons **501**—10.1–10.9, 10.206

Transfers **501**—10.7, 10.101, 10.102

Retirement/disability/death benefits **11**—64.16; **495**—4.6(4)a,c,f,g, 5.2(6)d,f, 5.2(37,39);
545—4.3; **661**—chs 400–404

Telecommunications advisory committee (LEATAC) **661**—ch 15

Weapons, training, *see Reserve above*; *CORRECTIONS DEPARTMENT: Officers*

PENITENTIARY

See CORRECTIONS DEPARTMENT

PENSIONS

See RETIREMENT

PERB

See PUBLIC EMPLOYMENT RELATIONS BOARD (PERB)

PERMITS

See also ENVIRONMENTAL PROTECTION COMMISSION; LICENSES; TAXATION

Accountants **193A**—chs 7, 8, 12, 19.1–19.4

Advertising, highway **761**—117.5(5)a, 117.6, 117.9

Air quality, emission control **561**—1.2(1), 1.3(2)g(2); **567**—20.1, 20.3(1), 21.2(3)a, ch
22, 27.3(3)d, 31.1, ch 33, 34.203, 34.223, 34.303

Alcohol, *see Beer/Liquor below; Fuel below*

Amusement devices/rides/concession booths **875**—61.1(2)b, 61.2(2–4,8,9)

Anaerobic lagoons **567**—22.1–22.3, 23.5

Animal feeding operations, *see LIVESTOCK: Feedlots*

Animal shelters/pounds/foster care **21**—67.12

Appliance demanufacturing **567**—118.2, 118.5–118.7

Aquaculture, importation **571**—89.2, 89.3

PERMITS (*cont'd*)

- Archaeological/scientific studies, metal detectors **571**—64.3
- Asbestos removal/encapsulation **875**—155.1, 155.2, 155.7—155.9
- Barbers **645**—5.2(3,5), 21.2(3)*d*, 21.7, 21.8, 22.3(2); **701**—26.9
- Barge fleeing **571**—ch 17
- Beer/liquor **185**—1.5(1)*b*, chs 4, 5, 12.2(7,8), 16.24, 17.5, 18.14(1), 18.15(4), 18.16; **481**—5.16(4), 74.4, 103.9“3”; **701**—15.3(6), *see also BEER AND LIQUOR*
- Bees, transportation **21**—22.9
- Buildings/structures
 - Construction/demolition **661**—300.6(3)
 - Public lands/waters **571**—ch 13, 55.1(4)
- Burial transit **641**—101.4—101.6, 101.8, 127.5(2,3); **645**—100.1, 100.5, 100.10(6)*a*
- Carriers, *see CARRIERS*
- Cemeteries, perpetual care **191**—18.1, 18.5, 18.7
- Chauffeur **761**—602.1(2), 602.23, 604.21(1)*c*, 605.5(4), 605.20(2)
- Cigarette **701**—81.1, 81.12(1), 81.13, 82.1—82.3, 82.4(5)*b*, 82.8, 83.1, 83.12—83.15, 83.17, 84.2, 84.7
- Coal mining **27**—40.30—40.39, 40.51, 40.73(4), 40.92
- Concession booths, *see Amusement Devices/Rides/Concession Booths above*
- Cosmetology **645**—5.5(13), 60.9, 63.4(1); **701**—26.9
- Cremation **641**—127.6; **645**—100.1
- Dairy products, *see Milk Producers/Processors/Distributors below*
- Dams **567**—52.20, 72.3(2)*c*
- Dentistry **650**—1.1, 6.11(3), 6.14(8), 10.2, 11.7—11.9, ch 13, 15.1(4,9—11,16,17), 15.2(3—5,8), 15.4(1,2), 25.2(10), ch 29
- Disinterment **641**—101.7; **645**—100.1, 100.9
- Docks, construction **571**—ch 16
- Drivers, *see MOTOR VEHICLES*
- Electrical inspections **661**—550.5(7), chs 552, 553
- Elevators
 - Grain **567**—22.1(1)*d*, 22.10
 - Passenger, installation **875**—chs 75, 76
- Engineers **193C**—3.3(4)
- Feedlots, *see LIVESTOCK*
- Firearms **661**—91.2, 91.4—91.6
- Fireworks **571**—ch 65
- Fish/fishing **561**—1.3(2)*c*(4); **571**—15.4, 55.1(4), 77.4(5—7), 88.2, 88.4, 89.2, 89.3
- Flood plains/floodways **561**—1.2(5), 1.3(2)*g*(1)“2”; **567**—51.2, 61.2(2)*g*, 65.9(1)*o*, 70.4, 70.5, 72.3(2)*c*, 72.30(3), *see also Dams above*
- Fuel **185**—4.30; **761**—ch 505, *see also TAXATION: Motor Fuel: Licenses/Permits: Re-funds*

PERMITS (cont'd)

- Fund-raiser registration **61**—ch 24
- Garbage/refuse collection **761**—ch 513
- Ginseng **571**—78.3
- Hazardous wastes, *see ENVIRONMENTAL PROTECTION COMMISSION subheadings Air Quality: Emissions; Hazardous Waste: Storage/Disposal/Treatment/Transportation*
- Hearing aid dispenser trainee **645**—121.1–121.3, 121.4(6), 125.1(4)
- Highway access, entrance **761**—112.3(3), 112.4, 112.5(2)
- Hotels/motels, tax **701**—103.4, 104.3
- Hunting **561**—1.3(2)c(4); **571**—15.11, 53.3, 67.2, 67.8(3), 91.5, 101.1, 101.5(3), 101.6, 106.11
- Irrigation **567**—38.3(1), 50.6(2), 52.2, 52.4(3)
- Landfarming **567**—120.4, 120.5
- Land use, state-owned **571**—ch 13, *see also LEASES*
- Livestock movement, *see LIVESTOCK*
- Machinery movement, highways **761**—ch 181
- Milk producers/processors/distributors **21**—68.2, 68.11, 68.12, 68.35(2), 68.36(3,6–9)
- Mobile homes, *see MOBILE HOMES*
- Motor vehicle, *see MOTOR VEHICLES*
- NPDES (National Pollutant Discharge Elimination System), *see ENVIRONMENTAL PROTECTION COMMISSION: Permits*
- Natural resources authority **561**—1.2, 1.3(2)c(4,6), 1.3(2)g, 2.14(2), 3.3(1)b(1); **571**—61.7(16), 64.3, *see also NATURAL RESOURCES DEPARTMENT: Natural Resource Commission*
- Occupational therapy, *see PHYSICAL/OCCUPATIONAL THERAPISTS*
- Oil/gas/mineral wells, *see Wells below*
- Parking
 - Disabled **11**—101.2, 101.4; **571**—61.2, 61.4(5)j, 61.7(12); **681**—4.30(4); **761**—ch 411
 - Employees, state capitol complex **11**—ch 101
 - Universities, *see specific university*
- Parks/recreation areas/trails
 - Events, special **571**—61.7(16), 67.7(1)b
 - Motor vehicle use, disabled **571**—61.7(8), 66.4(4)
- Pesticides **21**—45.6, 45.18(3), 45.19(4), 45.37(5); **567**—ch 66
- Petroleum depositors, tanks **591**—6.4–6.7, 6.14, 6.15
- Pipelines, *see PIPELINES*
- Poultry, importation **21**—65.1, 65.2, 65.11(2)

PERMITS (*cont'd*)

- Precursor substances **657**—1.3“8,” 12.7, 12.8, 14.14(15), 36.1(2)*a-c*, 36.4, 36.11, 36.13, 36.15, 36.16
- Private investigative agencies **661**—121.23
- Prophylactics, sales **641**—ch 6
- Radiation machine operators **641**—41.2(11)*a*(5), 41.3(7)*b*, 42.2(7,8)
- Retail sales tax, *see TAXATION: Sales and Use*
- Sand/gravel removal **561**—1.3(2)*c*(6); **571**—ch 19
- Saylorville multiuse trail **571**—66.4(4)
- Sewers, *see ENVIRONMENTAL PROTECTION COMMISSION*
- Signs, private directional **761**—120.9, 120.10
- Sludge, land application **567**—67.6, 121.1, 121.3, 121.7(1)
- Solid waste disposal, *generally* **561**—1.2(10), *see also ENVIRONMENTAL PROTECTION COMMISSION*
- Spas **641**—15.52(1)
- Speech pathology **645**—300.7, 305.1(10)
- Swimming pool construction **641**—15.5(1)
- Swine
- Dealers **21**—66.20
 - Importation **21**—65.2(3), 65.5(4)
 - Movement, restricted **21**—64.152
 - Premises, approval **21**—64.160
- Tanning facilities **641**—46.1, 46.2, 46.4
- Tattoo establishments **641**—ch 22
- Taxation, *see TAXATION subheadings Motor Fuel; Sales and Use; Use Tax*
- Taxidermists **571**—93.5
- Tires, storage/disposal/processing **567**—117.2, 117.4, 117.6, 117.7(1,4)
- Trucks, *see CARRIERS*
- Utilities
- Electric lines, construction **199**—11.3(1)*a*
 - Facilities, highways **761**—115.4(1,2,11,13), 115.8, 115.10, 115.16(12), 115.27(2)*a*(6), 115.28(2), 115.29(1), 115.30(6)
 - Generating facilities **199**—24.1(3)
- Veterinarians **811**—chs 9, 13
- Waste disposal, *see Hazardous Wastes above; Solid Waste Disposal, Generally above; Tires, Storage/Disposal/ Processing above; Water below*
- Water
- Pesticide application **567**—ch 66
 - Storage/diversion **567**—chs 50–52, 55.4, 55.5

*PERMITS (cont'd)**Water*

- Supply systems, construction/operation **561**—1.2(2), *see also ENVIRONMENTAL PROTECTION COMMISSION: Water Quality*
- Wastewater disposal system, construction/operation **561**—1.2(11), 1.3(2)g(1), *see also ENVIRONMENTAL PROTECTION COMMISSION: Wastewater Treatment/Disposal*
- Wells, pollutant disposal **567**—62.9, 64.7(5)h
- Withdrawal, *see ENVIRONMENTAL PROTECTION COMMISSION: Water Quality*
- Weapons **201**—40.4(12)b(2); **661**—2.19, 13.10, 13.11, ch 91
- Wells
 - See also WELLS: Water*
 - Construction
 - Gas/oil **561**—1.3(2)f(2); **565**—51.2, 51.3, 51.6(10)
 - Water **567**—chs 38, 40, 49.4, 53.7(1)
 - Nonpublic **567**—49.4
 - Pollutant disposal **567**—62.9, 64.7(5)h
- Wildlife
 - Collection/rehabilitation **571**—ch 111
 - Endangered species **571**—77.4(3,5-7), 111.8, 114.12
 - Nuisance control operators **571**—ch 114
- Wine, *see Beer/Liquor above*
- Work **11**—54.2(6)j; **877**—8.6, *see also MOTOR VEHICLES: Licenses: Driver's*
- X-ray machine operators **641**—41.1(3)a(2)

PERSONNEL DEPARTMENT

See ADMINISTRATIVE SERVICES DEPARTMENT (DAS): Human Resources Enterprise

PERSONS WITH DISABILITIES DIVISION

- Declaratory orders **431**—ch 6
- Organization **431**—ch 1
- Records **431**—ch 2, *see also DISABILITIES; HUMAN RIGHTS DEPARTMENT*
- Rule making **431**—chs 4, 5, 7

PESTICIDES

See also HERBICIDES

- Generally* **21**—chs 44, 45
- Advertising **21**—45.10
- Advisory committee **21**—45.37(3-5), ch 48
- Analysis **21**—45.2, 45.16, 45.19(2); **567**—83.6(7)a(3),

PESTICIDES (*cont'd*)

Applicators

- Aerial **21**—44.1, 44.12
 - Apiary owners, notification **21**—45.31
 - Certification/licensure **21**—1.2(6), ch 7, 45.19(4), 45.20, 45.22, 45.28, 45.29;
283—ch 37
 - Continuing education **21**—45.22(4)*b*, 45.22(5)*d*, 45.22(6), 45.22(16)*c*, 45.52, 48.7
 - Definition **21**—44.1
 - Notification requirements **21**—45.20, 45.31, 45.50
 - Penalties, civil, peer review **21**—45.100–45.105
 - Records **21**—45.26
 - Rodenticide use **21**—45.20
 - Taxation **701**—26.45
 - Unemployment exemption **871**—23.26(8)
- Aquatic application **567**—ch 66
- Arsenic **21**—45.33, 45.37; **567**—ch 42 Appendix C
- Atrazine, restrictions **21**—45.51; **567**—ch 42 Appendixes A,C
- Bees, registered hives **21**—45.31
- Bulk **21**—44.1, 44.2, 44.7–44.9, 44.10(3), 44.11
- Bureau **21**—1.2(6)
- Burning, containers **567**—23.2(3)*h*
- Cities **21**—45.50
- Coloration, toxic materials **21**—45.15
- Command 6EC herbicide **21**—45.46
- Containers **21**—44.1, 44.2, 44.7–44.11; **567**—23.2(3)*h*
- DDT/DDD **21**—45.32
- Dealers **21**—ch 7, 45.48, 45.51(3); **283**—ch 37; **761**—520.3, 520.4
- Definitions **21**—44.1, 45.1, 45.100; **641**—71.2; **701**—17.9(3)*i*
- EDB, *see Ethylene Dibromide (EDB), Restrictions below*
- EIS, *see Manufacturers below*
- Esters use (2,4-D/2,4,5-T) **21**—45.27
- Ethylene dibromide (EDB), restrictions **21**—45.45; **567**—41.5(1)*b*(1)
- Experimentation, shipment **21**—45.18
- Fertilizer additives **21**—43.4
- Handlers, certification **21**—45.22(15)
- Hazardous chemical risks, right-to-know **875**—110.1(5)
- Heptachlor **21**—45.34; **567**—41.5(1)*b*(1), 41.5(1)*c*(3)“7,” ch 42 Appendix A (p. 38)
- Irrigation systems, check valve **567**—52.2(1)*e*
- Labeling **21**—44.9(2), 44.11, 45.1, 45.4, 45.6–45.14, 45.17, 45.18, 45.24, 45.31, 45.49, 45.50(6); **875**—110.1(5)

PESTICIDES (cont'd)

Laboratory analysis **21**—1.2(11); **567**—83.3(2)c, 83.6(7)a(3); **641**—1.3(1)f
 Licensure **21**—1.2(6), ch 7, 45.48; **283**—ch 37, *see also Applicators above*
 Lindane **21**—45.35; **567**—ch 42 Appendixes A,C
 Manufacturers
 Emergency information system (EIS) **641**—ch 71
 License **21**—45.48(2)
 Pollution standards **567**—23.1(4)*bm*, 62.4(55)
 Registration **21**—45.5
 Organic farming restrictions **21**—47.3(2,3)
 Permits **21**—45.6, 45.18(3), 45.19(4), 45.37(5); **567**—ch 66
 Poisonings **21**—45.36; **641**—1.3(1)*b,f*, ch 71, *see also Toxicity below*
 Records **21**—6.14(5)*e*, 45.22(6)*d*, 45.26
 Registration **21**—1.2(6), 45.3–45.6, 45.12, 45.17
 Remediation board, agrichemical **21**—ch 51
 Reports **21**—45.22(6)*d*, 45.36, 45.47, 45.51(3); **641**—1.3(1)*b,f*
 Restricted use **21**—45.22(3)*c*, 45.26, 45.28, 45.30, 45.49, 45.51
 Rodenticides **21**—45.20, 45.23
 Sales **21**—45.18(4), 45.23, 45.26, 45.47; **701**—17.9(3)
 Standards **21**—45.1, 45.16, 45.22; **567**—23.1(4)*bm*, 62.4(55), 141.3
 Storage/mixing **21**—44.5, 44.6, 45.51(4)*c,d*, *see also Containers above*
 Taxation, exemptions **701**—17.9(3), 18.57(1)
 Thallium, possession limitations **21**—45.23
 Toxicity **21**—45.15, 45.21, 45.31
 Use, recommendations, liability **21**—45.49
 Violations **21**—45.6, 45.16, 45.19, 45.102–45.105
 Waste disposal, land application **567**—121.6(1)*f*, 121.7(2)
 Water supplies **21**—45.22(3)*a*, 45.51(4); **567**—41.5(1)*b*(1), 41.5(1)*c*(3)“7,” ch 42 Appendix A, 42.3(3)*f*(2)“3,” *see also Aquatic Application above; Laboratory Analysis above*

PESTS

Control operator, property condition, disclosure report **193E**—14.1(4)
 Definitions **21**—45.1, 45.25
 Eradication, taxation **701**—26.45
 Insects **21**—45.22(2)*d*, 45.34, 45.50(5), 46.8, 46.14, 46.15
 Pesticides, *see PESTICIDES*
 Weeds, *see WEEDS*

PETITIONS

Boundary changes, *see ANNEXATION*

PETROLEUM

PETROLEUM

See also *ENERGY AND GEOLOGICAL RESOURCES; FUEL; GAS; OIL*

Diminution

- Bonds **591**—6.13
- Charges **567**—135.3(7); **591**—5.3, 6.3, 6.8, 6.10–6.12, 6.17
- Costs **591**—ch 5
- Credit **591**—5.3
- Definitions **591**—6.1
- Forms **591**—6.17
- Liability **591**—6.12
- Permits, depositor's **591**—6.4–6.7, 6.14, 6.15
- Records **591**—6.16
- Refunds **591**—6.17
- Returns, filing **591**—6.9
- Taxation **701**—9.1, 10.1(3), ch 37, 40.37

Liquefied (LP)

- Advertising **21**—85.48
- Heating value **199**—19.7(6)
- Meters **21**—85.40–85.46
- Pipelines **199**—ch 13; **761**—115.13(5)c, 115.15(3)
- Refrigerants **661**—226.3
- Standards
 - Fire safety **661**—51.150, ch 226; **875**—62.8
 - Utility gas plants **199**—19.5(2)a(6)
- Storage **565**—51.6(10); **567**—22.100 p.34, 23.1(2)bb,cc; **661**—51.150, 226.1, 226.2; **875**—62.8
- Taxation **701**—67.3(5), 68.16, ch 69

Refineries

- Construction **661**—221.3, 221.3(3)b(2), 221.3(3)c(2); **871**—23.82(2)e
- Emissions standards **567**—23.1(4)bu
- Fire standards **661**—221.3

Set-aside program **565**—ch 3

Soil, contaminated, disposal/removal **567**—108.4(14), 108.8(10), 109.3, 109.11(2), ch 120; **591**—11.3(8)c, 11.3(9)

Standards

See also *Liquefied (LP) above*

- Effluent **567**—62.4(19,35)
- Emissions **567**—23.1(2)g, 23.1(2)bb,cc,tt,vv,ggg, 23.1(4)ac

*PETROLEUM (cont'd)**Standards*

Fire safety, *see Liquefied (LP) above; Tanks: Aboveground below; Tanks: Underground below*

Retailer, compliance, deliveries **761**—520.3, 520.4

Tanks **567**—119.5

Tanks

Aboveground **567**—119.5(1); **591**—6.1, ch 14; **661**—221.3(1,3), ch 224

Underground

See also ENVIRONMENTAL PROTECTION COMMISSION: Tanks, Underground Storage (UST); FUEL

Authority **591**—6.2

Claims **591**—chs 9, 11

Diminution, *see Diminution above*

Financial responsibility **567**—ch 136; **591**—ch 10, 11.2, 11.2(1,3), 11.2(6)b(3), 11.3(6), 11.5(2)c

Inspectors

Certification **567**—ch 134 Part B

Licensure **567**—ch 134 Part C

Installers

Child support noncompliance **567**—134.17, 134.19(1), 134.28(2)g

License **567**—134.19, 134.22, 134.28; **591**—17.32

Loans, student noncompliance **283**—ch 37

Plans, approval **661**—221.3(3)b(5)

Standards **567**—134.27

Insurance **567**—134.21, 136.5, 136.6, 136.8; **591**—ch 10, 11.2, 11.2(2,3), 11.4(9), 12.3(5), *see also*

Financial Responsibility this subheading above

Laboratory analysis **567**—83.1(3)b, 83.3(2)c

Liners/testers **567**—ch 134 Part C

Loans **591**—ch 12

Permits, *see Diminution above*

Storage tank fund board (UST)

See also Aboveground this subheading above

Address **591**—1.4

Authority **591**—6.2

Bonds, tax exemption **701**—40.37

Community remediation **591**—ch 13

Conflicts of interest **591**—1.5

Contested cases **591**—16.11, ch 17

Costs, diminution **591**—5.2, 5.3

PETROLEUM (*cont'd*)

Tanks

Underground

Storage tank fund board (UST)

Declaratory orders **591**—ch 3Definitions **591**—11.4(1), 11.5(1), 16.1Funds, disbursement **591**—ch 12Hearings/appeals **567**—134.28(3); **591**—5.1, 16.11, 16.22, ch 17Liabilities, transfer **591**—ch 9Licensure **567**—ch 134 Part COrganization **591**—ch 1Revenue department **701**—37.1Rule making **591**—chs 2, 4, 16Waste collection **567**—119.5**PETS***See ANIMALS***PHARMACISTS AND PHARMACY**Absence, temporary **657**—6.7(2,3), 7.6(2), 7.8(3)

Abuse

Drugs, recovery program **657**—ch 30Identification/reporting **657**—2.12(5), 2.16, 36.1(4)*af*Address/name change **657**—2.15, 3.13, 8.35(6), 9.5(7), 10.34(6)*g*, 10.35(6), 14.14(14)Advertising **657**—8.12, 8.35(7)*e*, 20.3(4), 36.1(4)*g*Alcohol permit **185**—5.3(4)Association, emergency preparedness advisory committee (PAC) **641**—114.4(1)*m*Benefits managers **191**—ch 59

Board

Address **657**—1.5(2), 10.2, 14.3Adjudicative procedures, emergency **657**—35.30Appeals **657**—3.29, 35.24, 35.25(2), 35.26, 36.14(4,5)Complaints **657**—14.12(1)*d*, 14.13(2)*b*, 36.2, 36.3Conflict of interest **657**—ch 29Contested cases **657**—ch 35, 36.6Controlled substances **657**—ch 10, 14.13(2)*c,g*, 14.14(4–6), 30.6(6)Declaratory orders **657**—ch 27Discipline **657**—1.3“9,” 2.11(2), 3.28, 3.30, 4.11, 17.18, 19.10, ch 36Forms **657**—12.3, 12.7Hearings **657**—10.12(5–8), 34.9, ch 35, 36.5, 36.8, 36.12, 36.16, 36.17(2,3), 36.18Inspections **657**—7.13, 10.10Investigations **657**—1.3“7,” 35.9, 35.13, 36.2, 36.3, 36.17(4), *see also Complaints this subheading above*

PHARMACISTS AND PHARMACY (cont'd)

Board

- Meetings **657**—1.5
- Organization **657**—ch 1
- Peer review committees **657**—36.3
- Precursor substances **657**—1.3“8,” ch 12, 14.14(15), 36.4, 36.11, 36.13, 36.15
- Records
 - Generally*, public/fair information/inspection **657**—ch 14
 - Confidential **657**—14.11, 14.12, 14.13(2), 14.14, 14.15(4), 36.14(2)
 - Disclosure **657**—14.9–14.11, 30.7
 - Hearings **657**—35.23, 36.8, 36.12, 36.16, 36.18
- Rule making **657**—14.15(3), chs 26, 28, 34
- Business, high quality job creation program **261**—ch 68
- Centralized prescription filling/processing, *see DRUGS: Prescriptions: Filing/Processing, Centralized*
- Child support noncompliance **641**—ch 192; **657**—ch 25, 36.1(4)x
- Closure, permanent **657**—8.35(7)
- College, admission **681**—1.7, 2.10, *see also Internship below*
- Complaints, claims payment **191**—59.5
- Confidentiality **657**—3.28(2), 6.13(3), 8.15(1)e(3), 8.16, 9.11(1)c, 9.12(3)b, 18.10(2)d, ch 21, 30.3, 36.2(8)b, *see also Board: Records above*
- Continuing education **657**—2.12, 2.13, 2.16, 25.3(5), 36.1(4)o
- Contracts **657**—7.7, 9.5(6)
- Controlled substances, *see DRUGS*
- Correctional facilities **657**—8.35(2), ch 15
- Counseling, patients **441**—78.2(8); **657**—6.2“5,” 6.7(3)d, 6.14, 9.11(1)g, 9.18(8), 13.32, 19.1, 19.9(3), 36.1(4)w
- Debts, state, nonpayment **657**—36.1(4)a
- Definitions **191**—59.2; **641**—41.2(2), 76.4; **657**—3.1, 4.1, 8.33(1), 8.34(1), 9.2, 11.1, 13.2, 14.1, 15.2, 16.2, 17.1, 18.2, 19.1, 20.2, 21.1, 22.1, 23.1, 25.1, 30.1, 31.1, 34.1, 35.2, 36.18
- Diabetes education program **641**—ch 9
- Discipline, *see Board above*
- Drugs/prescriptions, *see Hospitals below; DRUGS*
- Emergency medical service **657**—ch 11
- Equipment/reference material **657**—6.2“3,” 6.3, 6.4, 7.3, 8.5, 13.3(1)d, 13.5, 13.28(1), 13.28(2)e, 13.29, 13.31(1), 15.3“4,” 15.4, 16.6, 19.8, 20.4(1), 20.8, 23.6
- Ethics **657**—3.28, 4.2(2)d, 48.11
- Facilities **657**—6.14(3), 13.27, 13.28(1), 13.29, 13.31(1)f, 16.4(2), 20.5
- Fees **657**—1.7, 2.3, 3.10, 3.11, 4.8, 10.3, 12.7(2), 30.8, 36.18
- Foreign graduates **657**—2.9(2), 2.10, 4.7

PHARMACISTS AND PHARMACY (cont'd)

- General **657**—ch 6
- Health care facilities
See also HEALTH CARE FACILITIES
Generally **657**—chs 22, 23
 Intermediate **441**—82.2(6)*i,j*; **481**—65.25(17)
 Nursing **441**—81.13(16); **481**—58.15(2)*f*, 58.21(11–14), 58.51
 Residential **481**—57.19(1,2), 57.47, 62.15, 63.18(1)*b*(11), 63.18(1)*c*, 63.18(2)*m*, 63.45
- Home health care **657**—13.32, 22.9
- Hospitals
Generally **481**—51.14; **657**—ch 7
- Drugs
 Collaborative therapy management **653**—13.4(3); **657**—8.34
 Compounding/packaging/labeling **657**—7.6(2)*d*, 7.8(1)*c*, 7.8(11,12), 7.12(3,4), *see also Purchase this subheading below*
 Dispensation **481**—51.14; **657**—7.2“2,” 7.8, 7.12, 10.21(3), 18.1, 18.2
 Emergency **657**—7.6(2)*b*, 7.8(5), 7.12
 Information/reference **657**—7.3
 Inspections **657**—7.8(5), 7.13
 Investigation **657**—7.8(9)
 Prescriptions, orders **481**—51.14(3,4); **657**—7.8(3,4,14), 7.13(1,2), 8.11(5)
 Purchase **657**—20.3(4)
 Records **481**—51.14(4)*e*; **657**—7.2“8,13,14,” 7.6(1,2), 7.7(7), 7.8(3), 7.12(2)*e*, 7.13
 Storage **481**—51.14(5); **657**—7.6(3,5), 7.8(5)
- Remote services, preview/verification **657**—7.7
- Staff **657**—7.2“2”
- Identification **657**—3.18, 8.4
- Immunizations, administration **653**—13.3; **657**—8.33
- Impairment, recovery program **657**—ch 30
- Inactive practitioner, *see Licenses below*
- Inspections **481**—57.19(1)*b*(11), 58.21(13)*b*, 62.15(5)*b*(8), 63.18(1)*b*(11); **657**—3.17, 6.2“15,” 6.16, 8.4(2,3), 8.35(5,6), 9.5(8), 9.11(2)*j*, 10.10, 10.34, 11.3(5)*j*, 11.6, 13.6(5), 13.23, 13.31(1)*c,d*, 18.10(1), 20.4(1), 20.8(3), 20.12, *see also Hospitals: Drugs above*
- Internship **653**—13.3(1)*c*(3); **657**—1.3“5,” 2.4, 2.10(2), 2.13(2)*b*(2), 2.13(2)*c*(2), 2.13(2)*d*(2), ch 4, 8.4(2,3), 8.21, 10.31(1), 10.32(1), 14.14(8,14), 25.3(5), 32.3(5), 36.4, 36.11, 36.15
- Library **657**—6.3, 7.3, 9.5(3), 13.5, 15.4, 16.5

Licenses

- Generally **657**—8.35
- Active **657**—2.13
- Correctional facilities **657**—8.35(2), ch 15
- Denial **283**—37.1; **657**—17.18, 19.10, 25.2, 31.2, 32.1, 32.2, 36.16
- Display **657**—8.4(1)
- Examinations **657**—2.1–2.4, 2.6–2.10, 2.12(8), 2.13(2)*b–d*, 14.14(7), 36.13(2), 36.17
- Fees **657**—1.7, 2.3, 2.8(3), 2.9, 2.11, 2.14, 8.35(4,6,8), 17.3(2)
- Foreign graduates **657**—2.9(1)*b*, 2.10, 4.7
- Hospital contractors, remote **657**—7.7(3)
- Inactive **657**—2.13(2)
- Managing/remote sites **657**—9.5(1), *see also Hospital Contractors, Remote this sub-heading above*
- Nonresident **657**—ch 19
- Nuclear **657**—8.35(2), 16.3, 16.4(1)
- Reactivation **657**—2.11(2)
- Reciprocity **657**—2.9, 2.12(6)
- Records **657**—14.14(10), 18.10(2)*b,c*
- Reinstatement **657**—25.2(5), 25.3(5), 36.13–36.15
- Renewal **283**—37.1; **657**—1.6, 2.11–2.13, 8.35(4), 17.3(2), 25.2, 25.3(5), 36.1(2)*c*, *see also Continuing Education above*
- Suspension/revocation **283**—37.1; **657**—17.18, 19.10, 25.3, 30.7(4), 31.3, 32.1, 32.3, 36.1(2)*a,b*, 36.1(4)*u,aeon*, 36.4, 36.11, 36.13, 36.15
- Wholesale **657**—ch 17, 36.4, 36.11, 36.15
- Loans, student, noncompliance **283**—ch 37; **657**—ch 31, 36.1(4)*y*
- Long-term care practice **657**—ch 23
- Mail order **657**—18.2, 18.3(3)
- Medical assistance providers **441**—77.2, 78.2, 78.3(2)*d*(2), 78.47, 79.1(2) p.10, 79.1(8,18), 80.2(1)*b*, 80.2(2)*c*, 81.13(16), 82.2(6)*i,j*
- Nuclear **641**—39.4(29)*j*, 41.2(2), 41.2(3)*c*, 41.2(4)*b*, 41.2(5), 41.2(9)*b*(2), 41.2(11)*c*, 41.2(12,31,37,75,78), 42.4(4)*a*; **657**—8.35(2), ch 16, *see also DRUGS: Radio-pharmaceuticals*
- Ownership/management change **657**—8.35(6), 10.11(4,5), 10.34(6)*g*, 10.35(4–7), 14.14(14)
- Personnel **657**—3.25, 6.2“2,9,” 7.2“2,” 7.8(1)*b,c*, 8.13, 8.21, 13.3(3), 13.11(3)*c*, 13.20(4,6), 13.25, 13.31(1)*g,h*, 13.33, 16.4(3), 20.4, *see also Internship above; Technicians below*
- Preceptors **657**—4.6(5)*b*, 4.9, 10.31(1), 14.14(8)
- Precursor substances **661**—ch 174, *see also Board above*
- Reciprocity, *see Licenses above*

PHARMACISTS AND PHARMACY (*cont'd*)

Records/data **191**—59.6; **481**—58.15(2)f(2), 58.21; **657**—6.2“8,12,” 6.8, 6.9(5–9), 6.13, 6.16, 8.3(3), 8.4(2,3), 8.5(8), 8.9, 8.13(3)b, 8.16, 8.21, 8.26(5), 8.35(7)a,b, 9.10(4), 9.11(1)c,k, 9.12(1)f, 9.12(3)b, 9.13, 9.21, 13.24(3), 13.25, 13.28(2), 13.31, 15.8(8), 16.4(4), 18.10, 18.15, 19.7, 19.9, 20.4(1), 20.10(3), 20.11, 20.12, ch 21, 22.3(1), 22.5(8), 22.7(6,7), 22.9(4), 36.1(4)ag;
661—174.1, *see also Board above; Hospitals: Drugs above; Security below;*
DRUGS

References, *see Library above*

Registrations

Controlled substances **657**—8.35(8), 10.1–10.6, 10.10–10.12, 14.14(5), 32.3(5)
 Interns **657**—1.3“5,” 4.3, 4.6, 4.8, 32.3(5), 36.4, 36.11, 36.15
 Technicians **657**—1.3“6,” ch 3, 32.3(5), 36.4, 36.11, 36.13, 36.15

Remote dispensing sites, *see Telepharmacy below*

Reports

Access activity, drugs **657**—9.12(3)a
 Drug reactions **657**—8.33(1)c(6)
 Medication errors **657**—8.26, 9.16(2,4,7), 9.17(2)a
 Precursor substances, delivery/receipt **657**—12.2–12.5
 Technicians **657**—3.13
 Theft/loss **657**—10.16, 14.14(14)

Repositories, prescription drug donation **641**—ch 109

Sanitation **657**—ch 13, 20.4(1,4), 20.5, 20.6, 20.8(2), 20.9(2), 20.10(5)

Security **657**—6.7, 7.6, 8.5(3), 9.11(1)c,k, 9.11(2)a, 10.15, 15.5, 21.2

Standards **657**—ch 8

Supervision, technicians **657**—3.20–3.22, 9.18(7)

Taxation

Incentives, high quality job creation program **261**—ch 68
 Sales/use **701**—16.34, 20.7, 20.8–20.10

Technicians **657**—1.3“6,” ch 3, 6.2“9,” 7.6(2), 8.14, 9.18(2,7), 9.20(3), 10.18(2), 14.14(14,16), 20.4(3), 25.3(5), ch 30, 36.4, 36.11, 36.13, 36.15

Telepharmacy **657**—ch 9

Waivers **657**—9.17(2) 16.6, ch 34

PHEASANTS

See HUNTING; WILDLIFE: Habitats, Establishment

PHENYLKETONURIA (PKU)

Tests **641**—4.3

PHOTOGRAPHY

Sales tax **701**—16.51, 18.16, 26.17

PHYSICAL EDUCATION

See *TEACHERS*

PHYSICAL/OCCUPATIONAL THERAPISTS

Abuse reports, *see specific therapist below*

Board

*See also PROFESSIONAL LICENSURE DIVISION**

Address **645**—4.4(1), 206.2(1)

Discipline **645**—4.2(3), 4.13, 4.15(7), chs 202, 209

Hearings **645**—4.15(3,4), 5.11(9), 5.13(9)

Meetings **645**—4.3, 4.6, 13.3, ch 17

Organization **645**—4.3

Child support noncompliance **641**—ch 192; **645**—ch 14

Definitions **645**—4.1, 200.1, 202.1, 203.1, 206.1, 207.1, 209.1

Health care facilities, *see HEALTH CARE FACILITIES*

Impaired practitioner review committee **641**—ch 193; **645**—ch 16, 202.2(31), 209.2(31)

Inactive practitioners, *see specific therapist subheading Licenses*

Loans, student, noncompliance **283**—ch 37; **641**—ch 195; **645**—ch 15

Medical assistance providers, *see HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*

Occupational therapists/assistants

Abuse identification/reporting **645**—206.12(4), 207.3(2)a(8)

Address/name change **645**—4.4(2,3), 209.2(25)

Advertising **645**—209.2(5)

Competency **645**—209.2(2)

Continuing education **645**—4.11, 4.12, 4.14, 206.10“7,” 206.12(3)a, 206.18, ch 207, 209.2(22)

Discipline, *see Board above*

Education **645**—206.7

Endorsements/reciprocity, *see Licenses: Foreign-Trained this subheading above*

Ethics **645**—209.2(3,12,29)

Fraud **645**—209.2(1,5,9)

Licenses

Applications **645**—206.2–206.4, 209.2(1), *see also subheadings Reinstatement below; Renewal below*

Certificates/wallet cards **645**—4.8, 4.9, 5.11(6), 206.12(5)

*Rules **645**—chs 6–18 apply to all professional licensure boards

PHYSICAL/OCCUPATIONAL THERAPISTS (cont'd)

Occupational therapists/assistants

Licenses

- Denial **283**—37.1; **641**—192.1, 195.2; **645**—4.10
- Display **645**—206.12(6)
- Examinations **645**—4.15, 206.2(6), 206.3, 206.4“4,” 206.6, 206.10“4,7”
- Fees **641**—192.2(7), 195.3(7); **645**—5.11, 206.2(3), 206.12(3)
- Foreign-trained **645**—206.4, 206.7(2), 206.10
- Inactive practitioners **645**—200.9(8), 206.1, 206.12(8), 206.18, 207.1, 209.2(26)
- Reactivation **645**—5.11(5), 206.1, 206.18, 207.2(4)
- Reinstatement **641**—192.2(5,7), 195.3(7); **645**—206.1, 206.19
- Renewal **283**—37.1; **641**—192.1, 192.2(5), 195.2, 195.3(7); **645**—4.13“3,”
5.11(2-4), 200.9, 206.2(7), 206.10“7,” 206.12, *see also Continuing Education*
this subheading above
- School practice **282**—15.3(2), 15.16, 16.1“3,” 16.4
- Suspension/revocation **283**—37.1; **641**—192.2, 195.3; **645**—209.2(13,26), 209.3;
701—ch 153
- Permit holders **645**—206.3, 206.5, 206.8
- Records **645**—208.1(1)i, 208.1(3)i, 208.2, 209.2(8)
- Reports **645**—4.15(1)f, 209.2(13,16,22,23,25)
- Screening **645**—206.1
- Scope of practice **645**—208.1(2,3), 209.2(4)
- Supervision **645**—206.3-206.5, 206.8, 206.9, 208.1(3)h, 209.2(10)

Physical therapists/assistants

- Abuse identification/reporting **645**—200.9(4), 203.3(2)i
- Address/name change **645**—4.4(2,3), 202.2(25)
- Advertising **645**—202.2(5)
- Competency **645**—202.2(2)
- Continuing education **645**—4.11, 4.12, 4.14, 200.7(2), 200.7(3)a, 200.9(3,4),
200.15(3)a(2), 200.15(3)b(2), 202.2(22), ch 203
- Discipline, *see Board, above*
- Endorsements/reciprocity, *see Licenses: Foreign-Trained this subheading above*
- Ethics **645**—201.1, 202.2(3,12,29)
- Fraud **645**—202.2(1,3,9)
- Licenses

- Applications **645**—200.2, 202.2(1)
- Certificates/wallet cards **645**—4.8, 4.9, 5.13(6), 200.9(5)
- Denial **283**—37.1; **641**—192.1, 195.2; **645**—4.10
- Display **645**—200.9(6)
- Examinations **645**—4.15, 200.2(5,6), 200.4, 200.7(1)d, 200.7(2)d, 200.7(3)c
- Fees **641**—192.2(5); **645**—5.13, 200.2(3), 200.7(1)b, 200.9(7)
- Foreign-trained **645**—200.5(2), 200.7

*PHYSICAL/OCCUPATIONAL THERAPISTS (cont'd)**Physical therapists/assistants**Licenses*

- Inactive practitioners **645**—200.1, 200.9(8), 202.2(26), 203.1
- Reactivation **645**—5.13(5), 200.1, 200.9(3), 200.15
- Reinstatement **641**—192.2(5,7), 195.3(7); **645**—200.1, 200.16
- Renewal **283**—37.1; **641**—192.1, 192.2(5), 195.2, 195.3(7); **645**—4.13“3,”
5.13(2-4), 200.2(7), 200.7(4), 200.9
- School practice **282**—15.3(2), 15.17, 16.1“4,” 16.5
- Suspension/revocation **283**—37.1; **641**—192.2, 195.3; **645**—202.2(13,26), 202.3;
701—ch 153
- Records **645**—200.6(5)*i*, 201.2, 202.2(8)
- Reports **645**—4.15(1)*f*, 200.9(3,4), 202.2(13-16,22,23,25)
- Scope of practice **645**—201.1(3)*a*, 202.2(4)
- Supervision **645**—200.6, 201.1(2)*k*, 201.1(3)*g*, 202.2(10)

Violations, *see Board: Discipline above*

PHYSICIANS AND SURGEONS

- Abortions **441**—78.1(17)
- Abuse reports, *see Assistants: Continuing Education below; Continuing Education below*
- Acupuncture **645**—43.5; **653**—1.1-1.3, chs 17, 23
- Address/name change **653**—9.10(1), 10.5(1)*f*
- Advertising **653**—23.1(17)
- Alcohol/drug abuse **653**—23.1(6,7,27), 24.4
- Assistants
 - Address/name change **645**—4.4(2,3), 326.16, 329.2(24)
 - Advertising **645**—329.2(5)
- Board
 - See also PROFESSIONAL LICENSURE DIVISION**
 - Address **645**—4.4(1)
 - Discipline **645**—4.2(3), 4.3(7)*f*, 4.13, 4.15(7), ch 329; **653**—14.11(2)*g*, 14.11(3),
24.2(5)*h*
 - Hearings **645**—4.10(2), 4.15(3,4), 5.14(9)
 - Meetings **645**—4.3, 4.6, 13.3, ch 17
 - Organization **645**—4.3
 - Public health department authority **641**—170.4(1)
- Certificates/wallet cards **281**—36.14(1); **645**—4.8, 4.9, 5.14(6), 326.9(6)
- Child support noncompliance **641**—ch 192; **645**—ch 14
- Continuing education
 - Abuse identification/reporting **645**—326.9(4)
 - Definitions **645**—328.1

*Rules 645—chs 6-18 apply to all professional licensure boards

PHYSICIANS AND SURGEONS (cont'd)

Assistants

Continuing education

Exemptions **645**—4.12, 4.14Hours **645**—328.1–328.3Report **645**—4.11, 329.2(21)Standards **645**—328.3Trauma care **641**—137.3Definitions **645**—4.1, 326.1, 328.1, 329.1Discipline, *see Board this subheading above*Drugs/medical devices **645**—327.1(1)*o,r-u*, 327.6, 327.7; **657**—ch 10, *see also HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*Duties **645**—327.1, 327.2Education **645**—326.18, *see also Continuing Education this subheading above*Ethics **645**—329.2(3,28); **653**—13.7, 13.20Hospitals, clinical privileges **481**—51.5(3)Impaired practitioner review committee **641**—ch 193; **645**—ch 16, 329.2(31)Inactive practitioners **645**—326.1, 326.9(8), 328.1, 329.2(25)Licensure **283**—37.1; **641**—170.4(1), chs 192, 195; **645**—4.7, 4.8, 4.12, 4.15, 5.14, 326.1–326.4, 326.6, 326.7, 326.8(1)*b*, 326.9–326.11, 326.19, 326.20, 328.1, 329.2(1,13,25), 329.3Loans, student **283**—ch 37; **645**—ch 15Physicals, athletes **281**—36.14(1)Prescriptions **441**—78.15(2); **645**—327.1(1)*s-u*, 327.6, 327.7(4)Records **645**—327.1(1)*o*, 327.7(4)Reports **645**—329.2(13–16,21,22,24)Scope of practice **645**—329.2(4)Students **645**—326.17, 326.18Supervision **441**—78.25(1); **645**—326.8, 327.1, 327.2, 327.4; **653**—ch 21Temporary **645**—326.3Volunteers **641**—ch 88Biopsies, breast **641**—41.7Board, *see Medical Board, State below*Chelation therapy **653**—13.5Child support noncompliance **641**—ch 192; **645**—ch 14; **653**—ch 15, 23.1(31)Chiropractors, *see CHIROPRACTORS*Colleges, *see Education below*Competency, clinical **653**—23.1(27), 24.4Complaints, *see Assistants above; Medicine Board, State below*Conduct **653**—13.7Confidentiality **653**—13.7(3), 14.9, 22.2(2)*d*, 24.2(7,9), *see also Medicine Board, State: Records below*

PHYSICIANS AND SURGEONS (cont'd)

- Conflict of interest **653**—1.10, 13.20(1)
- Congenital/inherited disorders **641**—1.3(1)*b*, ch 4
- Contested cases **653**—ch 25
- Continuing education
 - Abuse identification/reporting **653**—9.1, 9.13(1)*b*, 10.1, 11.1, 11.4(1,5), 11.5
 - Assistants, *see Assistants above*
 - Breast biopsies **641**—41.7(3)
 - Definitions **653**—11.1
 - Exemptions **653**—11.4(2,3)
 - Hours **653**—11.2, 11.4(1)*a,b*, 11.4(4)
 - Physician assistants, *see Assistants above*
 - Provider accreditation **653**—11.3
 - Records/reports **653**—2.14(5), 11.4(1), 23.1(20)
 - Trauma care **641**—137.3
 - Waivers **653**—11.6
- Death
 - Certificates **641**—5.1, 99.12, 101.1–101.4, 101.8, 102.1(2), *see also DEATH*
 - Maternal **641**—ch 5
- Definitions **191**—40.1; **641**—76.4; **653**—1.1, 2.1, 2.10(1), 8.1, 9.1, 9.12, 10.1, 11.1, 13.2(1), 13.4(1), 14.2, 15.1, 16.1, 17.3, 22.2, 25.33(1), *see also Assistants above*
- Dentists, *see DENTISTS AND DENTISTRY*
- Diabetes education program **641**—ch 9
- Discipline, *see Medicine Board, State below*
- Disease, reports **641**—1.3–1.6, 1.11, 11.49, 11.51–11.53, 11.74(1), *see also DISEASES*
- Drugs, *see Alcohol/Drug Abuse above; Assistants above; DRUGS; HEALTH CARE FACILITIES; HOSPITALS*
- Education
 - Continuing, *see Continuing Education above*
 - Costs, Medicaid reimbursement program, hospitals **441**—79.1(5,16)
 - Grants, osteopathic **283**—ch 14
 - Institutions, accreditation **653**—9.3(1)*c,d*
 - Loans, *see Loans below*
 - Radiology/nuclear medicine **641**—41.2(67–73,75,77)
 - Residents/interns/fellows **653**—9.1, 9.2(2), 9.3(1)*c*(3,4), 9.3(1)*d*, 9.4(2)*d*(4), 9.4(2)*e*(6), 9.4(6)*a*(3,4), 9.4(6)*b*(3,4), 9.5(2)*j*, ch 10, *see also Interns below*
 - Transcripts **653**—9.5(2)*h*
 - Trauma care **641**—ch 137
 - University of Iowa admission **681**—2.8
- Emergency medical care service programs, *see EMERGENCY MEDICAL CARE*

PHYSICIANS AND SURGEONS (*cont'd*)

- Ethics **653**—13.7, 13.20, 23.1(4)
- Examiners board, *see Medicine Board, State below*
- Foreign **653**—10.5(4)*k*, 10.5(5,6); **657**—10.6(5), 10.21(3)
- Fraud **653**—23.1(14–16,18)
- Health care facilities, *see HEALTH CARE FACILITIES*
- Health committee, Iowa physician (IPHC) **653**—1.10, ch 14
- Health maintenance organizations (HMOs) **191**—40.1, 40.5, 40.22; **441**—ch 88
- Hearing aid evaluations/tests **441**—78.14; **645**—299.7
- Hearing, newborn/infant screenings **641**—ch 3
- Hospice, *see HOSPICE*
- Hospitals, *see HOSPITALS*
- Immunizations
 - Generally* **641**—ch 7
 - Pharmacist's administration **653**—13.3; **657**—8.33
- Impaired physician **653**—23.1(8), *see also Health Committee, Iowa Physician (IPHC) above*
- Inactive practitioner, *see Licenses below*
- Incompetency **653**—23.1(2)
- Insurance coverage, services **191**—71.14
- Interns
 - Controlled substances, dispensation **657**—10.4(2), 10.21(3)
 - Education
 - Direct/indirect costs, hospital reimbursement **441**—79.1(5)*a,f,m,y,ac*, 79.1(16)*a,e,f,k,v*
 - Requirements, *see Education above*
 - License **653**—ch 10
 - Retirement, IPERS, exclusion **495**—5.2(25)
- Licenses
 - Application **653**—8.4, 8.10, 9.5–9.8, 9.11, 9.15, 10.3(3,4), 10.4(3,4)
 - Background checks, criminal, *see CRIME: Records*
 - Certificates/wallet cards **653**—8.2(2)*e*, 8.4(6)
 - Continuing education, *see Continuing Education above*
 - Denial **283**—37.1; **653**—9.6(7)*g*, 9.6(8)*g*, 9.15, 10.3(4)*h*(6), 10.3(7)*g*(5), 10.3(7)*h*(6), 10.4(4)*g,h*, 10.5(5)*g*(3), 10.5(5)*h*(4), 10.5(6)*d*(4), 12.2, 15.2, 16.2, 16.3, 25.30
 - Display **653**—9.9(2), 9.11(7)
 - Eligibility **653**—10.3(2), 10.4(2), 10.5(2)
 - Evaluations, mental/physical **653**—24.4
 - Examinations, *generally* **653**—2.13(2)*e,f*, 2.14(6), 8.3, 8.5(2), 8.11, 9.4
 - Fees/service charges **653**—1.3(5)*k*, 8.1, 8.3–8.5, 8.8, 8.10–8.12, 9.1, 9.5(1), 9.7(2), 9.11(3,5), 9.13(2)*b*, 10.1, 10.3(3,5), 10.3(6)*c,e*, 10.3(8), 10.4(3,5,6), 10.5(3,7), 10.5(8)*b*, 11.1, 17.3

*PHYSICIANS AND SURGEONS (cont'd)**Licenses*

- Hearings, *see Medicine Board, State below*
- Inactive **653**—8.4(1)e, 9.9(1)c, 9.11(6), 9.12, 9.13, 10.3(1)d, 10.3(5,10), 10.4(5), 10.4(6)c, 10.5(7), 10.5(8)b(3), 26.1(6)
- Lists, licensees **653**—8.7
- Permanent **653**—ch 9, 10.3(1)b
- Records **653**—2.14(8), 9.10
- Reinstatement **653**—8.4(1)f,g, 9.13, 9.14, 11.4(4), 11.5, ch 26
- Renewal **283**—37.1; **653**—1.3(5)i, 8.4(1), 8.4(4)b, 9.11, 10.4(1)b, 10.4(6), 10.5(1)b(1), 10.5(8), 11.4, 11.5
- Resident physician **653**—8.4(2), 9.9(1)c, ch 10
- Special **653**—8.4(3), 10.4
- Suspension/revocation **283**—37.1; **653**—9.14, 10.3(9), 10.4(1)e, 10.5(1)e, 12.3, 15.3, 16.4, 23.1(1,22), 25.25, 25.29, ch 26
- Temporary **653**—8.4(4), 9.2(2)h, 10.3(1)f, 10.5
- Verification **653**—8.5(1)
- Loans **283**—chs 14, 37; **641**—110.21; **653**—ch 16, 23.1(32)
- Malpractice **653**—1.1, 22.1, 23.1(2)a, 23.1(24)
- Mammograms **641**—41.6(3)a
- Maternal health centers **441**—77.23, 78.25; **641**—76.4, 76.5
- Medical assistance providers, *see HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid)*
- Medical decision-making boards **641**—chs 84, 85
- Medical examiners, county, *see MEDICAL EXAMINERS*
- Medicine board, state
- See also Assistants: Board above*
- Address **653**—1.4, 2.3
- Adjudicative proceedings, emergency **653**—25.29
- Appeals **653**—9.15(2,4,5), 25.30, 25.31, 25.33(3)a(2)
- Committees **653**—1.3(5)l,m
- Complaints **653**—1.3(5), 2.11(2), 2.14(2), 24.1, 24.2
- Confidentiality, *see Confidentiality above; Records below*
- Conflict of interest **653**—1.10
- Continuing education **653**—1.3(5)j, *see also Continuing Education above*
- Declaratory orders **653**—1.9, 2.15(4)
- Discipline **641**—88.13; **653**—1.3(5)c–e,h, 2.12“2,” 2.13(2)c,i, 2.14(1,2,4,9,10), 8.8, 9.8(3), 10.3(7)h(6), 10.3(9), 17.11, 17.12, 17.29, 21.4–21.6, chs 22, 23, 24.4(7)
- Fees **653**—1.3(5)k, 8.7, 8.12, 8.13, 9.13(2)a(9), 9.13(2)b, 10.3(3)b(11), 10.4(3)b(10), 10.5(3), 25.22, 25.33, *see also Licenses below*
- Hearings **653**—1.8, 2.10(2)h, 2.12“2,” 2.13(2)c,i, 2.14(1,2,4), 2.17(2)“5,” 3.9, 9.15, 24.4(3,4), ch 25

PHYSICIANS AND SURGEONS (cont'd)

Medicine board, state

- Meetings **653**—1.6, 2.15(2)
- Organization **653**—1.3
- Purpose **653**—1.2
- Records
 - Generally, public/fair information **653**—ch 2
 - Confidential **653**—2.7, 2.9(2), 2.11, 2.12, 2.13(2-4), 2.14, 2.15, 24.2(7,9), 24.4(5)
 - Fees **653**—2.3(7), 8.6, 8.7, 8.9, 25.22
 - Hearings **653**—1.8, 2.10(2)h, 2.12“2,” 2.13(2)c,i, 2.14(1,2,4), 2.17(2)“5,” 9.15(3), 25.22, 25.32
 - Open **653**—2.9, 2.13(1), 2.15, 8.6, 24.2(9), 25.3(5), 25.17(5), 25.24(1), 25.32
- Rule making **653**—1.7, 1.8, 2.15(3), ch 3
- Subpoenas **653**—2.9(2)g, 23.1(26)
- Waivers **653**—ch 3, 9.16, 10.6, 11.6, 17.4(6), 17.5(10), 17.11, 17.30
- Mental/physical impairment, *see Health Committee, Iowa Physician (IPHC) above*
- Military service **653**—11.4(2)a(3)
- Nuclear medicine, *see Radiation Equipment/Materials below*
- Osteopaths
 - American Osteopathic Association (AOA) **481**—51.2(5,6), 51.6, 51.53(7); **653**—10.1, 11.1
 - Ethics **653**—13.20
 - Recruitment program **283**—ch 14
- Out-of-state, patient care **653**—9.2(2)d
- Peer review **653**—1.1, 24.2(9), 24.3
- Pesticides, emergency information **641**—ch 71
- Podiatrists, *see PODIATRISTS AND PODIATRY*
- Pregnancies, terminations, reports **641**—ch 106
- Radiation equipment/materials **641**—38.8(1), 39.4(22)i, 41.1(3)a“1,” 41.2(14,67-73,75,77,81,82,89), 41.3(1)b, 41.3(5)g, 41.3(9,10), 42.3(4), 42.4(4), 42.5(4), *see also RADIATION MACHINES AND RADIOACTIVE MATERIALS; X-RAYS*
- Records **441**—79.3, ch 87, 88.8(2,5), 88.9, 88.28(2,5), 88.29; **481**—73.4, 73.6; **641**—5.3; **653**—ch 2, 11.4(1), 13.1(4), 13.2(5)f, 13.7(7,8), 23.1(7,33,34), 24.2(7); **876**—8.9, *see also Medicine Board, State above*
- Recruitment program, *see Osteopaths above*
- Reports
 - Address/name change **653**—10.3(1)i, 10.4(1)f,g
 - Brain/spinal cord injuries **641**—ch 21
 - Child abuse **653**—11.4, 11.5, 22.4
 - Congenital/inherited disorders **641**—1.3(1)b, 4.4(3)

*PHYSICIANS AND SURGEONS (cont'd)**Reports*

- Continuing education, *see Continuing Education above*
- Malpractice/wrongful acts **653**—22.1, 22.2, 23.1(23–25)
- Pregnancies, terminations **641**—ch 106
- Volunteers **641**—88.8, 88.15
- Resuscitation (OOH DNR) orders **641**—142.5, 142.8
- Retirement, IPERS (Iowa public employees' retirement system) **495**—5.2(24,25)
- Students/observers **653**—9.1, 9.2(2)a, 9.2(3)
- Surgery, medical assistance, *see HUMAN SERVICES DEPARTMENT*
- Taxation
 - Equipment/services **701**—18.22
 - Prescription exemption **701**—20.7(2)
- Telemedicine **751**—7.4(5), 7.7(1)v,w, 7.11, 12.5
- Transplants **441**—78.1(12,20), 78.3(10)b
- Treatment options **191**—27.8, 40.22
- Tuition **283**—ch 14
- Violations, *see Medicine Board, State: Discipline above*
- Volunteer program **641**—ch 88
- Wages, minimum, exemption **875**—218.314

PIAP

See ECONOMIC DEVELOPMENT DEPARTMENT: Funds

PIPELINES

- Accidents **199**—10.17, 12.6
- Construction
 - Bridge attachments **761**—115.12, 115.16(2)d
 - Contractors **871**—23.82(2)e
 - Crossings **199**—10.14; **567**—71.8
 - Drainage structures/tile **199**—9.1(3), 9.4(2,7)
 - Hearings **199**—10.4–10.6, 13.4–13.6
 - Highway/railroad, right-of-way/adjustments **199**—9.4(3,4), 10.3(4)a, 10.14, 13.2(1)e, 13.14, ch 42; **761**—115.1, 115.2, 115.4(2), 115.4(11)b, 115.12(2), 115.13(5)c, 115.13(12), 115.15(3), 115.16(11), 115.25, 115.27–115.30
 - Land restoration **199**—ch 9, 10.2(1)i, 13.2(1)i, 13.12, 17.9(4)
 - Meetings, informational **199**—10.3, 13.3
 - Notices **199**—9.7, 10.18, 13.18
 - Objections **199**—10.5, 13.5
 - Permits **199**—2.4“6,9,” 9.3, 10.1–10.4, 10.7–10.10, 10.14, 10.16, 10.18, 10.19, ch 13, 17.9(3)
 - Safety **199**—19.8(6)

*PIPELINES (cont'd)**Construction*

- Standards **199**—10.12
- Utility board authority **199**—1.4
- Definitions **199**—9.1(3), 10.1(3), 13.1(3)
- Employees, drug tests **199**—10.12
- Fire notification **565**—51.11
- Gas
 - Interstate **199**—chs 12, 13
 - Intrastate **199**—9.3(1), ch 10
 - Raffinate, registration **21**—85.48(12)
 - Underground storage **199**—chs 10, 13
- Hazardous substances **199**—chs 9, 13, 17.9(5); **567**—23.1(4)r, ch 135
- Inspections **199**—9.4(2)e,f, 9.7, 10.10, 10.11, 12.2, 17.9(4)
- Petroleum, liquefied **199**—ch 13; **661**—226.5; **761**—115.13(5), 115.15(3)
- Relocation/removal/repair/change **199**—10.18, 13.18, *see also Construction above*
- Taxation **701**—18.45(3)a, 54.7(3), 77.5(1)

PISTOLS

See WEAPONS

PKU TESTING

See PHENYLKETONURIA (PKU)

PLANNING AND PROGRAMMING

See ECONOMIC DEVELOPMENT DEPARTMENT

PLANTS

See also CROPS; FERTILIZERS; FORESTS; HERBICIDES; PESTICIDES; PROCESSING PLANTS; TIMBER

- Aquatic invasive **571**—ch 90
- Diseases **21**—46.14, 46.15
- Endangered species **561**—1.2(9); **571**—ch 77
- Ginseng **571**—ch 78
- Highways **761**—116.5, ch 121
- Landscaping, *see Taxation below*
- Nursery stock
 - See also NURSERIES, HORTICULTURAL*
 - Conservation education **571**—71.3(7)
 - Producers, deer depredation **571**—106.11(2)
 - Wildlife habitats/forests/erosion control **561**—1.2(6), 1.3(2)e; **571**—ch 71
- Removal, natural resource jurisdiction **571**—ch 54

Taxation

- Evergreens **701**—40.38(4)
- Landscaping/tree trimming **701**—18.11, 18.43, 26.62, 26.66
- Production **701**—17.3(1)*d*, 18.48, 18.57
- Sales, health promotion products **701**—17.4, 17.9(3), 17.10, 18.57(1)

Trees

- Burning restrictions **567**—23.2(3)*b*, 23.2(4)
- Damage, deer, depredation **571**—106.11(2)
- Electric utility facilities, trimming **199**—25.3
- Farmers, conservation committee **27**—1.1
- Fruit trees **27**—10.20, 12.81(3); **571**—ch 73
- Harvest **571**—54.4

Plantings

- Community, grant program **571**—ch 34
- Shelterbelts **571**—22.6
- Soil erosion control program **27**—10.60(1)*b*, 10.82(3), 10.84(21)
- Water protection practices **27**—12.72, 12.80–12.85

Wildlife shelterbelts **571**—22.6

PLUMBING

- Code **641**—ch 25, *see also BUILDINGS: Building Code*
- Contractors **871**—23.82(2)*f*
- Examining board, plumbing/mechanical systems **641**—ch 27

PODIATRISTS AND PODIATRY

- Address/name change **645**—4.4(2,3), 224.2(25)
- Advertising **645**—224.2(5)
- Assistants **645**—223.4, *see also Radiographers below*
- Board, podiatry
 - See also PROFESSIONAL LICENSURE DIVISION**
 - Address **645**—4.4(1), 220.2(1)
 - Discipline **641**—42.7(7); **645**—4.2(3), 4.3(7)*f*, 4.13, 4.15(7), 223.2(9), 223.3, ch 224
 - Hearings **645**—4.10(2), 4.15(3,4), 5.1(9)
 - Meetings **645**—4.3, 4.6, 13.3, ch 17
- Child support noncompliance **641**—ch 192; **645**—ch 14
- Continuing education
 - Abuse identification/reporting **645**—220.1, 220.9(4)
 - Exemption **645**—4.12, 4.14

*Rules **645**—chs 6–18 apply to all professional licensure boards

*PODIATRISTS AND PODIATRY (cont'd)**Continuing education*

- Hours **645**—220.9(4)*a-c*, 220.15(3), 222.1, 222.2, 222.3(2)*b,c*, 223.2(3)
- Reports **645**—4.11, 224.2(22)
- Standards **645**—222.3
- Definitions **645**—219.1, 220.1, 222.1, 223.1, 224.1
- Disease prevention **645**—223.3, 224.2(30)
- Drugs **441**—78.2(1), 78.5(3); **645**—223.2, 224.2(2)*e*, 224.2(6–8), 224.3“7”;
701—20.7(2)*d*
- Endorsements, *see Licenses: Foreign-Trained below*
- Ethics **645**—224.2(3,29)
- Fraud **645**—224.2(1,3,10)
- Hearings, *see Board, Podiatry above*
- Impaired practitioner review committee **641**—ch 193; **645**—ch 16, 224.2(31)
- Licenses
 - Certificates/wallet cards **645**—4.8, 4.9, 5.15(5), 220.9(5,6), 220.12, 220.13
 - Continuing education, *see Continuing Education above*
 - Denial **283**—37.1; **641**—192.1, 195.2; **645**—4.10; **701**—ch 153
 - Examinations **645**—4.15, 220.2(12), 220.3, 220.6(2)*e*, 220.7(2,4)
 - Fees **641**—192.2(5), 195.3(7); **645**—5.15, 220.2(3), 220.6(2)*b*, 220.7(1), 220.9(3,7)
 - Foreign-trained **645**—220.4(2), 220.7, 220.8
 - Inactive practitioners **645**—220.1, 220.9(8), 222.1, 224.2(26)
 - Reactivation **645**—5.15(4), 220.1, 220.9(3,8), 220.15, 220.16
 - Reciprocity **645**—4.7, 220.1
 - Reinstatement **641**—192.2(5,7), 195.3(7); **645**—220.16
 - Renewal **283**—37.1; **641**—192.1, 192.2(5), 195.2, 195.3(7); **645**—4.13“3,”
5.15(2,3,9), 220.2(7), 220.9
 - Suspension/revocation **283**—37.1; **641**—192.2, 195.3; **645**—220.16, 224.2(14,26),
224.3; **701**—ch 153
 - Temporary **645**—5.15(9), 220.6
- Loans, student, noncompliance **283**—ch 37; **641**—ch 195; **645**—ch 15
- Malpractice **645**—224.2(17)
- Medical assistance providers **441**—77.5, 78.5, 78.15, 79.1(2)*p.10*, 79.3(2)*d(4)*
- Radiographers
 - Certificates **641**—42.2(1)*j*, 42.2(2), 42.2(4)*a(4)*, 42.7(4,6)
 - Continuing education **641**—42.2(3)*g(2)*, 42.7(5)
 - Definitions **641**—42.1(2)
 - Machines/systems **641**—38.8(1), 41.1(3)*a“2”*
 - Students **641**—42.3(4), 42.4(4), 42.5(4), 42.7(3)
 - Training **641**—41.2(75), 42.7(1)
 - Violations **641**—42.2(2)*a,b,d*

PODIATRISTS AND PODIATRY (cont'd)

Reports **645**—220.9(3,4), 223.2(6,7), 224.2(15–17,22,23,25)
 Scope of practice **645**—224.2(4), 224.2(8)c
 Taxation, prescription exemption **701**—20.7(2)d
 Violations, *see Board, Podiatry: Discipline above*

POISONS

*See also ASBESTOS; ENVIRONMENTAL PROTECTION COMMISSION; PESTICIDES;
 RADIATION MACHINES AND RADIOACTIVE MATERIALS*

Air pollutants **567**—23.1(3); **875**—10.19
 Chemicals, hazardous **875**—140.4, *see also CHEMICALS*
 Commercial feed **21**—41.10
 Control center, emergency preparedness advisory committee (PAC) **641**—114.4(1)o
 Death **641**—127.3(1)h
 Food **641**—1.3(1,2)
 Heavy metal **567**—ch 213; **641**—1.3(1)b
 Information centers **641**—1.6(6)
 Laboratories **641**—1.3(1)b,e–h
 Lead, *see LEAD*
 Livestock **21**—45.36
 Pigeon control **571**—100.2(2)
 Report requirements **21**—45.36; **641**—1.3(1)b,e–h, 1.6(6)

POLICE

*See also CRIME; LAW ENFORCEMENT ACADEMY; PEACE OFFICERS; PUBLIC DE-
 FENSE DEPARTMENT; PUBLIC SAFETY DEPARTMENT; SHERIFFS*

Cities, annexation/consolidation/incorporation **263**—8.3(11,14)
 Emergency care providers, training **641**—ch 139
 Explosives, disposition **661**—95.10
 Fingerprints **661**—11.9
 Livestock feeding operations, manure releases, notification **567**—65.2(9)a, 65.101(9)
 Missing person information **661**—ch 89
 Retirement benefits **495**—4.6(4)b, 5.1(3), 5.2(6,27,39)
 Tests
 Certification **501**—3.8, 3.9, 3.12(5)
 Psychological **501**—2.2
 Vehicles
 Impoundment **11**—101.11(5–9); **661**—ch 6; **761**—480.3, 480.4
 Licenses, undercover officers **761**—ch 625
 Wages **875**—220.221(6), 220.222(3), 220.223(2,4), 220.226(3)

POLITICS

See also ELECTIONS; ETHICS AND CAMPAIGN DISCLOSURE

Advertising **199**—16.2(8)c, 16.3(8)a; **351**—4.25, 4.38, 4.39, 4.41, 4.44, 5.4(2)e

Contributions

See also ETHICS AND CAMPAIGN DISCLOSURE: Committees, Campaign

Engineers/land surveyors **193C**—8.2(6)a

Debates

Media organization hosts **351**—4.51

Public resources, use **351**—5.5(3)

Employee participation

Corporations, political action committees (PAC) **351**—4.45, 4.52

Government positions **351**—5.8

Regents, board of **681**—3.3(3)

State **11**—ch 65

Gambling license **481**—100.1, 100.30(4)

Organizations

Party status **721**—21.10

Taxation **701**—52.1

POLLUTION

See also ENVIRONMENTAL PROTECTION COMMISSION

Water, wildlife injury **571**—ch 113

PORK

See MEAT

PORNOGRAPHY

See OBSCENITY

PORTS

Property, taxation exemption **701**—80.22

POST OFFICES

Telecommunications network **751**—7.4(4)

POULTRY

See also TURKEYS

Dead/diseased, disposal **21**—64.192; **567**—100.4, *see also Processing Plants below*

Dealers, license **21**—1.2(1)a, 60.2

Definitions **21**—65.1

Diseases **21**—60.1–60.4, 64.1, 64.34, 64.35, 64.185–64.192, 65.1–65.3, 65.11;
521—1.1

Eggs

See also EGGS

Standards **21**—ch 60, 65.11

Taxation, excise **301**—ch 4

Exhibitions **21**—60.4, 64.34(1,7), 64.35, 64.35(4)

Farms

Audits, fuel tax **701**—64.14

Employees **871**—23.26(10)

Income, taxation **701**—40.21(2)*d*, 40.38(2), 43.8, 53.11(2)*d*, 54.1(1,2), 59.8(2)*d*

Feed

Adulterants **21**—41.10(1)*a,b*

Taxation **701**—17.9(3), 18.14

Vitamins **21**—41.4(3)*b*; **701**—17.9(3)*c*

Feeding operations **567**—65.5, ch 65 Tables 3,3a,5,6, *see also LIVESTOCK: Feedlots*

Food preparation **481**—31.12(2)*d*

Importation **21**—65.1—65.3, 65.11

Inspections **21**—1.2(5), 60.2(3), 60.4(1), *see also Processing Plants below; Veterinary Inspection Certificates below*

Laboratory analysis **21**—1.2(10)

Organic production **21**—47.4(1)*b*

Permits **21**—65.1, 65.2, 65.11(2)

Pet food ingredients **21**—42.3(5,6), 76.8(7)

Processing plants

See also LIVESTOCK: Dead, Disposal: Plant, Rendering

Inspections **21**—1.2(5), 76.3, 76.4, 76.8(1,4)

Labor laws **875**—32.8(9)

Meat, inedible **21**—76.8(7), 76.9, 76.10

Records **21**—76.11

Registration **21**—76.7

Sales

Restrictions **21**—60.4(3)

Taxation **701**—17.9(2), 18.12

Slaughter **21**—64.35(4), 64.187(1)*a*, 64.187(2)*a*, 64.187(3)*a*, 64.191(2)*e*(2), 64.191(2)*f*(5), 76.4

Veterinary inspection certificates **21**—64.34(1,7), 64.35, 64.35(4), 65.2, 65.3(3), 65.11

Water use, taxation **701**—17.9(8)

POUNDS

See ANIMALS

POWER PLANTS

POWER PLANTS

See *ELECTRIC UTILITIES: Generating Facilities*

POWs (PRISONERS OF WAR)

See *VETERANS*

PRAIRIES

See *NATURAL RESOURCES DEPARTMENT: Natural Resource Commission*

PREACHERS

See *RELIGION*

PREGNANCY

See *CHILDREN: Adolescents; WOMEN*

PRESCHOOLS

See *SCHOOLS*

PRESCRIPTIONS

See also *DRUGS*

Devices, see *TAXATION: Sales And Use*

Eyeglasses/contacts, see *EYES*

PRESERVES, STATE ADVISORY BOARD

See also *HUNTING; NATURAL RESOURCES DEPARTMENT*

Address **575**—1.1(1)

Management, preserves **575**—ch 2

Organization **575**—ch 1

Records/reports **575**—1.5, 1.6, ch 3

Rule making **575**—1.8

PREVENTION OF DISABILITIES POLICY COUNCIL

Committee, technical assistance **597**—2.6

Conflict of interest **597**—2.10

Contracts/agreements **541**—ch 10; **597**—2.7(4,7), 2.8, ch 5

Definitions **597**—1.2, 5.1

Meetings **597**—2.3, 2.4

Membership **597**—2.2

Organization **597**—2.5

Powers **597**—2.7

Records **597**—ch 3

Reimbursement **597**—2.11

PREVENTION OF DISABILITIES POLICY COUNCIL (cont'd)

Reports **541**—10.3; **597**—2.9

Rule making **597**—ch 4

PRIMARY ROADS

See HIGHWAYS

PRIMECARRE

See PUBLIC HEALTH DEPARTMENT

PRINCIPALS

Schools, *see EDUCATION*

PRINTING, STATE

See ADMINISTRATIVE SERVICES DEPARTMENT (DAS)

Taxation, *see TAXATION: Sales And Use*

PRISONERS OF WAR (POWs)

See VETERANS

PRISONS

See also CORRECTIONS DEPARTMENT; PAROLE

Deaths **641**—127.1“5”

PRIVATE INVESTIGATION

See PUBLIC SAFETY DEPARTMENT

PROBATE

See TAXATION: Fiduciary Income

PROBATION

See also ADMINISTRATIVE SERVICES DEPARTMENT (DAS): Human Resources Enterprise; CORRECTIONS

DEPARTMENT; JUVENILES; PAROLE

Violations, indigent defense **493**—12.4(4), 12.6(1)

PROCESSING PLANTS

Dairies, *see DAIRIES*

Emissions standards, *see ENVIRONMENTAL PROTECTION COMMISSION: Air Quality*

Food, inspections **481**—ch 31

Meat/pet food **21**—1.2(5), ch 76; **875**—32.8(9), *see also LIVESTOCK: Dead, Disposal: Plant, Rendering*

Wastewater, *see ENVIRONMENTAL PROTECTION COMMISSION*

PROFESSIONAL LICENSING AND REGULATION BUREAU

See also ACCOUNTANCY; ACCOUNTANTS; ARCHITECTS; ENGINEERING AND LAND SURVEYING; INTERIOR DESIGN; LANDSCAPE ARCHITECTS; REAL ESTATE

Address **181**—1.6(2)
 Administrator **181**—1.5
 Aliens **193**—ch 4
 Child support noncompliance **193**—7.43, ch 8
 Commerce department authority **181**—1.4(9)
 Conflict of interest **193**—ch 11
 Declaratory orders **193**—ch 10
 Fees/costs, disciplinary, allocation **193**—ch 2
 Impaired licensee review committees **193**—ch 12
 Legal counsel **61**—1.3(2)c
 Loans, student, noncompliance **193**—7.44, ch 8; **283**—ch 37
 Newsletter publication **193**—1.9
 Organization **193**—ch 1
 Procurements **261**—ch 54; **541**—ch 10, *see also ADMINISTRATIVE SERVICES DEPARTMENT (DAS)*
 Records, public/fair information **193**—ch 13
 Rule making **193**—ch 9
 Vendors, appeals **193**—ch 3
 Waivers **193**—ch 5

PROFESSIONAL LICENSURE DIVISION

See also BARBERS; BEHAVIORAL SCIENCE BOARD; CHIROPRACTORS; COSMETOLOGY AND COSMETOLOGISTS; DIETITIANS; FUNERALS: Directors; HEARING AID DISPENSERS; MASSAGE THERAPY; NURSING HOME ADMINISTRATORS; OPTOMETRISTS AND OPTOMETRY; PHYSICAL AND OCCUPATIONAL THERAPISTS; PHYSICIANS AND SURGEONS: Assistants; PODIATRISTS AND PODIATRY; PSYCHOLOGISTS; RESPIRATORY THERAPISTS; SIGN LANGUAGE INTERPRETERS AND TRANSLITERATORS; SOCIAL WORKERS; SPEECH PATHOLOGY AND AUDIOLOGY

Address **645**—4.4(1)
 Child support noncompliance **641**—ch 192; **645**—ch 14
 Complaints/investigations **645**—ch 9
 Contested cases **645**—chs 11, 12, 18.9
 Declaratory orders **645**—ch 8
 Definitions **645**—4.1
 Discipline **645**—4.2(3), 4.3(7)f, 4.13, 4.15(7), ch 13
 Impaired practitioner review committee **645**—ch 16

PROFESSIONAL LICENSURE DIVISION (cont'd)

Loans, student, noncompliance **641**—ch 195; **645**—ch 15
 Meetings, board **645**—4.3, 4.6, 13.2, ch 17
 Organization **645**—4.3
 Procurements **261**—ch 54; **541**—ch 10
 Records/reports, *generally*, public/fair information **645**—ch 10
 Rule making **645**—chs 6, 7, 10.15“1,” ch 18

PROFESSIONAL TEACHING PRACTICES COMMISSION

See EDUCATION: Boards: Educational Examiners

PROMISE JOBS

See WORK AND TRAINING PROGRAMS

PROPANE

See GAS: Butane/Propane

PROPERTY

See also ANNEXATION; BUILDINGS; HOMES, HOUSING; LAND; LEASES; REAL ESTATE

Condemnation, acquisition, owner's rights **61**—ch 34
 Entrances, highway **761**—112.3(2,4), 112.4, 112.9(1), 112.12(4), 112.13
 Family investment program (FIP) exemptions **441**—41.26
 Forfeited, disposal **61**—ch 33; **571**—ch 10
 Inheritance, transfers to state **361**—ch 11, *see also TAXATION*
 Insurance **61**—ch 20; **187**—9.2(5); **191**—ch 20; **197**—12.2(5)*d*, *see also INSURANCE: Property/Casualty*
 Liens **701**—ch 9, 71.22(2)*d*; **721**—5.14(1)
 Lines, primary highways **761**—112.8(3), 112.9(2)*b*, 112.9(5)
 Personal, leasing **197**—ch 13
 Relocation assistance, *see RELOCATION ASSISTANCE*
 Rental
 Deposits, taxation **701**—26.18(2)*e*, 225.6(6)
 Election committees **351**—4.47(1)
 Fire safety **661**—5.809(1)
 Purchase agreement **61**—ch 19
 State-owned **571**—ch 18
 Taxation, reimbursement **701**—ch 73
 State agencies
 Inventory **11**—ch 110
 Surplus **11**—1.4(1)*d*

PROPERTY (cont'd)

Surveys, standards **193C**—ch 11

Taxation

See also TAXATION

Assessment/equalization **701**—chs 71, 120, *see also ASSESSORS*

Community colleges, new jobs training **261**—5.5, 5.8

Corporation

Credits

Investment **261**—58.4(3), 59.6(3)c(4); **701**—52.10(1)d, 52.10(2)

Rehabilitation **701**—52.18, *see also HOMES, HOUSING*

Depreciation, sale-leaseback agreements (safe harbor) **701**—53.7

Gains/losses **701**—53.9, 54.4

Tangible personal, *see Tangible Personal this subheading below*

Credits **223**—chs 37, 48; **265**—chs 10, 12; **361**—ch 11; **701**—42.15, 58.10, chs 73, 80, *see also Corporation this subheading above; HOMES, HOUSING*

Delinquent

Property sales **701**—ch 152

Statute of limitations **701**—75.8

Distressed sales **701**—11.8, 39.6, 39.8, 40.27

Exemptions **223**—ch 47; **261**—58.4(2,4), 59.6(3)b; **567**—ch 11; **571**—25.6, 25.7; **701**—18.36, 18.45(2-4), 52.10(1)d, 76.9, chs 78, 80

Franchise, gains/losses **701**—59.11, 59.27

Income

Fiduciary, *see TAXATION: Fiduciary Income: Reportable Income*

Gains/losses **701**—40.38(1,6,7)

Installment sales **701**—40.16, 40.57

Joint/single ownership **701**—40.15(1,2), 40.16(5)

Nonresidents **701**—40.16

Inheritance, *see TAXATION*

Mobile/modular/manufactured homes **701**—73.11, ch 74, 80.1(2)f, 80.2(2)j, *see also TAXATION: Sales And Use*

Payments **701**—chs 75, 152

Railroads **701**—ch 76

Real property sales **701**—40.16, 40.38(1,6,7), 52.10(1)d, 52.10(2), 59.27, 59.28

Reimbursement

Cities/counties **571**—33.19

Elderly/disabled/low-income **701**—ch 73

*PROPERTY (cont'd)**Taxation*

Review, school budget committee **289**—6.5(4)

Tangible personal

Capital gains **701**—40.38(1,8)

Corporations, manufacture/sale **701**—54.5

Franchise **701**—59.27, 59.28(2)

Local option **701**—107.3

Sales/use **701**—11.8, 13.1, 13.2, chs 15–19, 26

Use **701**—chs 30–34

Transfer, real estate **361**—ch 11; **701**—ch 79

Utility companies **701**—ch 77

Title guaranty **265**—ch 9

Unclaimed, reports **781**—ch 9

PROPHYLACTICS

Ophthalmia, infant eye treatment **641**—1.7

Venereal disease **641**—ch 6

PROSTHETIC, ORTHOTIC AND ORTHOPEDIC DEVICES

Insurance **191**—71.14(5)

Medical assistance providers **441**—77.18, 78.1(5,6), 78.4(7), 78.5, 78.10, 78.15,
79.1(2)p.3,11, 79.1(4), 79.1(13)c

Sales tax exemptions **701**—20.9

PROXIES

Domestic insurance companies, voting **191**—ch 7

PSEUDOEPHEDRINE

See DRUGS

PSEUDORABIES

See LIVESTOCK: Swine

PSYCHIATRIC CARE

See MENTAL HEALTH

PSYCHOLOGISTS

Abuse reports, *see Continuing Education below*

Address/name change **645**—4.4(2,3), 242.2(26)

Advertising **645**—242.2(6)

PSYCHOLOGISTS (*cont'd*)

- Associates **645**—240.5(1)
- Board, psychology
 - See also PROFESSIONAL LICENSURE DIVISION**
 - Address **645**—4.4(1), 240.7(1)*b*
 - Discipline **645**—4.2(3), 4.3(7)*f*, 4.13, 4.15(7), ch 242
 - Hearings/informal procedures **645**—4.10(2,3), 4.15(3,4), 4.16(8), 5.16(8)
 - Meetings **645**—4.3, 4.6, 13.3, ch 17
 - Organization **645**—4.3
- Certification **645**—5.16(10,11)
- Child support noncompliance **641**—ch 192; **645**—ch 14
- Confidentiality **645**—242.2(30)*c*
- Conflict of interest **645**—242.2(30)*d*
- Continuing education
 - Abuse identification/reporting **645**—240.1, 240.12(4)
 - Costs **645**—241.2(5)
 - Definitions **645**—241.1
 - Exemptions **645**—4.12, 4.14
 - Records/reports **645**—4.11, 242.2(23)
 - Requirements **645**—241.2
 - Standards **645**—241.3
- Definitions **441**—24.1; **645**—239.1, 240.1, 241.1
- Discipline, *see Board, Psychology above*
- Education
 - See also Continuing Education above*
 - Agencies, local **441**—78.50(1)
 - Authorization, school practice **282**—15.3(1)*b*(2), 15.11
 - Foreign-trained **645**—240.3(4)
 - Professional experience **645**—240.6, 240.7
 - Programs **645**—240.3, 240.7
- Ethics **645**—242.2(1,30)
- Examinations **645**—240.4, 242.3“6,” 242.5
- Fees **645**—243.1(11)
- Fraud **645**—242.2(2,4,10)
- Health care facilities **441**—82.2(3)*b*(5)“5”; **481**—62.14(4)*b*(9)
- Health services providers **645**—240.7, 5.16(10,11)
- Impaired practitioner review committee **641**—ch 193; **645**—ch 16, 242.2(32)

*Rules **645**—chs 6–18 apply to all professional licensure boards

PSYCHOLOGISTS (cont'd)

Licenses

- Application **645**—240.2
- Certificates/wallet cards **645**—4.8, 4.9, 5.16(5), 240.12(5,6)
- Class A **282**—15.11(3)*a*
- Denial **283**—37.1; **641**—192.1, 195.2; **645**—4.10
- Endorsement **645**—240.1, 240.10
- Examinations, *see Examinations above*
- Exemption **645**—5.16(9), 240.8
- Fees **641**—192.2(5), 195.3(7); **645**—5.16
- Inactive practitioners **645**—240.1, 240.12(8), 242.2(27)
- Reactivation **645**—5.16(4), 240.1, 240.18, 241.2(4)
- Reciprocity **645**—4.7, 240.1
- Reinstatement **641**—192.2(5,7), 195.3(7); **645**—240.1, 240.11, 240.19
- Renewal **283**—37.1; **641**—192.1, 192.2(5), 195.2, 195.3(7); **645**—4.13“3,”
5.16(2,3,11), 240.12, 241.2
- Supervisors **645**—240.1, 240.6(2)*b*
- Suspension/revocation **283**—37.1; **641**—192.2, 195.3; **645**—242.2(14,27), 242.3
- Loans, student, noncompliance **283**—ch 37; **641**—ch 195; **645**—ch 15
- Malpractice **645**—242.2(17)
- Maternal health centers **441**—77.23, 78.25(1)*e*, 78.25(3)*d*; **641**—76.4, 76.5
- Medical assistance program **441**—77.22, 77.39(23), 78.1(13)*a*, 78.16, 78.24,
78.31(4)*a,b,d*, 78.49, 78.50(1), 79.1(2)*p.11*, 79.1(13)*c*
- Medical decision-making boards **641**—ch 85
- School staff **281**—41.9(3)*h*, 41.10(2)*g*; **282**—15.3(1)*b*(2), 15.11, 15.13(3)*b*(2),
15.14(3)*b*(2)
- Scope of practice **645**—242.2(5)
- Supervision **645**—240.5, 240.6, 240.9
- Training
 - See also Education above*
 - Child abuse identification **645**—240.12(4)
 - Health service provider **645**—240.7(2)
- Violations **645**—ch 242
- Waivers, *see Continuing Education above*

PUBLIC ASSISTANCE*See HUMAN SERVICES DEPARTMENT***PUBLICATIONS**

- Archaeologist, state **685**—ch 6
- Ballots, sample **11**—102.6, 102.7

PUBLICATIONS (*cont'd*)

Corrections institutions, review **201**—20.6
 Historical society **223**—ch 15
 Homeland security/emergency management division, comprehensive plan **605**—ch 9
 Industries, emissions standards **567**—23.1(4)*ak*
 Natural resources department **561**—2.15(3)
 Political debate hosts **351**—4.51
 Taxation, corporation **701**—54.7(6)

PUBLIC BROADCASTING DIVISION

See also TELECOMMUNICATIONS

Adjudicative proceedings, emergency **288**—13.31
 Board **288**—ch 1
 Bureaus **288**—1.2
 Communications network, site selection **288**—ch 10
 Contested cases **288**—ch 13
 Declaratory orders **288**—ch 12
 Education department authority **281**—1.4(1)*f*
 Hearings, *see Contested Cases above*
 Facilities **288**—ch 2
 Meetings **288**—1.1(3)
 Purpose **288**—1.1(1)
 Records, *generally*, public/fair information **288**—ch 3
 Rule making **288**—3.15(5), ch 11

PUBLIC DEFENDER

Address **481**—9.5(6); **493**—1.5, 2.3
 Advisory commission, indigent **493**—1.4, 4.15(2,4)
 Claims
 Indigents, expense reimbursement **481**—9.2, 9.5(6); **493**—1.3(3)*h*, chs 12, 14
 Services, *generally* **493**—ch 13
 Contracts **493**—1.3(3)*g*, 4.14(3), 7.1, ch 11, 12.5
 Counsel, court-appointed, eligibility **493**—ch 10
 Declaratory orders **493**—ch 3
 Definitions **493**—4.1, 4.10, 7.1, 14.2
 Hearings **493**—13.3(2)
 Medical examiner advisory council, membership **641**—ch 125
 Organization **493**—1.3
 Parental rights terminations **493**—ch 14
 Records, *generally*, public/fair information **493**—ch 4
 Rule making **493**—ch 2, 4.15(1), chs 5, 6

PUBLIC DEFENSE DEPARTMENT

PUBLIC DEFENSE DEPARTMENT

Homeland security/emergency management division

Adjudicative proceedings, emergency **605**—6.31Administrator **605**—1.1, 1.2, 6.2, 7.3(5), 8.1, 8.2, 9.1, 10.2, 10.8(2), 10.9(1), 10.15(6), ch 12Comprehensive plan, state **605**—ch 9, 103.4, 104.1(2)Contested cases, *see Hearings/Appeals this subheading below*Declaratory orders **605**—ch 3Definitions **605**—1.2, 6.2, 7.2, 8.2, 10.2, 11.2, 12.2

Emergency response commission, Iowa (IERC)

Committees, local **605**—102.1, 102.3, ch 103, 104.1(2)Districts, planning **605**—ch 102Meetings **605**—ch 101Purpose **605**—ch 100Grants **605**—7.7, ch 8Hearings/appeals **605**—ch 6, 10.15

Local/joint commissions

Agreements **605**—7.3(5), 7.7(2)Bylaws **605**—7.3(2)Coordinators **441**—58.6(1); **605**—7.3(4)a(4), 7.4, 7.6(1)Definitions **605**—1.2, 7.2Funds **605**—7.3(4)a(3), 7.3(4)d(11), 7.6, 7.7, ch 8Personnel **605**—7.5Plan, countywide **605**—7.3(4)dOrganization **605**—ch 1Radiological maintenance facility **605**—ch 11Records, public/fair information **605**—ch 5Reports, chemical releases **605**—ch 104Response teams **605**—ch 12Rule making **605**—chs 2, 4Telecommunications network, public agencies **751**—7.1, 7.10Telephone systems, enhanced 911 (E911) service **605**—ch 10, *see also TELEPHONE**COMPANIES: Emergencies*

Military division

Forms **611**—ch 1Records, *generally*, public/fair information **611**—ch 2Procurement **261**—ch 54; **541**—ch 10

PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS)

- Address **495**—1.3(1), 2.1, 11.1(1), 30.1(1)
- Agents, claimants **495**—ch 20
- Appeals/hearings **486**—ch 9; **495**—11.3(1), 11.7(8), 13.2(8,10), 16.2(3)e, 17.15(5), 21.2(1), ch 26
- Benefits
 - Advisory committee (BAC) **495**—ch 3
 - Beneficiaries **495**—12.3, 12.7(3,4), 12.8(2)a, 12.8(4)a, 14.3(1), 14.15, 14.16, 15.1, 15.2(3,4), 16.2(3)b, 21.1(1,8), 21.2(1)b,g,m
 - Payment **495**—chs 9, 11–16, 20, 21, 32, *see also Employers: Contributions below*
 - Rollovers **495**—8.3(7), 8.5(2)e, 11.6(4), 12.10, 14.15, 16.2(3)k
- Boards/commissions, part-time employment **495**—11.5(4)
- Buy-back/buy-in **495**—ch 8, 9.5
- Corrections officers **495**—4.6(4)c
- Credits
 - See also Membership: Reinstatement below*
 - Favorable experience dividend (FED) **495**—15.2
 - General **495**—7.1(1)
 - Leaves of absence **495**—7.1(1)c, 7.1(3), 7.2(2,3), 8.1(8), 12.1(7)c(2)
 - Military **495**—7.1(3), 7.2(3), 8.1(2)d, 8.1(5), 12.1(7)c(2)“2”
 - Overpayments/errors, *see Employers: Contributions below*
 - Prior service **495**—4.2, 7.2, ch 8, 12.1(5)
 - School/college employees **495**—7.1(2), 7.2(5–7,9), 8.1(10), 11.3(2)c, 12.1(7)c(2)“4”
 - Special service **495**—4.6(5), 8.5(2)a,b, 8.5(4), 9.1(2)b, 9.2, 12.4, 12.7
- Deaths **495**—6.5(7), 7.1(3)f, 8.5, 10.3, 11.3(3), 11.4, 11.6(4,5), 11.7(6), 12.2(3), 12.7(1,3), 12.8(2)a, 12.8(4)e,h,i, ch 14, 15.2(4), 16.2(1), 16.2(3)b,c,g, 21.2(1)m
- Declaratory orders **495**—ch 19
- Definitions **495**—1.2, 4.1(1), 4.6(4)c, 5.1(1), 6.2, 6.4(2)a, 8.1(2)b, 11.5(2), 12.1(7)a,c, 14.12(2), 16.2(1), 17.1, 26.2, 31.6(1)
- Disability **495**—8.5(2)d, 9.6, 11.1(1)c, 12.1(2)c, ch 13, 21.2(1)o, 26.3(2)
- Eligibility **495**—4.1, ch 5, 11.2, 11.3(3), 21.1(3), *see also Benefits: Payment above*
- Employers
 - Contributions
 - Back pay settlements **495**—6.3(11)
 - Date, start-up **495**—4.1(1)d
 - Elective **495**—6.5(2–6), 6.5(7)a
 - Fringe benefits (Section 125 plan) **495**—6.5
 - Hours reduction, employer mandated (EMRH), restoration **495**—6.4
 - Interest **495**—4.4, 6.5(7)a, 8.1(1)a,c, 8.1(3,7,8), 8.2, 9.5, ch 10, 11.5(3), 11.7(2–5), 12.7(1), 14.1, 14.11, 21.2(1)e

*PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS) (cont'd)**Employers**Contributions*

Mergers, pension plans **495**—21.2(1)*f*
 Overpayments/errors, credit **495**—4.3(7,8), 6.5(7), 10.2
 Payment **495**—4.1(6), 4.3, 4.6(7), *see also Rates this subheading below*
 Pretax **495**—4.6(7), 8.3(5)
 Qualified benefits arrangement (QBA) **495**—ch 32
 Rates **495**—4.6
 Refunds **495**—ch 9, 12.8(3), 12.8(4)*d*
 Remuneration **495**—6.3(13,14), 12.8(3)

Counties, patient advocates **495**—4.1(6)

Dissolution **495**—4.1(3)

Employees, leased **495**—5.2(46)

Participation **495**—4.1

Records **495**—4.2

Reports **495**—4.1(3–5), 4.2(3), 4.3, 6.4, 12.8(2)*b*

Favorable experience dividend (FED) **495**—12.7(4), 15.2

Firefighters/emergency services personnel, *see Protection Occupations below*

Fraud **495**—6.3(8), 11.6(3), 13.2(11)

Garnishments, child/medical support **495**—ch 16

Health care professionals **495**—5.2(24), 11.5(2)

Hearings, *see Appeals/Hearings above*

Investment board **495**—ch 2

Leaves of absence, *see Credits above*

Legislature **495**—5.2(1,12), 6.3(10), 8.1(6), 11.5(1), 12.1(7)c(2)“5”

Membership

See also Eligibility above

Enrollment **495**—4.7

Identification number **495**—16.2(2)*a*, 17.3(3), 17.5(2)

Option **495**—5.2(1,4), 5.2(6)*e*, 5.2(9,11,12,14,29,32,33), 8.1(7), 8.5(1)*b*

Reinstatement **495**—4.3(10), 9.5, 9.6, *see also Reemployment below*

Vested **495**—7.1(1)*d*, 7.3, 10.4, 21.1(3,6), *see also Buy-Back/Buy-In above*

Mergers, pension plans **495**—ch 21

Military leave, *see Credits above*

Officials, elected **495**—5.2(1), 11.5(1,3), 12.1(7)c(2)“5”

Orders, domestic relations **495**—16.2

Organization **495**—ch 1

Overpayments

Benefits **495**—6.3(8), 6.5(7), 11.4, 11.7, 12.8(2)

Contributions, *see Employers above*

PUBLIC EMPLOYEES' RETIREMENT SYSTEM (IPERS) (cont'd)

Peace officers, *see Protection Occupations below*

Procurement **261**—ch 54; **541**—ch 10

Protection occupations **495**—4.6(3,4), 5.1(3), 5.2(6,27,39,41), 8.5(4), 12.1(6)c,e, 14.14, *see also Sheriffs below*

Records **495**—8.5(1)d, ch 17, 21.1(4), 21.2(1)g,j,m, 26.25, *see also Employers above*

Reemployment **495**—6.3(13,14), 7.1(3)b,d, 8.5(1)c, 9.3, 12.7(5)d, 12.8, 13.1(2,3), 13.2(13), 14.3(1), 15.2(3)

Refunds **495**—7.1(3)e, 8.1(1,4), 8.2, 8.3(4), ch 9, 10.1(2), 11.5(3), 12.8(3), 12.8(4)d, 16.2(3)g, 21.2(1)m

Retirement, notification **495**—11.1(1)

Rule making **495**—chs 30, 31, 33

School/college employees **495**—4.1, 5.2(17,19,33,34,40), 7.1(2), 7.2(5–7,9), 8.1(1,7,10), 11.3(2)c, 11.5(1), 12.1(7)c(2)“4”

Self-employment **495**—8.5(3)d

Service

Purchases, *see Buy-Back/Buy-In above*

Reclassification **495**—4.6(5)

Sheriffs **495**—4.6(2), 4.6(4)d, 4.6(6), 8.5(4), 9.2(5), 12.1(6)c,d

Social security **495**—9.6, 12.7(2), 13.1(3), 13.2(12)

Teachers, *see School/College Employees above*

Terminations, employee **495**—4.3(9), 6.5(7), 7.1(1)d, 7.1(3)e, 7.3, ch 9, 10.1(2), 11.2(4), 11.3–11.5, 12.6, 12.8(3), 12.8(4)j, 12.9(2), 13.1(3)

Vacations **495**—7.2(2)

Wages **495**—4.3, 5.2(13), ch 6, 8.1, 8.4, 8.5(1), 9.2(4), 10.2, 11.3(2)c, 12.1(4,7), 12.8

Warrants

Forgery claims **495**—11.6(3)

Replacement **495**—11.6(2)

PUBLIC EMPLOYMENT RELATIONS BOARD (PERB)

Address **621**—1.4

Amendments **621**—2.9, 3.7, 4.6

Appeals **481**—1.6“10”; **621**—1.3, 1.9(22), chs 9, 11

Bargaining units/representatives

See also Employee Organizations below

Determination **621**—1.2, ch 4

Elections **621**—4.2(5), 4.3, 4.6(3), ch 5

Complaints **621**—1.2, 1.3, 2.9, ch 3, 7.7(5), 8.6

Contested cases, *see Hearings below*

Declaratory orders **621**—2.20, 2.21, 7.7(5), ch 10

PUBLIC EMPLOYMENT RELATIONS BOARD (PERB) (cont'd)

- Definitions **621**—1.6, 1.9(1), 6.3(1), 12.1
- Elections, *see Bargaining Units/Representatives above*
- Employee organizations
- Bonds **621**—8.3
 - Disclaimers **621**—5.7
 - Elections **621**—5.1(4,5), 5.4, 5.6, 5.7“d,” 5.8, 6.4
 - Petitions **621**—4.3–4.7
 - Registration **621**—8.1
 - Reports **621**—8.1, 8.2, 8.4(2,3), 8.5
 - Trusteeships **621**—8.4
- Fees **621**—1.8, 7.3(7), 7.4(9), 7.5(10)
- Forms **621**—2.13, 2.14, 3.1, 4.1(1), 4.2(1), 4.3(1), 4.4(2), 6.5, 8.1(2), 8.2(2), 11.5(2)“1”
- Hearings **621**—1.3, 1.9(10), ch 2, 4.2(3), 4.4(5), 5.4(2), 5.7“c,” 6.3(3), 7.4–7.7, ch 9, 11.5–11.8
- Negotiations
- Agreements **621**—6.1, 6.4, 6.5
 - Consolidation **621**—6.2
 - Disputes **621**—6.3, 7.4, 7.7(5)
 - Impasse procedures **621**—1.2, 6.3(2), ch 7
- Purpose **621**—1.2
- Records, *generally*, public/fair information **621**—ch 12
- Reports **621**—6.5, 7.4(6–8), 8.1, 8.2, 8.4(2,3), 8.5
- Rule making **621**—1.5, 1.9
- Settlement, informal **621**—1.3, 3.10, 3.11, 4.2(6)

PUBLIC HEALTH DEPARTMENT

Abuse

- Domestic, review team **641**—ch 91, 175.13(2)c(3), 175.14(3)b, 175.15(2)c(2)
 - Education review panel **641**—ch 93
- Address **641**—1.3, 9.12, 11.18(2), 12.3(2)d, 12.12, 12.21, 15.6(2)d(3,11), 15.14(2), 20.3, 21.3, 22.9(3,11), 70.10(4), 72.2(2), 73.3, 73.12(8,12), 73.13(17), 73.23, 74.1, 74.2, 74.12(1), 75.8(3,11), 76.2, 80.5(3,4), 87.7(7,11), 87.8(3,4), 132.10, 132.14(2), 135.2(1)b, 135.3(2,6,14), 136.2(1)b,d, 136.3(2,6,14), 137.2(1)c, 155.16, 170.5, 170.8, 172.1, 176.8(1), 177.8, 178.1(5)d, 202.4, 202.7
- Adjudicative proceedings, emergency **641**—132.10(17), 173.31
- Administrative divisions **641**—170.4
- Adoption registry **641**—ch 107
- Advisory bodies **641**—chs 55, 191

PUBLIC HEALTH DEPARTMENT (cont'd)

AIDS, *see Diseases below*

Appeals **641**—1.9(7), 1.12(7), 1.13(5), 9.13, 9.14, 12.20, 15.6(2)d, 15.14, 22.9, 56.9, 69.10(4), 70.10(6), 72.4, 73.12, 73.13, 74.12, 75.8, 76.17, 80.5, 85.9, 87.8, 110.11(8), 110.16(8), 132.10, 132.14(6), 133.5, 134.3(11,12,15,16), 135.3(10–15), 137.4, 143.6, 173.25, 173.27, 175.15(5), 176.8, 201.17, 201.28, *see also Hearings below*

Attorney general **61**—1.3(2)c

Autopsies, *see Children below*

Biological agent risk assessment **641**—ch 112

Birth

Certificates, *see BIRTH*

Congenital/inherited disorders **641**—ch 4, 175.13(2)e(4,5)

Low-income assistance **641**—ch 76

Maternal deaths **641**—ch 5

Newborns/infants, hearing screening **641**—ch 3

Obstetrical care **641**—ch 75

Boards

*See also PROFESSIONAL LICENSURE DIVISION**

Licensing **641**—170.4(1), 175.14(2)b

Local **641**—1.9(5,10), 1.12, 1.13(8)a,b, 7.8(2,3), 7.9, 15.6, 15.13, chs 24, 72, 77, 78, 80, 143

Medical decision-making **641**—chs 84, 85

State **641**—ch 84, 155.1, 155.5, 155.8, 155.10(3), 158.8, 158.9, 170.2, 170.3, *see also Hearings below*

Brain injury services program **641**—ch 56

Brain/spinal cord injury, central registry **641**—ch 21, 170.4(3), 175.13(2)c(1), *see also Head Injuries, Advisory Council below; MENTAL HEALTH*

Camps, migratory **641**—ch 81

Certificate of need

Generally **641**—chs 202, 203

Address **641**—202.4, 202.7

Application **641**—202.1(3), 202.4–202.8, 202.14

Definitions **641**—202.1, 203.1(2), 203.2(2), 203.3(2), 203.4(2), 203.5(2), 203.7(2), 203.8(2), 203.9(2), 203.10(2), 203.11(2), 203.12(2), 203.13(2)

Extension requests, approval/denial **641**—202.8, 202.13

Health facilities council **641**—202.8(1)d

Hearings **641**—202.6, 202.9

*Rules 645—chs 6–18 apply to all professional licensure boards

*PUBLIC HEALTH DEPARTMENT (cont'd)**Certificate of need*

Letter of intent **641**—202.2, 202.3

Project

Application changes **641**—202.14

Progress reports **641**—202.12

Review, letter of intent **641**—202.3

Records **641**—175.14(1)g

Sanctions **641**—202.14(3), 202.15

Standards

Acute care **641**—203.1

Cardiac care **641**—203.2

Financial feasibility **641**—203.8

Long-term care **641**—203.5

Magnetic resonance imaging (MRI) **641**—203.12

Mentally retarded care **641**—203.6

Obstetric/neonatal care **641**—203.9

Pediatrics **641**—203.10

Radiation/radiotherapy **641**—203.3

Renal disease facilities **641**—203.7

Substance abuse treatment **641**—203.11

Tomography **641**—203.4, 203.13

Summary review, eligibility **641**—202.7

Children

*See also Birth above; Immunization below; Substance Abuse Treatment Programs:
Juveniles below; WIC (Women/Infants/Children) Program below*

Autopsies, infant **641**—127.3(1)d

Death review teams/committee **641**—chs 90–92, 175.13(2)e(2), 175.15(2)e(5)

Empowerment board **349**—1.6

Fatality review committee **641**—ch 92

HFI program **641**—ch 87

Indigents **641**—ch 75

Maternal/child health program **641**—ch 76

Protection grants **641**—ch 94

Support, noncompliance **641**—ch 192

Condoms, *see Diseases: Prophylactics, Sales below*

Confidentiality, *see Records below*

Conflict of interest **641**—55.6

Contested cases **641**—ch 173, 178.1(5)*b*, 178.1(9)

Deaths

Infants/fetuses **641**—127.1“6,9,” 127.3(1)*d*

Records/reports **641**—1.6(7), 1.11, ch 5, 15.4(7), 15.51(6), 98.2, 99.12, ch 101, 102.1(2), 127.1, 127.2, 175.13(2)*b*

Review teams/committee, *see Children above*

Declaratory orders **641**—ch 172

Defibrillator program/training **641**—131.1, 132.1, 139.1, 139.6, ch 143

Definitions **641**—1.1, 1.12, 3.1, 6.1, 7.1, 9.2, 11.17, 11.46, 11.84, 12.2, 14.3, 20.2, 21.2, 22.2, 24.2, 41.1(2,11), 50.2, 51.2, 56.1, 71.2, 72.1, 73.5, 75.1, 76.4, 80.2, 85.2, 87.2, 94.2, 96.1, 107.1, 141.1, 170.1, 176.2, 178.1(1), 193.1, 195.1, *see also Certificate of Need above; Organized Delivery Systems (ODSs) below; Records below; Substance Abuse Treatment Programs below; Swimming Pools/Spas below; EMERGENCY MEDICAL CARE; RADIATION MACHINES AND RADIOACTIVE MATERIALS*

Dental/health services **641**—ch 50, *see also Maternal/Child Health (MCH) Program below*

Diabetes education, *see Diseases below*

Director, duties **191**—35.36; **349**—1.6; **641**—1.2, 1.9(6,7), 12.17, ch 124, 130.3, 132.8(9), 136.2(7)*c*, 170.3

Disaster response teams **641**—ch 113

Diseases

See also DISEASES

Acquired immune deficiency syndrome (AIDS) **641**—1.3(1)*a*, ch 11, 175.13(2)*a*(4), 175.14(1)*e*

Biological agents **641**—ch 112

Communicable **641**—chs 1, 7, 11, 132.8(5)*b*, *see also subheadings Death below; Records below*

Congenital/inherited disorders **641**—ch 4

Death **641**—1.6(7), 1.11, 101.5(5), 127.1“3,” *see also Deaths: Records/Reports above*

Diabetes education **441**—78.31(4)*f*; **641**—ch 9

Division, prevention **641**—170.4(3)

Hepatitis C programs **641**—ch 2

Immunization **641**—ch 7

Isolation/quarantine **641**—1.1, 1.8, 1.9, 1.12, 1.13

Prophylactics, sales **641**—ch 6

Records **641**—11.74(7), 175.13(2)*d,e*, 175.14(5)*g*, *see also Renal this subheading below*

Reporting, *see DISEASE*

*PUBLIC HEALTH DEPARTMENT (cont'd)**Diseases*

- Sexually transmitted **641**—175.13(2)a(3,4), 175.14(1)b
- Venereal **641**—1.3(1)a, 1.5(2)
- Disinterment **641**—ch 101
- District boards/departments **641**—ch 78
- Divisions **641**—170.4, 175.14, 175.15(2)
- Drug testing, *see Laboratories below*
- Embalming facilities **641**—ch 86
- Emergency medical care, *see PAC (Preparedness Advisory Committee below; EMERGENCY MEDICAL CARE)*
- Eyeglasses **641**—ch 121
- Facilities council, health **641**—202.8(1)d
- Family planning **641**—ch 74, 170.4(4)
- Fluoridation, grants **641**—ch 20
- Food program, women/children, *see WIC (Women/Infants/Children) Program below*
- Gambling treatment program **641**—ch 162, *see also GAMBLING*
- Genetics, services **641**—4.5, 4.6
- Grants, *see GRANTS*
- Head injuries, advisory council **641**—ch 55
- Health care facilities **641**—chs 202–204, *see also Certificate Of Need above*
- Health care providers, volunteer program **641**—ch 88
- Health planning office **641**—170.4(2)
- Health promotion/chronic diseases prevention division **641**—170.4(4), 175.14(5)
- Healthy opportunities for parents to experience success/healthy families Iowa (HOPES/HFI) program **641**—ch 87
- Hearings **481**—1.6“8”; **641**—1.9(7), 9.14, 22.9, 38.9(4,8), 69.10(3)e–g, 69.10(4)c, 73.12, 73.13, 75.8, 88.10, 88.12, 88.13, 133.5, 134.3(7–9,14), 135.3(6–8), 137.4, 150.11(8), 155.11(5), 155.12, 155.13, 158.5, ch 173, 176.8, 178.1(9), 201.25(2)b, 201.27, *see also Appeals above; Certificate of Need above*
- Home care aide services **641**—11.35(1)b, ch 80, 170.4(4)
- Hospitals **641**—3.8, ch 21, 75.6, chs 134–136, 150, chs 202–204, *see also Certificate Of Need above; HOSPITALS*
- Immunization **641**—ch 7, 175.13(2)a(8)
- Impaired practitioner review committee **641**—ch 193
- Information **641**—170.8, *see also Records below*
- Injuries, agricultural/occupational **641**—1.3(1)c,d
- Laboratories
 - Clinical, reports **641**—1.3(1)e, ch 3
 - Congenital/inherited disorders **641**—4.3(5), 4.4
 - Drug tests **641**—ch 12, 170.4(3), *see Substance Abuse Treatment Programs: Tests below*
 - HIV (human immunodeficiency virus) **641**—11.16–11.19, 11.21–11.31

PUBLIC HEALTH DEPARTMENT (cont'd)

Lead

- Abatement **641**—ch 72
- Hazard notification **641**—ch 69
- Poisonings, records **641**—175.14(4)*c,d*
- Professionals, certification **641**—ch 70
- Tests, blood **441**—78.44; **641**—1.3(1)*e*(1), 72.2(3)*c,e*
- Licensure, professional **641**—170.4(1), chs 192, 195, *see also specific profession*
- Long-term care **641**—202.1(9,13), 203.5, *see also ELDER AFFAIRS DEPARTMENT; INSURANCE*
- Maternal/child health (MCH) program **641**—ch 76, 175.14(5)*a*
- Medical decision-making boards **641**—chs 84, 85, 175.15(2)*c*(3)
- Medical examiners
 - See also MEDICAL EXAMINERS*
 - County **641**—1.6(7), ch 127
 - State **641**—chs 124–126
- Mental retardation, care facilities **641**—203.6
- Migratory labor **641**—73.15, ch 81
- Multicultural health office **641**—ch 82
- Nurses, *see NURSES*
- Obstetrical/newborn/orthopedic care, indigents **641**—chs 75
- Organization **641**—ch 170
- Organized delivery systems (ODSs)
 - See also INSURANCE*
 - Accountability **641**—201.8
 - Antitrust, application/approval **641**—201.20–201.30
 - Appeals **641**—201.17, 201.18, 201.28
 - Applications
 - Antitrust **641**—201.22(5), 201.23–201.27
 - License **641**—201.3, 201.17
 - Bond **641**—201.12(3)
 - Complaints **641**—201.7
 - Definitions **641**—201.2, 201.21
 - Emergency care **641**—201.5(3), 201.6(6)
 - Finances **641**—201.3“6,” 201.8(5), 201.12
 - Illness, terminal **641**—201.6(10)
 - Investments **641**—201.13
 - Organization **641**—201.4, 201.16
 - Ownership, transfer **641**—201.16(2), 201.22(1)

*PUBLIC HEALTH DEPARTMENT (cont'd)**Organized delivery systems (ODSs)*

- Pregnancy **641**—201.6(9)
- Providers **641**—201.6
- Rates **641**—201.14
- Reports **641**—201.6(8), 201.8(3), 201.9, 201.11
- Reviews **641**—201.2, 201.6(11,12), 201.18
- Service area/access **641**—201.5, 201.26(2)c
- Solvency **641**—201.8(5), 201.12
- Standards **641**—201.6, 201.10

- PAC (preparedness advisory committee) **641**—ch 114
- Paramedics **641**—ch 132, *see also EMERGENCY MEDICAL CARE*
- Perinatal health care, regionalized system **641**—ch 150
- Pesticides
 - Information systems **641**—ch 71
 - Tests, blood **641**—1.3(1)f
- Physicians, volunteer program **641**—ch 88
- Plumbing and mechanical systems examining board **641**—ch 27
- Plumbing, uniform code **641**—ch 25, *see also PLUMBING CODE*
- Pregnancy, termination, report **641**—ch 106
- PRIMECARRE (primary care provider recruitment/retention endeavor) **641**—ch 110
- Procurements **261**—ch 54; **541**—ch 10
- Prophylactics, *see Diseases above*
- Radiation equipment/materials **641**—chs 38–46, 170.4(3), 175.14(4)b, 175.15(2)d, *see also RADIATION MACHINES AND RADIOACTIVE MATERIALS; X-RAYS*
- Records
 - See also Registries below*
 - Generally*, public/fair information **641**—ch 175
 - Address **641**—175.3
 - Agendas/minutes **641**—175.15(2)
 - Confidential **641**—3.10, 12.6(1)f, 12.8, 21.6, 96.6, 96.8, 100.7, ch 103, 106.4, 132.10(2), 136.2(5), 138.2(4), 156.3(14), 175.1, 175.7, 175.10–175.15, 177.6, 192.3
 - Data processing **641**—73.20, 175.14, 175.16
 - Definitions **641**—175.1, 175.10(1)
 - Disclaimer **641**—175.17
 - Disclosure **641**—175.7, 175.9–175.11
 - Fees **641**—175.3(7), 177.5

PUBLIC HEALTH DEPARTMENT (cont'd)

Records

Health

- Data, collection **641**—170.4(3), ch 177
- Health promotion/chronic disease prevention division **641**—175.14(1)
- Protection **641**—170.4(3)

Hearings

- Administration **481**—1.6“8”; **641**—173.24
- Diabetes education **641**—9.14(4)
- Indigents, newborn **641**—75.8(8)
- WIC (women/infants/children) program **641**—73.12(9), 73.13(14)

Open **641**—39.4(24)e, 72.2(2), 96.6, 175.2, 175.3, 175.9, 175.15, 178.1(11)

Personally identifiable information **641**—175.14

Personnel **641**—175.14(1)f

Rule-making **641**—171.1(2), 175.15(1)

Substance abuse **641**—175.14(3)a

Vital statistics **641**—175.13(2)b, 175.14(2)a, *see also VITAL STATISTICS*

Women/infants/children (WIC) food program **641**—73.7(5,6), 73.12(9)

Registrars **641**—chs 95, 96, 98, 99, 103, 104, 107

Registries

- Adoption **641**—ch 107
- Brain/spinal cord injuries **641**—ch 21
- Congenital/inherited disorders **641**—4.7
- Immunization **641**—7.11
- Trauma **641**—ch 136

Renal disease, *see Diseases above*

Resuscitation orders (OOH DNR) **641**—ch 142

Rule making **641**—chs 171, 174, 175.15(1), ch 178

Rural health/primary care center **641**—ch 110

Sanitation

- Buildings **641**—ch 17
- Swimming pools, *see Swimming Pools/Spas subheadings Chemicals; Facilities below*

Smokefree air Act **641**—ch 153

Spas, *see Swimming Pools/Spas below*

Student loan default/noncompliance **283**—ch 37; **641**—ch 195

Substance abuse treatment programs

See also Laboratories above

Accreditation **641**—155.11(1)e, 155.18, 155.35(17)

Administration **641**—170.4(5)

*PUBLIC HEALTH DEPARTMENT (cont'd)**Substance abuse treatment programs*

- Admission/assessment/evaluation **441**—78.31(4)*a*; **641**—155.21(7)*d*, 155.21(11), 155.25, 155.35(4,5,14), 156.3(7–9,13)
- Community-based **201**—ch 47
- Complaints, investigations/reports **641**—155.16, 155.18(4)*b*, 155.35(16), 155.35(17)*d*
- Correctional facilities **201**—ch 47; **641**—ch 156
- Definitions **641**—155.1, 155.25(1), 155.35(1,3), 156.1, 157.1
- Facilities **571**—15.4; **641**—155.1, 155.2, 155.21(21–23), 155.22, 155.23(7), 155.25(17,18), 156.3(17), 202.1(6), 203.11
- Fire/tornado safety, *see Safety this subheading below*
- Food assistance benefits **441**—65.9
- Food service **641**—155.22(1)*a,b*, 155.23(2)
- Funds **641**—155.19
- Governing body **641**—155.21(1)
- Housing, transitional, loan program **265**—ch 23
- Inspections **641**—155.3(2), 155.5(4), 155.7, 155.10, 155.16, 155.20, 155.22(1), 156.2
- Juveniles **641**—155.21(9)*b*, 155.21(21)*d*(4)“3,” 155.24, 155.25(11)
- Licensure
 - Application **641**—155.5, 155.6
 - Assessment/evaluation programs **641**—155.5(2)
 - Categories **641**—155.2
 - Closure, facility **641**—155.4
 - Correctional facilities **201**—47.1(5); **641**—ch 156
 - Deemed status **641**—155.18(3), 155.35(17)*c*
 - Denial **641**—155.10, 155.12–155.15
 - Effective date **641**—155.7(3)
 - Employees, fishing **571**—15.4(2)*d*
 - Inspections, *see Inspections this subheading above*
 - Opioid programs **641**—155.35(2)
 - Renewal **641**—155.3, 155.5(3), 155.8, 155.11, 155.15
 - Suspension/revocation **641**—155.11, 155.12, 155.15, 155.35(16)
 - Temporary (initial) **641**—155.3, 155.9
- Medical assistance **441**—78.31(1–3), 78.31(4)*a*, 79.1(5)*b,r*, 79.1(16)*b*(5), ch 88 Div. IV; **641**—155.25(6), *see also HUMAN SERVICES DEPARTMENT: Medical Assistance (Medicaid): Iowa Plan for Behavioral Health*
- Medical services **641**—155.21(15–17), 155.25(15), 155.35(1,11), 156.3(3)
- Medications **641**—155.21(18), 155.35(9–11,13), 156.3(16)
- Opioid **641**—155.35
- Outpatient **441**—78.31(1–3), 78.31(4)*a*; **641**—155.21(22), 155.25(18)
- OWI, *see ALCOHOL*

PUBLIC HEALTH DEPARTMENT (cont'd)

Substance abuse treatment programs

- Permits, fishing **571**—15.4
- Personnel
 - Child abuse **641**—155.21(9), 155.25(11)
 - Corrections facilities **641**—156.3(2)
 - Juvenile facilities **641**—155.24(5)
 - Outpatient services **441**—78.31(4)a(3)
 - Policies **641**—155.21(8,9), 155.25(9)
 - Training **641**—155.21(4), 155.25(5,10), 156.3(6)
- Prisoners **201**—50.15(5), *see also Correctional Facilities this subheading above*
- Records **641**—155.4, 155.12(2), 155.16(5), 155.21(8)g,h, 155.21(9–14), 155.21(15)d, 155.21(18)b, 155.23(5,8), 155.25(9)e, 155.25(12,14), 155.35(4)c, 155.35(5–7,9), 155.35(10)b, 155.35(12), 156.3(4,8,10,11,14), 157.6, 157.7, 175.14(3)a
- Rehabilitative services **641**—155.35(8), *see also Medical Services above*
- Reports **441**—65.9; **641**—155.9, 155.16(3,4), 155.21(5,9), 155.23(7)f, 155.25(2,11), 155.25(18)c, 155.35(17)c(3,7), 155.35(17)e
- Safety **641**—155.21(11)c(8), 155.21(21,22), 155.22, 155.23(7)e,f, 155.25(17)
- Service areas **641**—ch 158
- Standards **201**—47.1(5); **641**—155.21–155.25, 155.35, 156.3, ch 157, 203.11
- Technical assistance **641**—155.5, 155.7(1)
- Tests **641**—155.21(15), 155.35(4)d, 155.35(5)g, 155.35(10)e, 155.35(11)
- Swimming pools/spas
 - Accidents **641**—15.4(6)l, 15.4(7), 15.51(6)
 - Apartments/condominiums/homeowners associations **641**—15.1(1), 15.4(2)e(1), 15.4(4)d(10), 15.4(4)l(4), 15.4(6)a, 15.5(13)i(5), 15.5(21)a, 15.51(4)k(4), 15.52(12)e(4)
 - Appeals **641**—15.6(2)d, 15.14
 - Chemicals **641**—15.4(2,3), 15.4(4)a,n, 15.4(6)j(1), 15.4(6)g,k,l, 15.5(11,12), 15.51(2–4), 15.52(11)
 - Construction **641**—15.5, 15.12(4), 15.52
 - Definitions **641**—15.3
 - Diving **641**—15.4(4)c, 15.4(4)j(6), 15.4(6)b, 15.5(13)
 - Exemptions **641**—15.4(6)a
 - Facilities **641**—15.4(5), 15.5(21), *see also Construction this subheading above*
 - Fountains **641**—15.5(7)e
 - Inspection **641**—15.4(6)f,g,m, 15.6, 15.12, 15.13
 - Leisure rivers **641**—15.4(4)j(5), 15.5(20)
 - Lifeguards/equipment **641**—15.4(4)d–f, 15.4(6)d,m, 15.5(13)g,h
 - Multisection water recreation **641**—15.5(18)
 - Operators **641**—15.4(6,7), 15.11, 15.51(5,6)

*PUBLIC HEALTH DEPARTMENT (cont'd)**Swimming pools/spas*

- Penalties **641**—15.8, 15.12(1), 15.12(3)*d*
- Registration **641**—15.6(2)*d*, 15.9, 15.12(1,2), 170.4(3)
- Residential, commercial use **641**—15.3(1), 15.4(6)*n*, 15.12(3)*a*
- Safety **641**—15.4(4), 15.5(13), 15.51(4), 15.52(12), *see also Accidents this subheading above*
- Signs/markers **641**—15.4(4)*i,j,n*, 15.4(6), 15.5(13)*f*(6), 15.51(5)
- Spas **641**—15.51, 15.52
- Spray pads **641**—15.4(4)*d*, 15.4(4)*l*(1), 15.5(19)
- Training **641**—15.4(6)*l*, 15.10, 15.11, 15.12(5)
- Variances **641**—15.7
- Wading pools **641**—15.3, 15.4(1)*f*, 15.4(4)*d,j,l*, 15.4(6)*d*, 15.5(3)*a*, 15.5(5)*b*, 15.5(8)*b*, 15.5(13)*i*, 15.5(14), 15.12
- Water slides **641**—15.3, 15.4(4)*d*(5), 15.4(4)*o*, 15.4(6)*e*, 15.5(5)*b*, 15.5(7)*e*, 15.5(17), 15.12
- Wave pools **641**—15.3, 15.4(4)*i*(4), 15.4(4)*j*, 15.4(4)*l*(6), 15.5(5)*b*, 15.5(8)*c*, 15.5(15), 15.12
- Zero-depth **641**—15.5(8)*c*, 15.5(16)
- Tanning facilities **641**—ch 46
- Tattoo establishments **641**—ch 22
- Tobacco use, control/prevention **641**—chs 151, 152
- Vital statistics **641**—chs 95, 96, 98–104, 170.4(1), 175.13(2)*b*, 175.14(2)*a*, 175.15(4), *see also VITAL STATISTICS*
- Volunteer health care providers **641**—ch 88
- Waivers, rules **641**—ch 178
- Water
 - See also WATER*
 - Spas/pools **641**—ch 15
 - Supplies **641**—15.4(1)*d*, 15.5(3)*d*, 15.51(1)*g*, 15.52(3)*e*, chs 20, 24, 81
 - Treatment, residential sales/tests **641**—ch 14
 - Wells, private **641**—ch 24
- WIC (women/infants/children) program
 - See also WOMEN*
 - Generally* **641**—ch 73
 - Abuse, child **641**—73.11(2)
 - Appeals/hearings **641**—73.12, 73.13, 73.22(4), 73.24
 - Audits **641**—73.17
 - Caseload **641**—73.22
 - Confidentiality **641**—73.7(7), 73.11(2)*a*

PUBLIC HEALTH DEPARTMENT (*cont'd*)*WIC (women/infants/children) program*

Contracts, agency 641—73.15, 73.20–73.23
Definitions 641—73.5, 76.4
Documents, distribution/redemption 641—73.8
Education, nutrition 641—73.10
Eligibility, benefits 641—73.7, 73.22, 73.24
Federal regulations 641—73.2–73.4, 73.7, 73.9, 73.12(5), 73.19(2)*efhln*, 73.21,
73.22, 73.24
Food packages 641—73.9
Health services 641—73.11
Outreach 641—73.21
Policies/procedures 641—73.7(2,4), 73.8(2), 73.9(2), 73.10(2), 73.11(2), 73.18, 73.20
Records/reports 641—73.7(5–7), 73.12(9), 73.14, 73.18, 175.14(5)*b*
Reviews, contract agency operations 641—73.14
Staff 641—73.6, 73.10(2)
Vendors 641—73.8, 73.12, 73.19
Violations 641—73.19

PUBLIC INSTRUCTION DEPARTMENT*See EDUCATION***PUBLIC RECORDS***See FAIR INFORMATION PRACTICES***PUBLIC SAFETY DEPARTMENT**

Addresses 661—1.3, 5.10, 10.103(3), 10.105, 10.106(2), 20.3(6), 20.5(3), 25.3, 28.1,
35.2, 53.1, 89.101, 121.1, 156.5, 156.10, 157.2(1), 259.103(1), 275.1(4),
275.6, 372.2(1), 400.6, 403.1, 403.2
Adjudicative proceedings, emergency 661—10.331
Alcohol/blood tests, *see Crime below*
Alarm system contractors/installers 661—ch 277
Appeals/hearings 486—ch 6; 661—5.11(8), 10.325, 10.327, 83.3(5), 121.20, 224.9,
251.204(4), 259.204(4), 275.7(5)*f*, 275.7(6), 372.5(4)*f*
Attorney general, assistance 661—1.6
Bail enforcement 661—ch 121
Building code 661—chs 16, 300–303, 322, 323, 350, 372, 374, *see also BUILDINGS*
Cigarettes, reduced ignition propensity 661—ch 61
Confidentiality, *see Records below*
Contested cases 661—10.301–10.332, 401.301–401.314, *see also Appeals/Hearings above*

Crime

See also Missing Persons below

Criminal investigation

Alcohol/drug tests **661**—7.8, 150.3(2,3,11), ch 157

Criminalistics laboratory **661**—1.2(6), 7.8(2), 95.1–95.9, chs 150, 156, 157.4, 157.5(1)

Division **661**—1.2(6)

Identification section

Generally **661**—11.1

Fingerprints **661**—11.2, 11.7–11.9, 11.19

Information, access **661**—1.2(4), ch 8, 11.3–11.5, 11.12, 11.14, 11.15, 11.17, 11.18, 11.20, 11.21

Narcotics enforcement **661**—1.2(8), ch 28, 174.2

Sex offenders registry **201**—38.3(8); **661**—ch 83

Surveillance systems, casinos **661**—ch 141

Declaratory orders **661**—10.101–10.112, 401.201

Definitions **661**—10.1, 10.302, 11.2, 25.1, 25.10, 35.1, 81.1, 83.2, 89.102, 91.1, 121.2, 141.1, 277.2, 400.2, *see also BUILDINGS: Building Code; FIRE AND FIRE PROTECTION*

Divisions **661**—1.2, 1.3

DNA

Database **661**—ch 156

Examination/profiling **661**—150.3(4,5)

Drug tests, *see Crime above*

Electrical examining board, *see FIRE AND FIRE PROTECTION: Fire Marshal*

Emergency service providers, volunteer, benefits **661**—ch 291

Employees

Claims **661**—ch 41

Complaints **661**—11.17, ch 35

Dismissal **486**—ch 6, *see also ADMINISTRATIVE SERVICES DEPARTMENT (DAS): Human Resources Enterprise: Staff/Force Reduction*

Peace officers **11**—100.3(3), 101.11; **486**—ch 6; **495**—4.6(4)g, 5.2(37,39); **661**—chs 400–404

Photographs, release **661**—25.15

Explosives, *see FIRE AND FIRE PROTECTION*

Fees, *see Private Investigation/Security/Bail Enforcement Business below; Records below*

Firearms, *see Weapons below*

PUBLIC SAFETY DEPARTMENT (cont'd)

- Fire safety standards, buildings/gases, *see FIRE AND FIRE PROTECTION*
- Fire service training bureau **661**—chs 53, 251, 259
- Governor's traffic safety bureau **661**—ch 20
- Hearings, *see Appeals/Hearings above; Contested Cases above*
- Highway patrol **661**—1.2(2)
- Law enforcement administrator's telecommunications advisory committee (LEATAC)
661—ch 15
- Marijuana, eradication **661**—ch 28
- Medical examiner, interagency coordinating council **641**—ch 124
- Missing persons
 - Education/prevention, materials/programs **661**—89.102, 89.104, 89.105
 - Information
 - Open records **661**—89.105
 - Telephone, toll-free **661**—89.103(1)
 - Reports **661**—89.102, 89.103, 89.107
- Narcotics division **661**—1.2(8), ch 28, 174.2
- Organization **661**—1.2
- Parking, disabled **661**—ch 18
- Peace officers, *see Employees above*
- Private investigation/security/bail enforcement business
 - Advertising **661**—121.13
 - Background investigations **661**—121.2, 121.5
 - Badges/uniforms **661**—121.12
 - Continuing education **661**—121.22
 - Definitions **661**—121.2
 - Fees **661**—121.4(4)*b,f*, 121.6(1)*c*, 121.7, 121.11(1,3), 121.23(2)*c,h,i*
 - Financial responsibility **661**—121.4(4)*g*, 121.4(6)
 - Fingerprint cards **661**—121.6(1)*c*, 121.7(2), 121.10, 121.11(1), 121.23(2)*c*
 - Identification cards **661**—121.4(3)*b,h*, 121.4(4)*f*, 121.6, 121.11–121.13, 121.16, 121.17, 121.21, 121.22(6)*c*, 121.23(2)*i*, 121.23(3)
 - Indigent defense claims **481**—9.5(1)
- License
 - Applications **661**—121.1, 121.4, 121.7, 121.10, 121.23(2)*b*
 - Child support noncompliance **661**—121.21
 - Display **661**—121.8
 - Duplicate **661**—121.2, 121.9
 - Eligibility **661**—121.5
 - Exemptions **661**—121.3
 - Reciprocity **661**—121.23

*PUBLIC SAFETY DEPARTMENT (cont'd)**Private investigation/security/bail enforcement business**License*

Renewals **283**—37.1; **661**—121.10, 121.21(2), 121.22(5,6)

Replacement **661**—121.2

Suspension/revocation/denial **283**—37.1; **661**—121.7(1), 121.8, 121.11(1,4),
121.13, 121.16, 121.17, 121.21, 121.22(6)*b*

Loans, student, noncompliance **283**—37.1

Partnership **661**—121.3(14)*b,c*

Permits, temporary **661**—121.23

Reports **661**—121.15, 121.17

Services, taxation **701**—18.43, 26.69

Violations **661**—121.14, 121.17, *see also License: Suspension/Revocation/Denial above*

Weapons **661**—121.18, 121.19

Procurements **261**—ch 54; **541**—ch 10, *see also ADMINISTRATIVE SERVICES DEPARTMENT (DAS)*

Pseudoephedrine sales **661**—ch 174

Railway special agents **661**—ch 13

Records

Generally, public/fair information **661**—1.4(7), ch 25

Address **661**—5.10, 25.3

Changes **661**—25.6

Confidential **661**—5.10, 8.103, 11.3, 25.4, 25.5, 25.7, 25.9(2), 25.13

Crime **201**—38.3; **661**—1.2(6,7), chs 8, 11

Data processing **661**—25.12

Definitions **661**—11.2, 25.1, 25.10(1)

Fees **661**—10.324, 11.4, 11.15, 25.3(7)

Fire marshal **661**—5.10

Hearings **661**—10.324

Open **661**—1.4, 5.10, 25.3, 25.9(1), 89.105

Personnel **661**—25.13“6”

Rule-making **661**—10.213

Reports **541**—10.3; **661**—1.4, 6.4(2), 25.13, *see also Missing Persons above*

Rule making **661**—1.4(4), 1.8, 5.15, 10.201–10.222, 401.101–401.113

Sheriffs, uniforms **661**—ch 3, *see also SHERIFFS*

Surveillance, casino systems, *see Crime above*

Telephone service, E911 **605**—10.7, 10.9(7,8), 10.11, 10.12

Vehicle impoundment **661**—ch 6

Weapons

Criminalistics laboratory, firearms **661**—150.3(6)

Disposition **661**—95.1–95.9, 95.11

Offensive, collectors' items **661**—91.7

PUBLIC SAFETY DEPARTMENT (cont'd)

Weapons

Permits/identification cards **661**—13.10, 13.11, ch 96, 121.19

Purchase/transfer **661**—91.5

Training programs **661**—91.2, 91.3, 121.18

PUBLIC TRANSIT

See TRANSPORTATION DEPARTMENT

PURCHASING

Human services, provider contracts, *see HUMAN SERVICES DEPARTMENT*

Regents institutions **681**—chs 7, 8, *see also REGENTS BOARD*

State agencies, *generally*, *see ADMINISTRATIVE SERVICES DEPARTMENT (DAS); BIDS AND BIDDING*

Transportation department, equipment/supplies **761**—ch 20