

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

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

a. A confinement feeding operation structure, other than an unformed manure storage structure, if the structure is part of a small animal feeding operation or if the stockpile consists of dry manure originating from a small animal feeding operation.

b. A confinement feeding operation structure which is constructed or expanded, if the titleholder of the land benefiting from the distance separation requirement executes a written waiver with the titleholder of the land where the structure, stockpile or qualified stockpile structure is located, under such terms and conditions that the parties negotiate. The written waiver becomes effective only upon the recording of the waiver in the office of the recorder of deeds of the county in which the benefited land is located. The benefited land is the land upon which is located the residence, business, church, school or public use area from which separation is required. The filed waiver shall preclude enforcement by the department of the separation distance requirements of Iowa Code section 459.202. A copy of the recorded waiver shall be submitted with the construction design statement pursuant to subrule 65.9(3) if a construction permit is not required or as part of the construction permit application documents pursuant to subrule 65.9(1).

c. A confinement feeding operation structure which is constructed or expanded closer than the separation distances required in subrules 65.11(1) and 65.11(2), including Tables 6 to 6d at the end of this chapter, if the residence, business, church or school was constructed or expanded after the date that the confinement feeding operation commenced operating or if the boundaries of the public use area or the city expanded after the date that the confinement feeding operation commenced operating. A confinement feeding operation commences operating when it is first occupied by animals. A change in ownership or expansion of the confinement feeding operation does not change the date the operation commenced operating.

d. The stockpile consists of dry manure originating exclusively from a confinement feeding operation that was constructed before January 1, 2006, unless the confinement feeding operation is expanded after that date.

65.12(2) *Exemptions to separation distance requirements from public thoroughfares.* As specified in Iowa Code section 459.205 as amended by 2009 Iowa Acts, House File 735, section 4, the separation required from thoroughfares specified in Iowa Code section 459.202 and summarized in Tables 6 to 6d at the end of this chapter shall not apply to any of the following:

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

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

65.12(3) *Exemptions to separation distance requirements for prior constructed operations and for operations that expand based on prior separation distance requirements.* As specified in Iowa Code section 459.203, a confinement feeding operation constructed or expanded prior to the date that a distance

requirement became effective under Iowa Code section 459.202 and which does not comply with the statute's distance requirement may continue to operate regardless of the distance requirement and may expand as provided in subrule 65.11(2).

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

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

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

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

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

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

(2) Either of the following:

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

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

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

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

(2) 1,000 animal units.

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

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

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

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

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

65.12(6) *Exemption to separation distance requirements from cemeteries.* As specified in Iowa Code section 459.205 as amended by 2009 Iowa Acts, House File 735, section 4, the separation distance required between a confinement feeding operation structure and a cemetery shall not apply if any of the following apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The replacement formed manure storage structure more likely than not provides a higher degree of environmental protection than the confinement feeding operation’s existing manure storage and handling facilities. If the formed manure storage structure will replace any existing manure storage

structure, the department shall, as a condition of granting the variance, require that the replaced manure storage structure be properly closed.

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

[ARC 8998B, IAB 8/11/10, effective 9/15/10]