

**567—65.12(455B) Exemptions to confinement feeding operation separation distance requirements.**

**65.12(1)** As specified in Iowa Code section 455B.165, the separation required from residences, businesses, churches, schools, public use areas and thoroughfares specified in Iowa Code section 455B.162 and summarized in Table 6 at the end of this chapter shall not apply to the following:

- a.* A confinement feeding operation structure which stores manure exclusively in a dry form.
- b.* A confinement feeding operation structure, other than an unformed manure storage structure, if the structure is part of a small animal feeding operation.
- c.* An animal 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 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 455B.162.
- d.* An animal feeding operation structure closer than the distances in Table 6 at the end of this chapter from a residence, business, church, school or public use area, if the residence, business, church, school or public use area was constructed or expanded after the date that the animal feeding operation commenced operating. An animal feeding operation commences operating when it is first occupied by animals. A change in ownership or expansion of the animal feeding operation does not change the date the operation commenced operating.

**65.12(2)** As specified in Iowa Code section 455B.165(4), the separation required from thoroughfares specified in Iowa Code section 455B.162(5) and summarized in Table 6 at the end of this chapter shall not apply if permanent vegetation stands between the animal feeding operation structure and that part of the right-of-way from which separation is required. The permanent vegetation must be at least seedlings of plants with mature height of at least 20 feet and stand along the full length of the structure. The minimum vegetation requirement shall be a single row of conifers or columnar deciduous trees on 12- to 16-foot spacing. It is recommended that the advice of a professional forester or nursery stock expert, a department district forester or the Natural Resource Conservation Service be sought to identify tree species for a specific site.

**65.12(3)** As specified in Iowa Code section 455B.163, the separation required from residences, businesses, churches, schools, public use areas and thoroughfares specified in Iowa Code section 455B.162 and summarized in Table 6 at the end of this chapter shall not apply to confinement feeding operations constructed before the effective date of the separation distance in the following cases:

- a.* The confinement feeding operation continues to operate, but does not expand.
- b.* The animal feeding operation structure as constructed or expanded prior to January 1, 1999, complies with the distance requirements applying to that structure at the time of construction or expansion.
- c.* The confinement feeding operation expands on or after January 1, 1999, and any of the following apply:
  - (1) The animal feeding operation structure as constructed or expanded complies with the separation requirements. The separation required shall be based on the animal weight capacity of the entire confinement feeding operation, including existing and proposed structures.
  - (2) All of the following apply to the expansion:
    1. No portion of the confinement feeding operation after expansion is closer than before expansion to a location or object for which separation is required.
    2. The animal weight capacity of the confinement feeding operation which did not comply with a separation requirement that went into effect on May 31, 1995, after expansion is not more than the lesser double its capacity on May 31, 1995, or of 625,000 pounds for animals other than bovine, or 1,600,000 pounds for bovine.
    3. The animal weight capacity of a confinement feeding operation which complied with the separation requirements that went into effect on May 1, 1995, but did not comply with a separation

requirement that went into effect on January 1, 1999, after expansion is not more than the lesser of double its capacity on January 1, 1999, or 625,000 pounds for animals other than bovine, or 1,600,000 pounds for bovine.

(3) The confinement feeding operation is expanded by replacing one or more unformed manure storage structures with one or more formed manure storage structures and all of the following apply:

1. The animal weight capacity of the portion of the operation that changes from unformed to formed manure storage does not increase.

2. Use of the replaced unformed manure storage structures is discontinued within one year after construction of the replacement formed manure storage structures.

3. The replacement formed manure storage structures do not provide more than 14 months of manure storage.

4. No portion of the operation after expansion is closer than before expansion to a location or object for which separation is required.

(NOTE: A construction permit is not required to construct the replacement formed manure storage structures if a permit would not be required for the construction if the unformed manure storage structures did not exist.)

**65.12(4)** As specified in Iowa Code section 455B.165(7), the separation required from a cemetery shall not apply to animal feeding operations structures on which construction or expansion began before January 1, 1999.

**65.12(5)** As specified in Iowa Code section 455B.204(3), the separation required from surface intakes, wellheads or cisterns of agricultural drainage wells, known sinkholes, major water sources and watercourses specified in Iowa Code section 455B.204 and summarized in Table 6 at the end of this chapter shall not apply to a farm pond, privately owned lake or a manure storage structure constructed with a secondary containment barrier according to subrule 65.15(17).

**65.12(6)** Variances to the well separation requirements may be granted by the director if the applicant provides an alternative that is substantially equivalent to the required separation or provides improved or greater protection for the well. Requests for a variance shall be made in writing at the time an application is submitted. The denial of a variance request may be appealed to the environmental protection commission.