IOWA ADMINISTRATIVE BULLETIN

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BLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

PREFACE

Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economic Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committee, Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analyses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper by the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Supreme Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7)]; Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice of Application and Hearing [524.1905(2)].

PLEASE NOTE: *Italics* indicate new material added to existing rules; ~~strike through letters~~ indicate deleted material.

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Iowa Administrative Bulletin

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Iowa Administrative Code

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CITATION of Administrative Rules

The Iowa Administrative Code shall be cited as (agency identification number) IAC (chapter, rule, subrule, lettered paragraph, or numbered subparagraph).

441 IAC 79	(Chapter)
441 IAC 79.1(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)"a"	(Paragraph)
441 IAC 79.1(1)"a"(1)	(Subparagraph)

The Iowa Administrative Bulletin shall be cited as IAB (volume), (number), (publication date), (page number), (ARC number).

IAB Vol. XII, No. 23 (5/16/90) p. 2050, ARC 872A

Schedule for Rule Making
2000

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 24 '99	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7	Jan. 26	Feb. 15	Mar. 1	Mar. 3	Mar. 22	Apr. 26	July 24
Jan. 21	Feb. 9	Feb. 29	Mar. 15	Mar. 17	Apr. 5	May 10	Aug. 7
Feb. 4	Feb. 23	Mar. 14	Mar. 29	Mar. 31	Apr. 19	May 24	Aug. 21
Feb. 18	Mar. 8	Mar. 28	Apr. 12	Apr. 14	May 3	June 7	Sept. 4
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Mar. 17	Apr. 5	Apr. 25	May 10	May 12	May 31	July 5	Oct. 2
Mar. 31	Apr. 19	May 9	May 24	May 26	June 14	July 19	Oct. 16
Apr. 14	May 3	May 23	June 7	June 9	June 28	Aug. 2	Oct. 30
Apr. 28	May 17	June 6	June 21	June 23	July 12	Aug. 16	Nov. 13
May 12	May 31	June 20	July 5	July 7	July 26	Aug. 30	Nov. 27
May 26	June 14	July 4	July 19	July 21	Aug. 9	Sept. 13	Dec. 11
June 9	June 28	July 18	Aug. 2	Aug. 4	Aug. 23	Sept. 27	Dec. 25
June 23	July 12	Aug. 1	Aug. 16	Aug. 18	Sept. 6	Oct. 11	Jan. 8 '01
July 7	July 26	Aug. 15	Aug. 30	Sept. 1	Sept. 20	Oct. 25	Jan. 22 '01
July 21	Aug. 9	Aug. 29	Sept. 13	Sept. 15	Oct. 4	Nov. 8	Feb. 5 '01
Aug. 4	Aug. 23	Sept. 12	Sept. 27	Sept. 29	Oct. 18	Nov. 22	Feb. 19 '01
Aug. 18	Sept. 6	Sept. 26	Oct. 11	Oct. 13	Nov. 1	Dec. 6	Mar. 5 '01
Sept. 1	Sept. 20	Oct. 10	Oct. 25	Oct. 27	Nov. 15	Dec. 20	Mar. 19 '01
Sept. 15	Oct. 4	Oct. 24	Nov. 8	Nov. 10	Nov. 29	Jan. 3 '01	Apr. 2 '01
Sept. 29	Oct. 18	Nov. 7	Nov. 22	Nov. 24	Dec. 13	Jan. 17 '01	Apr. 16 '01
Oct. 13	Nov. 1	Nov. 21	Dec. 6	Dec. 8	Dec. 27	Jan. 31 '01	Apr. 30 '01
Oct. 27	Nov. 15	Dec. 5	Dec. 20	Dec. 22	Jan. 10 '01	Feb. 14 '01	May 14 '01
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Dec. 8	Dec. 27	Jan. 16 '01	Jan. 31 '01	Feb. 2 '01	Feb. 21 '01	Mar. 28 '01	June 25 '01
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PRINTING SCHEDULE FOR IAB

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27	**Friday, June 23, 2000**	**July 12, 2000**
1	**Friday, July 7, 2000**	**July 26, 2000**
2	**Friday, July 21, 2000**	**August 9, 2000**

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can import documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the processing of rule-making documents, we request a 3.5" High Density (not Double Density) IBM PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, 1st Floor, Lucas State Office Building or included with the documents submitted to the Governor's Administrative Rules Coordinator.

2. Alternatively, if you have Internet E-mail access, you may send your document as an attachment to an E-mail message, addressed to both of the following:

bcarr@legis.state.ia.us
kbates@legis.state.ia.us

Please note that changes made prior to publication of the rule-making documents are reflected on the hard copy returned to agencies by the Governor's office, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously possible and is greatly appreciated.

***Guide to Rule Making,** June 1995 Edition,* available upon request to the Iowa Administrative Code Division, Lucas State Office Building, First Floor, Des Moines, Iowa 50319.

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)"b" by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iowa Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]		
Eradication of pseudorabies, 64.147, 64.151(3), 64.153(5), 64.154(2), 64.156, 64.157, 64.158, 64.160, 64.161 IAB 5/31/00 **ARC 9862A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	June 22, 2000 10 a.m.
CORRECTIONS DEPARTMENT[201]		
Newton correctional facility, ch 28 IAB 6/14/00 **ARC 9879A**	Second Floor Conference Room 420 Keo Way Des Moines, Iowa	July 5, 2000 11 a.m. to 1 p.m.
Fort Dodge correctional facility, ch 29 IAB 6/14/00 **ARC 9880A**	Second Floor Conference Room 420 Keo Way Des Moines, Iowa	July 5, 2000 11 a.m. to 1 p.m.
EDUCATION DEPARTMENT[281]		
Ineligible player participation, 36.14(7) IAB 5/31/00 **ARC 9854A**	State Board Room Grimes State Office Bldg. Des Moines, Iowa	June 20, 2000 1 p.m.
ELDER AFFAIRS DEPARTMENT[321]		
Iowa senior living program—home- and community-based services for seniors, ch 28 IAB 6/14/00 **ARC 9884A** (Also see **ARC 9864A** herein)	North Conference Room—3rd Floor Clemens Bldg. 200 Tenth St. Des Moines, Iowa	July 6, 2000 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Air quality; emissions standards, 22.1, 22.3. 22.4(1), 22.100, 22.106, 23.1, 23.2(3), 23.3(2), 24.1, 25.1(9) IAB 6/14/00 **ARC 9885A**	Conference Rooms 5-8 Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	July 20, 2000 1 p.m.
Drinking water standards; laboratory certification, amendments to chs 40 to 43, 83 IAB 6/14/00 **ARC 9888A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	July 6, 2000 10 a.m.
	Muse-Norris Conference Center North Iowa Area Community College 500 College Dr. Mason City, Iowa	July 7, 2000 10 a.m.
	Helen Wilson Gallery Washington Public Library 120 E. Main Washington, Iowa	July 14, 2000 10 a.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	July 18, 2000 10 a.m.
	Delaware County Community Center 200 E. Acres (at fairgrounds) Manchester, Iowa	July 19, 2000 10 a.m.
	Hansen Room, Siebens Forum Buena Vista University 4th and Grand Ave. Storm Lake, Iowa	July 20, 2000 10 a.m.
Water quality standards, 61.2, 61.3 IAB 5/17/00 **ARC 9839A**	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	June 15, 2000 11 a.m.
	Conference Room—5th Floor West Wallace State Office Bldg. Des Moines, Iowa	June 16, 2000 1 p.m.
Operator certification: public water supply systems and wastewater treatment and collection systems, ch 81 IAB 6/14/00 **ARC 9886A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	July 6, 2000 10 a.m.
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	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	July 18, 2000 10 a.m.
	Delaware County Community Center 200 E. Acres (at fairgrounds) Manchester, Iowa	July 19, 2000 10 a.m.
	Hansen Room, Siebens Forum Buena Vista University 4th and Grand Ave. Storm Lake, Iowa	July 20, 2000 10 a.m.

HUMAN SERVICES DEPARTMENT[441]

Skilled nursing and home health aide services; HCBS waivers, amendments to chs 77 to 79, 83 IAB 6/14/00 **ARC 9881A**	Conference Room—6th Floor Iowa Bldg., Suite 600 411 3rd St. SE Cedar Rapids, Iowa	July 11, 2000 9 a.m.
	Administrative Conference Room 417 E. Kanesville Blvd. Council Bluffs, Iowa	July 5, 2000 9 a.m.

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	Conference Room 102 City View Plaza 1200 University Des Moines, Iowa	July 10, 2000 10 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	July 7, 2000 11 a.m.
	Conference Room 3 120 E. Main Ottumwa, Iowa	July 6, 2000 10 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	July 7, 2000 2:30 p.m.
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	Large Conference Room Bicentennial Bldg.—5th Floor 428 Western Ave. Davenport, Iowa	July 10, 2000 11 a.m.
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	Conference Room 3 120 E. Main Ottumwa, Iowa	July 6, 2000 11 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	July 7, 2000 1:30 p.m.

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Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas."

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

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ARC 9879A

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 904.108(1)"k," the Department of Corrections gives Notice of Intended Action to rescind Chapter 28, "Correctional Release Center," and to adopt a new Chapter 28, "Newton Correctional Facility," Iowa Administrative Code.

These proposed rules provide for the days and hours of visits, tours, and offender trips at the Newton Correctional Facility.

Any interested person may make written suggestions or comments on the proposed amendment on or before July 5, 2000. Such written materials should be sent to the Director of Policy and Legal Services, Corrections Department, 420 Keo Way, Des Moines, Iowa 50309.

There will be a public hearing on July 5, 2000, from 11 a.m. to 1 p.m. in the Second Floor Conference Room, 420 Keo Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements should contact the Department of Corrections and advise of special needs.

This amendment is intended to implement Iowa Code section 904.512.

The following amendment is proposed.

Rescind **201—Chapter 28** and adopt the following **new** chapter in lieu thereof:

CHAPTER 28
NEWTON CORRECTIONAL FACILITY

201—28.1(904) Visiting: medium security.

28.1(1) Visiting hours. Visiting hours are from 10 a.m. to 8 p.m., Sunday, Monday, Thursday, Friday, and Saturday.

a. All visitors must show proof of identification and must submit to a personal search.

b. In the event that the maximum visiting capacity has been reached, visits will be shortened to accommodate new arrivals.

28.1(2) General population. Each visitor will be allowed two 3-hour visits per week if the offender is in Level 4 or three 3-hour visits per week if the offender is in Level 5. Offenders are permitted a maximum of five visitors at any given time without advance, written permission of the security director.

28.1(3) Close custody. Offenders in close custody, Levels 1 and 2, may receive one 1-hour, noncontact visit per week. Offenders in close custody, Level 3, may receive one 2-hour, contact visit per week.

28.1(4) Disciplinary detention. Offenders in disciplinary detention will be allowed one 1-hour, noncontact visit per week, by immediate family only. Children under the age of 18 shall not be permitted to visit any offender in this status.

28.1(5) County/federal detainees. County or federal detainees will be permitted one 30-minute, noncontact visit per week, by immediate family only.

201—28.2(904) Visiting: minimum security (correctional release center).

28.2(1) Visiting hours are from 8:15 a.m. to 4:30 p.m. on Saturdays, Sundays, and holidays and from 5:45 p.m. to 9:45 p.m., Monday through Friday. Visiting hours are scheduled to avoid conflicts with offender work programs/assignments.

28.2(2) An approved visitor may visit three times per week for a maximum of three hours per visit.

a. Offenders are permitted to have a maximum of five visitors at any given time without advance written permission from the security director.

b. Offenders on dormitory confinement are permitted one 2-hour visit per week during normal visiting hours by immediate family only.

c. Visiting hours for offenders in administrative/disciplinary segregation are from 10 a.m. to 3 p.m., Monday through Friday. Visits shall be scheduled in advance by the visitor. Visitors shall be immediate family only, and visits shall be limited to one hour and shall be noncontact.

28.2(3) Upon arrival, all visitors shall report to the control center. All visitors must be prepared to show proof of identification. In the event that maximum visiting capacity has been exceeded, visits will be shortened to two hours to accommodate new arrivals.

28.2(4) Outdoor visits are permitted April 15 through October 15, weather permitting.

28.2(5) Visits for offenders of the violator program will be permitted only in conjunction with scheduled support-group treatment activities after the fourth week of treatment program participation. These visits must be scheduled with the unit director.

28.2(6) Visitors will have access only to designated visiting areas of the institution.

28.2(7) Visits between an attorney and offender shall be permitted during normal business hours or visiting hours. Such visits during nonbusiness hours shall be by appointment as authorized by the warden or designee.

28.2(8) Visitors must report to the control center at the end of the visit prior to leaving the institution.

201—28.3(904) Tours.

28.3(1) Tours of institutional facilities are available primarily for adult groups. In special cases, tours may be granted for persons under the age of 18 at the discretion of the warden or designee. Tours must be approved by the warden or designee.

28.3(2) Prior approval from the warden or designee shall be required for relatives or close friends of offenders to tour the institution.

201—28.4(904) Trips of offenders. An outside group wishing to schedule a presentation by a panel of offenders from the correctional release center shall send a written request to the institution's treatment director. Trips are limited to a 100-mile radius. Permission may be granted for longer trips at the discretion of the warden.

These rules are intended to implement Iowa Code section 904.512.

ARC 9880A

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 904.108(1)"k," the Department of Corrections gives Notice of Intended Action to adopt Chapter 29, "Fort Dodge Correctional Facility," Iowa Administrative Code.

These rules provide for the days and hours of visits and tours at the Fort Dodge Correctional Facility.

Any interested person may make written suggestions or comments on the proposed amendment on or before July 5, 2000. Such written materials should be sent to the Director of Policy and Legal Services, Corrections Department, 420 Keo Way, Des Moines, Iowa 50309.

There will be a public hearing on July 5, 2000, from 11 a.m. to 1 p.m. in the Second Floor Conference Room, 420 Keo Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements should contact the Department of Corrections and advise of special needs.

This amendment is intended to implement Iowa Code section 904.512.

The following **new** chapter is proposed.

CHAPTER 29
FORT DODGE CORRECTIONAL FACILITY

201—29.1(904) Visiting.

29.1(1) Visitation within the Fort Dodge correctional facility is additionally governed by the provision of department of corrections policy IN-V-122.

29.1(2) Contact and noncontact visiting areas are available.

29.1(3) Visiting hours are from 1 p.m. to 8 p.m., Thursday, Friday, Saturday, Sunday and Monday as well as New Year's Day, July 4 and Christmas Day.

29.1(4) Visits are limited to a maximum of three hours on weekdays and two hours on weekends.

29.1(5) All visitors shall present proper identification upon entrance to the institution. Photo identification is required for all visitors 16 years of age and older.

29.1(6) Visitors shall be required to clear a metal detector scan or other scanning device prior to admittance and may be requested to submit to a pat down search by staff of the same sex.

29.1(7) Each approved visitor will be allowed eight visits per month. Offenders will be permitted a maximum of five visitors at one time.

29.1(8) Attorneys, law enforcement officials and clergy are not required to be placed on an offender's visiting list. However, these visitors are encouraged to make prior arrangements for visitation and shall present proof of identity and appropriate credentials before entrance to the institution. The offender must express a desire to visit with clergy or an attorney before either is admitted to the facility for a visit.

29.1(9) County/federal detainees. Detainees will be allowed visitation with immediate family, approved clergy, and legal representatives. In limited circumstances, the names of additional visitors may be submitted by the assigned counselor and approved by the unit manager. Visiting hours for detainees are from 1 p.m. to 8 p.m. Sunday, Monday, Thursday, Friday, and Saturday. Subject to availability of space, detainees are allowed up to three 1-hour noncontact visits per week. Generally, these visits shall be conducted in the noncontact visitation area of the institution's visiting room. Attorney or legal representative visits may be contact visits and shall take place in the attorney visit area of the visiting room.

201—29.2(904) Visiting: Unit A.

29.2(1) Offenders housed in Unit A shall visit in the noncontact visiting areas of Unit A. Visitors shall check in at reception and then be escorted to Unit A visiting area by staff.

29.2(2) Visiting is restricted to two adult immediate family members or two clergy members at a time.

29.2(3) Offenders are allowed one visit per week. This visit is limited to one hour.

201—29.3(904) Visiting: administration segregation of disciplinary detention offenders housed outside of Unit A.

29.3(1) The noncontact visiting area in the visiting room shall be used.

29.3(2) A maximum of two persons, and one small child per adult who can sit on an adult's lap, will be allowed.

29.3(3) Visitors shall be escorted to one of the noncontact visiting rooms located adjacent to the visiting room.

201—29.4(904) Tours. Tours of the institution are limited to persons 18 years of age and older having a genuine interest in corrections and for whom the tour might prove beneficial or enlightening. These persons may include prospective employees, college or university student groups, legislators and their staff, employees of other governmental agencies, and civic organizations. Other individuals or groups may be permitted to tour the institution upon the specific approval of the office of the warden.

These rules are intended to implement Iowa Code section 904.512.

ARC 9884A

ELDER AFFAIRS DEPARTMENT[321]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2000 Iowa Acts, Senate File 2193, section 7, subsection 2, and section 21, the Department of Elder Affairs hereby adopts Chapter 28, "Iowa Senior Living Program—Home- and Community-Based Services for Seniors," Iowa Administrative Code.

These rules implement provisions of 2000 Iowa Acts, Senate File 2193, the Iowa Senior Living Program Act. The

ELDER AFFAIRS DEPARTMENT[321](cont'd)

goal of the Iowa Senior Living Program Act is to create a comprehensive long-term care system that is consumer-directed, provides a balance between the alternatives of institutionally and noninstitutionally provided services, and contributes to the quality of the lives of Iowans.

Funds are available from the Iowa Senior Living Trust Fund to the Area Agencies on Aging and subcontracting long-term care providers for designing and expanding home- and community-based services to low- and moderate-income seniors to promote independence and delay the use of institutional care. These rules set procedure for disbursement of the funds to the Area Agencies on Aging and their subcontractors for state fiscal year (SFY) 2001 and call for incorporation of the disbursement of funds for subsequent state fiscal years into the existing procedure for disbursement of other senior service funds. Allowable and priority uses for the funds and reporting requirements for the Area Agencies on Aging and their subcontractors and the department are established.

These rules do not provide for any waivers in specific situations because disbursement of the trust fund will confer a benefit on providers and consumers. Participation by long-term care providers is voluntary.

Any interested person may make written suggestions or comments on the proposed rules on or before July 6, 2000. Written comments should be directed to Dr. Judith A. Conlin, Director, Department of Elder Affairs, Clemens Building, Third Floor, 200 Tenth Street, Des Moines, Iowa 50309-3609.

Oral or written comments may be submitted at a public hearing to be held at 10 a.m. Thursday, July 6, 2000, in the North Conference Room, Department of Elder Affairs. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 9864A**. The content of that submission is incorporated by reference.

These rules are intended to implement 2000 Iowa Acts, Senate File 2193, sections 7, 9 and 10.

ARC 9885A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, "Controlling Pollution," Chapter 23, "Emission Standards for Contaminants," Chapter 24, "Excess Emission," and Chapter 25, "Measurement of Emissions," Iowa Administrative Code.

Item 1 incorporates a notification to the department requirement for certain types of emission units falling under a construction permit exemption. This notification process will ensure that the Department knows an exemption is being claimed and will clarify whether a particular piece of equipment needs or does not need a construction permit. Notification is required for emission units with construction or start-up dates on or after November 24, 2000. For emission units covered under the exemption that were constructed or operated before November 24, 2000, written notification of the fact that the exemption was taken on emission units is also requested. This new record keeping and the record keeping that was required under paragraph 22.1(2)"s" have been incorporated into the introductory paragraphs of subrule 22.1(2).

Item 2 amends paragraph "g" to reflect the record-keeping amendments made in Item 1. The revision is for administrative purposes only.

Item 3 deletes the exemption from construction permitting for emission units emitting less than a pound per hour of a pollutant and replaces the paragraph with a new exemption for emergency vents. The proposed deletion of the pound per hour construction permit exemption is being addressed by the addition of a new construction application form that would be specific for an emission unit emitting less than 1.0 lb/hr of a pollutant. This is explained in Item 5. The new exemption for emergency vents, etc., is being proposed to address construction permit requirements for emission points that are not expected to have any emissions but could have emissions to prevent equipment damage or personal injury.

Item 4 is a new construction permit exemption that is specific to emissions from specified equipment at teaching and academic research institutions. These sources are anticipated to have minimal emissions.

Item 5 identifies by name and number the forms that can be used to submit a construction permit application. Form 542-XXXX is proposed as a new form which can be used to apply for a construction permit for the emission points emitting less than 1.0 lb/hr of a pollutant. While the 1.0 lb/hr emissions were covered under a construction permit exemption which is proposed to be deleted, that exemption did not apply until the facility had provided specified information to the department that exemption was being taken. In lieu of that information's being provided to the department as part of the exemption process, facilities will now be required to apply for a construction permit for these sources; however, the information requested will be tailored to the type of information that was required in the exemption.

Item 6 identifies what sources are eligible for using the application form for emission units less than 1.0 lb/hr of a pollutant and identifies what information must be contained in the application.

Item 7 corrects an internal rule citation and changes the reference to one which pertains to the calculation of emission limits based on stack height.

Item 8 adds a new subrule that requires the department to be notified when the ownership of equipment covered by a construction permit changes. This proposal will require facilities to keep the department informed of who owns equipment covered by a construction permit.

Item 9 corrects the date of the latest revision of Appendix W to 40 FR Part 51. Also in the same subrule, the reference to 40 CFR 52.21(1) should read 40 CFR 52.21(l), replacing the number 1 for the letter "l."

Item 10 deletes a referenced date which implies that there is a level established by the EPA administrator which has defined the level of radionuclides for major source status. The federal regulations reserve the right of the administrator to

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set these levels, but at this time no levels have been established by the Environmental Protection Agency.

Item 11 clarifies the deadline for submitting annual Title V fees to the Department of Natural Resources. The existing wording requires payment to be made on July 1 of each year. The revised wording allows for payment to be made on or before July 1 of each year.

Item 12 reduces the number of copies of different forms that must be submitted with the annual emissions fee. These fees only apply to Title V facilities.

Item 13 reduces the number of copies of each form required to be submitted with the annual emissions inventory. Instead of the required four copies, only two will now be required.

Items 14 through 17 update references to 40 CFR Part 63. Item 14 identifies provisions of the three new national emission standards for hazardous air pollutants (NESHAPS) that are not delegated to the department which are proposed for adoption by reference in this rule. Items 15 through 17 pertain to the promulgation of three new NESHAPS for hazardous waste combustors at waste incinerators, cement kilns, and at lightweight aggregate kilns, amino/phenolic resin production units, and nonindustrial and industrial publicly owned treatment works, respectively.

Items 18 through 20 update the emission guidelines for hospital/medical infectious waste incinerators (Part 63, Subpart Ce) by incorporating compliance dates. Compliance dates were based on the date the department's implementation plan was approved by EPA. The department's 111(d) plan was approved August 16, 1999.

Item 21 removes the exemption to the state's open burning rules which would allow the burning of material for which there is a local recycling program for the following: trees and tree trimming, landscape waste, residential waste, paper and plastic pesticide containers and seed corn bags.

Item 22 corrects a gap in the regulations from a previous rule making. A revised general particulate emission rate became effective as of July 21, 1999. The regulations did not cover sources which were constructed, modified or reconstructed on July 21, 1999. The proposed rules clarify that the new general particulate emission rate applies to sources constructed after as well as on July 21, 1999, the effective date of the regulations. This item also includes the abbreviation, dscf, for the term "dry standard cubic feet."

Item 23 pertains to excess emissions and excess emissions reporting and handling by the department. The purpose of these amendments is to conform to EPA's policy on startups and shutdowns and excess emissions. EPA has informed the department that excess emissions during the cleaning of control equipment is not to be considered an acceptable exclusion from considering excess emissions a violation of a standard. In addition, the amendments provide for criteria when excess emissions from startup and shutdown should not be considered as a violation of the standards.

Item 24 incorporates procedures approved by EPA to calculate calibration drift in continuous opacity monitors in accordance with 40 CFR Part 60 Appendix B, Performance Specification 1 into "Iowa Compliance Sampling Manual." This procedure would apply only to boilers covered under 567—subrule 25.1(1). This item also clarifies the references to the appendices in the subrule and identifies where they may be found.

Any person may make written suggestions or comments on the proposed rules on or before July 28, 2000. Written comments should be directed to Monica Wnuk, Iowa Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, fax (515) 242-5094, or by electronic mail to Monica.Wnuk@dnr.state.ia.us.

An informational meeting will be held at 10:30 a.m. in Conference Rooms 5-8 on June 15, 2000, at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa. At the informational meeting, DNR staff will be available to answer questions on any of the proposed rule revisions.

A public hearing will be held on July 20, 2000, at 1 p.m. in Conference Rooms 5-8 at the Department's Air Quality Bureau office located at 7900 Hickman Road, Urbandale, Iowa, at which time comments may be submitted orally or in writing. All comments must be received no later than July 28, 2000.

Any persons who intend to attend a public hearing and have special requirements, such as those related to hearing or mobility, should contact Monica Wnuk at (515)281-7212 to advise of any specific needs.

These amendments may impact small business.

These amendments are intended to implement Iowa Code section 455B.133.

The following amendments are proposed.

ITEM 1. Amend subrule **22.1(2)**, introductory paragraph, by adding the following **new** unnumbered paragraphs:

Beginning on November 24, 2000, this subrule shall not apply unless the department is notified in writing within 30 days of installation or startup of the equipment for which the exemption is being claimed. For equipment already in use on November 24, 2000, and for which an exemption under 22.1(2)"a," "b," "e," "r" or "s" is claimed, the department also shall be notified in writing. Written notification shall contain the following information: the specific exemption claimed, a description of the associated equipment, and the date the equipment was installed or put in use.

A facility claiming to be exempt under the provisions of paragraph "g" shall provide the information listed below to the department. 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 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; and
- A statement that the provisions of rules 22.4(455B) and 22.5(455B) do not apply.

The written statement shall contain certification by a responsible official as defined in rule 22.100(455B) of truth,

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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.

ITEM 2. Amend subrule **22.1(2)**, paragraph **"g,"** as follows:

g. Equipment or control equipment which reduces or eliminates all emission to the atmosphere. If a source wishes to obtain credit for reductions under the prevention of significant deterioration requirements, it must apply for a permit 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, the conditions of the construction permit remain in effect. ~~In order to use this exemption, the facility must comply with paragraph "s" below.~~

ITEM 3. Amend subrule **22.1(2)** by rescinding paragraph **"i"** and adopting the following **new** paragraph **"i"** in lieu thereof:

i. Emergency emission release systems such as emergency vents, blow-off valves, relief valves, pop-off valves, and explosion doors whose primary purpose is the prevention of equipment damage and personal injury. Emission releases shall be reported as excess emissions as required by 567— 24.1(455B).

ITEM 4. Amend subrule **22.1(2)** by rescinding paragraph **"s"** and adopting the following **new** paragraph **"s"** in lieu thereof:

s. The equipment at academic institutions (e.g., high schools, colleges, universities) used exclusively for the purposes of teaching and academic research. The equipment covered under this exemption is limited to: lab hoods, art class equipment, wood shop equipment in classrooms, and fuel-burning units (except incinerators) with a capacity of less than one million BTU per hour fuel capacity.

This exemption shall not apply if its use would conflict with any other provision of law.

ITEM 5. Amend subrule **22.1(3)**, paragraph **"b,"** introductory paragraph, as follows:

b. Construction permit applications. Each application for a construction permit shall be submitted to the department on the *appropriate form supplied by the department, IDNR* Form *542-3190* "Air Construction Permit Application~~.~~*" or IDNR Form 542-XXXX "Air Construction Permit for Emission Units Below 1.0 lb/hr."* 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 registered in the state of Iowa in conformance with Iowa Code chapter 542B. *Information required and eligibility requirements for use of the application for a permit to construct an emission below 1.0 lb/hr are identified in 22.1(3)"d" of this subrule.* The application for a permit to construct, *IDNR Form 542-3190 "Air Construction Permit Application,"* shall include the following information:

ITEM 6. Amend subrule **22.1(3)** by adopting the following **new** paragraph **"d"**:

d. Application requirements for emission units less than 1.0 lb/hr. Form 542-XXXX, "Air Construction Permit for Emission Units Below 1.0 lb/hr," can be used only for emission units that emit less than 1.0 lb/hr of a pollutant. Form 542-XXXX may not be used if the emission unit is subject to any of the following: rule 22.4(455B), prevention of significant deterioration requirements; rule 22.5(455B), special requirements for nonattainment areas; 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. The application for emission units that meet the eligibility criteria above shall include the following information:

(1) Location information of the emission unit;
(2) Emission unit description and specifications;
(3) Control equipment description and specifications;
(4) Specifications on the stack or vent;
(5) Emission calculations;
(6) Emission inventory at the facility;
(7) Eligibility criteria checklist; and
(8) A certification from the responsible official that the emission unit complies with eligibility requirements and that information provided in the application is true, accurate and complete.

ITEM 7. Amend subrule **22.3(1)**, paragraph **"c,"** as follows:

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(4)~~ *23.1(6)*, and

ITEM 8. Amend 567—22.3(455B) by adopting the following **new** subrule:

22.3(8) Ownership change of permitted equipment. The department shall be notified 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 include the following information:

a. The date of ownership change;
b. The name, address and telephone number of the responsible official, 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.

ITEM 9. Amend subrule 22.4(1) as follows:

22.4(1) Federal rules 40 CFR 52.21(a) (Plan Disapproval), 52.21(q) (Public Participation), 52.21(s) (Environmental Impact Statement), and 52.21(u) (Delegation of Authority) are not adopted by reference. Also, for the purposes of 40 CFR ~~52.21(1)~~ *52.21(l)*, the department adopts by reference Appendix W to 40 CFR 51, Guideline on Air Quality Models (Revised), as adopted ~~March~~ *August* 12, 1996.

ITEM 10. Amend **567—22.100(455B)**, definition of "major source," numbered paragraph **"2,"** as follows:

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

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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 ~~as of January 18, 1994~~.

ITEM 11. Amend subrule 22.106(1) as follows:

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 emission 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 $29 per ton without adopting the change pursuant to formal rule making.

ITEM 12. Amend subrule **22.106(3)**, paragraph **"a,"** introductory paragraph, as follows:

a. The fee shall be submitted annually by July 1. The fee shall be submitted with ~~four~~ *two* copies of the following forms:

ITEM 13. Amend subrule **22.106(3)**, paragraph **"b,"** introductory paragraph, as follows:

b. ~~Four~~ *Two* copies of the following forms shall be submitted annually by March 31 documenting actual emissions for the previous calendar year:

ITEM 14. Amend subrule 23.1(4), introductory paragraph, as follows:

23.1(4) Emission standards for hazardous air pollutants for source categories. The federal standards for emissions of hazardous air pollutants for source categories, 40 Code of Federal Regulations Part 63 as amended through ~~June 29, 1999~~ *January 20, 2000*, are adopted by reference, except 40 CFR §§63.6(g) and (h)(9), 63.7(c)(2)(i), 63.7(e)(2)(ii) and (f), 63.8(f), 63.10(f), 63.12, 63.14, 63.15, 63.40(a), 63.42(a) and (b), 63.43(c) and (f) to (m), 63.177, 63.560(b) and (e)(2) and (3), 63.562(c) and (d), 63.772, 63.777, *63.694, 63.996 to 63.999, 63.1022 to 63.1024, 63.1038, 63.1039, 63.1062, 63.1063(a) and (b), 63.1064 to 63.1066,* 63.1157, 63.1158, 63.1161(d)(1), 63.1162(a)(2) to (5), 63.1162(b)(1) to (3), 63.1165, 63.1282, ~~and~~ 63.1287, *63.1403 to 63.1410, and 63.1414 to 63.1417*, and shall apply to the following affected facilities. The corresponding 40 CFR Part 63 Subpart designation is in parentheses. 40 CFR Part 63 Subpart B incorporates the requirements of Clean Air Act Sections 112(g) and 112(j) and does not adopt standards for a specific affected facility. Test methods (Appendix A), sources defined for early reduction provisions (Appendix B), and determination of the fraction biodegraded (F_{bio}) in the biological treatment unit (Appendix C) of Part 63 also apply to the affected activities or facilities. For the purpose of this subrule, "hazardous air pollutant" has the same meaning found in 567—22.100(455B). For the purposes of this subrule, a "major source" means 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 considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants, unless a lesser quantity is established, or in the case of radionuclides, where different criteria are employed. For the purposes of this subrule, an "area source" means any stationary source of hazardous air pollutants that is not a major stationary source as defined in this paragraph. Paragraph 23.1(4)"a," general provisions (Subpart A) of Part 63, shall apply to owners or operators who are subject to subsequent subparts of 40 CFR 63 (except when otherwise specified in a particular subpart or in a relevant standard) as adopted by reference below.

ITEM 15. Amend subrule **23.1(4)** by adopting the following **new** paragraph **"be"**:

be. Emission standards for hazardous air pollutants from hazardous waste combustors. These standards apply to all hazardous waste combustors: hazardous waste incinerators, hazardous waste burning cement kilns, and hazardous waste burning lightweight aggregate kilns, except as provided in the rule. Both area sources and major sources are subject to this subpart as of September 30, 1999, and are subject to the requirement to apply for and obtain a Title V permit. (Part 63, Subpart EEE)

ITEM 16. Amend subrule **23.1(4)** by adopting the following **new** paragraph **"bo"**:

bo. Emission standards for hazardous air pollutants for amino/phenolic resins production. These standards apply to new or existing facilities that own or operate an amino or phenolic resins production unit. (Part 63, Subpart OOO)

ITEM 17. Amend subrule **23.1(4)** by adopting the following **new** paragraph **"bv"**:

bv. Emission standards for hazardous air pollutants publicly owned treatment works (POTW). These standards apply to new or reconstructed nonindustrial POTW and industrial POTW. (Part 63, Subpart VVV)

ITEM 18. Amend subrule **23.1(5)**, paragraph **"b,"** subparagraphs **(4)**, **(5)** and **(6)**, as follows:

(4) Operator training and qualification requirements. Designated facilities shall meet the requirements for operator training and qualification listed in 40 CFR §60.53c *by August 16, 2000 (which is* ~~within~~ one year from EPA's approval of the state's 111(d) plan for HMIWI*)*.

(5) Waste management requirements. Designated facilities shall meet the requirements for a waste management plan listed in 40 CFR §60.55c *by June 16, 2002 (which is* ~~within~~ 34 months from EPA's approval of the state's 111(d) plan for HMIWI*)*.

(6) Inspection requirements. Each remote HMIWI subject to the emission limits under numbered paragraph "2" of subparagraph 23.1(5)"b"(3) must conduct an initial equipment inspection *by August 16, 2000 (which is* ~~within~~ one year from EPA's approval of the state's 111(d) plan for HMIWI*)*, and *perform* equipment inspections annually, no more than 12 months after the previous inspection. The facility must complete all necessary repairs within ten operating days following an inspection. If the repairs cannot be accomplished within this period, then the owner or operator must obtain written approval from the department requesting an extension. All inspections shall include the following:

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1. through 17. No change.

ITEM 19. Amend subrule **23.1(5)**, paragraph **"b,"** subparagraph **(12)**, as follows:

(12) Compliance times for designated facilities planning to retrofit. Designated facilities planning to retrofit existing HMIWI shall comply with the emission limits specified in subparagraph 23.1(5)"b"(3) *by August 16, 2002 (which is* ~~within~~ three years from EPA's approval of the state's 111(d) plan for HMIWI*)*~~, but not later than September 16, 2002~~. To ensure compliance, these facilities must also comply with the following increments of progress:

1. Submit construction permit application to the department, as required by rule 567— 22.1(455B), to outline the addition of control equipment and the modification of existing processes *by August 16, 2000 (which is* ~~within~~ one year from EPA's approval of the state's 111(d) plan for HMIWI*)*;

2. Award contracts for control systems or process modifications, or orders for purchase of components *by February 16, 2001 (which is* ~~within~~ 18 months from EPA's approval of the state's 111(d) plan for HMIWI*)*;

3. Initiate on-site construction or installation of the air pollution control device(s) or process changes *by August 16, 2001 (which is* ~~within~~ two years from EPA's approval of the state's 111(d) plan for HMIWI*)*;

4. Complete on-site construction or installation of air pollution control device(s) or process changes *by May 16, 2002 (which is* ~~within~~ 33 months from EPA's approval of the state's 111(d) plan for HMIWI*)*; and

5. Complete initial compliance test(s) on the air pollution control equipment *by June 16, 2002 (which is* ~~within~~ 34 months from EPA's approval of the state's 111(d) plan for HMIWI*)*.

ITEM 20. Amend subrule **23.1(5)**, paragraph **"b,"** subparagraph **(13)**, as follows:

(13) Compliance times for designated facilities planning to shut down. Designated facilities planning to shut down an existing HMIWI shall shut down *by August 16, 2000 (which is* ~~within~~ one year from EPA's approval of the state's 111(d) plan for HMIWI*)*. Designated facilities may request an extension from the department to operate the HMIWI for up to two additional years. The request for extension must be submitted to the department *by May 16, 2000 (which is* ~~within~~ nine months from EPA's approval of the state's 111(d) plan for HMIWI*)* and include the following:

1. Documentation to support the need for the requested extension;

2. An evaluation of the option to transport the waste off site to a commercial medical waste treatment and disposal facility on a temporary or permanent basis; and

3. A plan that documents measurable and enforceable incremental steps of progress to be taken toward compliance with paragraph 23.1(5)"b," including final compliance date which can be no later than September 16, 2002.

ITEM 21. Amend subrule 23.2(3), introductory paragraph, as follows:

23.2(3) Exemptions. The following shall be permitted unless prohibited by local ordinances or regulations *or if the material to be burned in paragraphs "b," "d," "f," and "h" is collected as part of a local recycling program.*

ITEM 22. Amend subrule **23.3(2)**, paragraph **"a,"** subparagraph **(1)**, as follows:

(1) For sources constructed, modified or reconstructed *on or* after July 21, 1999, the emission of particulate matter from any process shall not exceed an emission standard of 0.1 grain per dry standard cubic foot *(dscf)* of exhaust gas, except as provided in 567—21.2(455B), 23.1(455B), 23.4(455B), and 567—Chapter 24.

ITEM 23. Amend rule 567—24.1(455B) as follows:

567—24.1(455B) Excess ~~**emission**~~ ***emissions*** **reporting.**

24.1(1) Excess ~~emission~~ *emissions* during periods of startup*, or* shutdown~~, or cleaning of control equipment~~. ~~Excess emission during a period of startup, shutdown, or cleaning of control equipment is not a violation of the emission standard if the startup, shutdown or cleaning is accomplished expeditiously and in a manner consistent with good practice for minimizing emissions. Cleaning of control equipment which does not require the shutdown of the process equipment shall be limited to one six-minute period per one-hour period.~~ *All periods of excess emissions arising during startup or shutdown shall be treated as violations unless the following can be demonstrated:*

a. The periods of excess emissions that occurred during startup and shutdown were short and infrequent and could not have been prevented through planning and design;

b. The excess emissions were not part of a recurring pattern indicative of inadequate design, operation, or maintenance;

c. The excess emissions were caused by a bypass (an intentional diversion of control equipment) that was unavoidable to prevent loss of life, personal injury, or severe property damage;

d. At all relevant times, the facility was operated in a manner consistent with good practice for minimizing emissions;

e. The frequency and duration of operation in startup or shutdown mode was minimized to the maximum extent practicable;

f. All possible steps were taken to minimize the impact of the excess emissions on ambient air quality;

g. All emission monitoring systems were kept in operation if at all possible;

h. The owner or operator's actions during the period of excess emissions were documented by properly signed, contemporaneous operating logs, or other relevant evidence; and

i. The owner or operator properly and promptly notified the appropriate regulatory authority.

24.1(2) Oral report of excess emissions. An incident of excess ~~emission~~ *emissions* ~~(other than an incident of excess emission during a period of startup, shutdown, or cleaning)~~ shall be reported to the appropriate regional office of the department within eight hours of, or at the start of, the first working day following the onset of the incident. ~~The reporting exemption for an incident of excess emission during startup, shutdown or cleaning does not relieve the owner or operator of a source with continuous monitoring equipment of the obligation of submitting reports required in 567—subrule 25.1(6).~~

An oral report of excess ~~emission~~ *emissions* is not required for a source with operational continuous monitoring equipment (as specified in 567—subrule 25.1(1)) if the incident of excess ~~emission~~ *emissions* continues for less than 30 minutes and does not exceed the applicable emission standard by more than 10 percent or the applicable visible emission standard by more than 10 percent opacity.

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The oral report may be made in person or by telephone and shall include as a minimum the following:

a. The identity of the equipment or source operation from which the excess ~~emission~~ *emissions* originated and the associated stack or emission point.

b. The estimated quantity of the excess ~~emission~~ *emissions.*

c. The time and expected duration of the ~~excess emission~~ *emissions.*

d. The cause of the excess ~~emission~~ *emissions.*

e. The steps being taken to remedy the excess ~~emission~~ *emissions.*

f. The steps being taken to limit the excess ~~emission~~ *emissions* in the interim period.

24.1(3) Written report of excess ~~emission~~ *emissions.* A written report of an incident of excess ~~emission~~ *emissions* shall be submitted as a follow-up to all required oral reports to the department within seven days of the onset of the upset condition, and shall include as a minimum the following:

a. The identity of the equipment or source operation point from which the excess ~~emission~~ *emissions* originated and the associated stack or emission point.

b. The estimated quantity of the excess ~~emission~~ *emissions.*

c. The time and duration of the excess ~~emission~~ *emissions.*

d. The cause of the excess ~~emission~~ *emissions.*

e. The steps that were taken to remedy and to prevent the recurrence of the incident of excess ~~emission~~ *emissions.*

f. The steps that were taken to limit the excess ~~emission~~ *emissions.*

g. If the owner claims that the excess ~~emission~~ *emissions* was due to malfunction, documentation to support this claim.

24.1(4) Excess emissions. An incident of excess ~~emission~~ *emissions* ~~(other than an incident during startup, shutdown or cleaning of control equipment)~~ is a violation. *An incident of excess emissions during startup or shutdown is a violation unless the requirements of 24.1(1)"a" through "i" are documented in writing and submitted to the department.* If the owner or operator of a source maintains that the incident of excess ~~emission~~ *emissions* was due to a malfunction, the owner or operator must show that the conditions which caused the incident of excess ~~emission~~ *emissions* were not preventable by reasonable maintenance and control measures. Determination of any subsequent enforcement action will be made following review of this report. If excess emissions are occurring, either the control equipment causing the excess ~~emission~~ *emissions* shall be repaired in an expeditious manner or the process generating the emissions shall be shut down within a reasonable period of time. An expeditious manner is the time necessary to determine the cause of the excess emissions and to correct it within a reasonable period of time. A reasonable period of time is eight hours plus the period of time required to shut down the process without damaging the process equipment or control equipment. A variance from this subrule may be available as provided for in Iowa Code section 455B.143. In the case of an electric utility, a reasonable period of time is eight hours plus the period of time until comparable generating capacity is available to meet consumer demand with the affected unit out of service.~~, unless~~ *If, upon investigation,* the director ~~shall, upon investigation,~~ reasonably ~~determine~~ *determines* that continued operation *of any source* constitutes an unjustifiable environmental hazard, *the department shall* ~~and~~ issue an order that such operation is not in the public interest and require ~~a~~ *the* process shutdown to commence immediately.

24.1(5) Compliance with other paragraphs. Subrules 24.1(1) to 24.1(4) notwithstanding, a fossil fuel-fired steam generator to which 567—paragraph 23.1(2)"a," "z," or "ccc" applies shall comply with 567—paragraph 23.1(2)"a," "z," or "ccc."

ITEM 24. Amend subrule 25.1(9) as follows:

25.1(9) Methods and procedures. Stack sampling and associated analytical methods used to evaluate compliance with emission limitations of 567—Chapter 23 or a permit condition are those specified in the "Compliance Sampling Manual*" adopted by the commission on May 19, 1977, as revised through ~~January 1, 1995~~ *November 24, 2000.* Sampling methods, analytical determinations, minimum performance specifications and quality assurance procedures for performance evaluations of continuous monitoring systems are those found in Appendices A (as amended through March 12, 1996), B (as amended through December 15, 1994) and F (as amended through February 11, 1991~~,~~) *of* 40 CFR Part 60, and ~~40 CFR 75,~~ Appendices A (as amended through May 22, 1996), B (as amended through May 17, 1995), and H (as amended through July 30, 1993) *of 40 CFR Part 75.*

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 40, "Scope of Division—Definitions—Forms—Rules of Practice," Chapter 41, "Water Supplies," Chapter 42, "Public Notification, Public Education, Consumer Confidence Reports, Reporting, and Record Maintenance," Chapter 43, "Water Supplies—Design and Operation," and Chapter 83, "Laboratory Certification," Iowa Administrative Code.

Proposed changes to Chapter 40 include an amendment to rule 40.1(455B) regarding the scope of the division to include Chapter 55, "Aquifer Storage and Recovery Rules." Definitions for the following new terms are proposed: "composite correction program," "comprehensive performance evaluation," "comprehensive technical assistance," "disinfection profile," "enhanced coagulation," "enhanced softening," "filter profile," "GAC10," "haloacetic acids," "maximum residual disinfectant level," "maximum residual disinfectant level goal," "SUVA," and "total organic carbon." Changes to the definitions of the following terms are proposed: "act," "acute health effect," "health advisory," "influenced groundwater," "maximum contaminant level goal," "nonacute health effect," "special irrigation district," and "transient noncommunity water system." The following terms are rescinded: "EPA methods" and "health-based standard." The construction permit application schedule form number is also corrected.

Proposed amendments to Chapter 41 include minor technical corrections; analytical methodology updates; incorpo-

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ration of the new Environmental Protection Agency (EPA) disinfectants/disinfection byproducts rule requirements; elimination of the surface water treatment requirements (these will be moved to Chapter 43), elimination of the reiterated ethylene dibromide and 1,2-dibromo-3-chloropropane requirements in 41.11(455B); and sodium reporting requirements.

Proposed amendments to Chapter 42 include minor technical corrections; adoption of the EPA disinfectants/disinfection byproducts and enhanced surface water treatment rule requirements; elimination of the outdated special lead ban public notice requirement; and elimination of the "variances and exemptions" definition from the consumer confidence reporting requirements.

Proposed amendments to Chapter 43 include minor technical corrections; reorganization of the operation fee subrule to allow the Department to adjust the fees by two cents ($0.02) per capita to meet the $350,000 target revenue and charge a late fee of $100; a requirement that the Commission approve any increases above the 14 cents per capita rate; incorporation of new EPA disinfectants/disinfection byproducts and interim enhanced surface water treatment rule requirements; and incorporation of the surface water treatment rule requirements now found in 41.7(455B).

Proposed amendments to Chapter 83 include: allowing certified operators to analyze certain parameters (exempting such from the normal certified laboratory requirements); eliminating the exception for the University of Iowa Hygienic Laboratory(UHL); incorporating the newest version of the underground storage tank program laboratory certification manual; correction of the term "heterotrophic plate count"; clarification of the UHL's role as the Department's designated appraisal authority for laboratory certification; new language to allow third parties to provide performance evaluation samples for water supply testing, a new requirement that laboratories annually analyze a performance evaluation sample for each analytical method, new language for the disinfection byproducts quality assurance requirements, and provisions for revocation of a laboratory's certification upon request.

These chapters and the proposed amendments were reviewed by the water supply technical advisory group at two separate meetings. The group is comprised of individuals representing a wide variety of water supply stakeholders, including professional drinking water organizations, certified operators, environmental interests, public water supply owners, and other state agencies.

Any interested person may make written suggestions or comments on these proposed amendments on or before July 26, 2000. Such written materials should be directed to Diane Moles, Water Supply Section, Department of Natural Resources, Wallace State Office Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views orally should contact the Water Supply Section at (515)281-8863 or at the Environmental Protection Commission offices on the fifth floor of the Wallace State Office Building.

There will be six public hearings at which persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. The public hearings will be held at 10 a.m. in the following places on the following dates:

Des Moines	July 6, 2000
	Auditorium Wallace State Office Building 502 E. Ninth Street Des Moines, Iowa
Mason City	July 7, 2000
	Muse-Norris Conference Center North Iowa Area Community College 500 College Drive Mason City, Iowa
Washington	July 14, 2000
	Helen Wilson Gallery Washington Public Library 120 E. Main Washington, Iowa
Atlantic	July 18, 2000
	Conference Room Atlantic Municipal Utilities 15 West Third Street Atlantic, Iowa
Manchester	July 19, 2000
	Delaware County Community Center 200 E. Acres (at the fairgrounds) Manchester, Iowa
Storm Lake	July 20, 2000
	Hansen Room Siebens Forum Buena Vista University Fourth & Grand Avenue Storm Lake, Iowa

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code section 17A.3(1)"b" and chapter 455B, division III, part 1.

The following amendments are proposed.

ITEM 1. Amend rule **567—40.1(455B)** by adopting the following **new** paragraph in numerical order:

Chapter 55 contains the provisions for public water supply aquifer storage and recovery.

ITEM 2. Amend rule **567—40.2(455B)** by amending, adopting, or rescinding the following definitions:

"Act" means the ~~Public Health Service Act as amended by the~~ Safe Drinking Water Act~~, Public Law 93-523~~ *as amended (42 U.S.C. 300f et seq.).*

"Acute *health effect*" means the health effect of a contaminant which is an immediate rather than a long-term risk to health.

"Composite correction program (CCP)" is a systematic, comprehensive procedure that identifies and corrects the unique combination of factors, in the areas of design, operation, maintenance, and administration, that limit the performance of a filtration plant. The CCP is comprised of two elements: comprehensive performance evaluation, which is the evaluation phase, and comprehensive technical assistance, which is the performance improvement phase.

"Comprehensive performance evaluation (CPE)" is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. CPE is conducted to identify factors that may be adversely impacting a

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plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with surface water or influenced groundwater treatment plant requirements pursuant to 567—Chapters 41 and 43, the comprehensive performance evaluation must consist of at least the following components: assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

"Comprehensive technical assistance (CTA)" is the performance improvement phase of the composite correction plan that is implemented if the comprehensive performance evaluation results indicate improved performance potential by a filtration plant, in which the system must identify and systematically address plant-specific factors.

"Disinfection profile" is a summary of daily Giardia lamblia inactivation through the treatment plant. The procedure for developing a disinfection profile is contained in 567—paragraph 43.9(2)"b."

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

~~"EPA methods" means methods listed in the Manual for the Certification of Laboratories Analyzing Drinking Water, 4th edition, EPA document 815-B-97-001, March 1997.~~

"Filter profile" is a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts versus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days.

"Haloacetic acids (HAA5)" means the sum of the concentrations in milligrams per liter of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

"Health advisory (HA)" means a group of levels set by EPA below which no harmful *health* effect is expected from a given contaminant *in drinking water.* The HAs used by the department are listed in the most current edition of the EPA "Drinking Water Regulations and Health Advisories" bulletin. The lifetime HA is the concentration of a chemical in drinking water that is not expected to cause any adverse noncarcinogenic effects over a lifetime of exposure, with a margin of safety. The long-term HA is the concentration of a chemical in drinking water that is not expected to cause any adverse noncarcinogenic effects up to approximately seven years (10 percent of an individual's lifetime of exposure), with a margin of safety.

~~"Health-based standard" means a standard regulating the amount of allowable contaminant in drinking water, and includes maximum contaminant levels, action levels, treatment techniques, and health advisory levels.~~

"Influenced groundwater *(IGW)*" means groundwater which is under the direct or indirect influence of surface water, as determined by the presence of (1) significant occurrence of insects or other macroorganisms, algae or large-size pathogens such as Giardia lamblia *or Cryptosporidium*; or (2) significant and relatively rapid shifts in water characteristics such as turbidity (particulate content), temperature, conductivity, or pH which correlate to climatological or surface water conditions, or other parameters as specified in 567— 43.5(455B).

"Maximum contaminant level goal (MCLG)" means the ~~nonenforceable concentration of a drinking water contaminant that is protective of adverse human health effects and allows an adequate margin of safety~~ *maximum level of a contaminant in drinking water at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MCLGs are nonenforceable health goals.*

"Maximum residual disinfectant level (MRDL)" means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects.

"Maximum residual disinfectant level goal (MRDLG)" means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety.

"Nonacute *health effect*" means the health effect of a contaminant which is a long-term rather than immediate risk to health.

"Special irrigation district" means an irrigation district in existence prior to May 18, 1994, that provides primarily agricultural service through a piped water system with only incidental residential or similar use where the system or the residential or similar users of the system comply with ~~567—Chapters 40 through 43.~~ *the second and third numbered paragraphs listed in the definition of "Service Connection."*

"SUVA" means Specific Ultraviolet Absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (in m^{-1}) by its concentration of dissolved organic carbon (in mg/L).

"Total organic carbon (TOC)" means total organic carbon in milligrams per liter, measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Transient noncommunity water ~~sysytem~~ *system* (TNC)" means a noncommunity water system that does not regularly serve at least 25 of the same persons over six months per calendar year.

ITEM 3. Amend subrule 40.3(1), introductory paragraph, as follows:

40.3(1) Construction permit application forms. Schedules "1*a*" through "16d" are required.

ITEM 4. Amend subrule **41.2(1)**, paragraph **"b,"** as follows:

b. Maximum contaminant levels (MCL) for total coliforms, fecal coliforms, and E. coli. The MCL is based on the presence or absence of total coliforms in a sample.

(1) Nonacute coliform bacteria MCL.

1. For a system which collects 40 samples or more per month, no more than 5.0 percent of the samples collected during a month may be total coliform-positive. A nonacute *total* coliform bacteria MCL violation occurs when more than 5.0 percent of routine and repeat samples collected during a month are total coliform-positive, but are not fecal coliform-positive or E. coli-positive.

2. For a system which collects less than 40 samples per month, no more than one sample collected during a month

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may be total coliform-positive. A nonacute *total* coliform bacteria MCL violation occurs when two or more routine and repeat samples collected during a month are total coliform-positive, but are not fecal coliform-positive or E. coli-positive.

(2) Acute coliform bacteria MCL. Any fecal coliform-positive repeat sample or E. coli-positive repeat sample, or any total coliform-positive repeat sample following a fecal coliform-positive or E. coli-positive routine sample constitutes a violation of the MCL for total coliforms. For purposes of the public notification requirements in 567—paragraph 42.1(1)"b," this is a violation that may pose an acute risk to health.

(3) MCL compliance period. Compliance of a system with the MCL for total coliforms in 41.2(1)"b"(1) and (2) is based on each month in which the system is required to monitor for total coliforms.

(4) Compliance determination. Results of all routine and repeat samples not invalidated by the department or laboratory must be included in determining compliance with the MCL for total coliforms. *Repeat samples must be analyzed at the same laboratory as the corresponding original routine sample(s), unless written approval for use of a different laboratory is granted by the department.*

ITEM 5. Amend subrule **41.2(1)**, paragraph **"c,"** subparagraph **(1)**, numbered paragraph **"2,"** as follows:

2. The public water supply system must collect samples at regular time intervals throughout the month, except that a system which uses only groundwater (except groundwater under the direct influence of surface water, as defined in 567—paragraph 43.5(1)"b") and serves 4,900 persons or fewer, may collect all required samples on a single day if they are taken from different sites. *A system that uses only groundwater and adds a chemical disinfectant or provides water with a disinfectant must measure the residual disinfectant concentration at the same points in the distribution system and at the same time as total coliform bacteria samples are collected. A system that uses surface water or IGW must comply with the requirements specified in 567—numbered paragraph 43.5(4)"b"(2)"2." The system shall report the residual disinfectant concentration to the laboratory with the bacteria sample, in addition to compliance with the applicable reporting requirements of 567—subrule 42.4(3).*

ITEM 6. Amend subrule **41.2(1)**, paragraph **"d,"** by adopting the following **new** subparagraph **(5)**:

(5) Wellhead protection program. For groundwater systems, compliance with the requirements of the department's Wellhead Protection Program.

ITEM 7. Amend subrule **41.2(1)**, paragraph **"e,"** subparagraph **(3)**, as follows:

(3) Total coliform bacteria analytical methodology. Public water supply systems must conduct total coliform analyses in accordance with one of the analytical methods in the following table:

Organism	Methodology	Citation[1]
Total Coliforms[2]	Total Coliform Fermentation Technique[3,4,5]	9221A, B
	Total Coliform Membrane Filter Technique[6]	9222A, B, C
	Presence-Absence (P-A) Coliform ~~Test[5,6]~~ *Test[5,7]*	9221D
	ONPG-MUG ~~Test[7]~~ *Test[8]*	9223
	Colisure ~~Test[8]~~ *Test[9]*	
	*M*Colite Test [10]*	
	m-ColiBlue24 Test[11]	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents listed in footnotes 1, 6, 8, 9, 10, and 11 was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460, telephone (202)260-3027; or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC 20408.

[1]Methods 9221A, B; 9222A, B, C; 9221D; and 9223 are contained in Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, *and 19th edition, 1995,* American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005. *Either edition may be used.*

[2]The time from sample collection to initiation of the analysis may not exceed 30 hours. Systems are encouraged but not required to hold samples below 10 degrees Celsius during transit.

[3]Lactose broth, as commercially available, may be used in lieu of lauryl tryptose broth, if the system conducts at least 25 parallel tests between this medium and lauryl tryptose broth using the water normally tested, and this comparison demonstrates that the false-positive rate and false-negative rate for total coliforms, using lactose broth, is less than 10 percent.

[4]If inverted tubes are used to detect gas production, the media should cover these tubes at least one-half to two-thirds after the sample is added.

[5]No requirement exists to run the completed phase on 10 percent of all total coliform-positive confirmed tubes.

[6]*MI agar also may be used. Preparation and use of MI agar is set forth in the article, "New medium for the simultaneous detection of total coliform and Escherichia coli in water," by Brenner, K.P., et al., 1993, Applied Environmental Microbiology 56:3534-3544. Also available from the Office of Water Resource Center (RC-4100), 401 M Street SW, Washington, DC, 20460, EPA 600/J-99/225.*

[6]~~Six-times~~ [7]*Six-times* formulation strength may be used if the medium is filter-sterilized rather than autoclaved.

[7]~~The~~ [8]*The* ONPG-MUG Test is also known as the Autoanalysis Colilert System.

[8]~~The Colisure Test must be incubated for 28 hours before examining the results. If an examination of the results at 28 hours is not convenient, then results may be examined at any time between 28 hours and 48 hours. A description of the Colisure Test may be obtained from the Millipore Corp., Technical Services Department, 80 Ashby Road, Bedford, MA 01730.~~

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[9]The Colisure Test may be read after an incubation time of 24 hours. A description of the Colisure Test, February 28, 1994, may be obtained from IDEXX Laboratories, Inc., One IDEXX Drive, Westbrook, ME 04092.

*[10]A description of the E*Colite Test, "Presence/Absence for Coliforms and E. Coli in Water," December 21, 1997, is available from Charm Sciences, Inc., 25 Franklin Street, Malden, MA 02148-4120.*

[11]A description of the m-ColiBlue24 Test, August 17, 1999, is available from the Hach Company, 100 Dayton Avenue, Ames, IA 50010.

[12]The department strongly recommends that laboratories evaluate the false-positive and false-negative rates for the method(s) they use for monitoring total coliforms. It also encourages laboratories to establish false-positive and false-negative rates within their own laboratory and sample matrix (drinking water or source water) with the intent that if the method chosen has an unacceptable false-positive or false-negative rate, another method can be used. The department suggests that laboratories perform these studies on a minimum of 5 percent of all total coliform-positive samples, except for those methods where verification/confirmation is already required, e.g., the M-Endo and LES Endo Membrane Filter Tests, Standard Total Coliform Fermentation Technique, and Presence-Absence Coliform Test. Methods for establishing false-positive and false-negative rates may be based on lactose fermentation, the rapid test for beta-galactosidase and cytochrome oxidase, multi-test identification systems, or equivalent confirmation tests. False-positive and false-negative information is often available in published studies or from the manufacturer(s).

ITEM 8. Amend subrule **41.2(1)**, paragraph **"e,"** subparagraph **(5)**, as follows:

(5) Fecal coliform analytical methodology. Public water systems must conduct fecal coliform analysis in accordance with the following procedure. When the MTF Technique or presence-absence (P-A) coliform test is used to test for total coliforms, shake the lactose-positive presumptive tube or P-A bottle vigorously and transfer the growth with a sterile 3-mm loop or sterile applicator stick into brilliant green lactose bile broth and EC medium to determine the presence of total and fecal coliforms, respectively. For EPA-approved analytical methods which use a membrane filter, *transfer the total coliform-positive culture by one of the following methods:* remove the membrane containing the total coliform colonies from the substrate with sterile forceps and carefully curl and insert the membrane into a tube of EC medium. (The laboratory may first remove a small portion of selected colonies for verification)*; swab the entire membrane filter surface with a sterile cotton swab and transfer the inoculum to EC medium (do not leave the cotton swab in the EC medium); or inoculate individual total coliform-positive colonies into EC medium.* Gently shake the inoculated EC tubes to ensure adequate mixing and incubate in a waterbath at 44.5 (+ or -) 0.2 degrees C for 24 (+ or -) 2 hours. Gas production of any amount in the inner fermentation tube of the EC medium indicates a positive fecal coliform test. The preparation of EC medium is described in Method 9221E (paragraph 1a) in Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, *and in the 19th edition, 1995; either edition may be used.* Public water supply systems need only determine the presence or absence of fecal coliforms; a determination of fecal coliform density is not required.

ITEM 9. Amend subrule **41.2(1)**, paragraph **"e,"** subparagraph **(6)**, as follows:

(6) E. coli analytical methodology. Public water systems must conduct analysis of Escherichia coli (E. coli) in accordance with one of the following analytical methods:

1. EC medium supplemented with 50 micrograms per milliliter of 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration). EC medium is described in Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, *and in the 19th edition, 1995,* Method 9221E, paragraph 1a*; either edition may be used.* MUG may be added to EC medium before autoclaving. EC medium supplemented with 50 micrograms per milliliter of MUG is commercially available. At least 10 mL of EC medium supplemented with MUG must be used. The inner inverted fermentation tube may be omitted. The procedure for transferring a total coliform-positive culture to EC medium supplemented with MUG shall be as specified in ~~subrule~~ 41.2(1)"e"(5) for transferring a total coliform-positive culture to EC medium. Observe fluorescence with an ultraviolet light (366 nm) in the dark after incubating tube at 44.5 plus or minus 0.2 degrees Celsius for 24 plus or minus 2 hours.

2. Nutrient agar supplemented with 100 micrograms per mL 4-methylumbelliferyl-beta-D-glucuronide (MUG) (final concentration). Nutrient agar is described in Method 9221B (paragraph 3) in Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, *and in the 19th edition, 1995; either edition may be used.* This test is used to determine if a total coliform-positive sample, as determined by the Membrane-Filter Technique or any other method in which a membrane filter is used, contains E. coli. Transfer the membrane filter containing a total coliform colony(ies) to nutrient agar supplemented with 100 micrograms per mL (final concentration) of MUG. After incubating the agar plate at 35 degrees Celsius for 4 hours, observe the colony(ies) under ultraviolet light (366 nm) in the dark for fluorescence. If fluorescence is visible, E. coli are present.

3. Minimal Medium ONPG-MUG (MMO-MUG) Test, as set forth in the article "National Field Evaluation of a Defined Substrate Method for the Simultaneous Detection of Total Coliforms and Escherichia coli from Drinking Water: Comparisons with Presence-Absence Techniques" (Edberg et al.), Applied and Environmental Microbiology, Volume 55, pp. 1003-1008, April 1989. (Note: The Autoanalysis Colilert System is an MMO-MUG test.) If the MMO-MUG Test is total coliform-positive after a 24-hour incubation, test the medium for fluorescence with a 366-nm ultraviolet light (preferably with a 6-watt lamp) in the dark. If fluorescence is observed, the sample is E. coli-positive. If fluorescence is questionable (cannot be definitively read) after 24 hours incubation, incubate the culture for an additional four hours (but not to exceed 28 hours total), and again test the medium for fluorescence. The MMO-MUG Test with hepes buffer is the only approved formulation for the detection of E. coli.

4. The membrane filter method with MI agar, as described in footnote 6 of the Total Coliform Methodology Table in 41.2(1)"e"(3).

*5. E*Colite Test, as described in footnote 10 of the Total Coliform Methodology Table in 41.2(1)"e"(3).*

6. m-ColiBlue24 Test, as described in footnote 11 of the Total Coliform Methodology Table in 41.2(1)"e"(3).

ITEM 10. Amend subrule **41.2(3)**, paragraph **"e,"** as follows:

e. Analytical methodology. Public water systems shall conduct heterotrophic plate count bacteria analysis in accordance with 567—subrule 43.5(2) and the following analyti-

cal method. Measurements for heterotrophic plate count bacteria must be conducted by a laboratory certified by the department to do such analysis~~.~~, *when heterotrophic plate count bacteria are being measured in lieu of a detectable residual disinfectant pursuant to 567—paragraph 43.5(2)"d." In addition, the time from sample collection to initiation of analysis may not exceed 8 hours, and the systems must hold the samples below 10 degrees Celsius during transit to the laboratory.*

(1) Method. The heterotrophic plate count shall be performed in accordance with Method 9215B Pour Plate Method, Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, *and 19th edition, 1995 (either edition may be used).*

(2) Reporting. The public water system shall report the results of heterotrophic plate count in accordance with 567— subparagraph 42.4(3)"c"(2).

ITEM 11. Amend subrule **41.3(1)**, paragraph **"c,"** subparagraph **(2)**, numbered paragraph **"4,"** as follows:

4. Composite sampling. The department may reduce the total number of samples which must be analyzed by the use of compositing. In systems serving less than or equal to 3,300 persons, composite samples from a maximum of five samples are allowed, provided that the detection limit of the method used for analysis is less than one-fifth of the MCL. Compositing of samples must be done in the laboratory. If the concentration in the composite sample is greater than or equal to one-fifth of the MCL of any inorganic chemical, then a follow-up sample must be taken within 14 days at each sampling point included in the composite. These samples must be analyzed for the contaminants which exceeded one-fifth of the MCL in the composite sample. If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these duplicates instead of resampling, *provided the holding time of the duplicate samples is not exceeded.* The duplicate must be analyzed and the results reported to the department within 14 days ~~of collection~~ *after completing analysis of the composite sample.* If the population served by the system is greater than 3,300 persons, then compositing may only be permitted by the department as sampling points within a single system. In systems serving less than or equal to 3,300 persons, the department may permit compositing among different systems provided the five-sample limit is maintained. Detection limits for each inorganic contaminant analytical method are contained in 41.3(1)"e"(1).

ITEM 12. Amend subrule **41.3(1)**, paragraph **"c,"** subparagraph **(7)**, numbered paragraph **"1,"** as follows:

1. Deadline for IOCs confirmation samples. Where the results of an analysis for antimony, arsenic, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, selenium, ~~and~~ *or* thallium indicate an exceedance of the maximum contaminant level, the department may require that one additional sample be collected as soon as possible after the initial sample was taken (but not to exceed two weeks) at the same sampling point.

ITEM 13. Amend subrule **41.3(1)**, paragraph **"c,"** subparagraph **(8)**, numbered paragraph **"3,"** as follows:

3. Blending or treatment processes conducted for the purpose of complying with ~~health-based standards~~ *a maximum contaminant level, treatment technique, or action level,* and

ITEM 14. Amend subrule **41.3(1)**, paragraph **"e,"** subparagraph **(1)**, as follows:

(1) Analytical methods for IOCs. Analysis for the listed inorganic contaminants shall be conducted using the following methods, or their equivalent as determined by EPA. Criteria for analyzing arsenic, barium, beryllium, cadmium, chromium, copper, lead, nickel, selenium, sodium, and thallium with digestion or directly without digestion, and other analytical test procedures are contained in Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October, 1994. This document is available from the National Technical Information Service, NTIS PB95-104766, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161. The toll-free number is (800)553-6847.

INORGANIC CONTAMINANTS ANALYTICAL METHODS

Contaminant	Methodology[15]	EPA	ASTM[3]	SM[4]	Other	Detection Limit, mg/L
Antimony	Atomic absorption; furnace			3113B		0.003
	Atomic absorption; platform	200.9[2]				0.0008[12]
	ICP-Mass spectrometry	200.8[2]				0.0004
	Atomic absorption; hydride		D3697-92			0.001
Arsenic[16]	Inductively coupled plasma	200.7[2]		3120B		
	ICP-Mass spectrometry	200.8[2]				
	Atomic absorption; platform	200.9[2]				
	Atomic absorption; furnace		D2972-93C	3113B		
	Atomic absorption; hydride		D2972-93B	3114B		
Asbestos	Transmission electron microscopy	100.1[9]				0.01 MFL
	Transmission electron microscopy	100.2[10]				
Barium	Inductively coupled plasma	200.7[2]		3120B		0.002
	ICP-Mass spectrometry	200.8[2]				
	Atomic absorption; direct			3111D		0.1
	Atomic absorption; furnace			3113B		0.002

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INORGANIC CONTAMINANTS ANALYTICAL METHODS						
Contaminant	Methodology[15]	EPA	ASTM[3]	SM[4]	Other	Detection Limit, mg/L
Beryllium	Inductively coupled plasma	200.7[2]		3120B		0.0003
	ICP-Mass spectrometry	200.8[2]				0.0003
	Atomic absorption; platform	200.9[2]				0.00002[12]
	Atomic absorption; furnace		D3645-93B	3113B		0.0002
Cadmium	Inductively coupled plasma	200.7[2]				0.001
	ICP-Mass spectrometry	200.8[2]				
	Atomic absorption; platform	200.9[2]				
	Atomic absorption; furnace			3113B		0.0001
Chromium	Inductively coupled plasma	200.7[2]		3120B		0.007
	ICP-Mass spectrometry	200.8[2]				
	Atomic absorption; platform	200.9[2]				
	Atomic absorption; furnace			3113B		0.001
Cyanide	Manual distillation (followed by one of the following analytical methods):		*D2036-91A*	4500-CN-C		
	Spectrophotometric; amenable[14]		D2036-91B	4500-CN-~~D~~ *G*		0.02
	Spectrophotometric; manual[13]		D2036-91A	4500-CN-E	I-3300-85[5]	0.02
	Spectrophotometric; semi-automated[13]	335.4[6]				0.005
	Selective electrode[13]			4500-CN-F		0.05
Fluoride	Ion chromatography	300.0[6]	D4327-91	4110B		
	Manual distillation; colorimetric; SPADNS			4500F-B,D		
	Manual electrode		D1179-93B	4500F-C		
	Automated electrode				380-75WE[11]	
	Automated alizarin			4500F-E	129-71W[11]	
Magnesium	*Atomic absorption; direct*		*D511-93B*	*3111B*		
	ICP	*200.7[1]*		*3120B*		
	Complexation Titrimetric Methods		*D511-93A*	*3500-MgE*		
Mercury	Manual, cold vapor	*245.1[2]*	D3223-91	3112B		0.0002
	Automated, cold vapor	245.2[1]				0.0002
	ICP-Mass spectrometry	200.8[2]				
Nickel	Inductively coupled plasma	200.7[2]		3120B		0.005
	ICP-Mass spectrometry	200.8[2]				0.0005
	Atomic absorption; platform	200.9[2]				0.0006[12]
	Atomic absorption; direct			3111B		
	Atomic absorption; furnace			3113B		0.001
Nitrate	Ion chromatography	300.0[6]	D4327-91	4110B	B-1011[8]	0.01
	Automated cadmium reduction	353.2[6]	D3867-90A	4500-NO_3-F		0.05
	Ion selective electrode			4500-NO_3-D	601[7]	1
	Manual cadmium reduction		D3867-90B	4500-NO_3-E		0.01
Nitrite	Ion chromatography	300.0[6]	D4327-91	4110B	B-1011[8]	0.004
	Automated cadmium reduction	353.2[6]	D3867-90A	4500-NO_3-F		0.05
	Manual cadmium reduction		D3867-90B	4500-NO_3-E		0.01
	Spectrophotometric			4500-NO_{32}-B		0.01

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

INORGANIC CONTAMINANTS ANALYTICAL METHODS						
Contaminant	Methodology[15]	EPA	ASTM[3]	SM[4]	Other	Detection Limit, mg/L
Selenium	Atomic absorption; hydride		D3859-93A	3114B		0.002
	ICP-Mass spectrometry	200.8[2]				
	Atomic absorption; platform	200.9[2]				
	Atomic absorption; furnace		D3859-93B	3113B		0.002
Sodium	Inductively coupled plasma	200.7[2]				
	Atomic absorption; direct			3111B		
Thallium	ICP-Mass spectrometry	200.8[2]				
	Atomic absorption; platform	200.9[2]				0.0007[12]

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, effective January 4, 1995. Copies of the documents may be obtained from the sources listed below. Contact the Safe Drinking Water Hotline at (800)426-4791 to obtain information about these documents. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone: (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

[1]"Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1983. Available at NTIS, PB84-128677. Also available from US EPA, EMSL, Cincinnati, OH 45268.

[2]"Methods for the Determination of Metals in Environmental Samples—Supplement I," EPA-600/R-94-111, May 1994. Available at NTIS, PB94-184942.

[3]Annual Book of ASTM Standards, 1994, Vols. 11.01 and 11.02, American Society for Testing and Materials (ASTM). Copies may be obtained from the American Society for Testing and Materials, 101 Barr Harbor Drive, West Conshohocken, PA 19428.

[4]18th *and 19th* ~~edition~~ *editions* of Standard Methods for the Examination of Water and Wastewater, 1992 *and 1995, respectively*, American Public Health Association*; either edition may be used.* Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

[5]Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A-1, 3rd edition, 1989, Method I-3300-85. Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225-0425.

[6]"Methods for the Determination of Inorganic Substances in Environmental Samples," EPA-600-R-93-100, August 1993. Available at NTIS, PB94-~~121811~~ *120821*.

[7]The procedure shall be done in accordance with the Technical Bulletin 601, "Standard Method of Test for Nitrate in Drinking Water," July 1994, PN221890-001, Analytical Technology, Inc. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, effective January 4, 1995. Copies may be obtained from ATI Orion, 529 Main Street, Boston, MA 02129. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

[8]Method B-1011, "~~Water~~ *Waters* Test Method for Determination of Nitrite/Nitrate in Water Using Single Column Ion Chromatography." Copies may be obtained from Waters Corporation, Technical Services Division, 34 Maple Street, Milford, MA 01757.

[9]Method 100.1, "Analytical Method for Determination of Asbestos Fibers in Water," EPA-600/4-83-043, EPA, September 1983. Available at NTIS, PB83-260471.

[10]Method 100.2, "Determination of Asbestos Structure Over 10 Microns in Length in Drinking Water," EPA-600/R-94-134, June 1994. Available at NTIS, PB94-201902.

[11]Industrial Method No. 129-71W, "Fluoride in Water and Wastewater," December 1972, and Method No. 380-75WE, "Fluoride in Water and Wastewater," February 1976, Technicon Industrial Systems. Copies may be obtained from Bran & Luebbe, 1025 Busch Parkway, Buffalo Grove, IL 60089.

[12]Lower MDLs are reported using stabilized temperature graphite furnace atomic absorption.

[13]Screening method for total cyanides.

[14]Measures "free" cyanides.

[15]Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher. For direct analysis of cadmium and arsenic by Method 200.7, and arsenic by Method 3120B, sample preconcentration using pneumatic nebulization may be required to achieve lower detection limits. Preconcentration may also be required for direct analysis of antimony and thallium by Method 200.9, and antimony by Method 3113B, unless multiple in-furnace depositions are made.

[16]If ultrasonic nebulization is used in the determination of arsenic by Method 200.7, 200.8, or SM 3120B, the arsenic must be in the pentavalent state to provide uniform signal response. For Methods 200.7 and 3120B, both samples and standards must be diluted in the same mixed acid matrix concentration of nitric and hydrochloric acid with the addition of 100 µL of 30 hydrogen peroxide per 100 mL of solution. For direct analysis of arsenic with Method 200.8 using ultrasonic nebulization, samples and standards must contain 1 mg/L of sodium hypochlorite.

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ITEM 15. Amend subrule **41.3(1)**, paragraph **"e,"** subparagraph **(2)**, as follows:

(2) Sampling methods for IOCs. Sample collection for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium, and thallium under this subparagraph shall be conducted using the sample preservation, container, and maximum holding time procedures specified in the table below:

SAMPLING METHODS FOR IOCs

Contaminant	Preservative[1]	Container[2]	Time[3]
Antimony	HNO_3	P or G	6 months
Asbestos	4 degrees C	P or G	48 hours for filtration[5]
Barium	HNO_3	P or G	6 months
Beryllium	HNO_3	P or G	6 months
Cadmium	HNO_3	P or G	6 months
Chromium	HNO_3	P or G	6 months
Cyanide	4 degrees C, NaOH	P or G	14 days
Fluoride	None	P or G	1 month
Mercury	HNO_3	P or G	28 days
Nickel	HNO_3	P or G	6 months
Nitrate[4]	4 degrees C	P or G	48 hours
Nitrate-Nitrite[4]	H_2SO_4	P or G	28 days
Nitrite[4]	4 degrees C	P or G	48 hours
Selenium	HNO_3	P or G	6 months
Thallium	HNO_3	P or G	6 months

[1]When indicated, samples must be acidified at the time of collection to pH <2 with concentrated acid, or adjusted with sodium hydroxide to pH >12. *Samples collected for metals analysis may be preserved by acidification at the laboratory, using a 1:1 nitric acid solution (50 percent by volume), provided the shipping time and other instructions in Section 8.3 of EPA Methods 200.7, 200.8, and 200.9 are followed.* When chilling is indicated, the sample must be shipped and stored at 4 degrees C or less.

[2]P: plastic, hard or soft; G: glass, hard or soft

[3]In all cases, samples should be analyzed as soon after collection as possible. Follow additional (if any) information on preservation, containers, or holding times that is specified in the method.

[4]Nitrate may only be measured separate from nitrite in samples that have not been acidified. Measurement of acidified samples provides a total nitrate (sum of nitrate plus nitrite) concentration. *Acidification of total nitrate (nitrate plus nitrite) samples must be done in the field at the time of sample collection.*

[5]Instructions for containers, preservation procedures, and holding times as specified in Method 100.2 must be adhered to for all compliance analyses, including those conducted with Method 100.1.

ITEM 16. Amend subrule **41.4(1)**, paragraph **"g,"** subparagraph **(1)**, as follows:

(1) Analytical methods. ~~The following analytical methods must be used by an approved laboratory, except for temperature which should be measured by the supplier using the approved method:~~ *Analyses for alkalinity, calcium, conductivity, orthophosphate, pH, silica, and temperature may be performed by a Grade I, II, III, or IV certified operator meeting the requirements of 567—Chapter 81, any person under the supervision of a Grade I, II, III, or IV certified operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform analysis under 567—Chapter 83. Analyses under this subrule for lead and copper shall only be conducted by laboratories that have been certified by the department, pursuant to 567—Chapter 83. The following methods must be used:*

LEAD, COPPER AND WATER QUALITY PARAMETER ANALYTICAL METHODS

Contaminant	EPA Contaminant Code	Methodology[9]	Reference (Method Number)			
			EPA	ASTM[3]	SM[4]	USGS[5]
Alkalinity	1927	Titrimetric		D1067-92B	2320 B	
		Electrometric titration				I-1030-85
Calcium	1919	EDTA titrimetric		D511-93A	3500-Ca D	
		Atomic absorption; direct aspiration		D511-93B	3111 B	
		Inductively-coupled plasma	200.7[2]		3120 B	
Chloride	1017	Ion chromatography	300.0[8]	D4327-91	4110 B	
		Potentiometric titration			4500-Cl-D	

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Contaminant	EPA Contaminant Code	Methodology[9]	Reference (Method Number)			
			EPA	ASTM[3]	SM[4]	USGS[5]
Conductivity	1064	Conductance		D1125-~~91A~~ *95A*	2510 B	
Copper[6]	1022	Atomic absorption; furnace technique		D1688-~~90C~~ *95C*	3113 B	
		Atomic absorption; direct aspiration		D1688-~~90A~~ *95A*	3111 B	
		Inductively-coupled plasma	200.7[2]		3120 B	
		Inductively-coupled plasma; mass spectrometry	200.8[2]			
		Atomic absorption; platform furnace	200.9[2]			
Lead[6]	1030	Atomic absorption; furnace technique		D3559-~~90D~~ *95D*	3113 B	
		Inductively-coupled plasma; mass spectrometry	200.8[2]			
		Atomic absorption; platform furnace technique	200.9[2]			
		Differential pulse anodic stripping voltammatry				*Method 1001*[10]
pH	1925	Electrometric	150.1[1] 150.2[1]	D1293-~~84~~ *95*	4500-H+ B	
Orthophosphate (Unfiltered no digestion or hydrolysis)	1044	Colorimetric, automated, ascorbic acid ~~colorimetric~~	365.1[8]		4500-P F	
		Colorimetric, ascorbic acid, single reagent		D515-88A	4500-P E	
		Colorimetric, phosphomolybdate;				I-~~1601~~ *1602*-85
		Automated-segmented flow				I-2601-90[8]
		Automated discrete				I -2598-85
		Ion chromatography	300.0[7]	D4327-91	4110 *B*	
Silica	1049	Colorimetric, molybdate blue				I-1700-85
		Automated-segmented flow				I-2700-85
		Colorimetric		D859-~~88~~ *95*		
		Molybdosilicate			4500-Si D	
		Heteropoly blue			4500-Si E	
		Automated method for molybdate-reactive silica			4500-Si F	
		Inductively-coupled plasma[6]	200.7[2]		3120 B	
Temperature	1996	Thermometric			2550 B	
Total Filterable Residue (TDS)	1930	Gravimetric			2540 C	

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, effective January 4, 1995. Copies of the documents may be obtained from the sources listed below. Contact the Safe Drinking Water Hotline at (800)426-4791 to obtain information about these documents. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone: (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

[1]"Methods for Chemical Analysis of Water and Wastes," EPA-600/4-79-020, March 1983. Available at NTIS as PB84-128677. Also available at US EPA, EMSL, Cincinnati, OH.

[2]"Methods for the Determination of Metals in Environmental Samples," EPA-600/4-91-010, June 1991. Available at NTIS as PB91-231498.

[3]Annual Book of ASTM Standards, 1994 *and 1996*, Vols. 11.01 and 11.02, American Society for Testing and Materials. *The previous versions of D1688-95A and D1688-95C (copper), D3559-95D (lead), D1293-95 (pH), D1125-91A (conductivity), and D859-94 (silica) are also approved. These previous versions, D1688-90A, C, D3559-90D, D1293-84, D1125-91A and D859-88, respectively, are located in the Annual Book of ASTM Standards, 1994, Volume 11.01.* Copies may be obtained from the American Society for Testing and Materials, 101 Barr Harbor Drive, West Conshohocken, PA 19428.

[4]18th *and 19th* ~~edition~~ *editions* of Standard Methods for the Examination of Water and Wastewater, 1992 *and 1995, respectively*, American Public Health Association. Copies may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

[5]Techniques of Water Resources Investigation of the U.S. Geological Survey, Book 5, Chapter A-1, 3rd ed., 1989. Available from Information Services, U.S. Geological Survey, Federal Center, Box 25286, Denver, CO 80225-0425.

[6]Samples may not be filtered. Samples that contain less than 1 NTU (Nephelometric turbidity unit) and are properly preserved (concentrated nitric acid to pH < 2) may be analyzed directly (without digestion) for total metals; otherwise, digestion is required. When digestion is required, the total recoverable technique as defined in the method must be used.

[7]"Methods for the Determination of Inorganic Substances in Environmental Samples," EPA/600/R-93/100, August 1993. Available at NTIS as PB94-~~121811~~ *120821*.

[8]"Methods of Analysis by the U.S. Geological Survey National Water Quality Laboratory—Determination of Inorganic and Organic Constituents in Water and Fluvial Sediments, Open File Report 93-125." Available at Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

[9]Because MDLs reported in EPA Methods 200.7 and 200.9 were determined using a 2X preconcentration step during sample digestion, MDLs determined when samples are analyzed by direct analysis (i.e., no sample digestion) will be higher. Preconcentration may be required for direct analysis of lead by Methods 200.9, 3113B, and 3559-90D unless multiple in-furnace depositions are made.

[10]The description for Method 1001 is available from Palintest, Ltd., 21 Kenton Lands Road, P.O. Box 18395, Erlanger, KY 41018; or from the Hach Company, P.O. Box 389, Loveland, CO.

ITEM 17. Amend subrule **41.4(1)**, paragraph **"g,"** subparagraph **(2)**, as follows:

(2) Certified laboratory requirements. ~~Analyses~~ *Lead and copper analyses* under this subrule shall only be conducted by laboratories that have been certified by the department and are in compliance with the requirements of 567—Chapter 83.

ITEM 18. Amend subrule **41.5(1)**, paragraph **"a,"** as follows:

a. Applicability. The maximum contaminant levels for *volatile and synthetic* organic contaminants apply to community and nontransient noncommunity water systems. Compliance with the *volatile and synthetic organic contaminant* maximum contaminant level is calculated pursuant to 41.5(1)"b." ~~The maximum contaminant level for total trihalomethanes applies only to community water systems which serve a population of 10,000 or more individuals and which add a disinfectant (oxidant) to the water in any part of the drinking water treatment process. Compliance with the maximum contaminant level for total trihalomethanes is calculated pursuant to 41.5(1)"e"(4). Total trihalomethanes is the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform) and trichloromethane (chloroform).~~ *The maximum contaminant level of 0.10 mg/L for total trihalomethanes (the sum of the concentrations of bromodichloromethane, tribromomethane (bromoform), dibromochloromethane, and trichloromethane (chloroform)) applies to all surface water community public water systems (CWS) serving 10,000 or more persons and all IGW CWS serving 10,000 or more persons until December 31, 2001, after which time the systems must comply with 41.6(455B). This 0.10 mg/L MCL also applies to all groundwater CWS serving 10,000 or more persons until December 31, 2003, after which time the systems must comply with 41.6(455B). Compliance with the maximum contaminant level for total trihalomethanes is calculated pursuant to 41.5(1)"e"(4).*

ITEM 19. Amend **41.5(1)**, paragraph **"b,"** introductory paragraph, as follows:

b. Maximum contaminant levels (MCLs) *and analytical methodology* for organic compounds. The maximum contaminant levels for organic chemicals are listed in the following table. *Analyses for the contaminants in this subrule shall be conducted using the following methods, or their equivalent as approved by EPA.*

ITEM 20. Amend subrule **41.5(1)**, paragraph **"b,"** subparagraph **(1)**, as follows:

(1) Table:

ORGANIC CHEMICAL CONTAMINANTS, CODES, MCLS, ANALYTICAL METHODS, AND DETECTION LIMITS

Contaminant	EPA Contaminant Code	MCL (mg/L)	Methodology[1]	Detection Limit ~~(mg/L)[2]~~ *(mg/L)*
Volatile Organic Chemicals (VOCs):				
Benzene	2990	0.005	502.2, 524.2	*0.0005*
Carbon tetrachloride	2982	0.005	502.2, 524.2, ~~551~~ *551.1*	*0.0005*
Chlorobenzene (mono)	2989	~~0.7~~ *0.1*	502.2, 524.2	*0.0005*

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Contaminant	EPA Contaminant Code	MCL (mg/L)	Methodology[1]	Detection Limit ~~(mg/L)~~[2] *(mg/L)*
1,2-Dichlorobenzene (ortho)	2968	0.6	502.2, 524.2	*0.0005*
1,4-Dichlorobenzene (para)	2969	0.075	502.2, 524.2	*0.0005*
1,2-Dichloroethane	2980	0.005	502.2, 524.2	*0.0005*
1,1-Dichloroethylene	2977	0.007	502.2, 524.2	*0.0005*
cis-1,2-Dichloroethylene	2380	0.07	502.2, 524.2	*0.0005*
trans-1,2-Dichloroethylene	2979	0.1	502.2, 524.2	*0.0005*
Dichloromethane	2964	0.005	502.2, 524.2	*0.0005*
1,2-Dichloropropane	2983*	0.005	502.2, 524.2	*0.0005*
Ethylbenzene	2992	0.7	502.2, 524.2	*0.0005*
Styrene	2996	0.1	502.2, 524.2	*0.0005*
Tetrachloroethylene	2987	0.005	502.2, 524.2, ~~551~~ *551.1*	*0.0005*
Toluene	2991	1	502.2, 524.2	*0.0005*
1,1,1-Trichloroethane	2981	0.2	502.2, 524.2, ~~551~~ *551.1*	*0.0005*
Trichloroethylene	2984	0.005	502.2, 524.2, ~~551~~ *551.1*	*0.0005*
1,2,4-Trichlorobenzene	2378	0.07	502.2, 524.2	*0.0005*
1,1,2-Trichloroethane	2985	0.005	502.2, 524.2, ~~551~~ *551.1*	*0.0005*
Vinyl chloride	2976	0.002	502.2, 524.2	*0.0005*
Xylenes (total)	2955*	10	502.2, 524.2	*0.0005*
Synthetic Organic Chemicals (SOCs):				
Alachlor[3]	2051	0.002	~~505~~[3] *505*, 507, ~~525.2,~~ 508.1, *525.2, 551.1*	0.0002
Aldicarb	2047	0.003	531.1, 6610	0.0005
Aldicarb sulfone	2044	0.002	531.1, 6610	0.0008
Aldicarb sulfoxide	2043	0.004	531.1, 6610	0.0005
Atrazine[3]	2050	0.003	~~505~~[3] *505*, 507, ~~525.2,~~ 508.1, *525.2, 551.1*	0.0001
Benzo(a)pyrene	2306	0.0002	525.2, 550, 550.1	0.00002
Carbofuran	2046	0.04	531.1, 6610	0.0009
Chlordane[3]	2959	0.002	505, 508, 508.1, 525.2	0.0002
2,4-D[6] *(as acids, salts, or esters)*	2105	0.07	*515.1*, 515.2, *515.3*, 555, ~~515.1~~ *D5317-93*	0.0001
Dalapon	2031	0.2	515.1, *515.3*, 552.1, *552.2*	0.001
1,2-Dibromo-3-chloropropane (DBCP)	2931	0.0002	504.1, ~~551~~[6] *551.1*	0.00002
Di(2-ethylhexyl)adipate	2035	0.4	506, 525.2	0.0006
Di(2-ethylhexyl)phthalate	2039	0.006	506, 525.2	0.0006
Dinoseb[6]	2041	0.007	*515.1*, 515.2, *515.3*, 555, ~~515.1~~	0.0002
Diquat	2032	0.02	549.~~1~~*2*	0.0004
Endothall	2033	0.1	548.1	0.009
Endrin[3]	2005	0.002	505, 508, 508.1, 525.2, *551.1*	0.00001
Ethylene dibromide (EDB)	2946	0.00005	504.1, ~~551~~ *551.1*	0.00001
Glyphosate	2034	0.7	547, 6651	0.006
Heptachlor[3]	2065	0.0004	505, 508, 508.1, 525.2, *551.1*	0.00004
Heptachlor epoxide[3]	2067	0.0002	505, 508, 508.1, 525.2, *551.1*	0.00002
Hexachlorobenzene[3]	2274	0.001	505, 508, 508.1, 525.2, *551.1*	0.0001

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Contaminant	EPA Contaminant Code	MCL (mg/L)	Methodology[1]	Detection Limit ~~(mg/L)~~[2] *(mg/L)*
Hexachlorocyclopentadiene[3]	2042	0.05	505, 508, 508.1, 525.2, *551.1*	0.0001
Lindane (gamma BHC) [3]	2010	0.0002	505, 508, 508.1, 525.2, *551.1*	0.00002
Methoxychlor[3]	2015	0.04	505, 508, 508.1, 525.2, *551.1*	0.0001
Oxamyl	2036	0.2	531.1, 6610	0.002
Pentachlorophenol	2326	0.001	515.1, 515.2, *515.3,* 525.2, 555, *D5317-93*	0.00004
Picloram[3,6]	2040	0.5	515.1, 515.2, *515.3,* 555, *D5317-93*	0.0001
Polychlorinated biphenyls[4] (as decachlorobiphenyl) (as Arochlors) [3]	2383	0.0005	508A 505, 508, *508.1, 525.2*	0.0001
Simazine[3]	2037	0.004	~~505~~[3] *505,* 507, 508.1, 525.2, *551.1*	0.00007
2,3,7,8-TCDD (dioxin)	2063	$3x10^{-8}$	1613	$5x10^{-9}$
2,4,5-TP[6] (Silvex)	2110	0.05	515.1, 515.2, *515.3,* 555, *D5317-93*	0.0002
Toxaphene[3]	2020	0.003	505, 508, *508.1,* 525.2	0.001
Total Trihalomethanes (TTHMs)[5]:				
Total Trihalomethanes (the sum of the concentrations of bromodichloromethane, dibromochloromethane, tribromomethane (bromoform), and trichloromethane (chloroform))	2950	0.10	502.2, 524.2, 551.1	

*As of January 1, 1999, the contaminant ~~code~~ *codes* for the following compounds ~~was~~ *were* changed from the Iowa Contaminant Code to the EPA Contaminant Code:

Contaminant	Iowa Contaminant Code (Old)	EPA Contaminant Code (New)
1,2 Dichloropropane	2325	2983
Xylenes (total)	2974	2955

[1]Analyses for the contaminants in this section shall be conducted using the following EPA methods or their equivalent as approved by EPA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, effective January 4, 1995. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

The following methods are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (telephone: (800)553-6847).

Methods for the Determination of Organic Compounds in Drinking Water, EPA-600/4-88-039, December 1988, Revised July 1991 (NTIS PB91-231480): Methods ~~502.2, 505, 507, 508,~~ 508A~~,~~ *and* 515.1~~, 531.1~~.

Methods for the Determination of Organic Compounds in Drinking Water—Supplement I, EPA-600/4-90-020, July 1990 (NTIS PB91-146027): Methods ~~506,~~ 547, 550, 550.1~~, 551~~.

Methods for the Determination of Organic Compounds in Drinking Water—Supplement II, EPA-600/R-92-129, August 1992 (NTIS PB92-207703): Methods ~~515.2, 524.2,~~ 548.1~~, 549.1,~~ 552.1, 555.

Methods for the Determination of Organic Compounds in Drinking Water—Supplement III, EPA-600/R-95-131, August 1995 (NTIS PB95-261616): Methods 502.2, 504.1, 505, 506, 507, 508, 508.1, 515.2, 524.2, 525.2, 531.1, 551.1, 552.2.

Method 1613 "Tetra-through Octa-Chlorinated Dioxins and Furans by Isotope-Dilution HRGC/HRMS," EPA-821-B-94-005, October 1994 (NTIS PB95-104774).

The following American Public Health Association (APHA) documents are available from APHA, 1015 Fifteenth Street NW, Washington, DC 20005.

Supplement to the 18th edition of Standard Methods for the Examination of Water and Wastewater, 1994, *or Standard Methods for the Examination of Water and Wastewater, 19th edition, 1995 (either publication may be used),* APHA: Method 6610.

Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, *and 19th edition, 1995 (either edition may be used),* APHA: Method 6651.

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The following American Society for Testing and Materials (ASTM) method is available from ASTM, 100 Barr Harbor Drive, West Conshohocken, PA 19428.

Annual Book of ASTM Standards, 1996, Vol. 11.02 (or any edition published after 1993), ASTM: D5317-93.

Methods ~~504.1, 508.1, and 525.2~~ *515.3 and 549.2* are available from U.S. EPA ~~EMSL~~ *NERL, 26 W. Martin Luther King Drive,* Cincinnati, OH 45268 ~~(telephone: (513)569-7586)~~.

Other required analytical test procedures germane to the conduct of these analyses are contained in Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994 (NTIS PB95-104766). ~~are listed in this table.~~

[2]~~Detection limits are only listed for the SOCs, per 40 CFR141.~~

[3]Substitution of the detector specified in Method 505*, 507, 508, or 508.1* for the purpose of achieving lower detection limits is allowed as follows. Either an electron capture or nitrogen-phosphorus detector may be used provided all regulatory requirements and quality control criteria are met.

[4]PCBs are qualitatively identified as Aroclors and measured for compliance purposes as decachlorobiphenyl. *Users of Method 505 may have more difficulty in achieving the required detection limits than users of Method 508, 508.1, or 525.2.*

[5]The TTHM MCL for surface water or influenced groundwater CWS and NTNC systems serving over 10,000 persons will be changed to 0.080 mg/L on January 1, 2002. All remaining CWS and NTNC will be required to comply with the 0.080 mg/L MCL on January 1, 2004. See rule 41.6(455B) for additional requirements.

[6]Accurate determination of the chlorinated esters requires hydrolysis of the sample as described in EPA Methods 515.1, 515.2, 515.3, and 555, and ASTM Method D5317-93.

ITEM 21. Amend subrule **41.5(1)**, paragraph **"c,"** subparagraph **(5)**, numbered paragraph **"2,"** as follows:

2. If duplicates of the original sample taken from each sampling point used in the composite are available, the system may use these instead of resampling*, provided the holding time of the samples is not exceeded.* The ~~duplicate~~ *duplicates* must be analyzed and the results reported to the department within 14 days ~~of collection~~ *after completing analysis of the composite sample.*

ITEM 22. Amend subrule **41.5(1)**, paragraph **"e,"** subparagraph **(1)**, as follows:

(1) Applicability. Community water systems which *use a groundwater source,* serve a population of 10,000 or more individuals, and which add disinfectant (oxidant) to the water in any part of the drinking water treatment process shall analyze for total trihalomethanes in accordance with this subrule*, until December 31, 2003, after which time the systems must comply with 41.6(455B). The requirements of this subrule also apply to community water systems which use surface water or IGW in whole or in part and serve 10,000 or more persons, until December 31, 2001, after which time the systems must comply with 41.6(455B). After December 31, 2003, paragraph 41.5(1)"e" is no longer applicable to any Iowa public water supply.*

1. and 2. No change.

~~3. The system shall submit the results of at least one sample for maximum TTHM potential using the procedure specified in 41.5(1)"e"(5).~~

~~4. A sample must be analyzed from each treatment plant used by the system and be taken at a point in the distribution system reflecting the maximum residence time of the water in the system.~~

ITEM 23. Amend subrule **41.5(1)**, paragraph **"f,"** subparagraph **(2)**, as follows:

(2) PCB analytical methodology. Analysis for PCBs shall be conducted *using the methods in 41.5(1)"b"(1) and* as follows:

1. Each system which monitors for PCBs shall analyze each sample using ~~either~~ Method 505*, 508, 508.1, or 525.2* ~~or 508 pursuant to 41.5(1)"b."~~ *Users of Method 505 may have more difficulty in achieving the required Aroclor detection limits than users of Method 508, 508.1, or 525.2.*

2. and 3. No change.

ITEM 24. Amend 567—Chapter 41 by adopting the following **new** rule:

567—41.6(455B) Disinfection byproducts maximum contaminant levels and monitoring requirements.

41.6(1) Disinfection byproducts.

a. Applicability.

(1) This rule establishes criteria under which CWS and NTNC public water supply systems that add a chemical disinfectant to the water in any part of the drinking water treatment process or which provide water that contains a chemical disinfectant must modify their practices to meet the MCLs listed in this rule and the maximum residual disinfectant levels (MRDL) and treatment technique requirements for disinfection byproduct precursors listed in 567—43.6(455B).

(2) This rule establishes criteria under which TNC public water supply systems that use chlorine dioxide as a disinfectant or oxidant must modify their practices to meet the chlorine dioxide MRDL listed in 567—paragraph 43.6(1)"b."

(3) Compliance dates for this rule are based upon the source water type and the population served. Systems are required to comply with this rule as follows, unless otherwise noted. The department may assign an earlier monitoring period as part of the operation permit, but compliance with the maximum contaminant level is not required until the dates stated below.

1. Surface water and IGW CWS and NTNC. CWS and NTNC systems using surface water or groundwater under the direct influence of surface water in whole or in part and which serve 10,000 or more persons must comply with this rule beginning January 1, 2002. CWS and NTNC systems serving fewer than 10,000 persons must comply with this rule beginning January 1, 2004.

2. Groundwater CWS and NTNC. CWS and NTNC systems using only groundwater not under the direct influence of surface water must comply with this rule beginning January 1, 2004.

3. TNC using chlorine dioxide. TNC systems are not required to comply with this rule.

(4) Consecutive systems. Consecutive systems that provide water containing a disinfectant or oxidant are required to comply with this rule. A consecutive system may be incorporated into the sampling plan of the supply that produces the water (the primary water supplier), provided:

1. There is a mutual signed agreement between the primary and consecutive system supplied by that primary system that states the primary system will be responsible for the compliance of its consecutive system with this rule, regardless of additional treatment by the consecutive system.

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2. Beginning with the primary water supply, each successive consecutive system must also be included in the primary supply's sampling plan, so that there is no system with its own sampling plan between the primary supply and the consecutive supply covered by the primary supply's plan.

3. It is understood by the primary and all consecutive systems that, even if only one system in the sampling plan has a violation, all systems in the sampling plan will receive the violation and be required to conduct public notification.

4. The department receives a copy of the signed agreement and approves the sampling plan prior to the beginning of the compliance period.

If a mutual agreement is not possible, each system (the primary system and each consecutive system) is responsible for compliance with this rule for its specific system.

(5) Systems with multiple water sources. Systems with water sources that are used independently from each other, are not from the same source as determined by the department, or do not go through identical treatment processes are required to conduct the monitoring for the applicable disinfectants or oxidants and disinfection byproducts during operation of each source. The system must comply with this rule during the use of each water source.

b. Maximum contaminant levels for disinfection byproducts. The maximum contaminant levels (MCLs) for disinfection byproducts are as follows:

Disinfection byproduct	MCL (mg/L)
Bromate	0.010
Chlorite	1.0
Haloacetic acids (HAA5)	0.060
Total trihalomethanes (TTHM)	0.080

c. Monitoring requirements for disinfection byproducts.

(1) General requirements.

1. Systems must take all samples during normal operating conditions.

2. Systems may consider multiple wells drawing water from a single aquifer as one treatment plant for determining the minimum number of TTHM and HAA5 samples required, with department approval.

3. Failure to monitor in accordance with the monitoring plan required under 41.6(1)"c"(1)"6" is a monitoring violation.

4. Failure to monitor is a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages, and the system's failure to monitor makes it impossible to determine compliance with MCLs.

5. Systems may use only data collected under the provisions of this rule or 567—43.6(455B) to qualify for reduced monitoring.

6. Each system required to monitor under the provisions of this rule or 567—43.6(455B) must develop and implement a monitoring plan. The system must maintain the plan and make it available for inspection by the department and the general public no later than 30 days following the applicable compliance dates in 41.6(1)"a"(3). All systems using surface water or groundwater under the direct influence of surface water and serving more than 3,300 people must submit a copy of the monitoring plan to the department by the applicable date in 41.6(1)"a"(3)"1." The department may also require the plan to be submitted by any other system. After review, the department may require changes in any plan elements. The plan must include at least the following elements:

- Specific locations and schedules for collecting samples for any parameters included in this rule.
- How the system will calculate compliance with MCLs, MRDLs, and treatment techniques.
- If providing water to one or more consecutive systems, and the consecutive systems have agreed to the sampling plan by the primary supplier of the water pursuant to 41.6(1)"a"(4), the sampling plan of the primary water supplier must reflect the entire distribution system.

7. The department may require a monthly monitoring frequency for disinfection byproducts, which would be specified in the operation permit.

(2) Bromate. Community and nontransient noncommunity systems using ozone for disinfection or oxidation must conduct monitoring for bromate.

1. Routine monitoring. Systems must take at least one sample per month for each treatment plant in the system using ozone, collected at each source/entry point to the distribution system while the ozonation system is operating under normal conditions.

2. Reduced monitoring. The department may allow systems required to analyze for bromate to reduce monitoring from monthly to once per quarter if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly bromide measurements for one year. The system may remain on reduced bromate monitoring until the running annual average source water bromide concentration, computed quarterly, is greater than or equal to 0.05 mg/L based upon representative monthly measurements. If the running annual average source water bromide concentration is greater than or equal to 0.05 mg/L, the system must resume routine monitoring required by 41.6(1)"c"(2)"1."

(3) Chlorite. Community and nontransient noncommunity water systems using chlorine dioxide, for disinfection or oxidation, must conduct monitoring for chlorite.

1. Routine daily monitoring. Systems must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the chlorite MCL, the system must take additional samples in the distribution system the following day at the locations required by 41.6(1)"c"(3)"3," which are in addition to the sample required at the entrance to the distribution system.

2. Routine monthly monitoring. Systems must take a three-sample set each month in the distribution system. The system must take one sample at each of the following locations: near the first customer, at a location representative of average residence time, and at a location reflecting maximum residence time in the distribution system. Any additional routine sampling must be conducted in the same manner (as three-sample sets, at the specified locations). The system may use the results of additional monitoring conducted in accordance with 41.6(1)"c"(3)"3" to meet the requirement for monitoring in this subparagraph.

3. Additional monitoring. On each day following a routine sample monitoring result that exceeds the chlorite MCL at the entrance to the distribution system, the system is required to take three chlorite distribution system samples at the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

4. Reduced monitoring.

- Daily chlorite monitoring at the entrance to the distribution system required by 41.6(1)"c"(3)"1" may not be reduced.

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• The department may allow systems with monthly chlorite monitoring in the distribution system required by 41.6(1)"c"(3)"2" to be reduced to a requirement of 1 three-sample set per quarter after one year of monitoring where no individual chlorite sample taken in the distribution system under 41.6(1)"c"(3)"2" has exceeded the chlorite MCL and the system has not been required to conduct additional monitoring under 41.6(1)"c"(3)"3." The system may remain on the reduced monitoring schedule until either any of the three individual chlorite samples taken quarterly in the distribution system under 41.6(1)"c"(3)"2" exceeds the chlorite MCL or the system is required to conduct monitoring under 41.6(1)"c"(3)"3" of this rule, at which time the system must revert to routine monitoring.

(4) Total trihalomethanes (TTHM) and haloacetic acids (HAA5).

1. Routine monitoring. Systems must monitor at the frequency indicated in the following table:

Routine Monitoring Frequency for TTHM and HAA5

Type of System (source water type and population served)	Minimum Monitoring Frequency	Sample Location in the Distribution System
SW/IGW[3] system serving ≥10,000 persons	Four water samples per quarter per treatment plant	At least 25 percent of all samples collected each quarter at locations representing maximum residence time. Remaining samples taken at locations representative of at least average residence time in the distribution system and representing the entire distribution system, taking into account number of persons served, different sources of water, and different treatment methods.[1]
SW/IGW[3] system serving 500 - 9,999 persons	One water sample per quarter per treatment plant	Locations representing maximum residence time.[1]
SW/IGW[3] system serving <500 persons	One sample per year per treatment plant during month of warmest water temperature	Locations representing maximum residence time.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in 41.6(1)"c"(4)"2," fourth unnumbered paragraph.
System using only non-IGW groundwater using chemical disinfectant and serving ≥10,000 persons	One water sample per quarter per treatment plant[2]	Locations representing maximum residence time.[1]
System using only non-IGW groundwater using chemical disinfectant and serving <10,000 persons	One sample per year per treatment plant during month of warmest water temperature	Locations representing maximum residence time.[1] If the sample (or average of annual samples, if more than one sample is taken) exceeds MCL, system must increase monitoring to one sample per treatment plant per quarter, taken at a point reflecting the maximum residence time in the distribution system, until system meets reduced monitoring criteria in 41.6(1)"c"(4)"2," fourth unnumbered paragraph.

[1]If a system chooses to sample more frequently than the minimum required, at least 25 percent of all samples collected each quarter (including those taken in excess of the required frequency) must be taken at locations that represent the maximum residence time of the water in the distribution system. The remaining samples must be taken at locations representative of at least average residence time in the distribution system.

[2]Multiple wells drawing water from a single aquifer may be considered one treatment plant for determining the minimum number of samples required, with department approval.

[3]SW/IGW indicates those systems that use either surface water (SW) or groundwater under the direct influence of surface water (IGW), in whole or in part.

2. Reduced monitoring. The department may allow systems a reduced monitoring frequency, except as otherwise provided, in accordance with the following table. Source water total organic carbon (TOC) levels must be determined in accordance with 567—subparagraph 43.6(2)"c"(1).

Reduced Monitoring Frequency for TTHM and HAA5

If you are a . . .	And you have monitored at least one year and your . . .	You may reduce monitoring to this level
SW/IGW[1] system serving ≥10,000 persons which has a source water annual average TOC level, before any treatment, of ≤4.0 mg/L.	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L	One sample per treatment plant per quarter at distribution system location reflecting maximum residence time.

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If you are a . . .	And you have monitored at least one year and your . . .	You may reduce monitoring to this level
SW/IGW[1] system serving 500 - 9,999 persons that has a source water annual average TOC level, before any treatment, of ≤4.0 mg/L.	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L	One sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.
SW/IGW[1] system serving <500 persons	Any SW/IGW[1] system serving <500 persons may not reduce its monitoring to less than one sample per treatment plant per year.	
System using only non-IGW groundwater using chemical disinfectant and serving ≥10,000 persons	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L	One sample per treatment plant per year at distribution system location reflecting maximum residence time during month of warmest water temperature.
System using only non-IGW groundwater using chemical disinfectant and serving <10,000 persons	TTHM annual average ≤0.040 mg/L and HAA5 annual average ≤0.030 mg/L for two consecutive years; or, TTHM annual average ≤0.020 mg/L and HAA5 annual average ≤0.015 mg/L for one year.	One sample per treatment plant per three-year monitoring cycle at distribution system location reflecting maximum residence time during month of warmest water temperature, with the three-year cycle beginning on January 1 following quarter in which system qualifies for reduced monitoring.

[1]SW/IGW indicates those systems that use either surface water (SW) or groundwater under the direct influence of surface water (IGW), in whole or in part.

• Systems on a reduced monitoring schedule may remain on that reduced schedule as long as the average of all samples taken in the year (for systems which must monitor quarterly) or the result of the sample (for systems which must monitor no more frequently than annually) is less than or equal to 0.060 mg/L for TTHMs and is less than or equal to 0.045 mg/L for HAA5. Systems that do not meet these levels must resume monitoring at the frequency identified in 41.6(1)"c"(4)"1" in the quarter immediately following the quarter in which the system exceeds 0.060 mg/L for TTHMs and 0.045 mg/L for HAA5. For systems using only groundwater not under the direct influence of surface water and serving fewer than 10,000 persons, if either the TTHM annual average is >0.080 mg/L or the HAA5 annual average is >0.060 mg/L, the system must go to increased monitoring identified in 41.6(1)"c"(4)"1."

• The department may allow systems on increased monitoring to return to routine monitoring if TTHM annual average is less than or equal to 0.040 mg/L and HAA5 annual average is less than or equal to 0.030 mg/L.

• The department may return a system to routine monitoring at the department's discretion.

d. Analytical requirements for disinfection byproducts.

(1) Systems must use only the analytical method(s) specified in this paragraph, or equivalent methods as determined by EPA, to demonstrate compliance with the requirements of this rule.

(2) Systems must measure disinfection byproducts by the methods (as modified by the footnotes) listed in the following table:

Approved Methods for Disinfection Byproduct Compliance Monitoring

Methodology[2]	EPA	Standard Methods	Byproduct measured[1]			
			TTHM	HAA5	Chlorite[4]	Bromate
P&T/GC/EICD & PID	502.2[3]		X			
P&T/GC/MS	524.2		X			
LLE/GC/ECD	551.1		X			
LLE/GC/ECD		6251 B		X		
SPE/GC/ECD	552.1			X		
LLE/GC/ECD	552.2			X		
Amperometric Titration		4500-ClO_2E			X	
IC	300.0				X	
IC	300.1				X	X

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register on February 16, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone: (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

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The following method is available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohoken, PA 19428:

Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials, 1996: Method D 1253-86.

The following methods are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (telephone: (800)553-6847):

"Determination of Inorganic Anions in Drinking Water by Ion Chromatography, Revision 1.0," EPA-600/R-98/118, 1997 (available through NTIS, PB98-169196): Method 300.1.

Methods for the Determination of Inorganic Substances in Environmental Samples, EPA-600/R-93/100, August 1993, (NTIS PB94-121811): Method 300.0.

Methods for the Determination of Organic Compounds in Drinking Water—Supplement II, EPA-600/R-92-129, August 1992 (NTIS PB92-207703): Method 552.1.

Methods for the Determination of Organic Compounds in Drinking Water—Supplement III, EPA-600/R-95-131, August 1995 (NTIS PB95-261616): Methods 502.2, 524.2, 551.1, and 552.2.

The following methods are available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005:

Standard Methods for the Examination of Water and Wastewater, 19th edition, American Public Health Association, 1995: Methods: 4500-Cl D, 4500-Cl E, 4500-Cl F, 4500-Cl G, 4500-Cl H, 4500-Cl I, 4500-ClO_2 D, 4500-ClO_2 E, 6251 B, and 5910 B.

Standard Methods for the Examination of Water and Wastewater, Supplement to the 19th edition, American Public Health Association, 1996: Methods: 5310 B, 5310 C, and 5310 D.

[1]X indicates method is approved for measuring specified disinfection byproduct.

[2]ECD = electron capture detector	IC = ion chromatography	P&T = purge and trap
EICD = electrolytic conductivity detector	LLE = liquid/liquid extraction	PID = photoionization detector
GC = gas chromatography	MS = mass spectrometer	SPE = solid phase extractor

[3]If TTHMs are the only analytes being measured in the sample, then a PID is not required.

[4]Amperometric titration may be used for routine daily monitoring of chlorite at the entrance to the distribution system, as prescribed in 41.6(1)"c"(3)"1." Ion chromatography must be used for routine monthly monitoring of chlorite and additional monitoring of chlorite in the distribution system, as prescribed in 41.6(1)"c"(3)"2" and "3."

(3) Certified laboratory requirements. Analyses under this rule for disinfection byproducts shall only be conducted by laboratories that have been certified by the department and are in compliance with the requirements of 567—Chapter 83, except as specified under subparagraph 41.6(1)"d"(4).

(4) Daily chlorite samples at the entrance to the distribution system must be measured by a Grade II, III or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of a Grade II, III or IV operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform analysis under 567—Chapter 83.

e. Compliance requirements for disinfection byproducts.

(1) General requirements.

1. When compliance is based on a running annual average of monthly or quarterly samples or averages and the system fails to monitor for TTHM, HAA5, or bromate, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

2. Unless invalidated by the department, all samples taken and analyzed under the provisions of this rule must be included in determining compliance, even if that number is greater than the minimum required.

3. If, during the first year of monitoring under paragraph 41.6(1)"c," any individual quarter's average will cause the running annual average of that system to exceed the MCL, the system is out of compliance at the end of that quarter.

(2) Bromate. Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly samples (or, for months in which the system takes more than one sample, the average of all samples taken during the month) collected by the system as prescribed by subparagraph 41.6(1)"c"(2). If the average of samples covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to 567—Chapter 42, in addition to reporting to the department pursuant to 567—paragraph 42.4(3)"d." If a PWS fails to complete 12 consecutive months' monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

(3) Chlorite. Compliance must be based on an arithmetic average of each three-sample set taken in the distribution system as prescribed by 41.6(1)"c"(3)"1" and 41.6(1)"c"(3)"2." If the arithmetic average of any three-sample set exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to 567—Chapter 42, in addition to reporting to the department pursuant to 567—paragraph 42.4(3)"d."

(4) TTHM and HAA5.

1. For systems monitoring quarterly, compliance with MCLs in paragraph 41.6(1)"b" must be based on a running annual arithmetic average, computed quarterly, of quarterly arithmetic averages of all samples collected by the system as prescribed by subparagraph 41.6(1)"c"(4).

2. For systems monitoring less frequently than quarterly, systems demonstrate MCL compliance if the average of samples taken that year under the provisions of subparagraph 41.6(1)"c"(4) does not exceed the MCLs in 41.6(1)"b." If the average of these samples exceeds the MCL, the system must increase monitoring to once per quarter per treatment plant and is not in violation of the MCL until it has completed one year of quarterly monitoring, unless the result of fewer than four quarters of monitoring will cause the running annual average to exceed the MCL, in which case the system is in violation at the end of that quarter. Systems required to increase to quarterly monitoring must calculate compliance by including the sample that triggered the increased monitoring plus the following three quarters of monitoring.

3. If the running annual arithmetic average of quarterly averages covering any consecutive four-quarter period exceeds the MCL, the system is in violation of the MCL and must notify the public pursuant to 567—Chapter 42 in addi-

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tion to reporting to the department pursuant to 567—paragraph 42.4(3)"d."

4. If a PWS fails to complete four consecutive quarters of monitoring, compliance with the MCL for the last four-quarter compliance period must be based on an average of the available data.

f. Reporting requirements for disinfection byproduct precursors. Systems required to sample quarterly or more frequently must report to the department within ten days after the end of each quarter in which samples were collected, notwithstanding the public notification provisions of 567—42.1(455B). Systems required to sample less frequently than quarterly must report to the department within ten days after the end of each monitoring period in which samples were collected. The specific reporting requirements for disinfection byproducts are listed in 567—subparagraph 42.4(3)"d"(2).

41.6(2) Reserved.

ITEM 25. Rescind and reserve rule **567—41.7(455B)**.

ITEM 26. Amend subrule **41.9(2)**, paragraph **"a,"** subparagraph **(1)**, as follows:

(1) Initial monitoring requirement and period. Initial sampling to determine compliance with 41.8(1) shall begin by June 24, 1979, and the analysis shall be completed by June 24, 1980. Compliance shall be based on the analysis of an annual composite of four consecutive quarterly samples or the average of the analyses of four samples obtained at quarterly intervals.

A gross alpha particle activity measurement may be substituted for the required radium-226 and radium-228 analysis, provided that the measured gross alpha particle activity does not exceed 5 pCi/L at a confidence level of 95 percent (1.65 ~~θ~~ {sigma} where ~~θ~~ {sigma} is the standard deviation of the net counting rate of the sample). In localities where radium-228 may be present in drinking water, radium-226 or radium-228 analyses are required when the gross alpha particle activity exceeds 2 pCi/L.

When the gross alpha particle activity exceeds 5 pCi/L, the same or an equivalent sample shall be analyzed for radium-226. If the concentration of radium-226 exceeds 3 pCi/L, the same or an equivalent sample shall be analyzed for radium-228.

ITEM 27. Rescind subrule **41.11(1)**, paragraph **"c,"** subparagraph **(4)**.

ITEM 28. Amend subrule **41.11(1)**, paragraph **"d,"** subparagraph **(2)**, as follows:

(2) Certified laboratory requirements. Analysis under this subrule shall only be conducted by laboratories certified under 567—Chapter 83. ~~In addition to these requirements, each laboratory analyzing for ethylene dibromide (EDB) and 1,2-dibromo-3-chloropropane (DBCP) must achieve a method detection limit for EDB and DBCP of 0.00002 mg/L, according to the procedures in Appendix B of 40 Code of Federal Regulations Part 136, June 20, 1986.~~

ITEM 29. Amend subrule **41.11(2)**, paragraph **"a,"** subparagraph **(1)**, as follows:

(1) Sampling for *unregulated* organic contaminants. Each community and nontransient noncommunity water system shall take four consecutive quarterly samples at each source/entry point for each contaminant listed in 41.11(2)"b" and report the results to the department. Monitoring must be completed by December 31, 1995, and take place during the calendar quarter which is specified by the department.

ITEM 30. Amend subrule **41.11(2)**, paragraph **"b,"** as follows:

b. Unregulated organic chemical (SOC) contaminants. Systems shall monitor for the unregulated contaminants listed below, using the methods identified below and using the analytical test procedures contained within Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994, which is available at NTIS, PB95-104766. Method 6610 shall be followed in accordance with the Standard Methods for the Examination of Water and Wastewater, 18th edition Supplement, 1994, American Public Health Association. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51, effective January 4, 1995. Copies of methods listed in Standard Methods for the Examination of Water and Wastewater may be obtained from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005. Copies may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460; or at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

Unregulated Organic Contaminants and Methodology

Organic Contaminants	EPA Analytical Method
Aldicarb	531.1, 6610
Aldicarb sulfone	531.1, 6610
Aldicarb sulfoxide	531.1, 6610
Aldrin	505, 508, 508.1, 525.~~1~~ *2*
Butachlor	507, 525.~~1~~ *2*
Carbaryl	531.1, 6610
Dicamba	515.1, 515.2, 555
Dieldrin	505, 508, 508.1, 525.~~1~~ *2*
3-Hydroxycarbofuran	531.1, 6610
Methomyl	531.1, 6610
Metolachlor	507, 508.1, 525.~~1~~ *2*
Metribuzin	507, 508.1, 525.~~1~~ *2*
Propachlor	507, 508.1, 525.~~1~~ *2*

ITEM 31. Amend subrule 41.11(3) as follows:

41.11(3) Special monitoring for sodium. Suppliers of water for community public water systems shall collect and have analyzed one sample per source or plant, for the purpose of determining the sodium concentration in the distribution system. Systems utilizing multiple wells, drawing raw water from a single aquifer may, with departmental approval, be considered as one source for determining the minimum number of samples to be collected. Sampling frequency and approved analytical methods are as follows:

a. Surface water systems. Systems utilizing a surface water source, in whole or in part, shall monitor for sodium at least once annually *at the entry point to the distribution system*;

b. Groundwater systems. Systems utilizing groundwater sources shall monitor at least once every three years *at the entry point to the distribution system*;

c. Increased monitoring. Suppliers may be required to monitor more frequently where sodium levels are variable;

d. Analytical methodology. Analyses for sodium shall be performed ~~using the flame photometric method~~ in accordance with 41.3(1)"e"(1).

e. Reporting. The sodium level shall be reported to the public by at least one of the following methods:

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(1) The community public water supply shall notify the appropriate local public health officials of the sodium levels by written notice by direct mail within three months. A copy of each notice required by this subrule shall be sent to the department within 10 days of its issuance.

(2) In lieu of the reporting requirement of 41.11(3)"e"(1), the community public water supply shall include the sodium level in its annual consumer confidence report, per subparagraph 42.3(3)"c"(12).

ITEM 32. Amend subrule 42.1(1) as follows:

42.1(1) Maximum contaminant level (MCL), *maximum residual disinfectant level (MRDL),* treatment technique, compliance schedule, and health advisory violations. The owner or operator of a public water supply system which fails to comply with an applicable MCL established by 567—41.2(455B) through 567—41.8(455B), *maximum residual disinfectant level or disinfection byproduct precursor treatment technique established by 567—43.6(455B),* treatment technique established by 567—subrule 43.3(10), fails to comply with the requirements of any compliance schedule prescribed in an operation permit, administrative order, or court order pursuant to 567—subrule 43.2(5), or fails to comply with a health advisory as determined by the department, shall notify persons served by the system as follows:

a. Distribution of public notice.

(1) Daily newspaper and mail delivery. Notice shall be given by publication in a daily newspaper of general circulation in the area served by the system as soon as possible, but in no case later than 14 days after the violation or failure, and by mail delivery (by direct mail, with the water bill, or by hand delivery) not later than 45 days after the violation or failure. The department may waive mail delivery if it determines that the owner or operator of the public water system in violation has corrected the violation or failure within the 45-day period. The department must issue the waiver in writing and within the 45-day period.

(2) Weekly newspaper and mail delivery. If the area served by a public water supply system is not served by a daily newspaper of general circulation, notice shall instead be given by publication in a weekly newspaper of general circulation serving the area and by mail delivery~~,~~ *not later than 45 days after the violation or failure. The department may waive mail delivery if it determines that the owner or operator of the public water system in violation has corrected the violation or failure within the 45-day period. The department must issue the waiver in writing and within the 45-day period.*

(3) Separable distribution systems. If a public water system has a distribution system separable from other parts of the distribution system with no interconnections, the department may allow the system to give public notice only to the area served by that portion of the system which is out of compliance.

b. Additional acute MCL violation notification requirements (electronic media). For violations of the MCLs of contaminants *or MRDLs of disinfectants* that may pose an acute risk to human health, the owner or operator of a public water supply system shall, as soon as possible but in no case later than 72 hours after the violation, furnish a copy of the notice to the radio and television stations serving the area served by the public water system in addition to meeting the requirements of 42.1(1)"a." The following violations are acute violations:

(1) Any violations specified by the department as posing an acute risk to human health.

(2) Violation of the MCL for nitrate, nitrite, or combined nitrate and nitrite as established in 567—paragraph 41.3(1)"b" and determined according to 567—paragraph 41.3(1)"c."

(3) Violation of the MCL for total coliforms, when fecal coliforms or E. coli are present in the water distribution system, as specified in 567—subparagraph 41.2(1)"b"(2).

(4) Occurrence of a waterborne disease outbreak.

(5) Violation of the MRDL for chlorine dioxide, as specified in 567—paragraph 43.6(2)"b" and determined according to 567—paragraph 43.6(2)"e."

For contaminants which pose an acute or immediate threat to public health, the department may require immediate public notification for a boil water order or where to obtain bottled water, via electronic media or door-to-door delivery of the notices.

c. Repeat ~~nonacute~~ MCL violation public notice requirements. Following the initial notice given under 42.1(1)"a," the owner or operator of the public water supply system must give notice at least once every three months by mail delivery (by direct mail, with the water bill, or by hand delivery), for as long as the violation or failure exists.

d. Additional public notice distribution methods. The owner or operator of a community water system in an area that is not served by a daily or weekly newspaper of general circulation must, in lieu of the requirements of 42.1(1)"a," "b," and "c," give notice within 14 days (72 hours for an acute violation) after the violation or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Hand delivery must be repeated every three months or posting must continue for as long as the violation or failure exists.

e. Noncommunity water system public notice distribution requirements. The owner or operator of a noncommunity water system may, in lieu of the requirements of 42.1(1)"a," "b," and "c," give notice within 14 days (72 hours for an acute violation) after the violation or failure by hand delivery or by continuous posting in conspicuous places within the area served by the system. Hand delivery must be repeated every three months or posting must continue for as long as the violation or failure exists.

f. Notice to new billing units. The owner or operator of a community water system must give a copy of the most recent public notice for any outstanding violation of any ~~health-based standard~~ *maximum contaminant level, health advisory,* treatment technique, or compliance schedule to all billing units or new service connections prior to or at the time service begins.

ITEM 33. Amend subrule 42.1(6), introductory paragraph, as follows:

42.1(6) Operation permit compliance schedule public notice requirements. When the director determines that a public water supply system cannot promptly comply with one or more ~~health-based standards of 567—Chapters 41 and 43~~ *maximum contaminant levels of 567—41.2(455B) through 41.8(455B),* and that there is no immediate, unreasonable risk to the health of persons served by the system, a draft operation permit or modified permit will be formulated, which may include interim contaminant levels or a compliance schedule. Prior to issuance of a final permit, notice and opportunity for public participation must be given in accordance with this subrule. The notice shall be circulated in a manner designed to inform interested and potentially interested persons of any proposed interim contaminant level or compliance schedule.

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ITEM 34. Rescind subrule **42.2(6)**.

ITEM 35. Amend subrule **42.3(3)**, paragraph **"b,"** subparagraphs **(3)** through **(5)**, as follows:

~~(3) "Variances and exemptions" means state permission not to meet an MCL or a treatment technique under certain conditions. This definition is only required for a water system which has been granted a variance, an exemption, or a compliance schedule extension through an operation permit, administrative order, or court order.~~

(4) A report which contains data on a contaminant for which EPA has set a treatment technique or an action level must include one or both of the following definitions, as applicable:

1. "Treatment technique *(TT)*" means a required process intended to reduce the level of a contaminant in drinking water.

2. "Action level *(AL)*" means the concentration of a contaminant which, if exceeded, triggers treatment or other requirements which a water system must follow.

~~(5) "Detected." For the purposes of this subrule, "detected" means at or above the levels prescribed by the following 567—Chapter 41 references:~~

~~1. Inorganic contaminants: 567—subparagraph 41.3(1)"e"(1).~~

~~2. Volatile organic contaminants: 567—paragraph 41.5(1)"b."~~

~~3. Synthetic organic contaminants: 567—paragraph 41.5(1)"b."~~

~~4. Radionuclide contaminants: 567—paragraph 41.9(1)"c."~~

~~5. Other contaminants with health advisory levels, as assigned by the department.~~

ITEM 36. Amend subrule **42.3(3)**, paragraph **"c,"** introductory paragraph, as follows:

c. Information on detected contaminants. This paragraph specifies the requirements for information to be included in each report for contaminants subject to mandatory monitoring (except Cryptosporidium, which is listed in 42.3(3)"c"(2)). It applies to the following: contaminants subject to an MCL, action level, or treatment technique (regulated contaminants); contaminants for which monitoring is required by 567—paragraph 41.3(1)"f," 567—41.11(455B), and 567—41.15(455B) (unregulated and special contaminants); and disinfection byproducts or microbial contaminants for which monitoring is required by 567—Chapters 40 to 43, except as provided under 42.3(3)"e"(1), and which are detected in the finished water. *For the purposes of this subrule, "detected" means at or above the levels prescribed by the following: inorganic contaminants in 567—subparagraph 41.3(1)"e"(1); volatile organic contaminants in 567—paragraph 41.5(1)"b"; synthetic organic contaminants in 567—paragraph 41.5(1)"b"; radionuclide contaminants in 567—paragraph 41.9(1)"c"; and other contaminants with health advisory levels, as assigned by the department.*

ITEM 37. Amend subrule **42.3(3)**, paragraph **"c,"** subparagraph **(1)**, numbered paragraph **"4,"** as follows:

4. For turbidity:

- When it is reported pursuant to 567—paragraph 41.7(1)"b": the highest average monthly value.
- When it is reported pursuant to 567—43.5(455B): the highest single measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 567—43.5(455B) for the filtration technology being used. The report should include an explanation of the reasons for measuring turbidity. *After January 1, 2002, systems serving more than 10,000 people must report the highest single turbidity measurement and the lowest monthly percentage of samples meeting the turbidity limits specified in 567—43.9(455B) for the filtration technology being used.*

ITEM 38. Amend subrule **42.3(3)**, paragraph **"c,"** subparagraph **(1)**, numbered paragraph **"9,"** as follows:

9. The table(s) must clearly identify any data indicating *MCL or TT* violations ~~of a health-based standard~~, and the report must contain a clear and readily understandable explanation of the violation including:

- The length of the violation,
- The potential adverse health effects,
- Actions taken by the system to address the violation, and
- The relevant language from Appendix E to describe the potential health effects.

ITEM 39. Amend subrule **42.3(3)**, paragraph **"c,"** subparagraph **(2)**, as follows:

(2) If monitoring indicates that Cryptosporidium may be present in the source water or the finished water, or that radon may be present in the finished water, the report must include:

~~1. A summary of the results of the monitoring;~~

1. A summary of the Cryptosporidium monitoring results;

2. The radon monitoring results; and

~~2~~ *3.* An explanation of the significance of the results.

ITEM 40. Amend subrule **42.3(3)**, paragraph **"c,"** subparagraph **(3)**, as follows:

(3) If the system has performed additional monitoring which indicates the presence of other contaminants in the finished water, the system must report any results which may indicate a health concern. To determine if results may indicate a health concern, the community public water supply can determine if there is a current or proposed ~~health-based standard~~ *maximum contaminant level, treatment technique, action level, or health advisory* by contacting the department or by calling the national Safe Drinking Water Hotline ((800)426-4791). The department considers the detection of a contaminant above a proposed MCL or health advisory to indicate possible health concerns. For such contaminants, the report should include:

1. The results of the monitoring; and

2. An explanation of the significance of the results noting the existence of a health advisory or a proposed regulation.

ITEM 41. Amend subrule **42.3(3)**, paragraph **"c,"** by adopting the following **new** subparagraph **(4)**:

(4) If the system was required to comply with the federal Information Collection Rule pursuant to the Code of Federal Regulations Title 40 Part 141, it must include the results of monitoring in compliance with Sections 141.142 and 141.143. These results need only be included for five years from the date of the sample or until any of the detected contaminants become regulated and subject to routine monitoring requirements, whichever comes first.

ITEM 42. Amend subrule **42.3(3)**, paragraph **"d,"** subparagraph **(1)**, as follows:

(1) Monitoring and reporting of compliance data pursuant to 567—Chapters 41 and 43, which includes any contaminant with a ~~health-based standard~~ *maximum contami-*

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nant level, treatment technique, action level, or health advisory;

ITEM 43. Amend subrule **42.3(3)**, paragraph **"g,"** subparagraph **(1)**, as follows:

(1) All systems. All reports must prominently display the following language: Some people may be more vulnerable to contaminants in drinking water than the general population. Immuno-compromised persons such as persons with cancer undergoing chemotherapy, persons who have undergone organ transplants, people with HIV/AIDS or other immune system disorders, some elderly, and infants can be particularly at risk from infections. These people should seek advice about drinking water from their health care providers. The *EPA/CDC* guidelines on appropriate means to lessen the risk of infection by Cryptosporidium and other microbial contaminants are available from the national Safe Drinking Water Hotline ((800)426-4791).

ITEM 44. Amend subrule **42.3(3)**, paragraph **"g,"** subparagraph **(5)**, introductory paragraph, as follows:

(5) Lead 95th percentile levels above the action level (0.015 mg/L). Systems which detect lead above the action level in more than 5 percent (95th percentile) ~~but fewer than~~ *and up to and including* 10 percent (90th percentile) of homes sampled:

ITEM 45. Amend subrule **42.3(4)**, paragraph **"c,"** introductory paragraph, as follows:

c. Waiver from mailing requirements for systems serving less than 10,000 persons. All community public water supply systems with fewer than 10,000 persons served will be granted the waiver, except for those systems which have the following: one or more exceedances of a ~~health-based standard~~ *maximum contaminant level, treatment technique, action level, or health advisory*; an administrative order; *a* court order; significant noncompliance with monitoring or reporting requirements; or an extended compliance schedule contained in the operation permit. Even though a public water supply system has been granted a mailing waiver, subparagraphs 42.3(4)"a"(2) to (4) and paragraph 42.3(4)"b" still apply to all community public water supply systems. A mailing waiver is not allowed for the report covering the year during which one of the previously listed exceptions occurred. Systems which use the mailing waiver must:

ITEM 46. Amend subrule **42.3(4)**, paragraph **"d,"** as follows:

d. Waiver from mailing requirements for systems serving 500 or fewer in population. All community public water supply systems serving 500 or fewer persons will be granted the waiver, except for those systems which have the following: one or more exceedances of a ~~health-based standard~~ *maximum contaminant level, treatment technique, action level, or health advisory*; an administrative order; *a* court order; significant noncompliance with monitoring or reporting requirements; or an extended compliance schedule contained in the operation permit. Systems serving 500 or fewer persons which use the waiver may forego the requirements of subparagraphs 42.3(4)"c"(1) and (2) if they provide notice at least once per year to their customers by mail, door-to-door delivery, or by posting that the report is available upon request, in conspicuous places within the area served by the system acceptable to the department. A mailing waiver is not allowed for the report covering the year during which one of the previously listed exceptions occurred. Even though a public water supply system has been granted a mailing waiver, subparagraphs 42.3(4)"a"(2) to (4) and paragraph 42.3(4)"b" still apply to all community public water supply systems.

ITEM 47. Amend subrule **42.4(2)**, paragraph **"e,"** subparagraph **(2)**, numbered paragraph **"2,"** as follows:

2. Conducted sampling which demonstrates that the lead concentration in all service line samples from individual line(s), taken pursuant to 567—numbered paragraph 41.4(1)"c"(2)"3," is less than or equal to 0.015 mg/L. In such cases, the total number of lines replaced and *those lines* which meet the criteria in 567—paragraph 43.7(4)"c" shall equal at least 7 percent of the initial number of lead lines identified under 567—paragraph 43.7(4)"~~c~~ *b*" or the percentage specified by the department under 567—paragraph 43.7(4)"f." *A lead service line meeting the criteria of 567—paragraph 43.7(4)"c" may only be used to comply with the 7 percent criteria for a specific year, and may not be used again to calculate compliance with the 7 percent criteria in future years.*

ITEM 48. Amend subrule **42.4(2)**, paragraph **"f,"** as follows:

f. Public education program reporting requirements. By December *31* of each year, a water system that is subject to the public education requirements in 42.2(455B) shall submit a letter to the department demonstrating that the system has delivered the public education materials that meet the content requirements in 42.2(2) and 42.2(3) and the delivery requirements in 42.2(4). This information shall include a list of all the newspapers, radio stations, television stations, facilities and organizations to which the system delivered public education materials during the previous year. The water system shall submit the letter annually for as long as it exceeds the lead action level.

ITEM 49. Amend subrule **42.4(3)**, paragraph **"a,"** subparagraph **(1)**, as follows:

(1) Applicability. No change.

1. to 3. No change.

4. Does not use a treatment technique such as blending to achieve compliance with ~~health-based standards~~ *a maximum contaminant level, treatment technique, action level, or health advisory.*

The reports shall be completed as described in 42.4(3)"a"(2) and maintained at the facility for inspection by the department for a period of five years. For CWS and NTNC PWSs, the monthly operation report must be signed by the certified operator in direct responsible charge or the certified operator's designee. For TNC PWSs, the monthly operation report, if required by the department, must be signed by the owner or the owner's designee.

All public water supplies must also comply with the record-keeping requirements in 567—43.5(455B).

ITEM 50. Amend subrule **42.4(3)**, paragraph **"a,"** subparagraph **(2)**, numbered paragraph **"3,"** as follows:

3. Treatment effectiveness for a primary standard. Where the raw water quality does not meet the requirements of 567—Chapters 41 and 43 and treatment is practiced for the purpose of complying with a ~~health-based standard~~ ~~drinking water standard~~ *maximum contaminant level, action level, health advisory, or treatment technique criteria*, daily measurement of the primary standard constituent or an appropriate indicator constituent designated by the department shall be recorded. The department will require reporting of these results in the operation permit to verify MCL compliance.

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ITEM 51. Amend subrule **42.4(3)**, paragraph **"a,"** subparagraph **(2)**, numbered paragraph **"7,"** as follows:

7. Noncommunity systems (NTNC and TNC) are exempt from the self-monitoring requirements for cation-exchange softening and iron/manganese removal if the treatment unit:

- Is a commercially available "off-the-shelf" unit designed for home use;
- Is self-contained, requiring only a piping connection for installation;
- Operates throughout a range of 35 to 80 psi; and
- Has not been installed for the purpose of removing a contaminant which has a ~~health-based standard~~ *maximum contaminant level, treatment technique, action level, or health advisory.*

ITEM 52. Amend **42.4(3)**, paragraph **"c,"** as follows:

c. Reporting and record-keeping requirements for systems using surface water and groundwater under the direct influence of surface water. In addition to the monitoring requirements required by 42.4(3)"a" and "b," a public water system that uses a surface water source or a groundwater source under the direct influence of surface water must report monthly to the department the information specified in this subrule beginning June 29, 1993, or when filtration is installed, whichever is later.

(1) Turbidity measurements as required by 567—~~subrules 41.7(1) and~~ *subrule* 43.5(3) must be reported within ten days after the end of each month the system serves water to the public. Information that must be reported includes:

1. The total number of filtered water turbidity measurements taken during the month.

2. The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in 567—~~paragraph 41.7(1)"b"~~ *paragraphs 43.5(3)"b" through "e"* for the filtration technology being used.

3. The date and value of any turbidity measurements taken during the month which exceed 5 NTU. If at any time the turbidity exceeds 5 NTU, the system must inform the department as soon as possible, but no later than the end of the next business day. This requirement is in addition to the monthly reporting requirement, pursuant to 567—43.5(455B).

(2) Disinfection information specified in 567—subrule ~~41.7(2)~~ *43.5(2)* and 567—paragraph 42.4(3)"b" must be reported to the department within ten days after the end of each month the system serves water to the public. Information that must be reported includes:

1. For each day, the lowest measurement of residual disinfectant concentration in mg/L in water entering the distribution system.

2. The date and duration of each period when the residual disinfectant concentration in water entering the distribution system fell below 0.3 mg/L and when the department was notified of the occurrence. If at any time the residual falls below 0.3 mg/L in the water entering the distribution system, the system must notify the department as soon as possible, but no later than by the end of the next business day. The system also must notify the department by the end of the next business day whether or not the residual was restored to at least 0.3 mg/L within four hours. This requirement is in addition to the monthly reporting requirement, pursuant to 567—43.5(455B).

3. The information on the samples taken in the distribution system in conjunction with total coliform monitoring listed in 567—paragraph 43.5(2)"d" and pursuant to 567—paragraph 41.2(1)"c."

ITEM 53. Amend subrule **42.4(3)**, by adopting the following **new** paragraph **"d"**:

d. Reporting and recordkeeping requirements for disinfection byproducts, disinfectants, and disinfection byproduct precursors.

(1) General requirements.

1. In addition to the monitoring requirements required by 42.4(3)"a" and "b," a CWS or NTNC public water system that adds a chemical disinfectant to the water in any part of the drinking water treatment process or which provides water that contains a chemical disinfectant must report monthly to the department the information specified in this paragraph by the dates listed in 567—subparagraphs 41.6(1)"a"(3) and 43.6(1)"a"(3). A TNC public water system which adds chlorine dioxide as a disinfectant or oxidant must report monthly to the department the information specified in this paragraph by the dates listed in 567—numbered paragraph 43.6(1)"a"(3)"3."

2. Systems required to sample quarterly or more frequently must report to the department within ten days after the end of each quarter in which samples were collected, notwithstanding the public notification provisions of 567—42.1(455B). Systems required to sample less frequently than quarterly must report to the department within ten days after the end of each monitoring period in which samples were collected.

(2) Disinfection byproducts. Systems must report the information specified in the following table:

Disinfection Byproducts Reporting Table

If you are a . . .	You must report . . .
System monitoring for TTHMs and HAA5 under the requirements of 567—subparagraph 41.6(1)"c"(4) on a quarterly or more frequent basis	1. The number of samples taken during the last quarter. 2. The location, date, and result of each sample taken during the last quarter. 3. The arithmetic average of all samples taken in the last quarter. 4. The annual arithmetic average of the quarterly arithmetic averages for the last four quarters. 5. Whether the MCL was exceeded.
System monitoring for TTHMs and HAA5 under the requirements of 567—subparagraph 41.6(1)"c"(4) less frequently than quarterly, but at least annually	1. The number of samples taken during the last year. 2. The location, date, and result of each sample taken during the last monitoring period. 3. The arithmetic average of all samples taken over the last year. 4. Whether the MCL was exceeded.

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If you are a . . .	You must report . . .
System monitoring for TTHMs and HAA5 under the requirements of 567—subparagraph 41.6(1)"c"(4) less frequently than annually	1. The location, date, and result of the last sample taken. 2. Whether the MCL was exceeded.
System monitoring for chlorite under the requirements of 567—subparagraph 41.6(1)"c"(3)	1. The number of samples taken each month for the last 3 months. 2. The location, date, and result of each sample taken during the last quarter. 3. For each month in the reporting period, the arithmetic average of all samples taken in the month. 4. Whether the MCL was exceeded, and in which month it was exceeded.
System monitoring for bromate under the requirements of 567—subparagraph 41.6(1)"c"(2)	1. The number of samples taken during the last quarter. 2. The location, date, and result of each sample taken during the last quarter. 3. The arithmetic average of the monthly arithmetic averages of all samples taken in the last year. 4. Whether the MCL was exceeded.

(3) Disinfectants. In addition to the requirements in 567—subparagraph 41.2(1)"c"(2), systems must report the information specified in the following table:

Disinfectants Reporting Table

If you are a . . .	You must report . . .
System monitoring for chlorine or chloramines under the requirements of 567—subparagraph 43.6(1)"c"(1)"2."	1. The number of samples taken during each month of the last quarter. 2. The monthly arithmetic average of all samples taken in each month for the last 12 months. 3. The arithmetic average of all monthly averages for the last 12 months. 4. Whether the MRDL was exceeded.
System monitoring for chlorine dioxide under the requirements of 567—subparagraph 43.6(1)"c"(1)"3."	1. The dates, results, and locations of samples taken during the last quarter. 2. Whether the MRDL was exceeded. 3. Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

(4) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Systems must report the information specified in the following table:

Disinfection Byproduct Precursors and Enhanced Coagulation or Enhanced Softening Reporting Table

If you are a . . .	You must report . . .
System monitoring monthly or quarterly for TOC under the requirements of 567—subparagraph 43.6(1)"c"(2) and required to meet the enhanced coagulation or enhanced softening requirements in 567—subparagraph 43.6(3)"b"(2) or (3).	1. The number of paired (source water and treated water, prior to continuous disinfection) samples taken during the last quarter. 2. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter. 3. For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal. 4. Calculations for determining compliance with the TOC percent removal requirements, as provided in 567—subparagraph 43.6(3)"c"(1). 5. Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in 567—paragraph 43.6(3)"b" for the last four quarters.
System monitoring monthly or quarterly for TOC under the requirements of 567—subparagraph 43.6(1)"c"(2) and meeting one or more of the alternative compliance criteria in 567—subparagraph 43.6(3)"a"(2) or (3).	1. The alternative compliance criterion that the system is using. 2. The number of paired samples taken during the last quarter. 3. The location, date, and result of each paired sample and associated alkalinity taken during the last quarter. 4. The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in 567—numbered paragraph 43.6(3)"a"(2)"1" or "3" or of treated water TOC for systems meeting the criterion in 43.6(3)"a"(2)"2."

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If you are a . . .	You must report . . .
	5. The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in 567—numbered paragraph 43.6(3)"a"(2)"5" or of treated water SUVA for systems meeting the criterion in 43.6(3)"a"(2)"6." 6. The running annual average of source water alkalinity for systems meeting the criterion in 567—numbered paragraph 43.6(3)"a"(2)"3" and of treated water alkalinity for systems meeting the criterion in 43.6(3)"a"(3)"1." 7. The running annual average for both TTHM and HAA5 for systems meeting the criterion in 567—numbered paragraph 43.6(3)"a"(2)"3" or "4." 8. The running annual average for the amount of magnesium hardness removal (as $CaCO_3$, in mg/L) for systems meeting the criterion in 567—numbered paragraph 43.6(3)"a"(3)"2." 9. Whether the system is in compliance with the particular alternative compliance criterion in 567—paragraph 43.6(3)"a"(2) or (3).

ITEM 54. Amend subrule **42.5(1)**, paragraph **"b,"** as follows:

b. Lead and copper record-keeping requirements. A system subject to the requirements of 42.4(2) shall retain on its premises original records of all data and analyses, reports, surveys, public education, letters, evaluations, schedules, and any other information required by 567—41.4(455B) and 567—Chapter 43. Each water system shall retain the records required by this subrule for ~~ten~~ *12* years.

ITEM 55. Amend subrule **42.5(1)**, paragraph **"e,"** as follows:

e. Operation or construction permits. Records concerning an operation or a construction permit issued pursuant to 567—Chapter 43 to the system shall be kept for a period ending not less than ten years after the system achieves compliance with the ~~health-based standard~~ *maximum contaminant level, treatment technique, action level, or health advisory,* or after the system in question completes the associated construction project.

ITEM 56. Amend **567—Chapter 42, Appendix A**, by deleting all paragraph numbers.

ITEM 57. Amend **567—Chapter 42, Appendix A**, by adopting the following **new** paragraphs in alphabetical order:

Bromate. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that bromate is a health concern at certain levels of exposure. Bromate is formed as a byproduct of ozone disinfection of drinking water. Ozone reacts with naturally-occurring bromide in the water to form bromate. Bromate has been shown to produce cancer in rats. EPA has set a drinking water standard to limit exposure to bromate.

Chloramines. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chloramines are a health concern at certain levels of exposure. Chloramines are added to drinking water as a disinfectant to kill bacteria and other disease-causing microorganisms and are also added to provide continuous disinfection throughout the distribution system. Disinfection is required for surface water systems. However, at high doses for extended periods of time, chloramines have been shown to affect blood and the liver in laboratory animals. EPA has set a drinking water standard for chloramines to protect against the risk of these adverse effects. Drinking water which meets this EPA standard is associated with little to none of this risk and should be considered safe with respect to chloramines.

Chlorine. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlorine is a health concern at certain levels of exposure. Chlorine is added to drinking water as a disinfectant to kill bacteria and other disease-causing microorganisms and is also added to provide continuous disinfection throughout the distribution system. Disinfection is required for surface water systems. However, at high doses for extended periods of time, chlorine has been shown to affect blood and the liver in laboratory animals. EPA has set a drinking water standard for chlorine to protect against the risk of these adverse effects. Drinking water which meets this EPA standard is associated with little to none of this risk and should be considered safe with respect to chlorine.

Chlorine dioxide. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlorine dioxide is a health concern at certain levels of exposure. Chlorine dioxide is used in water treatment to kill bacteria and other disease-causing microorganisms and can be used to control tastes and odors. Disinfection is required for surface water systems. However, at high doses, chlorine dioxide-treated drinking water has been shown to affect blood in laboratory animals. Also, high levels of chlorine dioxide in drinking water given to laboratory animals have been shown to cause neurological effects on the developing nervous system. These neurodevelopmental effects may occur as a result of a short-term excessive chlorine dioxide exposure. To protect against such potentially harmful exposures, EPA requires chlorine dioxide monitoring at the treatment plant, where disinfection occurs, and at representative points in the distribution system serving water users. EPA has set a drinking water standard for chlorine dioxide to protect against the risk of these adverse effects. (Note: One of the following two paragraphs must be included with the language of the previous paragraph.)

A. Systems with a nonacute violation at the treatment plant must also include the following language: The chlorine dioxide violations reported today are the result of exceedances at the treatment facility only, and do not include violations within the distribution system serving users of this water supply. Continued compliance with chlorine dioxide levels within the distribution system minimizes the potential risk of these violations to present consumers.

B. Systems with an acute violation in the distribution system must also include the following language: The chlorine dioxide violations reported today include exceedances of the EPA standard within the distribution system serving water users. Violations of the chlorine dioxide standard within the

distribution system may harm human health based on short-term exposures. Certain groups, including pregnant women, infants, and young children, may be especially susceptible to adverse effects of excessive exposure to chlorine dioxide-treated water. The purpose of this notice is to advise that such persons should consider reducing their risk of adverse effects from these chlorine dioxide violations by seeking alternate sources of water for human consumption until such exceed-ances are rectified. Local and state health authorities are the best sources for information concerning alternate drinking water.

Chlorite. The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that chlorite is a health concern at certain levels of exposure. Chlorite is formed from the breakdown of chlorine dioxide, a drinking water disinfectant. Chlorite in drinking water has been shown to affect blood and the developing nervous system. EPA has set a drinking water standard for chlorite to protect against these effects. Drinking water which meets this standard is associated with little to none of these risks and should be considered safe with respect to chlorite.

Disinfection byproducts and treatment techniques for DBPs. The United States Environmental Protection Agency (EPA) sets drinking water standards and requires the disinfection of drinking water. However, when used in the treatment of drinking water, disinfectants react with naturally occurring organic and inorganic matter present in water to form chemicals called disinfection byproducts (DBPs). EPA has determined that a number of DBPs are a health concern at certain levels of exposure. Certain DBPs, including some trihalomethanes (THMs) and some haloacetic acids (HAAs) have been shown to cause cancer in laboratory animals. Other DBPs have been shown to affect the liver and the nervous system, and cause reproductive or developmental effects in laboratory animals. Exposure to certain DBPs may produce similar effects in people. EPA has set standards to limit exposure to THMs, HAAs, and other DBPs. Drinking water which meets the EPA standards is associated with little to none of these risks and should be considered safe with respect to the disinfection byproducts.

ITEM 58. Amend **567—Chapter 42, Appendix A**, "Coliforms: Fecal coliforms/E. coli," as follows:

Coliforms: Fecal coliforms/E. coli (to be used when there is a violation of 567—subparagraph 41.2(1)"b"(2) or both 567—subparagraphs 41.2(1)"b"(1) and (2)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of fecal coliforms or E. coli is a serious health concern. Fecal coliforms and E. coli are generally not harmful themselves, but their presence in drinking water is serious because they usually are associated with sewage or animal wastes. The presence of these bacteria in drinking water is generally a result of a problem with water treatment or the pipes which distribute the water and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, *cramps,* nausea, and possibly jaundice, and associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than ~~the~~ *your* drinking water. EPA has set an enforceable drinking water standard for fecal coliforms and E. coli to reduce the risk of these adverse health effects. Under this standard all drinking water samples must be free of these bacteria. Drinking water which meets this standard is associated with little or none of this risk and should be considered safe. State and local health authorities recommend that consumers take the following precautions: (to be inserted by the public water supply system, according to instructions from state or local authorities).

ITEM 59. Amend **567—Chapter 42, Appendix A**, "Coliforms: Total coliforms," as follows:

Coliforms: Total coliforms (to be used when there is a violation of 567—subparagraph 41.2(1)"b"(1) and not a violation of 567—subparagraph 41.2(1)"b"(2)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of total coliforms is a possible health concern. Total coliforms are common in the environment and are generally not harmful themselves. The presence of these bacteria in drinking water, however, generally is a result of a problem with water treatment or the pipes which distribute the water and indicates that the water may be contaminated with organisms that can cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water but also may be caused by a number of factors other than ~~the~~ *your* drinking water. EPA has set an enforceable drinking water standard for total coliforms to reduce the risk of these adverse health effects. Under this standard, no more than 5.0 percent of the samples collected during a month can contain these bacteria, except that systems collecting fewer than 40 samples per month that have one total coliform-positive sample per month are not violating the standard. Drinking water which meets this standard is usually not associated with a health risk from disease-causing bacteria and should be considered safe.

ITEM 60. Amend **567—Chapter 42, Appendix A**, "microbiological contaminants," as follows:

Microbiological contaminants (for use when there is a violation of the treatment technique requirements for filtration and disinfection in 567—43.5(455B)). The United States Environmental Protection Agency (EPA) sets drinking water standards and has determined that the presence of microbiological contaminants is a health concern at certain levels of exposure. If water is inadequately treated, microbiological contaminants in that water may cause disease. Disease symptoms may include diarrhea, cramps, nausea, and possibly jaundice, and any associated headaches and fatigue. These symptoms, however, are not just associated with disease-causing organisms in drinking water, but also may be caused by a number of factors other than *your* drinking water. EPA has set enforceable requirements for treating drinking water to reduce the risk of these adverse health effects. Treatment such as filtering and disinfecting the water removes or destroys microbiological contaminants. Drinking water which is treated to meet EPA requirements is associated with little ~~or no~~ *to none of this* risk and should be considered safe.

ITEM 61. Amend **567—Chapter 42, Appendix B**, Section I, Notes, second bulleted paragraph, as follows:

- TNCs are exempt from the self-monitoring requirements for point-of-use treatment devices, unless the device is used to remove a contaminant which has a ~~health-based standard~~ *maximum contaminant level or treatment technique,* in which case additional SMRs will be assigned by the department.

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ITEM 62. Amend **567—Chapter 42, Appendix B**, Section I, General Requirements, introductory paragraph, as follows:

All TNCs which meet the criteria in 42.4(3)"a"(1) must measure the following parameters, where applicable. Additional SMRs are required if treatment is used to remove a contaminant which has a ~~health-based standard~~ *maximum contaminant level or treatment technique*. See Section II for the requirements under the specific treatment type.

ITEM 63. Amend **567—Chapter 42, Appendix B**, Section II, Notes, as follows:

- The self-monitoring requirements (SMR) only apply to those supplies meeting the criteria in 42.4(3)"a"(1).
- NTNCs are exempt from the self-monitoring requirements for point-of-use treatment devices, unless the device is used to remove a contaminant which has a ~~health-based standard~~ *maximum contaminant level, treatment technique, action level, or health advisory*, in which case additional SMRs will be assigned by the department.
- Daily monitoring for NTNCs *and IGW/SW TNCs* applies only when the facility is in operation.
- These are the minimum self-monitoring requirements. Additional or more frequent monitoring requirements may be assigned by the department in the operation permit.

ITEM 64. Amend **567—Chapter 42, Appendix B**, Section II, Subsection A, as follows:

A. General Requirements

All PWSs which meet the criteria in 42.4(3)"a"(1) must measure the following parameters, where applicable:

	PWS Type:	*IGW TNC*	NTNC*	CWS
Parameter	Sample Site	*Frequency*	Frequency	Frequency
Pumpage (Flow)	raw:	*1/day*	1/week	1/day
	bypass:		1/week	1/day
	final:	*1/day*	1/week	1/day
Static Water and Pumping Water Levels (Drawdown)	each active well:	*1/month*	1/month	1/month

*NTNCs must measure and record the total water used each week, but daily measurements are recommended, and may be required by the department in specific PWSs.

ITEM 65. Amend **567—Chapter 42, Appendix B**, Section II, Subsection C, introductory paragraph, as follows:

Nonmunicipalities except rural water systems, benefited water districts, and publicly owned PWSs are exempt from monitoring of iron/manganese removal equipment unless the treatment is or was installed to remove a contaminant which has a ~~health-based standard~~ *maximum contaminant level, treatment technique, action level, or health advisory.* Any chemicals which are applied during the treatment process must be measured under section "B. Chemical Addition" of this table.

ITEM 66. Amend **567—Chapter 42, Appendix B**, Section II, Subsection E, catchwords and introductory paragraph, as follows:

E. ~~Cationc~~ *Cation* Exchange (Zeolite) Softening

Nonmunicipalities except for rural water systems and benefited water districts are exempt from the monitoring of water quality parameters associated with ion-exchange softening unless the treatment is or was installed to remove a contaminant which has a ~~health-based standard~~ *maximum contaminant level, treatment technique, action level, or health advisory.*

ITEM 67. Amend **567—Chapter 42, Appendix B**, Section II, Subsection F, as follows:

F. Direct Filtration of Surface Waters or Influenced Groundwaters

	Pumpage or Flow:	All
Parameter	Sample Site	Frequency
CT Ratio	final:	1/day
Disinfectant Residual	source/entry point:	see 567—subrules 43.5(2) and 43.5(4), *and 567—43.6(455B)* for the specific requirements
	distribution system*:	
Disinfectant, quantity used	day tank/scale:	1/day
pH	final:	1/day
Temperature	raw:	1/day
Turbidity	raw:	see 567—subrules 43.5(3) and 43.5(4), *and 567—43.9(455B)* for the specific requirements
	final:	

* Monitoring is to be conducted at representative points in the distribution system which adequately demonstrate compliance with 567—subrule 43.5(2), ~~and~~ 567—subrule 43.5(4), *and 567—43.6(455B).*

ITEM 68. Amend **567—Chapter 42, Appendix B**, Section II, Subsection G, as follows:

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G. Clarification or Lime Softening of Surface Waters or Influenced Groundwaters

Parameter	Pumpage or Flow: Sample Site	All Frequency
Alkalinity	raw: final:	1/day 1/day
Caustic Soda, quantity used	day tank/scale:	1/week
CT Ratio	final:	1/day
Disinfectant Residual	source/entry point: distribution system*:	see 567—subrules 43.5(2) and 43.5(4), *and 567—43.6(455B)* for the specific requirements
Disinfectant, quantity used	day tank/scale:	1/day
Hardness as $CaCO_3$	raw: final:	1/day 1/day
Odor	raw: final:	1/week 1/day
pH	raw: final:	1/day 1/day
Temperature	raw:	1/day
Turbidity	raw: final:	see 567—subrules 43.5(3) and 43.5(4), *and 567—43.9(455B)* for the specific requirements

* Monitoring is to be conducted at representative points in the distribution system which adequately demonstrate compliance with 567—subrule 43.5(2), ~~and~~ 567—subrule 43.5(4), *and 567—43.6(455B)*.

ITEM 69. Amend **567—Chapter 42, Appendix C**, Key, by adopting the following **new** definition in alphabetical order:

N/A not applicable

ITEM 70. Amend **567—Chapter 42, Appendix C**, "acrylamide" entry in the "Synthetic Organic Contaminants" table, as follows:

Acrylamide	~~0~~		TT	0

ITEM 71. Amend **567—Chapter 42, Appendix C**, "TTHM - Total Trihalomethanes" entry in the "Volatile Organic Contaminants" table, as follows:

TTHM [Total trihalomethanes]	~~0.1~~ *0.10*	1000	100 ppb	~~0~~ *N/A*

ITEM 72. Amend **567—Chapter 42, Appendix D**, Key, by adopting the following **new** definition in alphabetical order:

N/A not applicable

ITEM 73. Amend **567—Chapter 42, Appendix D**, "turbidity" entry in the "Microbiological Contaminants" table, as follows:

Turbidity *(NTU)*	N/A	TT	Soil runoff

ITEM 74. Amend **567—Chapter 42, Appendix D**, "arsenic" entry in the "Inorganic Contaminants" table, as follows:

Arsenic (ppb)	N/A	50	Erosion of natural deposits; runoff from orchards; ~~natural deposits;~~ runoff from glass and electronic production wastes

ITEM 75. Amend **567—Chapter 42, Appendix D**, "di(2-ethylhexyl)adipate" entry in the "Synthetic Organic Contaminant" table, as follows:

Di(2-ethylhexyl)adipate (ppb)	400	400	~~Leaching from PVC plumbing systems; discharge~~ *Discharge* from chemical factories

ITEM 76. Amend **567—Chapter 42, Appendix D**, "tetrachloroethylene" entry in the "Volatile Organic Contaminants" table, as follows:

Tetrachloroethylene (ppb)	0	5	~~Leaching from PVC pipes; discharge~~ *Discharge* from factories and dry cleaners

ITEM 77. Amend **567—Chapter 42, Appendix D**, "TTHM - Total Trihalomethanes" entry in the "Volatile Organic Contaminants" table, as follows:

TTHM (ppb) [Total trihalomethanes]	~~0~~ *N/A*	100	Byproducts of drinking water chlorination

ITEM 78. Amend subrule **43.1(3)**, paragraph **"a,"** as follows:

a. Community PWS. Community public water systems shall not use bottled water, point-of-use (POU) or point-of-entry (POE) devices to achieve permanent compliance with ~~a health-based standard~~ *maximum contaminant level, action*

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level, or treatment technique requirement in 567—Chapters 41 and 43.

ITEM 79. Amend subrule **43.1(3)**, paragraph **"d,"** subparagraph **(1)**, as follows:

(1) Monitoring program. Submit for approval to the department a monitoring program for bottled water. The monitoring program must provide reasonable assurances that the bottled water complies with all ~~health-based standards~~ *maximum contaminant levels, action levels, or treatment technique requirements* in 567—Chapters 41 and 43. The public water system must monitor a representative sample of bottled water for all contaminants regulated under 567—Chapters 41 and 43 the first quarter that it supplies the bottled water to the public, and annually thereafter. Results of the monitoring program shall be provided to the department annually.

ITEM 80. Amend subrule **43.1(5)**, paragraph **"b,"** as follows:

b. TNC systems. Any transient noncommunity public water supply system which is owned by the state or federal government, such as a state park, state hospital, or interstate rest stop, or is using a groundwater under the direct influence of surface water or surface water source, must have a certified operator in direct responsible charge of the treatment and distribution systems, in accordance with 567—Chapters 40 through 44 and 81. *Any TNC which uses chlorine dioxide as a disinfectant or oxidant must have a certified operator in direct responsible charge of the system, pursuant to 567—Chapter 81.* The department may require any TNC to have a certified operator in direct responsible charge.

ITEM 81. Amend subrule 43.2(1) as follows:

43.2(1) Operation fees.

a. Annual fee. A ~~nonrefundable~~ fee for the operation of a public water supply system shall be paid annually. *The fee will not be prorated and is nonrefundable.* The fee shall be based on the population served. The fee shall be the greater of $25 per year or $0.14 multiplied by the total population served by the public water supply for all community and nontransient noncommunity public water supply systems. The fee shall be $25 per year for all transient noncommunity water systems. Where a system provides water to another public water supply system (consecutive public water supply system) which is required to have an operation permit, the population of the recipient water supply shall not be counted as a part of the water system providing the water.

b. Fee notices. The department will send annual notices to public water supply systems at least 60 days prior to the date that the operation fee is due.

c. Fee payments. ~~For the state fiscal year beginning July 1, 1996, and thereafter, the~~ *The* annual operation fee must be paid to the department by September 1 each year.

d. ~~New public water systems. The initial operation fee payment for a new public water supply is due with the initial application for the annual operation permit. The amount of the initial yearly payment of the operation fee shall be determined based upon the population served. The operation fee will not be prorated. Annual operation fee payments after obtaining an initial operation permit shall be due by September 1 each year, in accordance with the fee schedule outlined in 43.2(3)"b"(1).~~

~~e.~~ Fee schedule adjustment. The ~~environmental protection commission~~ *department* may adjust the per capita fee payment by up to +/– $0.02 per person served so as to achieve the targeted revenue *of $350,000 during each fiscal year. The environmental protection commission must approve any per capita fee rate above $0.14 per person.* ~~The environmental protection commission may hold a public hearing concerning the necessity for making a fee schedule adjustment upward or downward for a particular state fiscal year.~~ The extent of the fee adjustment ~~is limited by the intent of 1994 Iowa Acts, Senate File 2314, section 48, and 1995 Iowa Acts, House File 553, section 39~~ *must comply with the Iowa Code section 455B.183A.* ~~The fee payments will produce revenue amounts of $350,000 during each fiscal year.~~

~~f~~ *e.* Exempted public water supply systems. Public water supply systems located on Indian lands are exempt from the fee requirements.

~~g~~ *f.* Late fees. When the owner of a public water supply fails to make timely application or *to remit* payment of fees *by September 1*, the department will notify the system by a single notice of violation. *In addition, a late fee of $100 will be assessed for failure to remit the operation fee by September 1.* The department may thereafter issue an administrative order pursuant to Iowa Code section 455B.175(1) or request a referral to the attorney general under Iowa Code section 455B.175(3) as necessary.

ITEM 82. Amend subrule **43.2(5)**, paragraph **"b,"** as follows:

b. Compliance schedule. Where one or more ~~health-based standards~~ *maximum contaminant levels, treatment techniques, designated health advisories, or action levels* cannot be met immediately, a compliance schedule for achieving compliance with standards may be made a condition of the permit. A compliance schedule requiring alterations in accordance with the standards for construction in 43.3(1) and 43.3(2) may also be included for any supply that, in the opinion of the director, contains a potential hazard.

ITEM 83. Amend subrule 43.3(1) as follows:

43.3(1) Standards for public water supplies. Any public water supply that does not meet the drinking water standards contained in 567—Chapters 41 and 43 shall make the alterations in accordance with the standards for construction contained in 43.3(2) necessary to comply with the drinking water standards unless the public water supply has been granted a variance from a ~~health-based standard~~ *maximum contaminant level or treatment technique* as a provision of its operation permit pursuant to 43.2(455B), provided that the public water supply meets the schedule established pursuant to 43.2(455B). Any public water supply that, in the opinion of the director, contains a potential hazard shall make the alterations in accordance with the standards for construction contained in this rule necessary to eliminate or minimize that hazard.

ITEM 84. Amend subrule **43.3(5)**, paragraph **"a,"** as follows:

a. Such information and data must supply pertinent information as set forth in ~~chapter 1 of the "Iowa Water Supply Facilities Design Standards."~~ *part one of the Ten States Standards.*

ITEM 85. Amend subrule **43.3(10)**, paragraph **"b,"** "Inorganic chemical" chart, footnote "a," as follows:

[a]BAT only if influent Hg concentrations are less than *or equal to* 10 micrograms/liter.

ITEM 86. Adopt **new** paragraph **43.3(10)"c"** as follows and reletter paragraphs **"c"** to **"f"** as **"d"** to **"g"**:

c. BATs for disinfection byproducts and disinfectants. The department identifies the following as the best technology, treatment techniques, or other means available for achieving compliance with the maximum contaminant lev-

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els for the disinfection byproducts listed in 567—paragraph 41.5(2)"b," and the maximum residual disinfectant levels listed in 567—paragraph 41.5(2)"c."

DBP MCL or MRDL	Best Available Technology
Bromate MCL	Control of ozone treatment process to reduce production of bromate
Chlorite MCL	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels
HAA5 MCL	Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant
TTHM MCL	Enhanced coagulation or enhanced softening or GAC10, with chlorine as the primary and residual disinfectant
MRDL	Control of treatment processes to reduce disinfectant demand and control of disinfection treatment processes to reduce disinfectant levels

ITEM 87. Amend subrule **43.3(10)**, relettered paragraphs **"d"** and **"f,"** as follows:

d. Requirement to install BAT. The department shall require community water systems and nontransient noncommunity water systems to install and use any treatment method identified in 43.3(10) as a condition for granting an interim contaminant level except as provided in paragraph "~~d~~ *e*." If, after the system's installation of the treatment method, the system cannot meet the maximum contaminant level, the system shall be eligible for a compliance schedule with an interim contaminant level granted under the provisions of 567—42.2(455B) and 43.2(455B).

f. Compliance schedule. If the department determines that a treatment method identified in 43.3(10)"a," ~~and~~ "b," *and "c"* is technically feasible, the department may require the system to install or use that treatment method in connection with a compliance schedule issued under the provisions of 567—42.2(455B) and 43.2(455B). The determination shall be based upon studies by the system and other relevant information.

ITEM 88. Amend subrule **43.5(1)**, paragraph **"a,"** introductory paragraph, as follows:

a. These rules apply to ~~community and noncommunity~~ *all* public water supply systems using surface water or groundwater under the direct influence of surface water in whole or in part. ~~The rules~~, *and* establish criteria under which filtration is required as a treatment technique. In addition, these rules establish treatment technique requirements in lieu of maximum contaminant levels for Giardia lamblia, heterotrophic *plate count* bacteria, Legionella, viruses and turbidity. Each public water system with a surface water source or a groundwater source under the direct influence of surface water must provide treatment of that source water which complies with these treatment technique requirements. *Systems which serve at least 10,000 persons must also comply with the requirements of 43.9(455B). The department may require systems serving less than 10,000 persons to comply with 43.9(455B).* The treatment technique requirements consist of installing and properly operating water treatment processes which reliably achieve:

ITEM 89. Amend **43.5(2)**, paragraphs **"c"** and **"d,"** as follows:

c. ~~Disinfectant residual~~ *Residual disinfectant* entering system. The residual disinfectant concentration in the water entering the distribution system, measured as specified in ~~567—paragraphs 41.7(2)"c" and "e,"~~ *43.5(4)"a"(5) and 43.5(4)"b"(2),* cannot be less than 0.3 mg/L free residual or 1.5 mg/L total residual chlorine for more than four hours.

d. ~~Disinfectant residual~~ *Residual disinfectant* in the system. The residual disinfectant concentration in the distribution system, measured as total chlorine, combined chlorine, or chlorine dioxide, as specified in ~~567—paragraphs 41.7(2)"c" and "e,"~~ *43.5(4)"a"(5) and 43.5(4)"b"(2),* cannot be undetectable in more than 5 percent of the samples each month for any two consecutive months that the system serves water to the public. Water within the distribution system with a heterotrophic *plate count* bacteria concentration less than or equal to 500/mL, measured as heterotrophic plate count (HPC) as specified in 567—paragraph 41.2(3)"e," is deemed to have a detectable disinfectant residual for purposes of determining compliance with this requirement. Therefore, the value "V" in the following formula cannot exceed 5 percent in one month for any two consecutive months.

$$V = \left[\frac{c+d+e}{a+b}\right] \times 100$$

where:

a = number of instances ~~where~~ *in which* the residual disinfectant concentration is measured;

b = number of instances ~~where~~ *in which* the residual disinfectant concentration is not measured but heterotrophic ~~bacteria~~ plate count *bacteria* (HPC) is measured;

c = number of instances ~~where~~ *in which* the residual disinfectant concentration is measured but not detected and no HPC is measured;

d = number of instances ~~where~~ *in which* no residual disinfectant concentration is detected and where the HPC is greater than 500/mL; and

e = number of instances ~~where~~ *in which* the residual disinfectant concentration is not measured and HPC is greater than 500/mL.

ITEM 90. Amend subrule 43.5(3) as follows:

43.5(3) Filtration.

a. Applicability. A public water system that uses a surface water source or a groundwater source under the direct influence of surface water must provide treatment consisting of both disinfection, as specified in 43.5(2), and filtration treatment which complies with the turbidity requirements of ~~567—subrule 41.7(1)~~ *subrules 43.5(3), 43.5(4), and 43.5(5).* A system providing or required to provide filtration on or before December 30, 1991, must meet the requirements of ~~567—subrule 41.7(1)~~ *this subrule* by June 29, 1993. A system providing or required to provide filtration after December 30, 1991, must meet the requirement of ~~567—subrule 41.7(1)~~ *this subrule* when filtration is installed. *Beginning January 1, 2002, systems serving at least 10,000 people must*

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meet the turbidity requirements in 43.9(455B). A system shall install filtration within 18 months after the department determines, in writing, that filtration is required. The department may require and the system shall comply with any interim turbidity requirements the department deems necessary. Failure to meet any requirements of the referenced subrules after the dates specified is a treatment technique violation.

b. Conventional filtration treatment or direct filtration.

(1) For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 0.5 nephelometric turbidity units (NTU) in at least 95 percent of the measurements taken each month when measured as specified in 43.5(4)"a"(1) and 43.5(4)"b"(1).

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU when measured as specified in 43.5(4)"a"(1) and 43.5(4)"b"(1).

c. Slow sand filtration.

(1) For systems using slow sand filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month when measured as specified in 43.5(4)"a"(1) and 43.5(4)"b"(1).

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU when measured as specified in 43.5(4)"a"(1) and 43.5(4)"b"(1).

d. Diatomaceous earth filtration.

(1) For systems using diatomaceous earth filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month when measured as specified in 43.5(4)"a"(1) and 43.5(4)"b"(1).

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU when measured as specified in 43.5(4)"a"(1) and 43.5(4)"b"(1).

e. Other filtration technologies. A public water system may use either a filtration technology not listed in 43.5(3)"b" to 43.5(3)"d" or a filtration technology listed in 43.5(3)"b" or 43.5(3)"c" at a higher turbidity level if it demonstrates to the department through a preliminary report submitted by a registered professional engineer, using pilot plant studies or other means, that the alternative filtration technology in combination with disinfection treatment that meets the requirements of 567—subrule 43.5(2) consistently achieves 99.9 percent removal or inactivation of Giardia lamblia and 99.99 percent removal or inactivation of viruses. For a system that uses alternative filtration technology and makes this demonstration, the turbidity–treatment technique requirements are as follows:

(1) The turbidity level of representative samples of a system's filtered water must be less than or equal to 1 NTU in at least 95 percent of the measurements taken each month when measured as specified in 43.5(4)"a"(1) and 43.5(4)"b"(1).

(2) The turbidity level of representative samples of a system's filtered water must at no time exceed 5 NTU when measured as specified in 43.5(4)"a"(1) and 43.5(4)"b"(1).

Beginning January 1, 2002, systems serving at least 10,000 people must meet the requirements for other filtration technologies in 43.9(3)"b."

ITEM 91. Amend subrule 43.5(4) as follows:

43.5(4) Analytical and monitoring requirements.

a. Analytical requirements. Only the analytical method(s) specified in this paragraph, or otherwise approved by the department, may be used to demonstrate compliance with the requirements of 43.5(2) and 43.5(3). Measurements for pH, temperature, turbidity, and residual disinfectant concentrations must be conducted by a Grade II, III or IV operator meeting the requirements of 567—Chapter 81, any person under the supervision of a Grade II, III or IV operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform analysis under 567—Chapter 83. For consecutive public water supplies from a surface water or groundwater under the direct influence of surface water system, the disinfectant concentration analyses must be conducted by a certified operator who meets the requirements of 567—Chapter 81. Measurements for heterotrophic plate count bacteria must be conducted by a laboratory certified by the department to do such analysis. ~~The procedures shall be performed in accordance with 567—Chapters 41 and 83 as listed below and the referenced publications.~~

~~(1) Heterotrophic plate count - 567—subrule 41.2(3)~~

~~(2) Turbidity - 567—subrule 41.7(1)~~

~~(3) Residual disinfectant concentration - 567—subrule 41.7(2)~~

~~(4) Temperature - 567—subrule 41.7(3)~~

~~(5) pH - 567—subrule 41.7(4)~~

(1) Turbidity analytical methodology. Turbidity analysis shall be conducted using the following methodology:

Methodology	*Analytical Method*		
	EPA	*SM*	*GLI*
Nephelometric	*180.1*[1]	*2130B*[2]	*Method 2*[3]

[1]*"Methods for the Determination of Inorganic Substances in Environmental Samples," EPA-600/R-93-100, August 1993. Available at NTIS, PB94-121811.*

[2]*Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, and 19th edition, 1995 (either edition may be used), American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.*

[3]*GLI Method 2, "Turbidity," November 2, 1992, Great Lakes Instruments, Inc., 8855 North 55th Street, Milwaukee, WI 53223.*

(2) Temperature analytical methodology. The temperature shall be determined in compliance with the methodology listed in 567—subparagraph 41.4(1)"g"(1).

(3) pH (hydrogen ion concentration) analytical methodology. The pH shall be determined in compliance with the methodology listed in 567—subparagraph 41.4(1)"g"(1).

(4) Heterotrophic plate count bacteria analytical methodology. The heterotrophic plate count bacteria sampling and analysis shall be conducted in compliance with 567—subrule 41.2(3) and paragraph 43.5(2)"d." The time from sample collection to initiation of analysis shall not exceed 8 hours, and the samples must be held below 10 degrees C during transit.

(5) Residual disinfectant analytical methodology. The residual disinfectant concentrations shall be determined in compliance with one of the analytical methods in the following table. Residual disinfectant concentrations for free chlorine and combined chlorine may also be measured by using DPD colorimetric test kits. Free and total chlorine residuals may be measured continuously by adapting a specified chlorine residual method for use with a continuous monitoring instrument provided the chemistry, accuracy and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days.

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DISINFECTANT ANALYTICAL METHODOLOGY

Residual	*Methodology*	*Methods*[1,2]
Free chlorine	*Amperometric Titration*	*4500-Cl D*
	DPD Ferrous Titrimetric	*4500-Cl F*
	DPD Colorimetric	*4500-Cl G*
	Syringaldazine (FACTS)	*4500-Cl H*
Total chlorine	*Amperometric Titration*	*4500-Cl D*
	Amperometric Titration (low level measurement)	*4500-Cl E*
	DPD Ferrous Titrimetric	*4500-Cl F*
	DPD Colorimetric	*4500-Cl G*
	Iodometric Electrode	*4500-Cl I*
Chlorine dioxide	*Amperometric Titration*	*4500-ClO_2 C*
	DPD Method	*4500-ClO_2 D*
	Amperometric Titration	*4500-ClO_2 E*
Ozone	*Indigo method*	*4500-O_3 B*

[1]Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992, and 19th edition, 1995 (either edition may be used), American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005.

[2]Other analytical test procedures are contained within Technical Notes on Drinking Water Methods, EPA-600/R-94-173, October 1994, which is available as NTIS PB95-104766.

b. Monitoring requirements. A public water system that uses a surface water source or groundwater source under the influence of surface water must monitor in accordance with this paragraph or some interim requirements required by the department, until filtration is installed.

~~(1) Turbidity measurements to demonstrate compliance with 43.5(3) shall be performed in accordance with 567—subrule 41.7(1).~~

(1) Turbidity.

1. Routine turbidity monitoring requirements. Turbidity measurements as required by 43.5(3) must be performed on representative samples of the system's filtered water every four hours (or more frequently) that the system serves water to the public. A public water system may substitute continuous turbidity monitoring for grab sample monitoring if it validates the continuous measurement for accuracy on a regular basis using a calibration protocol approved by the department and audited for compliance during sanitary surveys. Major elements of the protocol shall include, but are not limited to: method of calibration, calibration frequency, calibration standards, documentation, data collection and data reporting. For any systems using slow sand filtration or filtration treatment other than conventional treatment, direct filtration, or diatomaceous earth filtration, the department may reduce the sampling frequency to once per day if it determines that less frequent monitoring is sufficient to indicate effective filtration performance. For systems serving 500 or fewer persons, the department may reduce the turbidity sampling frequency to once per day, regardless of the type of filtration treatment used, if the department determines that less frequent monitoring is sufficient to indicate effective filtration performance. Approval shall be based upon documentation provided by the system, acceptable to the department and pursuant to the conditions of an operation permit.

2. Turbidity monitoring requirements for population greater than 100,000. A supplier of water serving a population or population equivalent of greater than 100,000 persons shall provide a continuous or rotating cycle turbidity monitoring and recording device or take hourly grab samples to determine compliance with 43.5(3).

(2) Residual disinfectant. ~~concentration of the water entering the distribution system to demonstrate compliance with 43.5(2)"d" shall be monitored in accordance with 567—subparagraph 41.7(2)"c"(1).~~

1. Residual disinfectant entering the system. The residual disinfectant concentration of the water entering the distribution system shall be monitored continuously, and the lowest value recorded each day, except that if there is a failure in the continuous monitoring equipment, grab sampling every four hours may be conducted in lieu of continuous monitoring, but not to exceed five working days following the failure of the equipment. If acceptable to the department, systems serving 3,300 or fewer persons may take grab samples in lieu of providing continuous monitoring on an ongoing basis at the frequencies prescribed below:

RESIDUAL DISINFECTANT SAMPLES REQUIRED OF SURFACE WATER OR IGW PWS

System size (persons served)	*Samples per day**
500 or fewer	*1*
501 to 1,000	*2*
1,001 to 2,500	*3*
2,501 to 3,300	*4*

**When more than one grab sample is required per day, the day's samples cannot be taken at the same time. The sampling intervals must be at a minimum of four-hour intervals.*

If at any time the disinfectant concentration falls below 0.3 mg/L free residual or 1.5 mg/L total residual chlorine in a system using grab sampling in lieu of continuous monitoring, the system shall take a grab sample every four hours until the residual disinfectant concentration is equal to or greater than 0.3 mg/L free residual or 1.5 mg/L total residual chlorine.

~~(3) The residual disinfectant concentration of the water in the distribution system to demonstrate compliance with 43.5(2)"d" shall be monitored in accordance with 567—subparagraph 41.7(2)"c"(2).~~

2. Residual disinfectant in the system. The residual disinfectant concentration must be measured at least at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 567—paragraph 41.2(1)"c," except that the department may allow a public water system which uses both a surface water source or a groundwater source under direct influence of surface water, and a groundwater source to take residual disinfectant samples at points other than the total coliform sampling points, if these points are included as a part of the coliform sample site plan meeting the requirements of 567—41.2(1)"c"(1)"1" and the department determines that such points are representative of treated (disinfected) water quality within the distribution system. Heterotrophic plate count bacteria (HPC) may be measured in lieu of residual disinfectant concentration, using Method 9215B, Pour Plate Method, Standard Methods for the Examination of Water and Wastewater, 18th edition, 1992. The time from sample collection to initiation of analysis shall not exceed 8 hours. Samples must be kept below 10 degrees C during transit to the laboratory. All samples must be analyzed by a department-certified laboratory meeting the requirements of 567—Chapter 83.

***43.5(5)** Reporting requirements.*

~~(4) Reporting and response to violation.~~ Public water supplies shall report the results of routine monitoring re-

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quired to demonstrate compliance with 43.5(455B) and treatment technique violations as follows:

~~1~~ *a. Waterborne disease outbreak.* Each system, upon discovering that a waterborne disease outbreak potentially attributable to that water system has occurred, must report that occurrence to the department as soon as possible, but no later than by the end of the next business day.

~~2~~ *b. Turbidity exceeds 5 NTU.* If at any time the turbidity exceeds 5 NTU, the system must inform the department as soon as possible, but no later than by the end of the next business day.

~~3~~ *c. Residual disinfectant entering distribution system below 0.3 mg/L.* If at any time the residual falls below 0.3 mg/L in the water entering the distribution system, the system must notify the department as soon as possible, but no later than by the end of the next business day. The system also must notify the department by the end of the next business day whether or not the residual was restored to at least 0.3 mg/L within four hours.

~~4~~ *d. Routine monitoring reporting requirements.* Routine monitoring results shall be provided as part of the monthly operation reports in accordance with 567—40.3(455B) and 42.4(3).

ITEM 92. Amend 567—Chapter 43 by adopting the following **new** rule:

567—43.6(455B) Residual disinfectant and disinfection byproduct precursors.

43.6(1) Residual disinfectant.

a. Applicability.

(1) CWS and NTNC systems. This rule establishes criteria under which CWS and NTNC public water supply systems that add a chemical disinfectant to the water in any part of the drinking water treatment process or that provide water that contains a chemical disinfectant must modify their practices to meet the MCLs listed in 567—41.6(455B), the maximum residual disinfectant levels (MRDL) listed in this subrule, and treatment technique requirements for disinfection byproduct precursors listed in subrule 43.6(3).

(2) TNC systems with chlorine dioxide disinfection. This rule establishes criteria under which TNC public water supply systems that use chlorine dioxide as a disinfectant or oxidant must modify their practices to meet the chlorine dioxide MRDL listed in paragraph 43.6(1)"b."

(3) Compliance dates. Compliance dates for this subrule are based upon the source water type and the population served. Systems are required to comply with this rule as follows, unless otherwise noted:

1. Surface water and IGW CWS and NTNC. CWS and NTNC systems using surface water or groundwater under the direct influence of surface water (IGW) in whole or in part and which serve 10,000 or more persons must comply with this rule beginning January 1, 2002. CWS and NTNC surface water or IGW systems serving fewer than 10,000 persons must comply with this rule beginning January 1, 2004.

2. Groundwater CWS and NTNC. CWS and NTNC systems using only groundwater not under the direct influence of surface water must comply with this rule beginning January 1, 2004.

3. TNC using chlorine dioxide. TNC systems serving over 10,000 persons and using surface water or groundwater under the direct influence of surface water and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide in this rule beginning January 1, 2002. TNC systems serving 10,000 persons or less, regardless of source water type, and using chlorine dioxide as a disinfectant or oxidant must comply with any requirements for chlorine dioxide in this rule beginning January 1, 2004.

4. Extension of compliance period for GAC or membrane technology installation. A system that is installing GAC or membrane technology to comply with this rule may apply to the department for an extension of up to 24 months past the dates in subparagraph 43.6(1)"a"(3), but not beyond December 31, 2003. In granting the extension, the department will set a schedule for compliance and may specify any interim measures the system must take. Failure to meet a compliance schedule or interim treatment requirements constitutes a violation of the public drinking water supply rules, requires public notification per 567—subrule 42.1(1), and may result in an administrative order.

(4) Control of residual disinfectants. Notwithstanding the MRDLs in this rule, systems may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health, to address specific microbiological contamination problems caused by circumstances such as, but not limited to, distribution line breaks, storm run-off events, source water contamination events, or cross-connection events.

(5) Consecutive systems. Consecutive systems that provide water containing a disinfectant or oxidant are required to comply with this rule. A consecutive system may be incorporated into the sampling plan of the supply that produces the water (the primary water supplier), provided:

1. There is a mutual signed agreement between the primary and consecutive system supplied by that primary system that states the primary system will be responsible for the compliance of its consecutive system with this rule, regardless of additional treatment by the consecutive system.

2. Beginning with the primary water supply, each successive consecutive system must also be included in the primary supply's sampling plan, so that there is no system with its own sampling plan between the primary supply and the consecutive supply covered by the primary supply's plan.

3. It is understood by the primary and all consecutive systems that even if only one system in the sampling plan has a violation, all systems in the sampling plan will receive the violation and be required to conduct public notification.

4. The department receives a copy of the signed agreement and approves the sampling plan prior to the beginning of the compliance period.

If a mutual agreement is not possible, each system (the primary system and each consecutive system) is responsible for compliance with this rule for its system.

(6) Systems with multiple water sources. Systems with water sources that are used independently from each other, are not from the same source as determined by the department, or do not go through identical treatment processes are required to conduct the monitoring for the applicable disinfectants or oxidants and disinfection byproducts during operation of each source. The system must comply with this rule during the use of each water source.

b. Maximum residual disinfectant levels. Maximum residual disinfectant levels (MRDLs) are as follows:

Disinfection Residual	MRDL (mg/L)
Chloramines	4.0 as Cl_2
Chlorine	4.0 as Cl_2
Chlorine dioxide	0.8 as ClO_2

c. Monitoring requirements for residual disinfectants.

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(1) General requirements.

1. Systems must take all samples during normal operating conditions.

2. Failure to monitor in accordance with the monitoring plan required under 43.6(1)"c"(1)"5" is a monitoring violation.

3. Failure to monitor is a violation for the entire period covered by the annual average where compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs.

4. Systems may use only data collected under the provisions of this rule or of 567—41.6(455B) to qualify for reduced monitoring.

5. Systems required to monitor under the provisions of this rule or of 567—41.6(455B) must develop and implement a monitoring plan, in accordance with 567—numbered paragraph 41.6(1)"c"(1)"6."

(2) Chlorine and chloramines.

1. Routine monitoring. Community and nontransient noncommunity water systems that use chlorine or chloramines must measure the residual disinfectant level at the same points in the distribution system and at the same time as total coliforms are sampled, as specified in 43.5(4)"b"(2)"2." Surface water and groundwater under the direct influence of surface water systems may use the results of residual disinfectant concentration sampling conducted under 43.5(4)"b"(2)"1," in lieu of taking separate samples.

2. Reduced monitoring. Chlorine and chloramine monitoring may not be reduced.

(3) Chlorine dioxide.

1. Routine monitoring. Any public water supply systems that use chlorine dioxide for disinfection or oxidation must take daily samples at the entrance to the distribution system. For any daily sample that exceeds the MRDL, the system must take samples in the distribution system the following day at the locations required by 43.6(1)"c"(3)"2," in addition to the sample required at the entrance to the distribution system.

2. Additional monitoring. On each day following a routine sample monitoring result that exceeds the MRDL, the system is required to take three chlorine dioxide distribution system samples.

- If chlorine dioxide or chloramines are used to maintain a residual disinfectant in the distribution system, or if chlorine is used to maintain a residual disinfectant in the distribution system and there are no disinfection addition points after the entrance to the distribution system (i.e., no booster chlorination), the system must take three samples as close to the first customer as possible, at intervals of at least six hours.
- If chlorine is used to maintain a residual disinfectant in the distribution system and there are one or more disinfection addition points after the entrance to the distribution system (i.e., booster chlorination), the system must take one sample at each of the following locations: as close to the first customer as possible, in a location representative of average residence time, and as close to the end of the distribution system as possible (reflecting maximum residence time in the distribution system).

3. Reduced monitoring. Chlorine dioxide monitoring may not be reduced.

d. Analytical requirements for residual disinfectants.

(1) Analytical methods. Systems must measure residual disinfectant concentrations for free chlorine, combined chlorine (chloramines), and chlorine dioxide by the methods listed in the following table:

Approved Methods for Residual Disinfectant Compliance Monitoring

Methodology	Standard Methods	ASTM Method	Residual measured[1]			
			Free Chlorine	Combined Chlorine	Total Chlorine	Chlorine Dioxide
Amperometric Titration	4500-Cl D	D 1253-86	X	X	X	
Low Level Amperometric Titration	4500-Cl E				X	
DPD Ferrous Titrimetric	4500-Cl F		X	X	X	
DPD Colorimetric	4500-Cl G		X	X	X	
Syringaldazine (FACTS)	4500-Cl H		X			
Iodometric Electrode	4500-Cl I				X	
DPD	4500-ClO_2 D					X
Amperometric Method II	4500-ClO_2 E					X

The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register on February 16, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone: (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

The following method is available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohoken, PA 19428:

Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials, 1996: Method D 1253-86.

The following methods are available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005:

Standard Methods for the Examination of Water and Wastewater, 19th edition, American Public Health Association, 1995: Methods: 4500-Cl D, 4500-Cl E, 4500-Cl F, 4500-Cl G, 4500-Cl H, 4500-Cl I, 4500-ClO_2 D, 4500-ClO_2 E.

[1]X indicates method is approved for measuring specified residual disinfectant.

(2) Test kit use. Systems may also measure residual disinfectant concentrations for chlorine, chloramines, and chlorine dioxide by using DPD colorimetric test kits acceptable to the department. Free and total chlorine residual disinfectant concentrations may be measured continuously by adapting a specified chlorine residual method for use with a con-

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tinuous monitoring instrument provided the chemistry, accuracy, and precision remain the same. Instruments used for continuous monitoring must be calibrated with a grab sample measurement at least every five days.

(3) Operator requirement. Measurements for residual disinfectant concentration shall be conducted by a Grade A through IV operator meeting the requirements of 567—Chapter 81, any person under the direct supervision of a Grade A through IV operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform analysis under 567—Chapter 83.

e. Compliance requirements for residual disinfectants.

(1) General requirements.

1. When compliance is based on a running annual average of monthly or quarterly samples or averages and the system's failure to monitor makes it impossible to determine compliance with MRDLs for chlorine and chloramines, this failure to monitor will be treated as a monitoring violation for the entire period covered by the annual average.

2. All samples taken and analyzed under the provisions of this rule must be included in determining compliance, even if that number is greater than the minimum required.

(2) Chlorine and chloramines.

1. Compliance must be based on a running annual arithmetic average, computed quarterly, of monthly averages of all samples collected by the system under subparagraph 43.6(1)"c"(2). If the average of quarterly averages covering any consecutive four-quarter period exceeds the MRDL, the system is in violation of the MRDL and must notify the public pursuant to 567—42.1(455B), in addition to reporting to the department pursuant to 567—paragraph 42.4(3)"d."

2. In cases where systems switch between the use of chlorine and chloramines for residual disinfection during the year, compliance must be determined by including together all monitoring results of both chlorine and chloramines in calculating compliance. Reports submitted pursuant to 567—paragraph 42.4(3)"d" must clearly indicate which residual disinfectant was analyzed for each sample.

(3) Chlorine dioxide.

1. Acute violations. Compliance must be based on consecutive daily samples collected by the system under subparagraph 43.6(1)"c"(3). If any daily sample taken at the entrance to the distribution system exceeds the MRDL, and on the following day one or more of the three samples taken in the distribution system exceed the MRDL, the system is in violation of the MRDL and must take immediate corrective action to lower the level of chlorine dioxide below the MRDL and must notify the public pursuant to the procedures for acute health risks in 567—subparagraph 42.1(1)"b"(5) in addition to reporting to the department pursuant to 567—paragraph 42.4(3)"d." Failure to take samples in the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system will also be considered an MRDL violation and the system must notify the public of the violation in accordance with the provisions for acute violations under 567—subparagraph 42.1(1)"b"(5) in addition to reporting to the department pursuant to 567—paragraph 42.4(3)"d."

2. Nonacute violations. Compliance must be based on consecutive daily samples collected by the system under subparagraph 43.6(1)"c"(3). If any two consecutive daily samples taken at the entrance to the distribution system exceed the MRDL and all distribution system samples taken are below the MRDL, the system is in violation of the MRDL and shall take corrective action to lower the level of chlorine dioxide below the MRDL at the point of sampling and shall notify the public pursuant to the procedures for nonacute health violations in 567—subrule 42.1(1), in addition to reporting to the department pursuant to 567—paragraph 42.4(3)"d." Failure to monitor at the entrance to the distribution system the day following an exceedance of the chlorine dioxide MRDL at the entrance to the distribution system is also an MRDL violation and the system must notify the public of the violation in accordance with the provisions for nonacute violations under 567—subrule 42.1(1), in addition to reporting to the department pursuant to 567—paragraph 42.4(3)"d."

f. Reporting requirements for disinfectants. Systems required to sample quarterly or more frequently must report to the department within ten days after the end of each quarter in which samples were collected, notwithstanding the public notification provisions of 567—42.1(455B). Systems required to sample less frequently than quarterly must report to the department within ten days after the end of each monitoring period in which samples were collected. The specific reporting requirements for disinfectants are listed in 567—subparagraph 42.4(3)"d"(3).

43.6(2) Disinfection byproduct precursors.

a. Applicability.

(1) Surface water or IGW CWS and NTNC systems with conventional filtration. This rule establishes criteria under which surface water or influenced groundwater CWS and NTNC public water supply systems using conventional filtration treatment, as defined in 567—40.2(455B), that add a chemical disinfectant to the water in any part of the drinking water treatment process or which provide water that contains a chemical disinfectant must modify their practices to meet the MCLs listed in 567—41.6(455B) and the maximum residual disinfectant levels (MRDL) and treatment technique requirements for disinfection byproduct precursors listed in this rule.

(2) CWS and NTNC systems using ozone treatment. CWS and NTNC systems that use ozone in their treatment process must comply with the bromide requirements of this subrule.

(3) Compliance dates. Compliance dates for this rule are based upon the population served. CWS and NTNC systems using surface water or groundwater under the direct influence of surface water in whole or in part and which serve 10,000 or more persons must comply with this rule beginning January 1, 2002; while those systems serving fewer than 10,000 persons must comply with this rule beginning January 1, 2004.

(4) The department may require groundwater systems to conduct monitoring for disinfection byproduct precursors as a part of an operation permit.

b. Monitoring requirements for disinfection byproduct precursors.

(1) Routine monitoring. Surface water and groundwater under the direct influence of surface water systems which use conventional filtration treatment must monitor each treatment plant for total organic carbon (TOC) no later than the point of combined filter effluent turbidity monitoring and representative of the treated water. All systems required to monitor under this paragraph must also monitor for TOC in the source water prior to any treatment at the same time as monitoring for TOC in the treated water. These samples (source water and treated water) are referred to as paired samples. At the same time the source water sample is taken, all systems must monitor for alkalinity in the source water prior to any treatment. Systems must take one paired set of source water and treated water samples and one source water

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alkalinity sample per month per plant at a time representative of normal operating conditions and influent water quality.

(2) Reduced monitoring. The department may allow surface water and groundwater under the direct influence of surface water systems with an average treated water TOC of less than 2.0 mg/L for two consecutive years, or less than 1.0 mg/L for one year, to reduce monitoring for both TOC and alkalinity to one set of paired samples and one source water alkalinity sample per plant per quarter. The system must revert to routine monitoring in the month following the quarter when the annual average treated water TOC is greater than or equal to 2.0 mg/L.

(3) Bromide. The department may allow systems required to analyze for bromate to reduce bromate monitoring from monthly to once per quarter, if the system demonstrates that the average source water bromide concentration is less than 0.05 mg/L based upon representative monthly measurements for one year. The system must continue bromide monitoring to remain on reduced bromate monitoring.

(4) The department may assign disinfection byproduct precursor monitoring prior to the compliance dates in 43.6(2)"a"(2) as part of an operation permit.

c. Analytical requirements for disinfection byproduct precursors.

(1) Analytical methods. Systems required to monitor disinfectant byproduct precursors must use the following methods, which must be conducted by a certified laboratory pursuant to 567—Chapter 83, unless otherwise specified.

Approved Methods for Disinfection Byproduct Precursor Monitoring[1]

Analyte	Methodology	EPA	Standard Methods	ASTM	Other
Alkalinity	Titrimetric		2320B	D 1067-92B	
	Electrometric titration				I-1030-85
Bromide	Ion chromatography	300.0			
		300.1			
Dissolved Organic Carbon[2]	High temperature combustion		5310B		
	Persulfate-UV or heated-persulfate oxidation		5310C		
	Wet oxidation		5310D		
pH[3]	Electrometric	150.1	4500-H^+-B	D1293-84	
		150.2			
Total Organic Carbon[4]	High temperature combustion		5310B		
	Persulfate-UV or heated-persulfate oxidation		5310C		
	Wet oxidation		5310D		
Ultraviolet Absorption at 254 nm[5]	UV absorption		5910B		

[1]The procedures shall be done in accordance with the documents listed below. The incorporation by reference of the following documents was approved by the Director of the Federal Register on February 16, 1999, in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the documents may be obtained from the sources listed below. Information regarding obtaining these documents can be obtained from the Safe Drinking Water Hotline at (800)426-4791. Documents may be inspected at EPA's Drinking Water Docket, 401 M Street SW, Washington, DC 20460 (telephone: (202)260-3027); or at the Office of Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC.

The following methods are available from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohoken, PA 19428:

Annual Book of ASTM Standards, Volume 11.01, American Society for Testing and Materials, 1996: Method D 1067-92B and Method D1293-84.

The following methods are available from the National Technical Information Service, U.S. Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161 (telephone: (800)553-6847):

"Determination of Inorganic Anions in Drinking Water by Ion Chromatography, Revision 1.0," EPA-600/R-98/118, 1997 (NTIS, PB98-169196): Method 300.1.

Methods for Chemical Analysis of Water and Wastes, EPA-600/4-79-020, March 1983, (NTIS PB84-128677): Methods 150.1 and 150.2.

Methods for the Determination of Inorganic Substances in Environmental Samples, EPA-600/R-93/100, August 1993, (NTIS PB94-121811): Method 300.0.

The following methods are available from the American Public Health Association, 1015 Fifteenth Street NW, Washington, DC 20005:

Standard Methods for the Examination of Water and Wastewater, 19th edition, American Public Health Association, 1995: Methods: 2320B, 4500-H^+-B, and 5910B.

Standard Methods for the Examination of Water and Wastewater, Supplement to the 19th edition, American Public Health Association, 1996: Methods: 5310B, 5310C, and 5310D.

Method I-1030-85 is available from the Books and Open-File Reports Section, U.S. Geological Survey, Federal Center, Box 25425, Denver, CO 80225-0425.

[2]Dissolved Organic Carbon (DOC). DOC and UV_{254} samples used to determine an SUVA value must be taken at the same time and at the same location, prior to the addition of any disinfectant or oxidant by the system. Prior to analysis, DOC samples must be filtered through a 0.45 μ pore-diameter filter. Water passed through the filter prior to filtration of the sample must serve as the filtered blank. This filtered blank must be analyzed using procedures identical to those used for analysis of the samples

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and must meet a DOC concentration of <0.5 mg/L. DOC samples must be filtered through the 0.45 μ pore-diameter filter prior to acidification. DOC samples must either be analyzed or must be acidified to achieve pH less than 2.0 by minimal addition of phosphoric or sulfuric acid as soon as practical after sampling, not to exceed 48 hours. Acidified DOC samples must be analyzed within 28 days.

[3]pH must be measured by a laboratory certified by the department to perform analysis under 567—Chapter 83; a Grade II, III or IV operator meeting the requirements of 567—Chapter 81; or any person under the supervision of a Grade II, III or IV operator meeting the requirements of 567—Chapter 81.

[4]Total Organic Carbon (TOC). TOC samples may not be filtered prior to analysis. TOC samples must either be analyzed or must be acidified to achieve pH less than 2.0 by minimal addition of phosphoric or sulfuric acid as soon as practical after sampling, not to exceed 24 hours. Acidified TOC samples must be analyzed within 28 days.

[5]Ultraviolet Absorption at 254 nm (UV_{254}). DOC and UV_{254} samples used to determine a SUVA value must be taken at the same time and at the same location, prior to the addition of any disinfectant or oxidant by the system. UV absorption must be measured at 253.7 nm (may be rounded off to 254 nm). Prior to analysis, UV_{254} samples must be filtered through a 0.45 μ pore-diameter filter. The pH of UV_{254} samples may not be adjusted. Samples must be analyzed as soon as practical after sampling, not to exceed 48 hours.

(2) SUVA. Specific Ultraviolet Absorbance (SUVA) is equal to the UV absorption at 254nm (UV_{254}) (measured in m^{-1}) divided by the dissolved organic carbon (DOC) concentration (measured as mg/L). In order to determine SUVA, it is necessary to separately measure UV_{254} and DOC. When determining SUVA, systems must use the methods stipulated in subparagraph 43.6(1)"c"(1) to measure DOC and UV_{254}. SUVA must be determined on water prior to the addition of disinfectants/oxidants by the system. DOC and UV_{254} samples used to determine an SUVA value must be taken at the same time and at the same location.

d. Compliance requirements for disinfection byproduct precursors.

(1) General requirements. All samples taken and analyzed under the provisions of this rule must be included in determining compliance, even if that number is greater than the minimum required.

(2) Compliance determination. Compliance must be determined as specified by paragraph 43.6(3)"c." The department may assign monitoring through an operation permit, or systems may begin monitoring to determine whether Step 1 TOC removals can be met 12 months prior to the compliance date for the system. This monitoring is not required and failure to monitor during this period is not a violation. However, any system that does not monitor during this period and then determines in the first 12 months after the compliance date that it is not able to meet the Step 1 requirements in subparagraph 43.6(3)"b"(2), and must therefore apply for alternate minimum TOC removal (Step 2) requirements, is not eligible for retroactive approval of alternate minimum TOC removal (Step 2) requirements as allowed pursuant to subparagraph 43.6(3)"b"(3) and is in violation. Systems may apply for alternate minimum TOC removal (Step 2) requirements any time after the compliance date. For systems required to meet Step 1 TOC removals, if the value calculated under 43.6(3)"c"(1)"4" is less than 1.00, the system is in violation of the treatment technique requirements and must notify the public pursuant to 567—42.1(455B), in addition to reporting to the department pursuant to 567—paragraph 42.4(3)"d."

e. Reporting requirements for disinfection byproduct precursors. Systems required to sample quarterly or more frequently must report to the department within ten days after the end of each quarter in which samples were collected, notwithstanding the public notification provisions of 567—42.1(455B). Systems required to sample less frequently than quarterly must report to the department within ten days after the end of each monitoring period in which samples were collected. The specific reporting requirements for disinfection byproduct precursors are listed in 567—subparagraph 42.4(3)"d"(4).

43.6(3) Treatment technique for control of disinfection byproduct precursors.

a. Applicability.

(1) Systems using surface water or groundwater under the direct influence of surface water and conventional filtration treatment (as defined in 567—40.2(455B)) must operate with enhanced coagulation or enhanced softening to achieve the TOC percent removal levels specified in paragraph "b" of this subrule unless the system meets at least one of the alternative compliance criteria listed in subparagraph 43.6(3)"a"(2) or (3).

(2) Alternative compliance criteria for enhanced coagulation and enhanced softening systems. Systems using surface water or groundwater under the direct influence of surface water and conventional filtration treatment may use the alternative compliance criteria in "1" through "6" below to comply with this subrule in lieu of complying with paragraph 43.6(3)"b." Systems must still comply with monitoring requirements in paragraph 43.6(2)"b."

1. The system's source water TOC level, measured according to subparagraph 43.6(2)"c"(1), is less than 2.0 mg/L, calculated quarterly as a running annual average.

2. The system's treated water TOC level, measured according to subparagraph 43.6(2)"c"(1), is less than 2.0 mg/L, calculated quarterly as a running annual average.

3. The system's source water TOC level, measured according to subparagraph 43.6(2)"c"(1), is less than 4.0 mg/L, calculated quarterly as a running annual average; the source water alkalinity, measured according to subparagraph 43.6(2)"c"(1), is greater than 60 mg/L as $CaCO_3$, calculated quarterly as a running annual average; and either the TTHM and HAA5 running annual averages are no greater than 0.040 mg/L and 0.030 mg/L, respectively; or prior to the effective date for compliance in 567—subparagraph 41.6(1)"a"(3) and in 43.6(1)"a"(3) and 43.6(2)"a"(3), the system has made a clear and irrevocable financial commitment not later than the effective date for compliance in 567—subparagraph 41.6(1)"a"(3) and in subparagraphs 43.6(1)"a"(3) and 43.6(2)"a"(3), to use of technologies that will limit the levels of TTHMs and HAA5 to no more than 0.040 mg/L and 0.030 mg/L, respectively. Systems must submit evidence of a clear and irrevocable financial commitment, in addition to a schedule containing milestones and periodic progress reports for installation and operation of appropriate technologies, to the department for approval not later than the effective date for compliance in 567—subparagraph 41.6(1)"a"(3) and in 43.6(1)"a"(3) and 43.6(2)"a"(3). These technologies must be installed and operating not later than June 30, 2005. Failure to install and operate these technologies by the date in the approved schedule will constitute a treatment technique violation.

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4. The TTHM and HAA5 running annual averages are less than or equal to 0.040 mg/L and 0.030 mg/L, respectively, and the system uses only chlorine for primary disinfection and maintenance of a residual in the distribution system.

5. The system's source water SUVA, prior to any treatment and measured monthly according to paragraph 43.6(2)"c," is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

6. The system's finished water SUVA, measured monthly according to paragraph 43.6(2)"c," is less than or equal to 2.0 L/mg-m, calculated quarterly as a running annual average.

(3) Additional alternative compliance criteria for softening systems. Systems practicing enhanced softening that cannot achieve the TOC removals required by subparagraph 43.6(3)"b"(2) may use the alternative compliance criteria in 43.6(3)"a"(3)"1" and "2" in lieu of complying with paragraph 43.6(3)"b." Systems must still comply with monitoring requirements in paragraph 43.6(2)"b."

1. Softening that lowers the treated water alkalinity to less than 60 mg/L as $CaCO_3$, measured monthly according to paragraph 43.6(2)"c" and calculated quarterly as a running annual average.

2. Softening that removes at least 10 mg/L of magnesium hardness as $CaCO_3$, measured monthly and calculated quarterly as a running annual average.

b. Enhanced coagulation and enhanced softening performance requirements.

(1) Systems must achieve the percent reduction of TOC specified in subparagraph 43.6(3)"b"(2) between the source water and the combined filter effluent, unless the department approves a system's request for alternate minimum TOC removal (Step 2 requirements under subparagraph 43.6(3)"b"(3)).

(2) Required Step 1 TOC reductions, indicated in the following table, are based upon specified source water parameters measured in accordance with paragraph 43.6(2)"c." Systems using softening are required to meet the Step 1 TOC reductions in the right-hand column (Source water alkalinity >120 mg/L) for the specified source water TOC:

Step 1 Required Removal of TOC by Enhanced Coagulation and Enhanced Softening for Surface Water or IGW Systems Using Conventional Treatment[1,2]

Source water TOC, mg/L	Source water Alkalinity, mg/L as $CaCO_3$		
	0-60	>60-120	>120[3]
>2.0 - 4.0	35.0 %	25.0 %	15.0 %
>4.0 - 8.0	45.0 %	35.0 %	25.0 %
>8.0	50.0 %	40.0 %	30.0 %

[1]Systems meeting at least one of the conditions in 43.6(3)"a"(2)"1" to "6" are not required to operate with enhanced coagulation.

[2]Softening systems meeting one of the alternative compliance criteria in subparagraph 43.6(3)"a"(3) are not required to operate with enhanced softening.

[3]Systems practicing softening must meet the TOC removal requirements in this column.

(3) Surface water and groundwater under the influence of surface water systems using conventional treatment that cannot achieve the Step 1 TOC removals required by subparagraph 43.6(3)"b"(2) due to water quality parameters or operational constraints must apply to the department for approval of alternative minimum Step 2 TOC removal requirements submitted by the system within three months of failure to achieve the TOC removals required by subparagraph 43.6(3)"b"(2). If the department approves the alternative minimum Step 2 TOC removal requirements, the department may make those requirements retroactive for the purposes of determining compliance. The system must meet the Step 1 TOC removals contained in subparagraph 43.6(3)"b"(2) until the department approves the alternate minimum Step 2 TOC removal requirements.

(4) Alternate minimum Step 2 TOC removal requirements. Applications made to the department by enhanced coagulation systems for approval of alternate minimum Step 2 TOC removal requirements under subparagraph 43.6(3)"b"(3) must include, as a minimum, results of bench-scale or pilot-scale testing conducted under 43.6(3)"b"(4)"1" below and used to determine the alternate enhanced coagulation level.

1. Alternate enhanced coagulation level. Alternate enhanced coagulation level is defined as coagulation at a coagulant dose and pH as determined by the method described in 43.6(3)"b"(4)"1" to "5" such that an incremental addition of 10 mg/L of alum (or equivalent amount of ferric salt) results in a TOC removal of less than or equal to 0.3 mg/L. The percent removal of TOC at this point on the "TOC removal versus coagulant dose" curve is then defined as the minimum TOC removal required for the system. Once approved by the department, this minimum requirement supersedes the minimum TOC removal required by the table in subparagraph 43.6(3)"b"(2). This requirement will be effective until such time as the department approves a new value based on the results of a new bench-scale or pilot-scale test. Failure to achieve department-set alternative minimum TOC removal levels is a treatment technique violation.

2. Bench-scale or pilot-scale testing of enhanced coagulation must be conducted by using representative water samples and adding 10 mg/L increments of alum (or equivalent amounts of ferric salt) until the pH is reduced to a level less than or equal to the enhanced coagulation Step 2 target pH shown in the following table:

Enhanced Coagulation Step 2 Target pH

Alkalinity (mg/L as $CaCO_3$)	Target pH
0-60	5.5
>60-120	6.3
>120-240	7.0
>240	7.5

3. For waters with alkalinities of less than 60 mg/L for which addition of small amounts of alum or equivalent addition of iron coagulant drives the pH below 5.5 before significant TOC removal occurs, the system must add necessary chemicals to maintain the pH between 5.3 and 5.7 in samples until the TOC removal of 0.3 mg/L per 10 mg/L alum added (or equivalent addition of iron coagulant) is reached.

4. The system may operate at any coagulant dose or pH necessary (consistent with other public drinking water rules in 567—Chapters 41 through 43) to achieve the minimum TOC percent removal approved under subparagraph 43.6(3)"b"(3).

5. If the TOC removal is consistently less than 0.3 mg/L of TOC per 10 mg/L of incremental alum dose at all dosages of alum (or equivalent addition of iron coagulant), the water is deemed to contain TOC not amenable to enhanced coagulation. The system may then apply to the department for a waiver of enhanced coagulation requirements.

c. Compliance calculations.

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(1) Surface water or groundwater under the influence of surface water systems other than those identified in subparagraph 43.6(3)"a"(2) or (3) must comply with requirements contained in subparagraph 43.6(3)"b"(2) or (3). Systems must calculate compliance quarterly, beginning after the system has collected 12 months of data, by determining an annual average using the following method:

1. Step 1: Determine actual monthly TOC percent removal using the following equation, to two decimal places:

$$\text{Actual monthly TOC percent removal} = 1 - \left(\frac{\text{treated water TOC}}{\text{source water TOC}} \right) \times 100$$

2. Step 2: Determine the required monthly TOC percent removal from either subparagraph 43.6(3)"b"(2) or (3).

3. Step 3: Divide the "actual monthly TOC percent removal" value (from Step 1) by the "required monthly TOC percent removal" value (from Step 2). Determine this value for each of the last 12 months.

$$\text{Monthly percent removal ratio} = \frac{\text{actual monthly TOC percent removal}}{\text{required monthly TOC percent removal}}$$

4. Step 4: Add together the "monthly percent removal ratio" values from Step 3 for each of the last 12 months and divide by 12, to determine the annual average value.

$$\text{Annual average} = \frac{\Sigma \text{ monthly percent removal ratio}}{12}$$

5. Step 5: If the "annual average" value calculated in Step 4 is less than 1.00, the system is not in compliance with the TOC percent removal requirements.

(2) Systems may use the provisions in 43.6(3)"c"(2)"1" through "5" *in lieu of the calculations in* 43.6(3)"c"(1)"1" through "5" to determine compliance with TOC percent removal requirements.

1. In any month that the system's treated or source water TOC level, measured according to 567—subparagraph 46.3(2)"c"(1), is less than 2.0 mg/L, the system may assign a monthly value of 1.0 (in lieu of the value calculated in 43.6(3)"c"(1)"3" when calculating compliance under the provisions of 43.6(3)"c"(1).

2. In any month that a system practicing softening removes at least 10 mg/L of magnesium hardness as $CaCO_3$, the system may assign a monthly value of 1.0 (in lieu of the value calculated in 43.6(3)"c"(1)"3") when calculating compliance under the provisions of subparagraph 43.6(3)"c"(1).

3. In any month that the system's source water SUVA, prior to any treatment and measured according to 43.6(2)"c"(2), is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in 43.6(3)"c"(1)"3") when calculating compliance under the provisions of subparagraph 43.6(3)"c"(1).

4. In any month that the system's finished water SUVA, measured according to 43.6(2)"c"(2), is less than or equal to 2.0 L/mg-m, the system may assign a monthly value of 1.0 (in lieu of the value calculated in 43.6(3)"c"(1)"3") when calculating compliance under the provisions of subparagraph 43.6(3)"c"(1).

5. In any month that a system using enhanced softening lowers alkalinity below 60 mg/L as $CaCO_3$, the system may assign a monthly value of 1.0 (in lieu of the value calculated in 43.6(3)"c"(1)"3") when calculating compliance under the provisions of subparagraph 43.6(3)"c"(1).

(3) Surface water or groundwater under the direct influence of surface water systems using conventional treatment may also comply with the requirements of this subrule by meeting the criteria in subparagraph 43.6(3)"a"(2) or (3).

d. Treatment technique requirements for disinfection byproduct precursors. The treatment techniques to control the level of disinfection byproduct precursors in drinking water treatment and distribution systems, for surface water or groundwater under the direct influence of surface water systems using conventional filtration treatment, are enhanced coagulation or enhanced softening.

ITEM 93. Amend subrule **43.7(1)**, paragraph **"b,"** as follows:

b. Optimum corrosion control. A public water supply system has optimized corrosion control and is not required to complete the applicable corrosion control treatment steps identified in this subrule if the system satisfies one of the following criteria:

(1) A small or medium-size water supply system has optimized corrosion control if the system meets the lead and copper action levels during each of two consecutive six-month monitoring periods~~,~~ *conducted in accordance with 567—paragraph 41.4(1)"c."*

(2) Any public water supply system may be deemed to have optimized corrosion control treatment if the system demonstrates *to the satisfaction of the department that* it has conducted activities equivalent to the corrosion control steps applicable to such system under this subrule. If the department makes this determination, it shall provide the water supply system with written notice explaining the basis for its decision and shall specify the water quality control parameters representing optimal corrosion control in accordance with 43.7(2)"f." A system shall provide the department with the following information in order to support a determination under this paragraph:

1. to 4. No change.

(3) Any water system has optimized corrosion control if it submits results of tap water monitoring conducted in accordance with 567—paragraph 41.4(1)"c" and source water monitoring conducted in accordance with 567—paragraph 41.4(1)"e" that demonstrate for two consecutive six-month monitoring periods that the difference between the 90th percentile tap water lead level computed under 567—~~paragraph~~ *subparagraph* 41.4(1)"b"(3) and the highest source water lead concentration~~,~~ is less than the practical quantitation level for lead specified in 567—paragraph 41.4(1)"g."

ITEM 94. Amend subrule **43.7(1)**, paragraph **"c,"** as follows:

c. Recommence corrosion control. Any small or medium-size water system that is required to complete the corrosion control steps due to its exceedance of the lead or copper action level may cease completing the treatment steps whenever the system meets both action levels during each of two consecutive monitoring periods conducted pursuant to

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567—paragraph 41.4(1)"c" and submits the results to the department. If any such water system thereafter exceeds the lead or copper action level during any monitoring period, the system shall recommence completion of the applicable treatment steps, beginning with the first treatment step which was not previously completed in its entirety. The department may require a system to repeat treatment steps previously completed by the system ~~where~~ *when* it is determined *by the department* that this is necessary to implement properly the treatment requirements of this rule. The department will notify the system in writing of such a determination and explain the basis for its decision. The requirement for any small or medium-size system to implement corrosion control treatment steps in accordance with 43.7(1)"e" (including systems deemed to have optimized corrosion control under 43.7(1)"b"(1)) is triggered whenever any small or medium-size system exceeds the lead or copper action level.

ITEM 95. Amend subrule **43.7(2)**, paragraph **"c,"** subparagraph **(4)**, as follows:

(4) The public water supply system shall identify all chemical or physical constraints that limit or prohibit the use of a particular corrosion control treatment and outline such constraints with the following: *data and* documentation showing that a particular corrosion control treatment has adversely affected other water treatment processes when used by another water system with comparable water quality characteristics; or *data and* documentation demonstrating that the water system has previously attempted to evaluate a particular corrosion control treatment and has found that the treatment is ineffective or adversely affects other water quality treatment processes.

ITEM 96. Amend subrule **43.7(2)**, paragraph **"h,"** as follows:

h. Modification of department treatment decisions. A determination of the optimal corrosion control treatment under 43.7(2)"d" or optimal water quality control parameters under 43.7(2)"f" may be modified. A request for modification by a public water supply system or other interested party shall be in writing, explain why the modification is appropriate, and provide *supporting* documentation. The department may modify its determination ~~where~~ *when* it concludes that such change is necessary to ensure that the public water supply system continues to optimize corrosion control treatment. A revised determination will be made in writing, which will set forth the new treatment requirements, explain the basis for the decision, and provide an implementation schedule for completing the treatment modifications.

ITEM 97. Amend subrule **43.7(3)**, paragraph **"b,"** subparagraph **(2)**, as follows:

(2) Source water treatment determinations. The department will complete an evaluation of the results of all source water samples submitted by the public water supply system to determine whether source water treatment is necessary to minimize lead or copper levels in water delivered to ~~user~~ *users'* taps. If the department determines that treatment is needed, the department will require installation and operation of the source water treatment recommended by the public water supply system or require the installation and operation of another source water treatment from among the following: ion exchange, reverse osmosis, lime softening or coagulation/filtration. If the department requests additional information to aid in its review, the water system shall provide the information by the date specified in its request. The department will notify the system in writing of its determination and set forth the basis for its decision.

ITEM 98. Amend subrule **43.7(4)**, paragraph **"d,"** as follows:

d. Lead service line control. A public water supply system shall replace the entire service line (up to the building inlet) unless it demonstrates to the satisfaction of the department *under paragraph 43.7(4)"e"* that it controls less than the entire service line. In such cases, the system shall replace the portion of the line which the department determines is under the system's control. The system shall notify the user served by the line that the system will replace the portion of the service line under its control and shall offer to replace the building owner's portion of the line, but is not required to bear the cost of replacing the building owner's portion of the line. For buildings where only a portion of the lead service line is replaced, the water system shall inform the resident(s) that the system will collect a first flush tap water sample after partial replacement of the service line is completed if the resident(s) so desires. In cases where the resident(s) accepts the offer, the system shall collect the sample and report the results to the resident(s) within 14 days following partial lead service line replacement.

ITEM 99. Amend 567—Chapter 43 by adopting the following **new** rule:

567—43.9(455B) Enhanced filtration and disinfection requirements for surface water and IGW systems serving at least 10,000 people.

43.9(1) General requirements.

a. Applicability. The requirements of this rule constitute national primary drinking water regulations. This rule establishes the filtration and disinfection requirements that are in addition to criteria under which filtration and disinfection are required in 43.5(455B). The requirements of this rule are applicable, beginning January 1, 2002, to all public water systems using surface water or groundwater under the direct influence of surface water, in whole or in part, and which serve at least 10,000 people. This rule establishes or extends treatment technique requirements in lieu of maximum contaminant levels for the following contaminants: Giardia lamblia, viruses, heterotrophic plate count bacteria, Legionella, Cryptosporidium, and turbidity. Each surface water or groundwater under the direct influence of a surface water system serving at least 10,000 people must provide treatment of its source water that complies with these treatment technique requirements and are in addition to those identified in subrule 43.5(1). The treatment technique requirements consist of installing and properly operating water treatment processes that reliably achieve:

(1) At least 99 percent (2-log) removal of Cryptosporidium between a point where the raw water is not subject to recontamination by surface water runoff and a point downstream before or at the first customer for filtered systems.

(2) Compliance with the profiling and benchmark requirements under subrule 43.9(2).

(3) The department may require other surface water or groundwater under the direct influence of surface water systems to comply with this rule, through an operation permit.

b. Compliance determination. A public water system subject to the requirements of this rule is considered to be in compliance with the requirements of paragraph 43.9(1)"a" if it meets the applicable filtration requirements in either subrule 43.5(3) or 43.9(3) and the disinfection requirements in subrules 43.5(2) and 43.6(2).

c. Prohibition of uncovered intermediate or finished water reservoirs new construction. Systems are not permitted to begin construction of uncovered intermediate or finished water storage facilities.

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43.9(2) *Disinfection profiling and benchmarking.*

a. Determination of systems required to profile. A public water system subject to the requirements of this rule must determine its total trihalomethane (TTHM) and haloacetic acid (HAA5) annual averages using the procedures listed below. The annual average is the arithmetic average of the quarterly averages of four consecutive quarters of monitoring. Both the TTHM and HAA5 samples must be collected as paired samples during the same time period in order for each parameter to have the same annual average period for result comparison. A paired sample is one that is collected at the same location and time and is analyzed for both TTHM and HAA5 parameters.

(1) Allowance of information collection rule data. Those systems that collected data under the provisions of the federal Information Collection Rule listed in Code of Federal Regulations Title 40, Part 141, Subpart M, must use the results of the TTHM and HAA5 samples collected during the last four quarters of monitoring required under 40 CFR 141.142. The system must have submitted the results of the samples collected during the last 12 months of required monitoring.

(2) Systems that have not collected TTHM and HAA5 data under 43.9(2)"a"(1). Those systems that have not collected four consecutive quarters of paired TTHM and HAA5 samples as described under subparagraph 43.9(2)"a"(1) must comply with all other provisions of this subrule as if the HAA5 monitoring had been conducted and the results of that monitoring required compliance with paragraph 43.9(2)"b." The system that elects this option must notify the department in writing of its decision.

(3) The department may require that a system use a more representative annual data set than the data set determined under 567—subparagraph 42.9(2)"a"(1) for the purpose of determining applicability of the requirements of this subrule.

(4) Profiling determination criteria. Any system having either a TTHM annual average greater than 0.064 mg/L or an HAA5 annual average greater than 0.048 mg/L during the period identified in subparagraphs 43.9(2)"a"(1) through (3) must comply with paragraph 43.9(2)"b."

b. Disinfection profiling.

(1) Applicability. Any system that meets the criteria in subparagraph 43.9(2)"a"(4) must develop a disinfection profile of its disinfection practice for a period of up to three years.

(2) Monitoring requirements. The system must monitor daily for a period of 12 consecutive calendar months to determine the total logs of inactivation for each day of operation, based on the $CT_{99.9}$ values in Tables 1 through 8 in Appendix A, as appropriate, through the entire treatment plant. This system must begin this monitoring as directed by the department. As a minimum, the system with a single point of disinfectant application prior to entrance to the distribution system must conduct the monitoring in 43.9(2)"b"(2)"1" through "4." A system with more than one point of disinfectant application must conduct the monitoring in 43.9(2)"b"(2)"1" through "4" for each disinfection segment. The system must monitor the parameters necessary to determine the total inactivation ratio, using analytical methods in paragraph 43.5(4)"a" as follows:

1. The temperature of the disinfected water must be measured once per day at each residual disinfectant concentration sampling point during peak hourly flow.

2. If the system uses chlorine, the pH of the disinfected water must be measured once per day at each chlorine residual disinfectant concentration sampling point during peak hourly flow.

3. The disinfectant contact time(s) ("T") must be determined for each day during peak hourly flow.

4. The residual disinfectant concentration(s) ("C") of the water before or at the first customer and prior to each additional point of disinfection must be measured each day during peak hourly flow.

(3) Use of existing data. A system that has existing operational data may use those data to develop a disinfection profile for additional years, in addition to the disinfection profile generated under subparagraph 43.9(2)"b"(2). Such systems may use these additional yearly disinfection profiles to develop a benchmark under the provisions of paragraph 43.9(2)"c." The department must determine whether these operational data are substantially equivalent to data collected under the provisions of subparagraph 43.9(2)"b"(2). These data must also be representative of inactivation through the entire treatment plant and not just of certain treatment segments.

(4) Calculation of the total inactivation ratio. The system must calculate the total inactivation ratio as follows, using the $CT_{99.9}$ values from Tables 1 through 8 listed in Appendix A:

1. If the system uses only one point of disinfectant application, the system may determine the total inactivation ratio for the disinfection segment based on either of the following two methods:

- Determine one inactivation ratio ($CTcalc/CT_{99.9}$) before or at the first customer during peak hourly flow.
- Determine successive $CTcalc/CT_{99.9}$ values, representing sequential inactivation ratios, between the point of disinfectant application and a point before or at the first customer during peak hourly flow. Under this alternative, the system must calculate the total inactivation ratio by determining ($CTcalc/CT_{99.9}$) for each sequence and then adding the ($CTcalc/CT_{99.9}$) values together to determine $\Sigma(CTcalc/CT_{99.9})$.

2. If the system uses more than one point of disinfectant application before the first customer, the system must determine the CT value of each disinfection segment immediately prior to the next point of disinfectant application, or for the final segment, before or at the first customer, during peak hourly flow. The $CTcalc/CT_{99.9}$ value of each segment and $\Sigma(CTcalc/CT_{99.9})$ must be calculated using the method in 43.9(2)"b"(4)"1."

3. The system must determine the total logs of inactivation by multiplying the value calculated in 43.9(2)"b"(4)"1" or "2" by 3.0.

(5) Systems using chloramines or ozone. A system that uses either chloramines or ozone for primary disinfection must also calculate the logs of inactivation for viruses using a method approved by the department.

(6) Profile retention requirements. The system must retain disinfection profile data in graphic form, as a spreadsheet, or in some other format acceptable to the department for review as part of sanitary surveys conducted by the department. The department may require the system to submit the data to the department directly or as part of a monthly operation report.

c. Disinfection benchmarking.

(1) Significant change to disinfection practice. Any system required to develop a disinfection profile under the provisions of paragraph 43.9(2)"a" or "b" that decides to make a significant change to its disinfection practice must obtain de-

partment approval prior to making such change. Significant changes to disinfection practice are:

1. Changes to the point of disinfection;
2. Changes to the disinfectant(s) used in the treatment plant;
3. Changes to the disinfection process; and
4. Any other modification identified by the department.

(2) Calculation of the disinfection benchmark. Any system that is modifying its disinfection practice must calculate its disinfection benchmark using the procedure specified below:

1. For each year of profiling data collected and calculated under paragraph 43.9(2)"b," the system must determine the lowest average monthly Giardia lamblia inactivation in each year of profiling data. The system must determine the average Giardia lamblia inactivation for each calendar month for each year of profiling data by dividing the sum of daily Giardia lamblia inactivation by the number of values calculated for that month.

2. The disinfection benchmark is the lowest monthly average value (for systems with one year of profiling data) or average of lowest monthly average values (for systems with more than one year of profiling data) of the monthly logs of Giardia lamblia inactivation in each year of profiling data.

(3) A system that uses either chloramines or ozone for primary disinfection must also calculate the disinfection benchmark for viruses using a method approved by the department.

(4) The system must submit the following information to the department as part of its consultation process:

1. A description of the proposed change;
2. The disinfection profile for Giardia lamblia (and, if necessary, viruses) under paragraph 43.9(2)"b" and the disinfection benchmark as required by subparagraph 43.9(2)"c"(2); and
3. An analysis of how the proposed change will affect the current levels of disinfection.

43.9(3) Filtration.

a. Conventional filtration treatment or direct filtration.

(1) Turbidity requirement in 95 percent of samples. For systems using conventional filtration or direct filtration, the turbidity level of representative samples of a system's filtered water must be less than or equal to 0.3 NTU in at least 95 percent of the measurements taken each month, measured as specified in subparagraphs 43.5(4)"a"(1) and 43.5(4)"b"(1).

(2) Maximum turbidity level. The turbidity level of representative samples of a system's filtered water must at no time exceed 1 NTU, measured as specified in subparagraphs 43.5(4)"a"(1) and 43.5(4)"b"(1).

(3) Systems with lime-softening treatment. A system that uses lime softening may acidify representative samples prior to analysis using a protocol approved by the department.

b. Filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration. The department may allow a public water system to use a filtration technology not listed in paragraph 43.9(3)"a" or 43.5(3)"c" or "d" if it demonstrates to the department, using pilot plant studies or other means, that the alternative filtration technology, in combination with disinfection treatment that meets the requirements of subrule 43.5(2), consistently achieves 99.9 percent removal or inactivation of Giardia lamblia cysts, 99.99 percent removal or inactivation of viruses, and 99 percent removal of Cryptosporidium oocysts and the department approves the use of the filtration technology. For each approval, the department will set turbidity performance requirements that the system must meet at least 95 percent of the time and the requirement that the system may not exceed at any time at a level that consistently achieves 99.9 percent removal or inactivation of Giardia lamblia cysts, 99.99 percent removal or inactivation of viruses, and 99 percent removal of Cryptosporidium oocysts.

43.9(4) Filtration sampling requirements.

a. Monitoring requirements for systems using filtration treatment. In addition to monitoring required by subrule 43.5(4), a public water system subject to the requirements of this rule that provides conventional filtration treatment or direct filtration must conduct continuous monitoring of turbidity for each individual filter using an approved method in subparagraph 43.5(4)"a"(1) and must calibrate turbidimeters using the procedure specified by the manufacturer. Systems must record the results of individual filter monitoring every 15 minutes.

b. Failure of the continuous turbidity monitoring equipment. If there is a failure in the continuous turbidity monitoring equipment, the system must conduct grab sampling every four hours in lieu of continuous monitoring until the turbidimeter is repaired and back online. A system has a maximum of five working days after failure to repair the equipment, or else it is in violation.

43.9(5) Reporting and record-keeping requirements. In addition to the reporting and record-keeping requirements in 567—paragraph 42.4(3)"c," a system subject to the requirements of this rule that provides conventional filtration treatment or direct filtration must report monthly to the department the information specified in paragraphs 43.9(5)"a" and "b" beginning January 1, 2002. In addition to the reporting and record-keeping requirements in 567—paragraph 42.4(3)"c," a system subject to the requirements of this rule that provides filtration approved under paragraph 43.9(3)"b" must report monthly to the department the information specified in paragraph 43.9(5)"a" beginning January 1, 2002. The reporting in paragraph 43.9(5)"a" is in lieu of the reporting specified in 567—subparagraph 42.4(3)"c"(1).

a. Turbidity. Turbidity measurements as required by subrule 43.9(3) must be reported in a format acceptable to the department and within ten days after the end of each month that the system serves water to the public. Information that must be reported includes:

(1) The total number of filtered water turbidity measurements taken during the month;

(2) The number and percentage of filtered water turbidity measurements taken during the month which are less than or equal to the turbidity limits specified in paragraph 43.9(3)"a" or "b"; and

(3) The date and value of any turbidity measurements taken during the month which exceed 1 NTU for systems using conventional filtration treatment or direct filtration or which exceed the maximum level set by the department under paragraph 43.9(3)"b."

b. Individual filter turbidity monitoring. Systems must maintain the results of individual filter turbidity monitoring taken under subrule 43.9(4) for at least three years. Systems must report to the department that they have conducted individual filter turbidity monitoring under subrule 43.9(4) within ten days after the end of each month that the system serves water to the public. Systems must report to the department individual filter turbidity measurement results taken under subrule 43.9(4) within ten days after the end of each month that the system serves water to the public only if measure-

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ments demonstrate one or more of the conditions specified in subparagraphs 43.9(5)"b"(1) through (4). Systems that use lime softening may apply to the department for alternative exceedance levels for the levels specified in subparagraphs 43.9(5)"b"(1) through (4) if they can demonstrate that higher turbidity levels in individual filters are due to lime carryover only and not due to degraded filter performance.

(1) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system must either produce a filter profile for the filter within seven days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(2) For any individual filter that has a measured turbidity level of greater than 0.5 NTU in two consecutive measurements taken 15 minutes apart at the end of the first four hours of continuous filter operation after the filter has been backwashed or otherwise taken offline, the system must report the filter number, the turbidity, and the date(s) on which the exceedance occurred. In addition, the system must either produce a filter profile for the filter within seven days of the exceedance (if the system is not able to identify an obvious reason for the abnormal filter performance) and report that the profile has been produced or report the obvious reason for the exceedance.

(3) For any individual filter that has a measured turbidity level of greater than 1.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each month of three consecutive months, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system must conduct a self-assessment of the filter within 14 days of the exceedance and report that the self-assessment was conducted. The self-assessment must consist of at least the following components: assessment of filter performance; development of a filter profile; identification and prioritization of factors limiting filter performance; assessment of the applicability of corrections; and preparation of a filter self-assessment report.

(4) For any individual filter that has a measured turbidity level of greater than 2.0 NTU in two consecutive measurements taken 15 minutes apart at any time in each month of two consecutive months, the system must report the filter number, the turbidity measurement, and the date(s) on which the exceedance occurred. In addition, the system must arrange for a comprehensive performance evaluation to be conducted by the department or a third party approved by the department no later than 30 days following the exceedance and have the evaluation completed and submitted to the department no later than 90 days following the exceedance.

c. Additional reporting requirement for turbidity combined filter effluent.

(1) If at any time the turbidity exceeds 1 NTU in representative samples of filtered water in a system using conventional filtration treatment or direct filtration, the system must inform the department as soon as possible, but no later than the end of the next business day.

(2) If at any time the turbidity in representative samples of filtered water exceeds the maximum level set by the department under paragraph 43.9(3)"b" for filtration technologies other than conventional filtration treatment, direct filtration, slow sand filtration, or diatomaceous earth filtration, the system must inform the department as soon as possible, but no later than the end of the next business day.

ITEM 100. Amend **567—Chapter 43** by adopting the following **new** Appendix A:

APPENDIX A: $CT_{99.9}$ TABLES FOR DISINFECTION PROFILING

TABLE 1: CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of Giardia Lamblia Cysts by Free Chlorine at 0.5°C or Lower[1]

Free Residual Chlorine, mg/L	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	137	163	195	237	277	329	390
0.6	141	168	200	239	286	342	407
0.8	145	172	205	246	295	354	422
1.0	148	176	210	253	304	365	437
1.2	152	180	215	259	313	376	451
1.4	155	184	221	266	321	387	464
1.6	157	189	226	273	329	397	477
1.8	162	193	231	279	338	407	489
2.0	165	197	236	286	346	417	500
2.2	169	201	242	297	353	426	511
2.4	172	205	247	298	361	435	522
2.6	175	209	252	304	368	444	533
2.8	178	213	257	310	375	452	543
3.0	181	217	261	316	382	460	552

[1]These CT values achieve greater than a 99.99 percent inactivation of viruses. Any CT values between the indicated pH values may be determined by linear interpolation. Any CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature and at the higher pH.

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TABLE 2: CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of Giardia Lamblia Cysts by Free Chlorine at 5.0°C[1]

Free Residual Chlorine, mg/L	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	97	117	139	166	198	236	279
0.6	100	120	143	171	204	244	291
0.8	103	122	146	175	210	252	301
1.0	105	125	149	179	216	260	312
1.2	107	127	152	183	221	267	320
1.4	109	130	155	187	227	274	329
1.6	111	132	158	192	232	281	337
1.8	114	135	162	196	238	287	345
2.0	116	138	165	200	243	294	353
2.2	118	140	169	204	248	300	361
2.4	120	143	172	209	253	306	368
2.6	122	146	175	213	258	312	375
2.8	124	148	178	217	263	318	382
3.0	126	151	182	221	268	324	389

[1]These CT values achieve greater than a 99.99 percent inactivation of viruses. Any CT values between the indicated pH values may be determined by linear interpolation. Any CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature and at the higher pH.

TABLE 3: CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of Giardia Lamblia Cysts by Free Chlorine at 10.0°C[1]

Free Residual Chlorine, mg/L	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	73	88	104	125	149	177	209
0.6	75	90	107	128	153	183	218
0.8	78	92	110	131	158	189	226
1.0	79	94	112	134	162	195	234
1.2	80	95	114	137	166	200	240
1.4	85	98	116	140	170	206	247
1.6	83	99	119	144	174	211	253
1.8	86	101	122	147	179	215	259
2.0	87	104	124	150	182	221	265
2.2	89	105	127	153	186	225	271
2.4	90	107	129	157	190	230	276
2.6	92	110	131	160	194	234	281
2.8	93	111	134	163	197	239	287
3.0	95	113	137	166	201	243	292

[1]These CT values achieve greater than a 99.99 percent inactivation of viruses. Any CT values between the indicated pH values may be determined by linear interpolation. Any CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature and at the higher pH.

TABLE 4: CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of Giardia Lamblia Cysts by Free Chlorine at 15.0°C[1]

Free Residual Chlorine, mg/L	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	49	59	70	83	99	118	140
0.6	50	60	72	86	102	122	146
0.8	52	61	73	88	105	126	151
1.0	53	63	75	90	108	130	156
1.2	54	64	76	92	111	134	160
1.4	55	65	78	94	114	137	165
1.6	56	66	79	96	116	141	169
1.8	57	68	81	98	119	144	173
2.0	58	69	83	100	122	147	177

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Free Residual Chlorine, mg/L	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
2.2	59	70	85	102	124	150	181
2.4	60	72	86	105	127	153	184
2.6	61	73	88	107	129	156	188
2.8	62	74	89	109	132	159	191
3.0	63	76	91	111	134	162	195

[1]These CT values achieve greater than a 99.99 percent inactivation of viruses. Any CT values between the indicated pH values may be determined by linear interpolation. Any CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature and at the higher pH.

TABLE 5: CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of Giardia Lamblia Cysts by Free Chlorine at 20.0°C[1]

Free Residual Chlorine, mg/L	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	36	44	52	62	74	89	105
0.6	38	45	54	64	77	92	109
0.8	39	46	55	66	79	95	113
1.0	39	47	56	67	81	98	117
1.2	40	48	57	69	83	100	120
1.4	41	49	58	70	85	103	123
1.6	42	50	59	72	87	105	126
1.8	43	51	61	74	89	108	129
2.0	44	52	62	75	91	110	132
2.2	44	53	63	77	93	113	135
2.4	45	54	65	78	95	115	138
2.6	46	55	66	80	97	117	141
2.8	47	56	67	81	99	119	143
3.0	47	57	68	83	101	122	146

[1]These CT values achieve greater than a 99.99 percent inactivation of viruses. Any CT values between the indicated pH values may be determined by linear interpolation. Any CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature and at the higher pH.

TABLE 6: CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of Giardia Lamblia Cysts by Free Chlorine at 25.0°C and Higher[1]

Free Residual Chlorine, mg/L	pH						
	≤6.0	6.5	7.0	7.5	8.0	8.5	≤9.0
≤0.4	24	29	35	42	50	59	70
0.6	25	30	36	43	51	61	73
0.8	26	31	37	44	53	63	75
1.0	26	31	37	45	54	65	78
1.2	27	32	38	46	55	67	80
1.4	27	33	39	47	57	69	82
1.6	28	33	40	48	58	70	84
1.8	29	34	41	49	60	72	86
2.0	29	35	41	50	61	74	88
2.2	30	35	42	51	62	75	90
2.4	30	36	43	52	63	77	92
2.6	31	37	44	53	65	78	94
2.8	31	37	45	54	66	80	96
3.0	32	38	46	55	67	81	97

[1]These CT values achieve greater than a 99.99 percent inactivation of viruses. Any CT values between the indicated pH values may be determined by linear interpolation. Any CT values between the indicated temperatures of different tables may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature and at the higher pH.

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TABLE 7: CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of Giardia Lamblia Cysts by Chlorine Dioxide and Ozone[1]

Disinfectant	Temperature, °C					
	<1	5	10	15	20	≥25
Chlorine Dioxide	63	26	23	19	15	11
Ozone	2.9	1.9	1.4	0.95	0.72	0.48

[1]These CT values achieve greater than a 99.99 percent inactivation of viruses. Any CT values between the indicated temperatures may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature for determining $CT_{99.9}$ values between indicated temperatures.

TABLE 8: CT Values ($CT_{99.9}$) for 99.9 Percent Inactivation of Giardia Lamblia Cysts by Chloramines[1]

Disinfectant	Temperature, °C					
	<1	5	10	15	20	25
Chloramines	3800	2200	1850	1500	1100	750

[1]These values are for pH values of 6 to 9. These CT values may be assumed to achieve greater than 99.99 percent inactivation of viruses only if chlorine is added and mixed in the water prior to the addition of ammonia. If this condition is not met, the system must demonstrate, based on on-site studies or other information, as approved by the department, that the system is achieving at least 99.99 percent inactivation of viruses. Any CT values between the indicated temperatures may be determined by linear interpolation. If no interpolation is used, use the $CT_{99.9}$ value at the lower temperature for determining $CT_{99.9}$ values between indicated temperatures.

ITEM 101. Amend subrule 83.1(3) as follows:

83.1(3) Applicability to environmental program areas.

a. Water supply (drinking water). The requirements of this chapter apply to all laboratories conducting drinking water analyses ~~(with the exception of the University of Iowa Hygienic Laboratory)~~ pursuant to 567—Chapters 40, 41, 42, 43, and 47. Routine, on-site monitoring for ~~pH, turbidity, and chlorine residual~~ *alkalinity, calcium, conductivity, residual disinfectant, orthophosphate, pH, silica, temperature, turbidity* and on-site operation and maintenance-related analytical monitoring are excluded from this requirement, *and may be performed by a Grade I, II, III, or IV certified operator meeting the requirements of 567—Chapter 81, any person under the supervision of a Grade I, II, III, or IV certified operator meeting the requirements of 567—Chapter 81, or a laboratory certified by the department to perform water supply analyses under this chapter.*

b. Underground storage tanks. The requirements of this chapter also apply to all laboratories conducting underground storage tank analyses ~~(with the exception of the University of Iowa Hygienic Laboratory)~~ for petroleum constituents pursuant to 567—Chapter 135. Routine on-site monitoring conducted by or for underground storage tank owners for leak detection or a nonregulatory purpose are excluded from this requirement.

c. Wastewater. The requirements of this chapter also apply to all laboratories conducting analyses of wastewater, groundwater or sewage sludge analyses ~~(with the exception of the University of Iowa Hygienic Laboratory)~~ pursuant to 567—Chapters 63, 67, and 69. Routine on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine and other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements such as flow and cell depth, and operational monitoring tests specified in 567—subrule 63.3(4) are excluded from this requirement.

ITEM 102. Amend rule **567—83.2(455B)**, definition of "Manual for the Certification of Laboratories Analyzing Environmental Samples for the Iowa Department of Natural Resources," as follows:

"Manual for the Certification of Laboratories Analyzing Environmental Samples for the Iowa Department of Natural Resources" (1999) (Iowa Manual) is incorporated by reference in this chapter.

1. Chapter 1 of the Iowa Manual pertains to certification of laboratories analyzing samples of drinking water and incorporates by reference the Manual for the Certification of Laboratories Analyzing Drinking Water, 4th edition, March 1997, EPA document 815-B-97-001.

2. Chapter 2 of the Iowa Manual, *2nd edition, March 1999,* pertains to laboratories analyzing samples for the underground storage tank program.

3. Chapter 3 of the Iowa Manual, *1st edition, March 1996,* pertains to laboratories analyzing samples for the wastewater and sewage sludge disposal programs.

ITEM 103. Amend subrule **83.3(2)**, paragraph **"c,"** subparagraph **(1)**, numbered paragraph **"1,"** as follows:

1. The fee for microbiological analyses including total coliform, fecal coliform, E. coli, heterotrophic *plate count* bacteria, viruses, algae, diatoms, rotifers, and Giardia shall be $600. Laboratories may also be certified for fluoride, nitrate and nitrite with no additional fee (when they are certified for microbiological analyses) providing they are not seeking certification for any other inorganic analyte.

ITEM 104. Amend subrule **83.3(2)**, paragraph **"c,"** subparagraph **(1)**, by rescinding numbered paragraph **"8."**

ITEM 105. Amend subrule 83.6(4) as follows:

83.6(4) Site visits.

~~(1)~~ *a. Certification of the University of Iowa Hygienic Laboratory. The department has designated the University of Iowa Hygienic Laboratory (UHL) as its appraisal authority for laboratory certification. As such, the certification* ~~Certification~~ of ~~the University of Iowa Hygienic Laboratory (UHL), as the designee of the department for appraisal authority,~~ is the responsibility of the *EPA for the water supply program, and the* UHL quality assurance officer *for the wastewater and underground storage tank programs for those areas with no available EPA certification program.* The *UHL* quality assurance officer reports directly to the office of the *UHL* director and operates independently of all areas of the laboratory generating data to ensure complete objectivity in the evaluation of laboratory operations. The quality assurance officer will schedule a biennial on-site inspection of the UHL and review results for acceptable per-

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formance. Inadequacies or unacceptable performance shall be reported by the quality assurance officer to the UHL and the department for correction. The department shall be notified if corrective action is not taken.

~~(2)~~ *b. On-site visits.* Laboratories must consent to a periodic site visit by the department or its designee, at least every two years. However, an on-site visit may be conducted more frequently if the laboratory undergoes a major change which may alter or impair analytical capability, fails a PE sample analysis, or if the department questions an aspect of data submitted which is not satisfactorily resolved.

ITEM 106. Amend subrule **83.6(6)**, paragraph **"a,"** subraragraph **(1)**, as follows:

(1) Certified laboratories must report to the department, or its designee such as the University *of Iowa* Hygienic Laboratory, all analytical test results for all public water supplies, using forms provided or approved by the department or by electronic means acceptable to the department. If a public water supply is required by the department to collect and analyze a sample for an analyte not normally required by 567—Chapters 41 and 43, the laboratory testing for that analyte must also be certified and report the results of that analyte to the department. It is the responsibility of the laboratory to correctly assign and track the sample identification number as well as *facility ID and* source/entry point data for all reported samples.

1. to 3. No change.

4. The sample type cannot be changed after submittal to the laboratory, without *written* approval by the department. The prescreening, splitting, or selective reporting of compliance samples is not allowed.

ITEM 107. Amend subrule **83.6(7)**, paragraph **"a,"** as follows:

a. Water supply program. In addition to the analytes specifically listed in 83.6(7)"a," PE samples are required for certification of the unregulated and discretionary compounds listed in 567—Chapter 41, using statistical acceptance limits determined by the PE sample provider.

(1) Volatile organic chemical (VOC) PE laboratory certification. Analysis for VOCs shall only be conducted by laboratories certified by EPA or the department or its authorized designee according to the following conditions. To receive approval to conduct analyses for the VOC contaminants in 567—subparagraph 41.5(1)"b"(1), except for vinyl chloride, the laboratory must:

1. Analyze PE samples provided by EPA, the department, or ~~its designee~~ *a third-party provider acceptable to the department*, at least once a year *by each method for which the laboratory desires certification.*

2. to 5. No change.

(2) To receive approval for vinyl chloride, the laboratory must:

1. Analyze PE samples which include vinyl chloride provided by EPA, the department, ~~or its authorized designee~~ *or a third-party provider acceptable to the department*, at least once a year *by each method for which the laboratory desires certification.*

2. and 3. No change.

(3) Synthetic organic chemicals (SOCs) PEs—laboratory certification. Analysis under this paragraph shall only be conducted by laboratories certified by EPA or the department or its authorized designee. To receive approval to conduct analyses for the SOC contaminants in 567—subparagraph 41.5(1)"b"(2), the laboratory must:

1. Analyze PE samples which include those substances provided by EPA, the department, or ~~its authorized designee~~ *a third-party provider acceptable to the department*, at least once a year *by each method for which the laboratory desires certification.*

2. No change.

(4) Inorganic chemical PE—laboratory certification. Analysis under this paragraph shall be conducted only by laboratories certified by EPA or the department or ~~its authorized designee~~ *a third-party provider acceptable to the department.* To receive approval to conduct analyses for antimony, asbestos, barium, beryllium, cadmium, chromium, cyanide, fluoride, mercury, nickel, nitrate, nitrite, selenium and thallium, the laboratory must:

1. Analyze PE samples ~~which include those substances~~ provided by EPA, the department, or ~~its designee~~ *a third-party provider acceptable to the department*, at least once a year.

2. For each contaminant that has been included in the PE sample *and for each method for which the laboratory desires certification*, achieve quantitative results on the analyses that are within the following acceptance limits:

List of acceptance limits. No change.

(5) Lead and copper PE—laboratory certification. To obtain certification to conduct analyses for lead and copper, laboratories must:

1. Analyze PE samples which include lead and copper provided by EPA, the department, or ~~its designee~~ *a third-party provider acceptable to the department*, at least once a year, and

2. Achieve quantitative acceptance limits as follows *for each method for which the laboratory desires certification*:

- Lead: plus or minus 30 percent of the actual amount in the PE sample when the actual amount is greater than or equal to 0.005 mg/L. The practical quantitation level or PQL for lead is 0.005 mg/L; and
- Copper: plus or minus 10 percent of the actual amount in the PE sample when the actual amount is greater than or equal to 0.050 mg/L. The practical quantitation level or PQL for copper is 0.050 mg/L;

3. and 4. No change.

(6) Disinfection byproducts PE—laboratory certification. To obtain certification to conduct analyses for disinfection byproducts listed in 567—paragraph 41.6(1)"b," laboratories must:

1. Analyze performance evaluation (PE) samples approved by EPA, the department, or its designee, at least once a year; and

2. Achieve quantitative results within the acceptance limit on a minimum of 80 percent of the analytes included in each PE sample. The acceptance limit is defined as the 95 percent confidence interval calculated around the mean of the PE study data. However, the acceptance limit range shall not exceed +/- 50 percent or be less than +/- 15 percent of the study mean.

3. Be currently certified by EPA or the department to perform analyses to the specifications described in 567—paragraph 41.6(1)"d."

ITEM 108. Amend subrule **83.7(5)** by adopting the following **new** paragraph:

d. Laboratory-requested revocation. The department may revoke certification upon receipt of a written request by the certified laboratory for removal from the certification program.

ITEM 109. Amend subrule 83.7(6) as follows:

83.7(6) Revoked certification procedure.

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a. Notification to the laboratory. ~~If~~ *Except for the instance when the laboratory voluntarily requests revocation in paragraph 83.7(5)"d," if* a laboratory is subject to revocation on the basis of 83.7(5), the department will notify the party in writing of its intent to revoke certification in accordance with 561—7.16(17A,455A). Certification may be revoked for an analyte, a related analytical series, an environmental program area, or the entire laboratory.

b. No change.

c. Right to appeal. There is no appeal process for revocation of an analyte or a related analytical series unless the analyte(s) represents an entire environmental program area, such as underground storage tank parameters, or the entire laboratory. *When the laboratory requests revocation pursuant to paragraph 83.7(5)"d," the revocation will be promptly issued and will be immediately effective with no appeal process.*

(1) and (2) No change.

d. No change.

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ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission gives Notice of Intended Action to rescind Chapter 81, "Public Water Supply Systems and Wastewater Treatment Plants," and adopt new Chapter 81, "Operator Certification: Public Water Supply Systems and Wastewater Treatment and Collection Systems," Iowa Administrative Code.

Because of the significant number of changes proposed to the current chapter, the Commission proposes to rescind Chapter 81 and adopt a new chapter rather than amend the existing Chapter 81. The new rules primarily affect public water supply system operators, although rules regarding the wastewater operator certification program are also being proposed.

The new chapter includes the following: amended definitions for "activated sludge," "aeration," "chlorination," "classification," "coagulation," "continuing education unit (CEU)," "direct responsible charge (DRC)," "direct surface water filtration," "directly related post-high school education," "director," "grade," "operator-in-charge," and "waste stabilization lagoon"; new definitions for "average daily pumpage," "community water system (CWS)," "disinfection," "ion exchange," "nontransient noncommunity water system (NTNC)," "public water system certificate," "water distribution system," "water supply system," "wastewater treatment plant," and "water treatment plant"; and omitted definitions for "benefited water district," "demineralization," "ion exchange softening," "oxidation," and "pumpage."

The new chapter also includes rules adding new classification of "public water system certificate" for small public water supply systems; expanding water distribution system classifications from three to four to better correspond to water treatment classifications; classifying rural water distribution systems according to miles of pipe; eliminating the provision that the water treatment certificate satisfies the water distribution requirements; reclassifying the current IR operators into the new classifications, adding the same continuing education and renewal fee requirements as other certified operators to these reclassified operators, and omitting the allowance for certification without examination to satisfy a new EPA requirement; adopting a Grade A classification for very small water supplies (limited to CWS and NTNC with only hypochlorination treatment and excluding municipal and rural water systems and NTNCs serving more than 500 persons); eliminating the double credit for directly related post-high school education; requiring half the post-high school education for Grades III and IV to be directly related; increasing the DRC requirement of Grade IV to two years at a Grade III or IV plant; and no longer allowing the substitution of experience for a high school diploma or GED.

The last fee increase in this program was implemented in 1983, and the number of certificates (currently 4,600) has doubled in that time period. The new chapter proposes to allow the department to reduce any fees but to require the commission to approve any fee increase; increase the fees for all categories (examination, oral examination, reciprocity, certification, renewal, penalty, duplicate certification, and temporary certificate); provide that reasonable accommodation be made for the administration of the examination; increase the late application and failure to renew time periods to 60 days; change the operator by affidavit rule to allow such operators of nonmunicipal systems; omit the allowance of an operator by affidavit at Grade III surface water plants (currently none operating as such in Iowa); reference additional chapters from the Iowa Administrative Code that are applicable to the operation of plants and distribution systems in the disciplinary action rules; make the disciplinary action procedures consistent with other enforcement actions within the Environmental Protection Commission of the Department of Natural Resources; and adopt a new subrule that allows for the denial of an application for certification or certificate renewal based upon receipt of a notice of noncompliance with a child support order.

This new chapter was first reviewed by the certified operators' technical advisory group during several meetings in 1999. This advisory group is comprised of individuals representing the wastewater and drinking water professional organizations, the continuing education providers, and the municipal and rural area interests. The proposed new chapter was then reviewed by a water supply technical advisory group at two separate meetings. This second advisory group is comprised of individuals representing a wide variety of water supply stakeholders, including professional drinking water organizations, certified operators, environmental interests, public water supply owners, and other state agencies.

Any interested person may make written suggestions or comments on this chapter on or before July 26, 2000. Such written materials should be directed to Mike Wiemann, Water Supply Section, Department of Natural Resources, Wallace State Office Building, 502 E. Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895. Persons who wish to convey their views orally should contact the Water Supply Section at (515)281-3989 at the Environmental Protection Commission offices on the fifth floor of the Wallace State Office Building.

Also, there will be six public hearings at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and ad-

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dresses for the record and to confine their remarks to the subject of the rules. The public hearings will be held at 10 a.m. at the following places on the dates given:

Des Moines	July 6, 2000
	Auditorium Wallace State Office Building 502 E. Ninth Street Des Moines, Iowa
Mason City	July 7, 2000
	Muse-Norris Conference Center North Iowa Area Community College 500 College Drive Mason City, Iowa
Washington	July 14, 2000
	Helen Wilson Gallery Washington Public Library 120 E. Main Washington, Iowa
Atlantic	July 18, 2000
	Conference Room Atlantic Municipal Utilities 15 West Third Street Atlantic, Iowa
Manchester	July 19, 2000
	Delaware County Community Center 200 E. Acres (at the fairgrounds) Manchester, Iowa
Storm Lake	July 20, 2000
	Hansen Room Siebens Forum Buena Vista University Fourth & Grand Avenue Storm Lake, Iowa

Any persons who intend to attend a public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These rules are intended to implement Iowa Code sections 455B.211 to 455B.224 and chapter 272C.

The following amendment is proposed.

Rescind **567—Chapter 81** and adopt the following **new** chapter in lieu thereof:

CHAPTER 81
OPERATOR CERTIFICATION: PUBLIC WATER SUPPLY SYSTEMS AND WASTEWATER TREATMENT AND COLLECTION SYSTEMS

567—81.1(455B) Definitions. In addition to the definitions in Iowa Code section 455B.211, the following definitions shall apply to this chapter.

"Activated sludge" means a biological wastewater treatment process in which a mixture of wastewater and sludge floc, produced in a raw or settled wastewater by the growth of microorganisms, is agitated and aerated in the presence of a sufficient concentration of dissolved oxygen, followed by sedimentation.

"Aerated lagoon system" means a lagoon system which utilizes aeration to enhance oxygen transfer and mixing in the cell.

"Aeration" means the process of initiating contact between air and water. This definition includes but is not limited to: spraying the water in the air, bubbling air through the water, or forcing the air into the water by pressure.

"Average daily pumpage" means the total quantity of water pumped during the most recent one-year period of record divided by 365 days.

"Chlorination" means the addition of a chlorine compound or chlorine gas to water to inactivate pathogenic organisms.

"Classification" means the type of plant or distribution system: wastewater treatment plants, water treatment plants, or water distribution systems.

"Coagulation" means a process using coagulation chemicals and mixing by which colloidal and suspended materials are destabilized and agglomerated into flocs.

"Community water system (CWS)" means a public water supply system which has at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Continuing education unit (CEU)" means ten contact hours of participation in an organized education experience approved by an accredited college, university, technical institute, or issuing agency, or by the department, and must be directly related to the subject matter of the particular certificate to which the credit is being applied.

"Directly related post-high school education" is post-high school education in chemistry, microbiology, biology, math, engineering, water, wastewater, or other curriculum pertaining to plant and distribution system operation.

"Director" means the director of the department of natural resources or a designee.

"Direct responsible charge (DRC)" means, where shift operation is not required, accountability for and performance of active, daily on-site operation of the plant or distribution system, or of a major segment of the plant or distribution system. Where shift operation is required, "direct responsible charge" means accountability for and performance of active, daily on-site operation of an operating shift, or a major segment of the plant or distribution system. A city manager, superintendent of public works, city clerk, council member, business manager, or other administrative official shall not be deemed to have direct responsible charge of a plant or distribution system unless this person's duties include the active, daily on-site operation of the plant or distribution system. On-site operation may not necessarily mean full-time attendance at the plant or distribution system.

"Direct surface water filtration" means a water treatment system that applies surface water and groundwater under the influence (influenced groundwater as defined in rule 567—40.2(455B)) directly to the filters after chemical treatment consisting of coagulation and flocculation or chemical treatment consisting of coagulation. This type of system eliminates the sedimentation unit process.

"Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents.

"Electrodialysis" means the demineralization of water by the removal of ions through special membranes under the influence of a direct-current electric field.

"Fixed film biological treatment" means a treatment process in which wastewater is passed over a media onto which are attached biological organisms capable of oxidizing the organic matter, normally followed by sedimentation. This definition includes but is not limited to: trickling filters, rotating biological contactors, packed towers and activated filters.

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"Fluoridation" means the addition of fluoride to produce the optimum fluoride concentration in water.

"Grade" means one of seven certification levels, designated as A, I, IL, II, IIL, III, or IV.

"Ion exchange" means the process of using ion exchange materials such as resin or zeolites to remove undesirable ions from water and substituting acceptable ions, for example, ion exchange for nitrate removal or ion exchange for softening.

"Issuing agency" means a professional, technical/educational organization authorized by the department to provide continuing education for certification renewal or upgrade in accordance with the commitments and guidelines detailed in the written issuing agency agreement and procedures.

"Nontransient noncommunity water system (NTNC)" means a public water system other than a community water system which regularly serves at least 25 of the same persons four hours or more per day for four or more days per week for 26 or more weeks per year.

"Operator-in-charge" means person or persons on site in direct responsible charge for a plant or distribution system. A city manager, superintendent of public works, city clerk, council member, business manager, or other administrative official shall not be deemed to be the operator-in-charge of a plant or distribution system unless this person's duties include the active, daily on-site operation of the plant or distribution system. On-site operation may not necessarily mean full-time attendance at the plant or distribution system.

"Plant" means those facilities which are identified as either a water treatment plant or wastewater treatment plant as defined in Iowa Code section 455B.211.

"Population equivalent" for a wastewater treatment plant means the calculated number of people which would contribute the same biochemical oxygen demand (BOD) per day as the system in question, assuming that each person contributes 0.167 pounds of five-day, 20°C, BOD per day.

"Post-high school education" means credit received for completion of courses given or cosponsored by an accredited college, university, technical institute, or issuing agency. Courses offered by regulatory agencies may also be recognized as post-high school education. One year of post-high school education is 30 semester hours or 45 quarter hours or 45 CEUs of credit.

"Primary treatment" means a treatment process designed to remove organic and inorganic settleable solids from wastewater by the physical process of sedimentation.

"Public water system certificate" means a certificate issued by the department certifying that an operator has successfully completed the certification requirements of this chapter. The certificate specifies the grades and classifications for which the certificate is valid.

"Reverse osmosis" means the process in which external pressure is applied to mineralized water against a semipermeable membrane to effectively reduce total dissolved solids (TDS) and radionuclides content as the water is forced through the membrane.

"Rural water district" means a water supply incorporated and organized as such pursuant to Iowa Code chapter 357A or 504A.

"Stabilization" means the addition of chemical compounds to water to maintain an ionic equilibrium whereby the water is not in a depository or corrosive state.

"Waste stabilization lagoon" means an excavation designed and constructed to receive raw or pretreated wastewater in which stabilization is accomplished by several natural self-purification processes. This definition includes both anaerobic and aerobic lagoons.

"Wastewater treatment plant" means the facility or group of units used for the treatment of wastewater from public sewer systems and for the reduction and handling of solids removed from such wastes.

"Water distribution system" means that portion of the water supply system in which water is conveyed from the water treatment plant or other supply point to the premises of the consumer, including storage facilities and pumping stations. For the purposes of this chapter, a water distribution system does not include individual service lines to the premises of the consumer, which are not under the control of the system.

"Water supply system" means the system of pipes, structures, and facilities through which water for a public water supply is obtained, treated, sold or distributed for human consumption or household use.

"Water treatment plant" means that portion of the water supply system which in some way alters the physical, chemical, or microbiological quality of the water.

567—81.2(455B) General.

81.2(1) Plant grade for system with multiple treatment processes. A plant having a combination of treatment processes that are in different grades shall be assigned the highest numerical plant grade of that combination.

81.2(2) Increase in facility grade for complex systems. The director may increase a plant or water distribution system grade above that indicated in rules 81.3(455B) to 81.6(455B) for those systems which in the judgment of the director include unusually complex treatment processes, complex distribution systems, or which present unusual operation or maintenance conditions.

81.2(3) Operator-in-charge certification requirement. The operator-in-charge shall hold a certificate of the same classification of the plant or water distribution system and of equal or higher grade than the grade designated for that plant or distribution system.

81.2(4) Shift operator certification. Any person who is responsible for the operation of an operating shift of a plant or distribution system or major segment of the plant or distribution system and is under the supervision of the operator-in-charge identified in 81.2(3) shall be certified in a grade no less than a Grade II level for Grade III and IV plants and distribution systems and Grade I for Grade I and II plants and distribution systems.

81.2(5) PWS certificate requirement. The operator who is designated by the owner to be the operator-in-charge of both the water treatment plant and the water distribution system shall hold a public water system certificate valid for water treatment and water distribution in accordance with 81.2(3) and 81.2(6).

81.2(6) Public water system certificate. A public water system certificate shall be issued to an operator successfully completing water treatment or water distribution certification. The public water system certificate shall specify the grade and classification for which the certificate is valid. An operator successfully completing both water treatment and water distribution certification shall be issued a public water system certificate valid for both classifications. For purposes of renewal, all renewal fees and CEU requirements shall be applied as one certification. The number of CEUs required shall be determined by the highest certification grade on the operator's public water system certificate.

81.2(7) PWS certificate issuance. An operator who holds a valid water treatment or water distribution certificate on March 31, 2001, and who renews the certificate for the July

1, 2001, through June 30, 2003, renewal period shall be issued a public water system certificate as follows:

a. Grades I and II water treatment certificate holder. A Grade I or II water treatment certificate holder shall be issued a public water system certificate valid for the appropriate water treatment and water distribution classifications, e.g., a Grade I water treatment certificate holder shall be issued a public water system certificate valid for both Grade I water treatment plants and Grade I water distribution systems.

b. Grade III and IV water treatment certificate holder. A Grade III or IV water treatment certificate holder shall be issued a public water system certificate valid for the appropriate water treatment and water distribution classifications providing the certificate holder has at least two years of operating experience in a water distribution system. For example, a Grade III water treatment certificate holder shall be issued a public water system certificate valid for both Grade III water treatment plants and Grade III water distribution systems if the certificate holder has at least two years of operating experience in a water distribution system. If the certificate holder does not have the prerequisite experience, upon application the certificate holder may be issued a temporary water distribution system certification. Temporary certification is not renewable and will expire 24 months after the issuance of a water distribution system operator certificate. Holders of this type of temporary certification will be allowed to take the certification examination in the appropriate classification regardless of education and experience qualifications. For example, a Grade III water treatment certificate holder without the two years of operating experience in a water distribution system shall be issued a public water system certificate valid for Grade III water treatment plants and temporarily valid for Grade III water distribution systems.

c. Water distribution certificate holder. A water distribution certificate holder shall be issued a public water system certificate valid for the appropriate water distribution, e.g., a Grade I water distribution certificate holder shall be issued a public water system certificate valid for only Grade I water distribution systems.

d. PWS certificate renewal. Upon renewal of the operator's certificate in accordance with the criteria of this subrule, the operator shall be issued a public water system certificate. For purposes of renewal, all renewal fees and CEU requirements shall be applied as one certification. The number of CEUs required shall be determined by the highest certification grade on the operator's public water system certificate.

81.2(8) Notification requirements for a personnel change in the operator-in-charge. The owner of a plant or distribution system must notify the department of a change in operator(s)-in-charge within 30 days after the change.

81.2(9) Change of address or employment. Certified operators must report to the department a change in address or employment within 30 days after the change.

81.2(10) Owner reporting requirements. All owners of plants and distribution systems must report, when requested by the department, the method of treatment provided, the average daily pumpage, and the operator(s)-in-charge.

81.2(11) Compliance plan. When the director allows the owner of a plant or distribution system required to have a certified operator time to obtain an operator, the owner must submit a compliance plan indicating what action will be taken to obtain a certified operator. The plan must be on Form 52, Compliance Plan 542-3120, provided by the department and must be submitted within 30 days of the facility owner's receipt of a notice of violation.

567—81.3(455B) Wastewater treatment plant grades.

81.3(1) Classifications. The wastewater treatment plant classifications are listed in the following table:

Wastewater Treatment Plant Classifications

Treatment Type	Grade				
	Based on Design Pounds of BOD_5/Day				
	less than 334	334-835	836-2,505	2,506-8,350	more than 8,350
	Based on Design Population Equivalent				
	less than 2,000	2,000-5,000	5,001-15,000	15,001-50,000	more than 50,000
1. Primary Treatment	I	I	II	III	IV
2. Waste Stabilization Lagoon	IL	IL	IL	IL	IL
3. Aerated Lagoon System	IL	IL	IIL	IIL	IIL
4. Fixed Film Biological Treatment	II	II	III	III	IV
5. Activated Sludge	II	III	III	IV	IV

81.3(2) Unknown design BOD_5 loading. When the design BOD_5 loading is unknown, the plant BOD_5 loading shall be determined by using the average pounds of BOD_5 of the 24-hour composite samples taken in the last 12 months. If no 24-hour composite samples were taken, then grab samples shall be used.

81.3(3) A Grade I, II, III, or IV wastewater treatment certificate will satisfy the certification requirements for a Grade IL plant. A Grade II, III, or IV wastewater treatment certificate will satisfy the certification requirements for a Grade IIL plant.

567—81.4(455B) Water treatment plant grades.

81.4(1) Classifications. The water treatment plant classifications are listed in the following table:

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Water Treatment Plant Classifications

Treatment Type	Grade*			
	Average Daily Pumpage in MGD			
	0-0.1	>0.1-0.5	>0.5-1.5	>1.5
1. Iron or manganese removal; aeration; chlorination; fluoridation; stabilization; any other chemical addition; or any combination of these processes	I	II	II	III
2. Ion exchange	II	II	III	III
3. Direct surface water filtration	II	II	III	III
4. Utilization of lime, soda ash or other chemical addition for pH adjustment in the precipitation and coagulation of iron or manganese	II	II	III	III
5. Complete surface water clarification or lime softening of surface water or groundwater	III	III	III	IV
6. Reverse osmosis and electrodialysis	II	II	III	IV
7. Activated carbon for THM or synthetic organics removal	III	III	III	IV

*For Grade A water supply classification, see subrule 81.6(1).

81.4(2) Average daily pumpage. When the average daily pumpage is unknown, the plant grade will be determined from the population of the most recent census and an evaluation of commercial, industrial, and other users.

567—81.5(455B) Water distribution system grades.

81.5(1) Classifications. The water distribution plant classifications are listed in the following table:

Water Distribution System Classifications*

System Type	Grade**			
	Average Daily Pumpage in MGD			
	0-0.1	>0.1-1.5	>1.5-5	>5
All municipal water systems Community water systems not classified as a Grade A water system Nontransient noncommunity water systems not classified as a Grade A water system	I	II	III	IV
	Miles of Pipe			
	0-100	>100-1000	>1000-2500	>2500
Rural water districts	I	II	III	IV

*Note: A public water system with a well, storage, and a distribution system shall be classified as a water distribution system if no treatment is provided.

**For Grade A water system classification, see subrule 81.6(1).

81.5(2) Average daily pumpage. When the average daily pumpage is unknown, the system grade will be determined from the population of the most recent census and an evaluation of commercial, industrial, and other users.

81.5(3) IR certificate holders. Operators with a IR certificate issued before July 1, 1999, may be issued a Grade I water distribution certificate restricted to the specific system(s) at which the IR certificate holder has been designated as the operator-in-charge. No fee or examination shall be required for the reclassification. The certificate issued shall be subject to renewal, continuing education requirements, and all other provisions of this chapter.

567—81.6(455B) Grade A classification.

81.6(1) Grade A water system classification.

a. Community water system. A community water system which serves a population of 250 persons or less and provides no treatment other than hypochlorination or treatment which does not require any chemical addition, process adjustment, backwashing or media regeneration by an operator shall be classified as a Grade A water system.

b. Nontransient noncommunity water system. A nontransient noncommunity water system which serves a population of 500 persons or less and provides no treatment other than hypochlorination or treatment which does not require any chemical addition, process adjustment, backwashing or media regeneration by an operator shall be classified as a Grade A water system.

81.6(2) Certification requirements for Grade A water systems. Any grade of water treatment certification will satisfy the certification requirements for a Grade A water system with hypochlorination. Any grade of water distribution certification will satisfy the certification requirements for a Grade A water system without hypochlorination.

567—81.7(455B) Operator education and experience qualifications.

81.7(1) Education and experience requirements. All applicants shall meet the education and experience requirements for the grade of certificate shown in the table below prior to being allowed to take the examination. Experience shall be in the same classification for which the applicant is

applying except that partial credit may be given in accordance with 81.7(2) and 81.7(3). Directly related post-high school education shall be in the same subject matter as the classification in which the applicant is applying.

Operator Education and Experience Qualifications

Grade	Education	Substitution for Education	Experience	Substitution for Experience
A	High school diploma or GED	None	Completion of an IDNR-approved training course	None
I	High school diploma or GED	None	1 year	See 81.7(3)"b"(1), (3) to (5)
IL	High school diploma or GED	None	1 year	See 81.7(3)"b"(1), (3) to (5)
II	High school diploma or GED	None	3 years	See 81.7(3)"b"(2) to (5)
IIL	High school diploma or GED	None	3 years	See 81.7(3)"b"(2) to (5)
III	High school diploma or GED and 2 years of post-high school education (1 year must be directly related)	See 81.7(3)"a"(1), (3)	4 years of experience in a Grade I or higher	See 81.7(3)"b"(2), (3)
IV	High school diploma or GED and 4 years of post-high school education (2 years must be directly related)	See 81.7(3)"a"(1), (3)	4 years of experience in a Grade III or higher including 2 years of DRC	See 81.7(3)"b"(2), (3); 81.7(3)"c"(1)

81.7(2) Related work experience. The following substitutions of related work experience for operating experience requirements may be accepted by the director.

a. Laboratory personnel. Laboratory personnel employed in water or wastewater treatment plants may be allowed 50 percent credit for work experience toward meeting the operating experience requirements for Grades I and II certification only. Laboratory experience must be in the same classification for which the applicant is applying.

b. Oversight personnel. Personnel with experience in on-site operation review and evaluation of plants and distribution systems may be allowed 50 percent credit for on-site work experience toward meeting the operating experience requirements for Grades I and II certification only. On-site experience must be in the same classification for which the applicant is applying.

c. Maintenance personnel. Maintenance personnel employed in water or wastewater treatment plants may be allowed 50 percent credit for work experience toward meeting the operating experience requirements for Grades I and II certification only. Maintenance experience may be applied either to the water or to the wastewater experience requirements.

d. Certified operators.

(1) Certified water treatment operators may be allowed 50 percent credit for work experience toward meeting the operating experience requirements for Grades I and II wastewater treatment certification only.

(2) Certified wastewater treatment operators may be allowed 50 percent credit for work experience toward meeting the operating experience requirements for Grades I and II water treatment certification only.

(3) Certified water treatment operators may be allowed 50 percent credit for work experience toward meeting the operating experience requirements for Grades I and II water distribution certification only.

(4) Certified water distribution operators may be allowed 50 percent credit for work experience toward meeting the operating experience requirements for Grades I and II water treatment certification only.

e. Limitation. The portion of related work experience that is substituted for operating experience cannot also be used to substitute for education.

81.7(3) The following substitutions for experience or education may be accepted by the director.

a. Substitution of experience for education.

(1) One year of operating experience in a Grade II or higher position may be substituted for one year of post-high school education for Grade III certification up to one-half the post-high school education requirement.

(2) One year of operating experience in a Grade III or higher position may be substituted for one year of post-high school education for Grade IV certification up to one-half the post-high school education requirement.

(3) That portion of experience which is applied toward substitution for education cannot also be used for experience.

b. Substitutions of education for experience.

(1) Two semester hours or three quarter hours or three CEUs of directly related post-high school education may be substituted for one-half the experience requirement for Grades I and IL.

(2) Thirty semester hours or 45 quarter hours or 45 CEUs of post-high school education may be substituted for one year of experience up to a maximum of one-half the experience requirement for Grades II, IIL, III and IV.

(3) That portion of education which is applied toward substitution for experience cannot also be used for education.

(4) Class hours involving closely supervised on-the-job type training in a pilot or full-scale facility where there are clearly defined educational objectives may be applied to the on-the-job experience requirement. The substitution value of such training shall be applicable only toward obtaining a Grade I and Grade II certification and shall not exceed one-half year of on-the-job experience. One hour of on-the-job training is equivalent to three hours of on-the-job experience. One month of on-the-job training consists of 20 eight-hour days. Credit for on-the-job training may be applied only to the examination for the type of system in which the experience was obtained.

(5) That portion of on-the-job training courses which is applied toward substitution for the on-the-job experience requirement cannot also be used for education.

c. Substitution of education for direct responsible charge experience. Thirty semester hours or 45 quarter

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hours or 45 CEUs of directly related post-high school education may be substituted for one year of direct responsible charge experience up to one-half the requirement for Grade IV certification.

567—81.8(455B) Certification and examination fees.

81.8(1) Examination fee. The examination fee for each examination shall be $30.

81.8(2) Oral examination fee. The oral examination fee for each oral examination shall be $90.

81.8(3) Reciprocity application fee. The reciprocity application fee for each type of classification shall be $30.

81.8(4) Certification fee. The certification fee shall be $20 for each one-half year of a two-year period from the date of issuance to June 30 of odd-numbered years.

81.8(5) Renewal fee. The certification renewal fee shall be $60.

81.8(6) Penalty fee. The certification and renewal penalty fee shall be $18.

81.8(7) Duplicate certificate fee. The duplicate certificate fee shall be $20.

81.8(8) Temporary certificate fee. The temporary certificate fee shall be $60.

81.8(9) Fee adjustments. The department may adjust the fees annually by up to plus or minus 20 percent to cover costs of administering and enforcing these rules and reimbursement for other expenses relating to operator certification. The environmental protection commission must approve any fee increases above those listed in 81.8(1) through 81.8(8). All fees collected shall be retained by the department for administration of the operator certification program.

567—81.9(455B) Examinations.

81.9(1) Examination application. All persons wishing to take the examination required to become a certified operator of a wastewater or water treatment plant or a water distribution system shall complete the Operator Certification Examination Application, Form CFN-542-3118/CPG-63997. A listing of dates and locations of examinations is available from the department upon request. The application form requires the applicant to indicate educational background, training and past experience in water or wastewater operation. The completed application and examination fee shall be sent to Iowa Department of Natural Resources, Operator Certification, 502 East Ninth, Des Moines, Iowa 50319-0034. The completed application and examination fee must be received by the department at least 30 days prior to the date of examination.

81.9(2) Application evaluation. The director shall designate department personnel to evaluate all applications for examination, certification, and renewal of certification and upgrading of certification. The director will review applications when it is indicated the applicant has falsified information or when questions arise concerning an applicant's qualifications of eligibility for examination or certification.

81.9(3) Application expiration. A properly completed application for examination shall be valid for one year from the date the application is approved by the department. An applicant may request only one class and grade of examination with each application. A new application shall be required with each different class or grade of examination desired by the applicant.

81.9(4) Refund of examination fee. An applicant who does not qualify for examination at the time of application will have the examination fee refunded if the applicant cannot qualify for examination within one year. If the applicant will qualify for a scheduled examination within one year, the applicant will be notified when the examination may be taken and the fee will not be refunded.

81.9(5) Reexamination. 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.

81.9(6) Reexamination fee. Upon each reexamination when a valid application is on file, the applicant shall submit the examination fee to the department at least ten days prior to the date of examination.

81.9(7) Application invalidation. Failure to successfully complete the examination within one year from the date of approval of the application shall invalidate the application.

81.9(8) Retention of completed examinations. Completed examinations will be retained by the director for a period of one year after which they will be destroyed.

81.9(9) Oral examination. Upon written request by an applicant for Grade A, I, IL, II or IIL certification, the director will consider the presentation of an oral examination on an individual basis when the plant or distribution system which employs the applicant is not in compliance with Iowa Code section 455B.113; the applicant has failed the written examination at least twice; the applicant has shown difficulty in reading or understanding written questions but may be able to respond to oral questioning; the applicant is capable of communicating in writing with regard to departmental requirements and inquiries; and the director has received a written recommendation for an oral examination from a department staff member attesting to the operational and performance capabilities of the applicant. The director shall designate department personnel to administer the examination. The examination shall contain practical questions pertaining to the operation of the plant or distribution system in which the applicant is employed. Certificates issued to operators through oral examinations shall be restricted to the plant or distribution system where the operator is employed at the time of certification.

81.9(10) Reasonable accommodation. Upon request for certification by an applicant, the director will consider on an individual basis reasonable accommodation to allow administration of the examination without discrimination on the basis of disability. The applicant shall request the accommodation 30 days prior to the date of the examination. The applicant must provide documentation of eligibility for the accommodation. Documentation shall be submitted with the completed examination application. Accommodations based on documentation may include site accessibility, oral examination, extended time, separate testing area, or other concerns.

567—81.10(455B) Certification by examination.

81.10(1) Examination requirement. All applicants not addressed for certification in 81.11(1) shall successfully complete and pass an examination prior to receiving certification.

81.10(2) Certification application time line. 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.

81.10(3) Late certification application. 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' notice of successful completion of the examination will not be certified on the basis of that examination.

567—81.11(455B) Certification by reciprocity.

81.11(1) Other states' mandatory certification programs. For applicants who have been certified under other states' mandatory certification programs, the equivalency of which has been previously reviewed and accepted by the department, certification in an appropriate classification and grade, without examination, will be recommended. The applicant must have successfully completed an examination generally equivalent to the Iowa examination and must meet the education and experience qualifications established by the director.

81.11(2) Other states' voluntary certification programs. For applicants who have been certified under voluntary certification programs in other states, certification in an appropriate class will be considered. The applicant must have successfully completed an examination generally equivalent to the Iowa examination and must meet the education and experience qualifications established by the director. The director may require the applicant to successfully complete the Iowa examination.

81.11(3) Reciprocity application. Applicants who seek Iowa certification pursuant to subrule 81.11(1) or 81.11(2) shall submit an application for examination accompanied by a letter requesting certification pursuant to these subrules. Application for certification pursuant to 81.11(1) and 81.11(2) shall be received by the director in accordance with these subrules.

567—81.12(455B) Restricted and temporary certification.

81.12(1) Restricted certification. Upon written request by an operator, the director may determine that further education requirements be waived when a plant or distribution system grade has been increased and the operator has been in direct responsible charge of the existing plant or distribution system. An operator successfully completing the examination will be restricted to that plant or distribution system until the education requirements are met.

81.12(2) Temporary certification. Upon written request by the owner of a plant or system not previously required to have a certified operator, the director may issue a temporary certificate of the appropriate grade and classification to the operator(s)-in-charge. The temporary certificate holder will be restricted to that plant or distribution system until all certification requirements, in accordance with rules 81.6(455B), 81.8(455B) and 81.9(455B), are met. The temporary certificate is not renewable and will expire 24 months after issuance. No temporary certificates will be issued to operators of new water plants or distribution systems, as defined in 567—subrule 43.8(1).

567—81.13(455B) Certification renewal.

81.13(1) Renewal period. All certificates shall expire on June 30 of odd-numbered years and must be renewed every two years in order to maintain certification.

81.13(2) Application for renewal. An application for renewal will be mailed to currently certified operators prior to the expiration date of their certificates. Application for renewal must be made in accordance with this rule and the instructions on the form in order to renew the certificate for the next two years. Application for renewal of a certificate without penalty must be received by the director or postmarked prior to the expiration of the certificate, and shall be accompanied by the certification renewal fee.

81.13(3) Late application. A late application for renewal of a certificate may be made provided that the application is received by the director or postmarked within 60 days of the expiration of the certificate on forms provided by the department. Such late application shall be accompanied by the penalty fee and the certification renewal fee.

81.13(4) Failure to renew. If a certificate holder fails to renew within 60 days following expiration of the certificate, the right to renew the certificate is automatically terminated. 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 81.10(455B).

81.13(5) Expired certificate. An operator may not continue as the operator-in-charge of a plant, distribution system, operating shift, or major segment of the plant or distribution system after expiration of a certificate unless the certificate is renewed.

567—81.14(455B,272C) Continuing education.

81.14(1) CEU requirements. Continuing education must be earned during two-year periods between April 1 and March 31 of odd-numbered years. A Grade III or IV certified operator must earn two units or 20 contact hours per certificate during each two-year period. All other certified operators must earn one unit or 10 contact hours per certificate during each two-year period. Newly certified operators (previously uncertified) who become certified after April 1 of a two-year period will not be required to earn CEUs until the next two-year period. If an operator upgrades a certificate after April 1 of a two-year period and that upgrade increases the CEU requirement, the operator will not be required to meet the higher CEU requirement until the next two-year period but must fulfill the lower CEU requirement for that period.

81.14(2) Certificate renewal. Only those operators fulfilling the continuing education requirements before the end of each two-year period (March 31) will be allowed to renew their certificate(s). The certificate(s) of operators not fulfilling the continuing education requirements shall expire on June 30 of the applicable biennium.

81.14(3) CEU approval. All activities for which continuing education credit will be granted must be approved by an accredited college, university, technical institute, or issuing agency, or by the department, and must be directly related to the subject matter of the particular certificate to which the credit is being applied.

81.14(4) CEU extensions. The director may, in individual cases involving hardship or extenuating circumstances, grant an extension of up to three months within which the certified operator 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 prior to March 31 of each biennium.

81.14(5) CEU reporting. It is the certified operator's personal responsibility to maintain a written record and to notify the department of the continuing education credit earned during the period. The continuing education credits earned during the period shall be listed on the application for renewal.

567—81.16(455B) Operator by affidavit.

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81.16(1) Affidavit allowance. The owner of a plant or distribution system that is required to have a Grade A, I, IL, II, IIL certified operator may sign an affidavit with a certified operator of the required classification and grade.

81.16(2) Affidavit requirements. This affidavit will verify that the certified operator is the operator-in-charge and has direct responsibility for a plant or distribution system that does not have first rights on the services of that operator. The affidavit form shall be provided by the director and shall require the name and signature of the certified operator, the operator's certification number, class and grade, and the date of last renewal of the operator's certificate. The affidavit form shall be proof that the certified operator has agreed to be directly responsible for the operation and maintenance of the plant or distribution system. The director may specify additional operational and maintenance requirements based on the complexity and size of the plant or distribution system. Four duly notarized copies of the affidavit must be returned to and approved by the director, based upon the ability of the certified operator to properly operate and maintain additional facilities. In event of disapproval, the owner of the plant or distribution system must terminate the agreement with the certified operator and seek the services of another certified operator. Both the owner of the plant or distribution system and the certified operator shall notify the director at least 30 days before the termination of the agreement.

567—81.17(455B,272C) Disciplinary actions.

81.17(1) Disciplinary action may be taken against a certified operator on any of the grounds specified in Iowa Code section 455B.219 and chapter 272C and the following more specific grounds.

a. Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified operator.

(1) Wastewater operator duties. Examples of a wastewater operator's duties are specified in the Water Environment Federation Manual of Practice #11, 1996; California State University—Sacramento (CSUS) Operation of Wastewater Treatment Plants, Volume I, 4th edition, 1998; CSUS Operation of Wastewater Treatment Plants, Volume II, 4th edition, 1998; CSUS Advanced Waste Treatment, 3rd edition, 1998; and 567—Chapters 60 through 64, 67, and 83, Iowa Administrative Code.

(2) Water treatment or distribution operator duties. Examples of a water treatment or distribution operator's duties are specified in the American Water Works Association (AWWA) Manuals of Water Supply Practice (Volumes 1, 3-7, 9, 11-12, 14, 17, 19-38, 41-42, 44-48); AWWA Water Supply Operations Series, 2nd edition: Vol. 1, 1995; Vol. 2, 1995; Vol. 3, 1996; Vol. 4, 1995; and Vol. 5, 1995; AWWA Water Distribution Operator Handbook, 2nd edition, 1976; and California State University—Sacramento (CSUS) Water Treatment Plant Operation, Volume I, 4th edition, 1999; CSUS Water Treatment Plant Operation, Volume II, 3rd edition, 1998; CSUS Small Water System Operation and Maintenance, 4th edition, 1999; CSUS Water Distribution System Operation and Maintenance, 4th edition, 2000; and 567—Chapters 40 through 43 and 83, Iowa Administrative Code.

b. 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.

c. 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.

d. Fraud in procuring a license.

e. Professional incompetence.

f. Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the licensee's profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

g. Habitual intoxication or addiction to the use of drugs.

h. Conviction of a felony related to the profession or occupation of the licensee. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

i. Fraud in representations as to skill or ability.

j. Use of untruthful or improbable statements in advertisements.

k. Willful or repeated violations of the provisions of Iowa Code chapter 272C or 455B, division III.

81.17(2) Disciplinary sanctions. Disciplinary sanctions may include those specified in Iowa Code section 272C.3(2) and the following:

a. Revocation of a certificate. Revocation may be permanent without chance of recertification or for a specified period of time.

b. Partial revocation or suspension. Revocation or suspension of the practice of a particular aspect of the operation of a plant or distribution system, including the restriction of operation to a particular plant or distribution system, or a particular type of plant or distribution system.

c. Probation. Probation under specified conditions relevant to the specific grounds for disciplinary action.

d. Additional education, training, and examination requirements. Additional education, training, and reexamination may be required as a condition of reinstatement.

e. Penalties. Civil penalties not to exceed $1,000 may be assessed for causes identified in 81.17(1).

81.17(3) Procedure.

a. Initiation of disciplinary action. The department staff shall initiate a disciplinary action by conducting such lawful investigation as is necessary to establish a legal and factual basis for action. The administrator of the environmental protection commission or designee shall make a decision as to any disciplinary action based on the department staff recommendations. Except as specified by this subrule, the disciplinary action shall be initiated by a notice of intended action in accordance with rule 561—7.16(17A,455A). At any time, the licensee and the department may enter into a settlement agreement, subject to approval by the director, which provides for a disciplinary sanction.

b. Request for hearing. Notwithstanding references in 561—subrule 7.16(4), a licensee shall be deemed to have waived any right to a contested case hearing unless the licensee appeals the action and requests a hearing within 30 days of receipt of the notice of intended action. If a timely appeal is filed, further contested case procedures shall apply in accordance with 561—Chapter 7.

c. Appeal and review of proposed decision. After a contested case hearing conducted in accordance with rule 561—7.14(17A,455A), the director shall review the presiding officer's proposed decision issued in accordance with 561—subrule 7.15(3). The proposed decision shall constitute a final decision of the director and the department unless the licensee or the director and department appeal the proposed decision to the environmental protection commission within 30 days of receipt as provided in 561—subrule 7.15(5).

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d. Effective date of suspension or revocation. Notwithstanding any contrary interpretation in 561—subrule 7.16(7), suspension, revocation or other disciplinary action shall be effective 30 days after receipt of the notice of intended action if the licensee fails to file a timely appeal and request for hearing. If a contested case hearing is timely requested, the disciplinary action is effective as specified in the presiding officer's proposed decision unless the licensee obtains a stay of the action in accordance with 561—subrule 7.15(7) pending a timely appeal to the environmental protection commission.

e. Emergency disciplinary action. The director may initiate an emergency suspension or other disciplinary action upon such grounds and following those procedures as provided in 561—subrule 7.16(6). The terms of the emergency order shall be effective upon service as provided in 561—subrule 7.16(7). The department shall promptly give notice of an opportunity to appeal and request a contested case hearing following the procedures as specified above.

f. Reinstatement of revoked certificates. Upon revocation of a certificate in accordance with the authority provided in Iowa Code section 455B.219 and chapter 272C, application for certification may be allowed after two years from the date of revocation unless otherwise specified in accordance with 81.17(2). Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

81.17(4) Noncompliance with child support order procedures. Upon receipt of a certification of noncompliance with a child support obligation as provided in Iowa Code section 252J.7, the department will initiate procedures to deny an application for certification or renewal, or to suspend a certification in accordance with Iowa Code section 252J.8(4). The department shall issue a notice by restricted certified mail to the person of its intent to deny or suspend operator certification based on receipt of a certificate of noncompliance. The suspension or denial shall be effective 30 days after receipt of the notice unless the person provides the department with a withdrawal of the certificate of noncompliance from the child support recovery unit as provided in Iowa Code section 252J.8(4)"c." Pursuant to Iowa Code section 252J.8(4), the person does not have a right to a hearing before the department to contest the denial or suspension action under this subrule but may seek a hearing in district court in accordance with Iowa Code section 252J.9.

These rules are intended to implement Iowa Code sections 455B.211 to 455B.224 and chapter 272C.

ARC 9867A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

The Seventy-eighth General Assembly directed the Department to increase the medical assistance eligibility income limit for pregnant women and infants under the Mothers and Children Program to 200 percent of the federal poverty level effective July 1, 2000. Federal law does not allow an increase in the current eligibility income limit of 185 percent of the federal poverty level, but does allow additional deductions.

This amendment allows pregnant women and infants Medicaid eligibility up to 200 percent of the federal poverty level by providing a deduction equal to 15 percent of the federal poverty level for the family size.

This amendment does not provide for waiver in specified situations because it confers a benefit by allowing the Department of Human Services to provide for coverage of medical services for more pregnant women and infants under the Mothers and Children Program.

It is anticipated this amendment will also be adopted on an emergency basis by the Council on Human Services at its June 8, 2000, meeting to be effective July 1, 2000.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before July 5, 2000.

This amendment is intended to implement 2000 Iowa Acts, Senate File 2435, section 8, subsection 12, and Iowa Code section 249A.3(1)"k" as amended by 2000 Iowa Acts, Senate File 2435, section 41.

The following amendment is proposed.

Amend subrule **75.1(28)**, paragraph **"a,"** subparagraph (1), as follows:

(1) Family income shall not exceed 185 percent of the federal poverty level for pregnant women when establishing initial eligibility under these provisions and for infants (under one year of age) when establishing initial and ongoing eligibility. Family income shall not exceed 133 percent of the federal poverty level for children who have attained one year of age but who have not attained 19 years of age. Income to be considered in determining eligibility for pregnant women, infants, and children shall be determined according to family medical assistance program (FMAP) methodologies except that the three-step process for determining initial eligibility and the two-step process for determining ongoing eligibility, as described at rule 441—75.57(249A), shall not apply. Family income is the income remaining after disregards and deductions have been applied in accordance with the provisions of rule 441—75.57(249A).

In determining eligibility for pregnant women and infants, after the aforementioned disregards and deductions have been applied, an additional disregard equal to 15 percent of the applicable federal poverty level shall be applied to the family's income.

ARC 9881A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2000 Iowa Acts, House File 2555, section 1, subsection 1, and section 11, the Department of Human Services proposes to amend Chapter 77, "Conditions of Participation for Providers of Medical and Remedial Care," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 83, "Medicaid Waiver Services," appearing in the Iowa Administrative Code.

These amendments implement the following changes to skilled nursing and home health aide services and to the Home- and Community-Based Services waivers as mandated by the Seventy-eighth General Assembly:

- The definitions of skilled nursing and home health aide services that meet the intermittent guidelines for payment under Medicaid are being expanded.

Daily skilled nursing visits or multiple daily visits for wound care or insulin injections are covered when ordered by a physician and included in the plan of care.

Home health aide services provided for four to seven days per week, not to exceed 28 hours per week when ordered by a physician and included in a plan of care, are allowed as intermittent services under certain conditions.

- An interim medical monitoring and treatment service is added to the ill and handicapped, mental retardation, and brain injury waivers.

Interim medical monitoring and treatment services are monitoring and treatment of a medical nature requiring specially trained caregivers. The services allow the consumer's usual caregivers to be employed. Interim medical monitoring and treatment services may also be provided for a limited period of time for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver.

Interim medical monitoring and treatment services provide experiences for each consumer's social, emotional, intellectual, and physical development, include comprehensive developmental care and any special services for a consumer with special needs, and include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis. Services may include transportation to and from school.

A maximum of 12 one-hour units of service is available per day. Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan. They may be provided only in the consumer's home, in a registered group child care home, in a registered family child care home, in a licensed child care center, or during transportation to and from school. The staff-to-consumer ratio shall not be less than one to six.

The following providers may provide interim medical monitoring and treatment services: licensed child care centers, registered group and family child care homes, and home health agencies certified to participate in the Medicare program.

Staff members providing interim medical monitoring and treatment services to consumers are to meet all of the following requirements: be at least 18 years of age, not be the spouse of the consumer or a parent or stepparent of the consumer if the consumer is aged 17 or under, not be a usual caregiver of the consumer, and be qualified by training or experience, as determined by the usual caregivers and a licensed medical professional on the consumer's interdisciplinary team, to provide medical intervention or intervention in a medical emergency necessary to carry out the consumer's plan of care.

- Assisted living programs certified or voluntarily accredited by the Iowa Department of Elder Affairs are clearly identified as an agency provider of consumer-directed attendant care in the elderly waiver program and a separate unit of service is identified.

When provided by an assisted living program, a unit of consumer-directed attendant care service is one calendar month. If services are provided by an assisted living program for less than one full calendar month, the monthly reimbursement rate shall be prorated based on the number of days service is provided.

- The aggregate monthly cost limit in the elderly waiver program for a person needing the nursing facility level of care is increased from $852 to $1,052.
- Respite services available under the HCBS waiver programs are expanded by adding medical respite, expanding potential providers, and increasing rates for all providers. In addition, criteria are added to require safety procedures during the provision of respite care.

Respite is a basic service that gives the caregiver of a person with a disability or an elderly person a necessary break from care. Respite is available under all of the HCBS waivers with the exception of the physical disability waiver.

Respite services provided by home health agencies, home care agencies, and other nonfacility providers are divided into specialized respite, group respite, and basic individual respite, with separate rates of payment. "Specialized respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals with specialized medical needs requiring the care, monitoring or supervision of a licensed registered nurse or licensed practical nurse. "Group respite" is respite provided on a staff-to-consumer ratio of less than one to one and "basic individual respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals without specialized needs requiring the care of a licensed registered nurse or licensed practical nurse.

- The reimbursement rates for the following providers are increased by 7/10 of 1 percent (hereinafter referred to as "0.7 percent" or "0.7%"): HCBS AIDS/HIV waiver counseling, homemaker, nursing, home-delivered meals, adult day care, and consumer-directed attendant care providers; HCBS Brain Injury waiver personal emergency response, adult day care, case management, consumer-directed attendant care, behavioral programming, family counseling and training, and prevocational services providers; HCBS Elderly waiver adult day care, emergency response, homemaker, nursing, chore, home-delivered meals, nutritional counseling, assistive devices, senior companion, and consumer-directed attendant care providers; HCBS Ill and Handicapped waiver homemaker, adult day care, nursing care, counseling, and consumer-directed attendant care providers; HCBS MR

HUMAN SERVICES DEPARTMENT[441](cont'd)

waiver personal emergency response and consumer-directed attendant care providers; and HCBS Physical Disability waiver consumer-directed attendant care and personal emergency response providers.

• Home- and Community-Based Service (HCBS) waiver home health providers shall be paid the maximum Medicare rate.

These amendments do not provide for waivers because the legislature directed these changes and they confer a benefit. Exceptions to the amended limits and from particular requirements regarding these services can be requested under the Department's general rule on exceptions at rule 441—1.8(17A).

It is anticipated these amendments will also be adopted on an emergency basis by the Council on Human Services at its June 8, 2000, meeting to be effective July 1, 2000.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before July 5, 2000.

Oral presentations may be made by persons appearing at the following meetings. Written comments will also be accepted at these times.

Cedar Rapids—July 11, 2000 9 a.m.
Cedar Rapids Regional Office
Iowa Building - Suite 600
Sixth Floor Conference Room
411 Third St. S.E.
Cedar Rapids, Iowa 52401

Council Bluffs—July 5, 2000 9 a.m.
Administrative Conference Room
Council Bluffs Regional Office
417 E. Kanesville Boulevard
Council Bluffs, Iowa 51501

Davenport—July 10, 2000 9 a.m.
Davenport Area Office
Bicentennial Building - Fifth Floor
Large Conference Room
428 Western
Davenport, Iowa 52801

Des Moines—July 10, 2000 10 a.m.
Des Moines Regional Office
City View Plaza
Conference Room 102
1200 University
Des Moines, Iowa 50314

Mason City—July 7, 2000 11 a.m.
Mason City Area Office
Mohawk Square, Liberty Room
22 North Georgia Avenue
Mason City, Iowa 50401

Ottumwa—July 6, 2000 10 a.m.
Ottumwa Area Office
Conference Room 3
120 East Main
Ottumwa, Iowa 52501

Sioux City—July 7, 2000 2:30 p.m.
Sioux City Regional Office
Fifth Floor
520 Nebraska St.
Sioux City, Iowa 51101

Waterloo—July 5, 2000 10 a.m.
Waterloo Regional Office
Pinecrest Office Building
Conference Room 213
1407 Independence Avenue
Waterloo, Iowa 50703

Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impairments should contact the Bureau of Policy Analysis at (515)281-8440 and advise of special needs.

These amendments are intended to implement Iowa Code section 249A.4 and 2000 Iowa Acts, House File 2555, section 1, subsection 1, paragraphs "f," "h," and "i."

The following amendments are proposed.

ITEM 1. Amend rule 441—77.30(249A) as follows:

Amend subrule 77.30(5) as follows:

77.30(5) Respite care providers.

a. The following ~~providers~~ *agencies* may provide respite ~~care~~ *services*:

~~a.~~ *(1)* Home health agencies ~~which meet the conditions of participation set forth in 77.30(2) above~~ *that are certified to participate in the Medicare program.*

~~b.~~ *(2)* Respite providers certified under the HCBS MR waiver.

~~c.~~ *(3)* Nursing facilities, intermediate care facilities for the mentally retarded, and hospitals ~~certified to participate~~ *enrolled as providers* in the *Iowa* Medicaid program.

~~d.~~ *(4)* ~~Child~~ *Group living* foster care facilities *for children* licensed by the department according to 441—Chapters 112 *and 114* to 116 *and child care centers licensed according to 441—Chapter 109.*

~~e.~~ *(5)* Camps ~~accredited~~ *certified* by the American Camping Association.

~~f.~~ *(6)* Home care agencies ~~which~~ *that* meet the conditions of participation set forth in subrule 77.30(1).

~~g.~~ *(7)* Adult day care providers ~~which~~ *that* meet the conditions of participation set forth in subrule 77.30(3).

(8) Residential care facilities for persons with mental retardation (RCF/PMR) licensed by the department of inspection and appeals.

b. Respite providers shall meet the following conditions:

(1) Providers shall maintain the following information that shall be updated at least annually:

1. The consumer's name, birth date, age, and address and the telephone number of each parent, guardian or primary caregiver.

2. An emergency medical care release.

3. Emergency contact telephone numbers such as the number of the consumer's physician and the parents, guardian, or primary caregiver.

4. The consumer's medical issues, including allergies.

5. The consumer's daily schedule which includes the consumer's preferences in activities or foods or any other special concerns.

(2) Procedures shall be developed for the dispensing, storage, authorization, and recording of all prescription and nonprescription medications administered. Home health agencies must follow Medicare regulations for medication dispensing.

All medications shall be stored in their original containers, with the accompanying physician's or pharmacist's directions and label intact. Medications shall be stored so they are inaccessible to consumers and the public. Nonprescription medications shall be labeled with the consumer's name.

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In the case of medications that are administered on an ongoing, long-term basis, authorization shall be obtained for a period not to exceed the duration of the prescription.

(3) Policies shall be developed for:

1. Notifying the parent, guardian, or primary caregiver of any injuries or illnesses that occur during respite provision. A parent's, guardian's or primary caregiver's signature is required to verify receipt of notification.

2. Requiring the parent, guardian or primary caregiver to notify the respite provider of any injuries or illnesses that occurred prior to respite provision.

3. Documenting activities and times of respite. This documentation shall be made available to the parent, guardian or primary caregiver upon request.

4. Ensuring the safety and privacy of the individual. Policies shall at a minimum address threat of fire, tornado, or flood and bomb threats.

c. A facility providing respite under this subrule shall not exceed the facility's licensed capacity, and services shall be provided in locations consistent with licensure.

d. Respite provided outside the consumer's home or the facility covered by the licensure, certification, accreditation, or contract must be approved by the parent, guardian or primary caregiver and the interdisciplinary team and must be consistent with the way the location is used by the general public. Respite in these locations shall not exceed 72 continuous hours.

Adopt the following **new** subrule:

77.30(8) Interim medical monitoring and treatment providers.

a. The following providers may provide interim medical monitoring and treatment services:

(1) Licensed child care centers.

(2) Registered group child care homes.

(3) Registered family child care homes.

(4) Home health agencies certified to participate in the Medicare program.

b. Staff requirements. Staff members providing interim medical monitoring and treatment services to consumers shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Not be the spouse of the consumer or a parent or stepparent of the consumer if the consumer is aged 17 or under.

(3) Not be a usual caregiver of the consumer.

(4) Be qualified by training or experience, as determined by the usual caregivers and a licensed medical professional on the consumer's interdisciplinary team and documented in the service plan, to provide medical intervention or intervention in a medical emergency necessary to carry out the consumer's plan of care.

ITEM 2. Amend subrule 77.33(6) as follows:

77.33(6) Respite care providers.

a. The following ~~providers~~ *agencies* may provide respite ~~care~~ *services*:

~~a.~~ *(1)* Home health agencies ~~certified by Medicare~~ *that are certified to participate in the Medicare program.*

~~b.~~ *(2)* Nursing facilities and hospitals ~~certified to participate~~ *enrolled as providers* in the *Iowa* Medicaid program.

~~c.~~ *(3)* Camps ~~accredited~~ *certified* by the American Camping Association.

~~d.~~ *(4)* Respite providers certified under the HCBS MR waiver.

~~e.~~ (5) Home care agencies ~~which~~ *that* meet the conditions of participation set forth in subrule 77.33(4).

~~f.~~ *(6)* Adult day care providers ~~which~~ *that* meet the conditions set forth in subrule 77.33(1).

b. Respite providers shall meet the following conditions:

(1) Providers shall maintain the following information that shall be updated at least annually:

1. The consumer's name, birth date, age, and address and the telephone number of the spouse, guardian or primary caregiver.

2. An emergency medical care release.

3. Emergency contact telephone numbers such as the number of the consumer's physician and the spouse, guardian, or primary caregiver.

4. The consumer's medical issues, including allergies.

5. The consumer's daily schedule which includes the consumer's preferences in activities or foods or any other special concerns.

(2) Procedures shall be developed for the dispensing, storage, authorization, and recording of all prescription and nonprescription medications administered. Home health agencies must follow Medicare regulations for medication dispensing.

All medications shall be stored in their original containers, with the accompanying physician's or pharmacist's directions and label intact. Medications shall be stored so they are inaccessible to consumers and the public. Nonprescription medications shall be labeled with the consumer's name.

In the case of medications that are administered on an ongoing, long-term basis, authorization shall be obtained for a period not to exceed the duration of the prescription.

(3) Policies shall be developed for:

1. Notifying the spouse, guardian, or primary caregiver of any injuries or illnesses that occur during respite provision. A spouse's, guardian's or primary caregiver's signature is required to verify receipt of notification.

2. Requiring the spouse, guardian or primary caregiver to notify the respite provider of any injuries or illnesses that occurred prior to respite provision.

3. Documenting activities and times of respite. This documentation shall be made available to the spouse, guardian or primary caregiver upon request.

4. Ensuring the safety and privacy of the individual. Policies shall at a minimum address threat of fire, tornado, or flood and bomb threats.

c. A facility providing respite under this subrule shall not exceed the facility's licensed capacity, and services shall be provided in locations consistent with licensure.

d. Respite provided outside the consumer's home or the facility covered by the licensure, certification, accreditation, or contract must be approved by the spouse, guardian or primary caregiver and the interdisciplinary team and must be consistent with the way the location is used by the general public. Respite in these locations shall not exceed 72 continuous hours.

ITEM 3. Amend subrule 77.34(5) as follows:

77.34(5) Respite care providers. ~~Respite care providers shall be:~~

a. The following agencies may provide respite services:

~~a.~~ *(1)* Home health agencies ~~which meet the conditions of participation set forth in 77.34(2)~~ *that are certified to participate in the Medicare program.*

~~b.~~ *(2)* Nursing facilities, intermediate care facilities for the mentally retarded, or hospitals ~~certified to participate~~ *enrolled as providers* in the *Iowa* Medicaid program.

~~c.~~ *(3)* Respite providers certified under the HCBS MR waiver.

~~d.~~ *(4)* ~~Child~~ *Group living* foster care facilities *for children* licensed by the department according to 441—Chapters 112

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and 114 to 116 *and child care centers licensed according to 441—Chapter 109.*

~~e.~~ *(5)* Camps ~~accredited~~ *certified* by the American Camping Association.

~~f.~~ *(6)* Home care agencies ~~which~~ *that* meet the conditions of participation set forth in subrule 77.34(3).

~~g.~~ *(7)* Adult day care providers ~~which~~ *that* meet the conditions of participation set forth in subrule 77.34(7).

b. Respite providers shall meet the following conditions:

(1) Providers shall maintain the following information that shall be updated at least annually:

1. The consumer's name, birth date, age, and address and the telephone number of each parent, guardian or primary caregiver.

2. An emergency medical care release.

3. Emergency contact telephone numbers such as the number of the consumer's physician and the parents, guardian, or primary caregiver.

4. The consumer's medical issues, including allergies.

5. The consumer's daily schedule which includes the consumer's preferences in activities or foods or any other special concerns.

(2) Procedures shall be developed for the dispensing, storage, authorization, and recording of all prescription and nonprescription medications administered. Home health agencies must follow Medicare regulations for medication dispensing.

All medications shall be stored in their original containers, with the accompanying physician's or pharmacist's directions and label intact. Medications shall be stored so they are inaccessible to consumers and the public. Nonprescription medications shall be labeled with the consumer's name.

In the case of medications that are administered on an ongoing, long-term basis, authorization shall be obtained for a period not to exceed the duration of the prescription.

(3) Policies shall be developed for:

1. Notifying the parent, guardian, or primary caregiver of any injuries or illnesses that occur during respite provision. A parent's, guardian's or primary caregiver's signature is required to verify receipt of notification.

2. Requiring the parent, guardian or primary caregiver to notify the respite provider of any injuries or illnesses that occurred prior to respite provision.

3. Documenting activities and times of respite. This documentation shall be made available to the parent, guardian or primary caregiver upon request.

4. Ensuring the safety and privacy of the individual. Policies shall at a minimum address threat of fire, tornado, or flood and bomb threats.

c. A facility providing respite under this subrule shall not exceed the facility's licensed capacity, and services shall be provided in locations consistent with licensure.

d. Respite provided outside the consumer's home or the facility covered by the licensure, certification, accreditation, or contract must be approved by the parent, guardian or primary caregiver and the interdisciplinary team and must be consistent with the way the location is used by the general public. Respite in these locations shall not exceed 72 continuous hours.

ITEM 4. Amend rule 441—77.37(249A) as follows:

Amend the introductory paragraph as follows:

441—77.37(249A) HCBS MR waiver service providers. Supported community living and supported employment providers shall be eligible to participate as approved HCBS MR service providers in the Medicaid program based on the outcome-based standards set forth below in subrules 77.37(1) and 77.37(2) evaluated according to subrules 77.37(10) to 77.37(12), the requirements of subrules 77.37(3) to 77.37(9), and the applicable subrules pertaining to the individual service. Respite providers shall meet the conditions set forth in subrules 77.37(1) and 77.37(15). Home and vehicle modification shall meet the conditions set forth in subrule 77.37(17). Personal emergency response system providers shall meet the conditions set forth in subrule 77.37(18). Nursing providers shall meet the conditions set forth in subrule 77.37(19). Home health aide providers shall meet the conditions set forth in subrule 77.37(20). Consumer-directed attendant care providers shall meet the conditions set forth in subrule 77.37(21). *Interim medical monitoring and treatment providers shall meet the conditions set forth in subrule 77.37(22).*

Amend subrule 77.37(15) as follows:

77.37(15) Respite care providers. ~~The department will contract only with public or private agencies to provide respite services. The department does not recognize individuals as service providers under the respite program.~~

a. The following agencies may provide ~~HCBS MR~~ respite services:

~~a.~~ *(1)* ~~Providers of services meeting the definition of foster care or day care licensed according to applicable 441—Chapters 108, 109, 112, 114, 115, and 116.~~ *Group living foster care facilities for children licensed by the department according to 441—Chapters 112 and 114 to 116 and child care centers licensed according to 441—Chapter 109.*

~~Providers of services may employ or contract with individuals meeting the definition of foster family homes or family or group day care homes to provide respite services. These individuals shall be licensed according to applicable 441—Chapters 110, 112, and 113.~~

~~b.~~ *(2)* Nursing facilities, intermediate care facilities for the mentally retarded, and hospitals ~~certified to participate~~ *enrolled as providers* in the *Iowa* Medicaid program.

~~c.~~ *(3)* ~~RCF/MR facilities certified~~ *Residential care facilities for persons with mental retardation (RCF/PMR) licensed* by the department of inspections and appeals.

~~d.~~ *(4)* Home health agencies ~~provided they~~ *that* are certified to participate in the Medicare program ~~(Title XVIII of the Social Security Act)~~.

~~e.~~ *(5)* ~~Day camps provided they are~~ *Camps* certified by the American Camping Association.

~~f.~~ *(6)* Adult day health services accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF).

(7) Home care agencies that meet the home care standards and requirements set forth in department of public health rules 641—80.5(135) through 641—80.7(135).

(8) Agencies certified by the department to provide respite services in the consumer's home that meet the requirements of 77.37(1) and 77.37(3) through 77.37(9).

b. Respite providers shall meet the following conditions:

(1) Providers shall maintain the following information that shall be updated at least annually:

1. The consumer's name, birth date, age, and address and the telephone number of each parent, guardian or primary caregiver.

2. An emergency medical care release.

3. Emergency contact telephone numbers such as the number of the consumer's physician and the parents, guardian, or primary caregiver.

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4. The consumer's medical issues, including allergies.

5. The consumer's daily schedule which includes the consumer's preferences in activities or foods or any other special concerns.

(2) Procedures shall be developed for the dispensing, storage, authorization, and recording of all prescription and nonprescription medications administered. Home health agencies must follow Medicare regulations for medication dispensing.

All medications shall be stored in their original containers, with the accompanying physician's or pharmacist's directions and label intact. Medications shall be stored so they are inaccessible to consumers and the public. Nonprescription medications shall be labeled with the consumer's name.

In the case of medications that are administered on an ongoing, long-term basis, authorization shall be obtained for a period not to exceed the duration of the prescription.

(3) Policies shall be developed for:

1. Notifying the parent, guardian, or primary caregiver of any injuries or illnesses that occur during respite provision. A parent's, guardian's or primary caregiver's signature is required to verify receipt of notification.

2. Requiring the parent, guardian or primary caregiver to notify the respite provider of any injuries or illnesses that occurred prior to respite provision.

3. Documenting activities and times of respite. This documentation shall be made available to the parent, guardian or primary caregiver upon request.

4. Ensuring the safety and privacy of the individual. Policies shall at a minimum address threat of fire, tornado, or flood and bomb threats.

c. A facility providing respite under this subrule shall not exceed the facility's licensed capacity, and services shall be provided in locations consistent with licensure.

d. Respite provided outside the consumer's home or the facility covered by the licensure, certification, accreditation, or contract must be approved by the parent, guardian or primary caregiver and the interdisciplinary team and must be consistent with the way the location is used by the general public. Respite in these locations shall not exceed 72 continuous hours.

Adopt the following **new** subrule:

77.37(22) Interim medical monitoring and treatment providers.

a. The following providers may provide interim medical monitoring and treatment services:

(1) Licensed child care centers.

(2) Registered group child care homes.

(3) Registered family child care homes.

(4) Home health agencies certified to participate in the Medicare program.

b. Staff requirements. Staff members providing interim medical monitoring and treatment services to consumers shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Not be the spouse of the consumer or a parent or stepparent of the consumer if the consumer is aged 17 or under.

(3) Not be a usual caregiver of the consumer.

(4) Be qualified by training or experience, as determined by the usual caregivers and a licensed medical professional on the consumer's interdisciplinary team and documented in the service plan, to provide medical intervention or intervention in a medical emergency necessary to carry out the consumer's plan of care.

ITEM 5. Amend rule 441—77.39(249A) as follows:

Amend the introductory paragraph as follows:

441—77.39(249A) HCBS brain injury waiver service providers. Adult day care, behavioral programming, case management, consumer-directed attendant care, family counseling and training, home and vehicle modification, *interim medical monitoring and treatment,* personal emergency response, prevocational service, respite, specialized medical equipment, supported community living, supported employment, and transportation providers shall be eligible to participate as approved brain injury waiver service providers in the Medicaid program based on the applicable subrules pertaining to the individual service and provided that they and each of their staff involved in direct consumer service have training regarding or experience with consumers who have a brain injury. In addition, behavioral programming, supported community living, and supported employment providers shall meet the outcome-based standards set forth below in subrules 77.39(1) and 77.39(2) evaluated according to subrules 77.39(8) to 77.39(10), and the requirements of subrules 77.39(3) to 77.39(7). Respite providers shall also meet the standards in subrule 77.39(1).

Amend subrule 77.39(14) as follows:

77.39(14) Respite service providers. ~~The department shall enter into a formal agreement only with public or private agencies to provide respite services. The department does not recognize individuals as service providers under the respite program. The following~~ *Respite providers* are eligible to be providers of respite service in the HCBS brain injury waiver if they have documented training or experience with persons with a brain injury.

a. The following agencies may provide respite services:

~~a.~~ *(1)* Respite providers certified under the HCBS mental retardation waiver.

~~b.~~ *(2)* ~~Providers of respite services which have been approved as a Medicaid vendor may provide in-home home health aid respite services or out-of-home medical facility respite services.~~ *Adult day health service providers accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF).*

~~c.~~ *(3)* ~~Child~~ *Group living* foster care facilities *for children* licensed by the department according to 441—Chapters 112 *and 114* to 116 *and child care centers licensed according to 441—Chapter 109.*

~~d.~~ *(4)* Camps ~~accredited~~ *certified* by the American Camping Association.

~~e.~~ *(5)* Home care ~~providers meeting~~ *agencies that meet* the conditions of participation set forth in subrule 77.30(1).

~~f. Providers of services meeting the definition of foster care or day care shall also be licensed according to applicable standards of 441—Chapters 108, 109, 112, 114, 115, and 116.~~

~~g. Providers of services may employ or contract with individuals meeting the definition of foster family homes or family or group day care homes to provide respite services. These individuals shall be licensed according to applicable 441—Chapters 110, 112, and 113.~~

~~h.~~ *(6)* Nursing facilities, intermediate care facilities for the mentally retarded, and hospitals ~~certified to participate~~ *enrolled as providers* in the *Iowa* Medicaid program.

~~i.~~ *(7)* ~~RCF/MR~~ *Residential care* facilities *for persons with mental retardation (RCF/PMR)* ~~certified~~ *licensed* by the department of inspections and appeals.

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~~j.~~ *(8)* Home health agencies ~~provided they~~ *that* are certified to participate in the Medicare program ~~(Title XVIII of the Social Security Act)~~.

(9) Agencies certified by the department to provide respite services in the consumer's home that meet the requirements of subrules 77.39(1) and 77.39(3) through 77.39(7).

b. Respite providers shall meet the following conditions:

(1) Providers shall maintain the following information that shall be updated at least annually:

1. The consumer's name, birth date, age, and address and the telephone number of each parent, guardian or primary caregiver.

2. An emergency medical care release.

3. Emergency contact telephone numbers such as the number of the consumer's physician and the parents, guardian, or primary caregiver.

4. The consumer's medical issues, including allergies.

5. The consumer's daily schedule which includes the consumer's preferences in activities or foods or any other special concerns.

(2) Procedures shall be developed for the dispensing, storage, authorization, and recording of all prescription and nonprescription medications administered. Home health agencies must follow Medicare regulations for medication dispensing.

All medications shall be stored in their original containers, with the accompanying physician's or pharmacist's directions and label intact. Medications shall be stored so they are inaccessible to consumers and the public. Nonprescription medications shall be labeled with the consumer's name.

In the case of medications that are administered on an ongoing, long-term basis, authorization shall be obtained for a period not to exceed the duration of the prescription.

(3) Policies shall be developed for:

1. Notifying the parent, guardian, or primary caregiver of any injuries or illnesses that occur during respite provision. A parent's, guardian's or primary caregiver's signature is required to verify receipt of notification.

2. Requiring the parent, guardian or primary caregiver to notify the respite provider of any injuries or illnesses that occurred prior to respite provision.

3. Documenting activities and times of respite. This documentation shall be made available to the parent, guardian or primary caregiver upon request.

4. Ensuring the safety and privacy of the individual. Policies shall at a minimum address threat of fire, tornado, or flood and bomb threats.

c. A facility providing respite under this subrule shall not exceed the facility's licensed capacity, and services shall be provided in locations consistent with licensure.

d. Respite provided outside the consumer's home or the facility covered by the licensure, certification, accreditation, or contract must be approved by the parent, guardian or primary caregiver and the interdisciplinary team and must be consistent with the way the location is used by the general public. Respite in these locations shall not exceed 72 continuous hours.

Adopt the following **new** subrule:

77.39(25) Interim medical monitoring and treatment providers.

a. The following providers may provide interim medical monitoring and treatment services:

(1) Licensed child care centers.

(2) Registered group child care homes.

(3) Registered family child care homes.

(4) Home health agencies certified to participate in the Medicare program.

b. Staff requirements. Staff members providing interim medical monitoring and treatment services to consumers shall meet all of the following requirements:

(1) Be at least 18 years of age.

(2) Not be the spouse of the consumer or a parent or stepparent of the consumer if the consumer is aged 17 or under.

(3) Not be a usual caregiver of the consumer.

(4) Be qualified by training or experience, as determined by the usual caregivers and a licensed medical professional on the consumer's interdisciplinary team and documented in the service plan, to provide medical intervention or intervention in a medical emergency necessary to carry out the consumer's plan of care.

ITEM 6. Amend rule 441—78.9(249A) as follows:

Amend subrule 78.9(3), introductory paragraph, as follows:

78.9(3) Skilled nursing services. Skilled nursing services are services that when performed by a home health agency require a licensed registered nurse or licensed practical nurse to perform. Situations when a service can be safely performed by the recipient or other nonskilled person who has received the proper training or instruction or when there is no one else to perform the service are not considered a "skilled nursing service." Skilled nursing services shall be available only on an intermittent basis. Intermittent services for skilled nursing services shall be defined as a medically predictable recurring need requiring a skilled nursing service at least once every 60 days, *not to exceed five days per week (except as provided below),* with an attempt to have a predictable end. Daily visits *(six or seven days per week)* that are reasonable and necessary and show an attempt to have a predictable end shall be covered for up to three weeks. Coverage of additional daily visits beyond the initial anticipated time frame may be appropriate for a short period of time, based on the medical necessity of service. Medical documentation shall be submitted justifying the need for continued visits, including the physician's estimate of the length of time that additional visits will be necessary. *Daily skilled nursing visits or multiple daily visits for wound care or insulin injections shall be covered when ordered by a physician and included in the plan of care.* ~~Daily~~ *Other daily* skilled nursing visits which are ordered for an indefinite period of time and designated as daily skilled nursing care do not meet the intermittent definition and shall be denied.

Amend subrule **78.9(7)**, paragraph **"c,"** introductory paragraph, as follows:

c. Services shall be provided on an intermittent basis. "Intermittent basis" for home health agency services is defined as services that are usually two to three times a week for two to three hours at a time. *Services provided for four to seven days per week, not to exceed 28 hours per week, when ordered by a physician and included in a plan of care shall be allowed as intermittent services.* Increased services provided when medically necessary due to unusual circumstances on a short-term basis of two to three weeks may also be allowed as intermittent services when the home health agency documents the need for the excessive time required for home health aide services.

ITEM 7. Amend rule 441—78.34(249A) as follows:

Amend subrule 78.34(5) as follows:

78.34(5) Respite care services. Respite care services are ~~temporary care to a client to provide relief to the usual informal caregiver and provide all the care the usual caregiver~~

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~~would provide~~ *services provided to the consumer that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that time period. The purpose of respite care is to enable the consumer to remain in the consumer's current living situation.*

a. ~~If the respite care is provided in the client's home, only the cost of care is reimbursed.~~ *Services provided outside the consumer's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.*

b. ~~If the respite care is provided outside of the client's home, charges may include room and board.~~ *Staff-to-consumer ratios shall be appropriate to the individual needs of the consumer as determined by the consumer's interdisciplinary team.*

c. A unit of service is ~~either one 24-hour day for out-of-home respite care provided by a facility or camp, one 4- to 8-hour period of time for in-home respite care provided by a home health agency, or one hour for respite care provided by an adult day care provider, HCBS MR waiver provider, home care agency, day camp, or home health agency when the home health agency provides one to three hours of respite service~~ *one hour.*

d. Respite care is not to be provided to persons ~~aged 17 or under~~ during the hours in which the usual caregiver is employed except when the provider is a camp ~~providing a 24-hour service~~.

e. The interdisciplinary team shall determine if the consumer will receive basic individual respite, specialized respite, or group respite as defined in rule 441—83.1(249A).

f. A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.

g. Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.

Adopt the following **new** subrule:

78.34(8) Interim medical monitoring and treatment services. Interim medical monitoring and treatment services are monitoring and treatment of a medical nature requiring specially trained caregivers beyond what is normally available in a day care setting. The services must be needed to allow the consumer's usual caregivers to be employed or, for a limited period of time, for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver.

a. Service requirements. Interim medical monitoring and treatment services shall:

(1) Provide experiences for each consumer's social, emotional, intellectual, and physical development;

(2) Include comprehensive developmental care and any special services for a consumer with special needs; and

(3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis.

b. Interim medical monitoring and treatment services may include supervision to and from school.

c. Limitations.

(1) A maximum of 12 one-hour units of service is available per day.

(2) Covered services do not include a complete nutritional regimen.

(3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan.

(4) Interim medical monitoring and treatment services may be provided only in the consumer's home, in a registered group child care home, in a registered family child care home, in a licensed child care center, or during transportation to and from school.

(5) The staff-to-consumer ratio shall not be less than one to six.

d. A unit of service is one hour.

ITEM 8. Amend rule 441—78.37(249A) as follows:

Amend subrule 78.37(6) as follows:

78.37(6) Respite care services. Respite care services are ~~temporary care to a client to provide relief to the usual informal caregiver and provide all the care the usual caregiver would provide~~ *services provided to the consumer that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that time period. The purpose of respite care is to enable the consumer to remain in the consumer's current living situation.*

a. ~~If the respite care is provided in the client's home, only the cost of care is reimbursed.~~ *Services provided outside the consumer's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.*

b. ~~If the respite care is provided outside of the client's home, charges may include room and board.~~ *Staff-to-consumer ratios shall be appropriate to the individual needs of the consumer as determined by the consumer's interdisciplinary team.*

c. A unit of service is ~~either one 24-hour day for out-of-home respite care provided by a facility or camp, one 4- to 8-hour period of time for in-home respite care provided by a home health agency, or one hour for respite care provided by an adult day care provider, HCBS MR waiver provider, home care agency, day camp, or home health agency when the home health agency provides one to three hours of respite service~~ *one hour.*

d. ~~Rescinded IAB 3/30/94, effective 6/1/94.~~ *The interdisciplinary team shall determine if the consumer will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.21(249A).*

e. When respite care is provided, the provision of, or payment for, other duplicative services under the waiver is precluded.

f. A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.

g. Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.

h. Respite care is not to be provided to persons during the hours in which the usual caregiver is employed except when the provider is a camp.

Amend subrule **78.37(15)**, paragraph **"c,"** as follows:

c. A unit of service *provided by an individual or an agency, other than an assisted living program,* is 1 hour, or one 8- to 24-hour day ~~provided by an individual or an agency~~. *When provided by an assisted living program, a unit of service is one calendar month. If services are provided by an assisted living program for less than one full calendar month, the monthly reimbursement rate shall be prorated based on the number of days service is provided.* ~~Each~~ *Ex-*

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cept for services provided by an assisted living program, each service shall be billed in whole units.

ITEM 9. Amend subrule 78.38(5) as follows:

78.38(5) Respite care services. Respite care services are ~~temporary care to a client to provide relief to the usual informal caregiver and provide all the care the usual caregiver would provide~~ *services provided to the consumer that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that time period. The purpose of respite care is to enable the consumer to remain in the consumer's current living situation.*

a. ~~If the respite care is provided in the client's home, only the cost of care is reimbursed.~~ *Services provided outside the consumer's home shall not be reimbursable if the living unit where respite is provided is otherwise reserved for another person on a temporary leave of absence.*

b. ~~If the respite care is provided outside of the client's home, charges may include room and board.~~ *Staff-to-consumer ratios shall be appropriate to the individual needs of the consumer as determined by the consumer's interdisciplinary team.*

c. A unit of service is ~~either one 24-hour day for out-of-home respite care provided by a facility or camp, one 4- to 8-hour period of time for in-home respite care provided by a home health agency, or one hour for respite care provided by an adult day care provider, HCBS MR waiver provider, home care agency, day camp, or home health agency when the home health agency provides one to three hours of respite service~~ *one hour.*

d. ~~Rescinded IAB 3/30/94, effective 6/1/94.~~ *The interdisciplinary team shall determine if the consumer will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.41(249A).*

e. When respite care is provided, the provision of, or payment for, other duplicative services under the waiver is precluded.

f. A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.

g. Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.

h. Respite care is not to be provided to persons during the hours in which the usual caregiver is employed except when the provider is a camp.

ITEM 10. Amend rule 441—78.41(249A) as follows:

Amend subrule 78.41(2) as follows:

78.41(2) Respite services. ~~Respite services are those services provided to consumers who are unable to care for themselves living with persons manually providing their care. Respite is short-term relief provided in the absence of the family or legal representative normally providing the care. Service activities shall be documented in the consumer record.~~ *Respite care services are services provided to the consumer that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that time period. The purpose of respite care is to enable the consumer to remain in the consumer's current living situation.*

a. Services *provided outside the consumer's home* shall not be reimbursable if the living unit *where the respite is provided* is ~~otherwise~~ reserved for ~~persons~~ *another person* on a temporary leave of absence.

b. ~~For respite services provided in the consumer's home, only the cost of care is reimbursed. Room and board is excluded from reimbursement.~~ *Staff-to-consumer ratios shall be appropriate to the individual needs of the consumer as determined by the consumer's interdisciplinary team.*

~~c. For respite services provided out of the home, charges may include room and board.~~

~~d~~ *c.* A unit of service is one hour ~~for nonfacility care or one day for facility care. One day equals 24 hours.~~

~~e~~ *d.* ~~A maximum of 576 hours are available per 12-month period. A maximum of 336 hours may be used in any calendar month. One unit of nonfacility care counts as one hour. One unit of facility care counts as 24 hours.~~ *Payment for respite services shall not exceed $7,050 per the consumer's waiver year.*

~~f~~ *e.* The service shall be identified in the consumer's individual comprehensive plan.

~~g~~ *f.* Respite services shall not be simultaneously reimbursed with other residential or respite services, HCBS MR waiver supported community living services, Medicaid or HCBS MR nursing, or Medicaid or HCBS MR home health aide services.

g. Respite care is not to be provided to persons during the hours in which the usual caregiver is employed except when the provider is a camp.

h. The interdisciplinary team shall determine if the consumer will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.60(249A).

i. A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.

j. Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.

Adopt the following **new** subrule:

78.41(9) Interim medical monitoring and treatment services. Interim medical monitoring and treatment services are monitoring and treatment of a medical nature requiring specially trained caregivers beyond what is normally available in a day care setting. The services must be needed to allow the consumer's usual caregivers to be employed or, for a limited period of time, for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver.

a. Service requirements. Interim medical monitoring and treatment services shall:

(1) Provide experiences for each consumer's social, emotional, intellectual, and physical development;

(2) Include comprehensive developmental care and any special services for a consumer with special needs; and

(3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis.

b. Interim medical monitoring and treatment services may include supervision to and from school.

c. Limitations.

(1) A maximum of 12 one-hour units of service is available per day.

(2) Covered services do not include a complete nutritional regimen.

(3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan.

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(4) Interim medical monitoring and treatment services may be provided only in the consumer's home, in a registered group child care home, in a registered family child care home, in a licensed child care center, or during transportation to and from school.

(5) The staff-to-consumer ratio shall not be less than one to six.

d. A unit of service is one hour.

ITEM 11. Amend rule 441—78.43(249A) as follows:

Amend subrule 78.43(3) as follows:

78.43(3) Respite services. ~~Respite services are those services provided to consumers who are unable to care for themselves living with their family or legal representative. Respite is short-term relief provided in the absence of the family or legal representative normally providing the care. Service activities shall be documented in the consumer record.~~ *Respite care services are services provided to the consumer that give temporary relief to the usual caregiver and provide all the necessary care that the usual caregiver would provide during that time period. The purpose of respite care is to enable the consumer to remain in the consumer's current living situation.*

a. ~~Rescinded IAB 12/3/97, effective 2/1/98.~~ *Services provided outside the consumer's home shall not be reimbursable if the living unit where respite is provided is reserved for another person on a temporary leave of absence.*

b. ~~If the respite care is provided in the consumer's home, only the cost of care is reimbursed.~~ *Staff-to-consumer ratios shall be appropriate to the individual needs of the consumer as determined by the consumer's interdisciplinary team.*

~~c. If the respite care is provided outside of the consumer's home, charges may include room and board.~~

~~d~~ *c.* A unit of service is ~~either one 24-hour day for out-of-home respite care provided by a facility or camp, one 4- to 8-hour day for in-home respite care provided by a home health aid agency, or one hour for respite care provided by an HCBS MR or HCBS brain injury waiver provider, homemaker agency, or camp~~ *one hour.*

~~e~~ *d.* Respite care is not to be provided to persons ~~aged 17 or under~~ during the hours in which the usual caregiver is employed except when the provider is a camp ~~providing a 24-hour service~~.

~~f~~ *e.* Respite services shall not be simultaneously reimbursed with other residential or respite services, HCBS brain injury waiver supported community living services, Medicaid nursing, or Medicaid home health aide services.

~~g~~ *f.* ~~For respite services provided through in-home health or through an out-of-home medical facility, the consumer must have medical needs, meet skilled level of care criteria, or be technologically dependent.~~ *The interdisciplinary team shall determine if the consumer will receive basic individual respite, specialized respite or group respite as defined in rule 441—83.81(249A).*

g. A maximum of 14 consecutive days of 24-hour respite care may be reimbursed.

h. Respite services provided for a period exceeding 24 consecutive hours to three or more individuals who require nursing care because of a mental or physical condition must be provided by a health care facility licensed as described in Iowa Code chapter 135C.

Adopt the following **new** subrule:

78.43(14) Interim medical monitoring and treatment services. Interim medical monitoring and treatment services are monitoring and treatment of a medical nature requiring specially trained caregivers beyond what is normally available in a day care setting. The services must be needed to allow the consumer's usual caregivers to be employed or, for a limited period of time, for academic or vocational training of a usual caregiver; due to the hospitalization, treatment for physical or mental illness, or death of a usual caregiver; or during a search for employment by a usual caregiver.

a. Service requirements. Interim medical monitoring and treatment services shall:

(1) Provide experiences for each consumer's social, emotional, intellectual, and physical development;

(2) Include comprehensive developmental care and any special services for a consumer with special needs; and

(3) Include medical assessment, medical monitoring, and medical intervention as needed on a regular or emergency basis.

b. Interim medical monitoring and treatment services may include supervision to and from school.

c. Limitations.

(1) A maximum of 12 one-hour units of service is available per day.

(2) Covered services do not include a complete nutritional regimen.

(3) Interim medical monitoring and treatment services may not duplicate any regular Medicaid or waiver services provided under the state plan.

(4) Interim medical monitoring and treatment services may be provided only in the consumer's home, in a registered group child care home, in a registered family child care home, in a licensed child care center, or during transportation to and from school.

(5) The staff-to-consumer ratio shall not be less than one to six.

d. A unit of service is one hour.

ITEM 12. Amend rule 441—79.1(249A) as follows:

Amend subrule **79.1(2)**, basis of reimbursement provider categories of "HCBS AIDS/HIV waiver service providers," "HCBS brain injury waiver service providers," "HCBS elderly waiver service providers," "HCBS ill and handicapped waiver service providers," "HCBS MR waiver service providers," and "HCBS physical disability waiver service providers," as follows:

Provider category	Basis of reimbursement	Upper limit
HCBS AIDS/HIV waiver service providers, including:		
1. Counseling		
Individual:	Fee schedule	~~$10~~ *$10.07* per unit
Group:	Fee schedule	~~$39.98~~ *$40.26* per hour
2. Home health aide	Retrospective cost-related	Maximum ~~Medicaid~~ *Medicare* rate ~~in effect on 6/30/99 plus 2%~~
3. Homemaker	Fee schedule	~~$18.36~~ *$18.49* per hour

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Provider category	Basis of reimbursement	Upper limit
4. Nursing care	Agency's financial and statistical cost report and Medicare percentage rate per visit	Cannot exceed ~~$74.25~~ *$74.77* per visit
5. Respite care providers, including:		
~~In-home:~~		
~~Home health agency~~	~~Fee schedule~~	~~$106.08 per 4- to 8-hour unit~~
~~Out-of-home:~~		
~~Nursing facility, or intermediate care facility for the mentally retarded~~	~~Prospective reimbursement~~	~~Limit for nursing facility level of care~~
~~Hospital or skilled nursing facility~~	~~Prospective reimbursement~~	~~Limit for skilled nursing facility level of care~~
~~Foster group care~~	~~Prospective reimbursement~~	~~P.O.S. contract rate~~
~~Foster family care~~	~~Fee schedule~~	~~(See 441—subrule 156.11(2))~~
~~Camps~~	~~Fee schedule~~	~~$117.30 per day~~
~~Hourly rate providers:~~		
~~Adult day care~~	~~Fee schedule~~	~~$12.24 per hour~~
~~HCBS MR waiver~~	~~Fee schedule~~ ~~See 79.1(15)~~	~~$12.24 per hour~~
~~Home care agency~~	~~Fee schedule~~	~~$12.24 per hour~~
~~Home health agency~~	~~Fee schedule~~	~~$12.24 per hour~~
~~Day camp~~	~~Fee schedule~~	~~$12.24 per hour~~
Home health agency:		
Specialized respite	*Rate for nursing services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed $294 per day*
Basic individual respite	*Rate for home health aide services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Home care agency:		
Specialized respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$31.50 per hour not to exceed $294 per day*
Basic individual respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$16.80 per hour not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Nonfacility care:		
Specialized respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$31.50 per hour not to exceed $294 per day*
Basic individual respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$16.80 per hour not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Facility care:		
Hospital or nursing facility providing skilled care	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for skilled nursing facility level of care*
Nursing facility	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for nursing facility level of care*
Intermediate care facility for the mentally retarded	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for ICF/MR level of care*

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Provider category	Basis of reimbursement	Upper limit
Foster group care	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem rate for rehabilitative treatment and supportive services*
Camps	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Adult day care	*$12.24 per hour*	*$12.24 per hour not to exceed rate for regular adult day care services*
Child care facilities	*$12.24 per hour*	*$12.24 per hour not to exceed contractual daily per diem*
6. Home-delivered meal providers	Fee schedule	~~$7.14~~ *$7.19* per meal. Maximum of 14 meals per week
7. Adult day care	Fee schedule	Veterans administration contract rate or ~~$20.40~~ *$20.54* per half day, ~~$40.80~~ *$41.09* per full day, or ~~$61.20~~ *$61.63* per extended day if no veterans administration contract.
8. Consumer-directed attendant care:		
Agency provider	Fee agreed upon by consumer and provider	~~$18.36~~ *$18.49* per hour ~~$106.08~~ *$106.82* per day
Individual provider	Fee agreed upon by consumer and provider	~~$12.24~~ *$12.33* per hour ~~$71.40~~ *$71.90* per day
HCBS brain injury waiver service providers, including:		
1. Supported community living	No change	
2. Respite care providers, including:		
~~Nonfacility care:~~	~~Retrospectively limited prospective rates. See 79.1(15)~~	~~$12.24 per hour. $106.08 per 4- to 8-hour day~~
~~Facility care:~~		
~~Hospital or skilled nursing facility~~	~~Prospective reimbursement~~	~~Limit for skilled nursing facility level of care~~
~~Nursing facility, or intermediate care facility for the mentally retarded~~	~~Prospective reimbursement~~	~~Limit for nursing facility level of care~~
~~Foster group care~~	~~Prospective reimbursement. See 441—185.106(234)~~	~~Rehabilitative treatment and supportive services rate~~
Home health agency:		
Specialized respite	*Rate for nursing services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed $294 per day*
Basic individual respite	*Rate for home health aide services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Home care agency:		
Specialized respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$31.50 per hour not to exceed $294 per day*
Basic individual respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$16.80 per hour not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Nonfacility care:		
Specialized respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$31.50 per hour not to exceed $294 per day*

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Provider category	Basis of reimbursement	Upper limit
Basic individual respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$16.80 per hour not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Facility care:		
Hospital or nursing facility providing skilled care	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for skilled nursing facility level of care*
Nursing facility	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for nursing facility level of care*
Intermediate care facility for the mentally retarded	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for ICF/MR level of care*
Residential care facilities for persons with mental retardation	*$12.24 per hour*	*$12.24 per hour not to exceed contractual daily per diem*
Foster group care	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem rate for rehabilitative treatment and supportive services*
Camps	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Adult day care	*$12.24 per hour*	*$12.24 per hour not to exceed rate for regular adult day care services*
Child care facilities	*$12.24 per hour*	*$12.24 per hour not to exceed contractual daily per diem*
3. Personal emergency response system	Fee schedule	Initial one-time fee of ~~$45.90~~ *$46.22*. Ongoing monthly fee of ~~$35.70~~ *$35.95*.
4. Case management	Fee schedule	~~$571.49~~ *$575.49* per month
5. Supported employment	No change	
6. Transportation	No change	
7. Adult day care	Fee schedule	~~$20.40~~ *$20.54* per half day, ~~$40.80~~ *$41.09* per full day, or ~~$61.20~~ *$61.63* per extended day
8. Consumer-directed attendant care:		
Agency provider	Fee agreed upon by consumer and provider	~~$18.36~~ *$18.49* per hour ~~$106.08~~ *$106.82* per day
Individual provider	Fee agreed upon by consumer and provider	~~$12.24~~ *$12.33* per hour ~~$71.40~~ *$71.90* per day
9. Home and vehicle modification	No change	
10. Specialized medical equipment	No change	
11. Behavioral programming	Fee schedule	~~$10~~ *$10.07* per 15 minutes
12. Family counseling and training	Fee schedule	~~$39.98~~ *$40.26* per hour
13. Prevocational services	Fee schedule. See 79.1(17)	~~$34.70~~ *$34.94* per day
14. Interim medical monitoring and treatment:		
Home health agency:		
Provided by home health aide	*Rate for home health aide services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate*
Provided by nurse	*Rate for nursing services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate*

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Provider category	Basis of reimbursement	Upper limit
Provided by a registered group child care home, registered family child care home, or licensed child care center	*Contractual rate. See 441—170.4(7)*	*$12.24 per hour*
HCBS elderly waiver service providers, including:		
1. Adult day care	Fee schedule	Veterans administration contract rate or ~~$20.40~~ *$20.54* per half day, ~~$40.80~~ *$41.09* per full day, or ~~$61.20~~ *$61.63* per extended day if no veterans administration contract.
2. Emergency response system	Fee schedule	Initial one-time fee ~~$45.90~~ *$46.22*. Ongoing monthly fee ~~$35.70~~ *$35.95*.
3. Home health aides	Retrospective cost-related	Maximum ~~Medicaid~~ *Medicare* rate ~~in effect on 6/30/99 plus 2%~~
4. Homemakers	Fee schedule	Maximum of ~~$18.36~~ *$18.49* per hour
5. Nursing care	Fee schedule as determined by Medicare	~~$74.25~~ *$74.77* per visit
6. Respite care providers, including:		
~~In-home:~~		
~~Home health agency~~	~~Fee schedule~~	~~$106.08 per 4- to 8-hour unit~~
~~Out-of-home:~~		
~~Nursing facility~~	~~Prospective reimbursement~~	~~Limit for nursing facility level of care~~
~~Hospital or skilled nursing facility~~	~~Prospective reimbursement~~	~~Limit for skilled nursing facility level of care~~
~~Hourly rate providers:~~		
~~Adult day care~~	~~Fee schedule~~	~~$12.24 per hour~~
~~Day camp~~	~~Fee schedule~~	~~$12.24 per hour~~
~~Home care agency~~	~~Fee schedule~~	~~$12.24 per hour~~
~~Home health agency~~	~~Fee schedule~~	~~$12.24 per hour~~
~~HCBS MR waiver~~	~~Fee schedule. See 79.1(15)~~	~~$12.24 per hour~~
Home health agency:		
Specialized respite	*Rate for nursing services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed $294 per day*
Basic individual respite	*Rate for home health aide services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Home care agency:		
Specialized respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$31.50 per hour not to exceed $294 per day*
Basic individual respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$16.80 per hour not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Nonfacility care:		
Specialized respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$31.50 per hour not to exceed $294 per day*
Basic individual respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$16.80 per hour not to exceed $294 per day*

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement	Upper limit
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Facility care:		
Hospital or nursing facility providing skilled care	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for skilled nursing facility level of care*
Nursing facility	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for nursing facility level of care*
Camps	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Adult day care	*$12.24 per hour*	*$12.24 per hour not to exceed rate for regular adult day care services*
7. Chore providers	Fee schedule	~~$7.14~~ *$7.19* per half hour
8. Home-delivered meal providers	Fee schedule	~~$7.14~~ *$7.19* per meal. Maximum of 14 meals per week.
9. Home and vehicle modification providers	No change	
10. Mental health outreach providers	No change	
11. Transportation providers	No change	
12. Nutritional counseling	Fee schedule	~~$7.65~~ *$7.70* per quarter hour
13. Assistive devices	Fee schedule	~~$102~~ *$102.71* per unit
14. Senior companion	Fee schedule	~~$6.12~~ *$6.16* per hour
15. Consumer-directed attendant care:		
Agency provider *other than an assisted living program*	Fee agreed upon by consumer and provider	~~$18.36~~ *$18.49* per hour ~~$106.08~~ *$106.82* per day
Assisted living provider	*Fee agreed upon by consumer and provider*	*$1,052 per calendar month. Rate must be prorated per day for a partial month, at a rate not to exceed $34.60 per day.*
Individual provider	Fee agreed upon by consumer and provider	~~$12.24~~ *$12.33* per hour ~~$71.40~~ *$71.90* per day
HCBS ill and handicapped waiver service providers, including:		
1. Homemakers	Fee schedule	Maximum of ~~$18.36~~ *$18.49* per hour
2. Home health aides	Retrospective cost-related	Maximum ~~Medicaid~~ *Medicare* rate ~~in effect on 6/30/99 plus 2%~~
3. Adult day care	Fee schedule	Veterans administration contract rate or ~~$20.40~~ *$20.54* per half day, ~~$40.80~~ *$41.09* per full day, or ~~$60.20~~ *$61.63* per extended day if no veterans administration contract.
4. Respite care providers, including:		
~~In-home:~~		
~~Home health agency~~	~~Fee schedule~~	~~$106.08 per 4- to 8-hour unit~~
~~Out-of-home:~~		
~~Hospital or skilled nursing facility~~	~~Prospective reimbursement~~	~~Limit for skilled nursing facility level of care~~
~~Nursing facility, or intermediate care facility for the mentally retarded~~	~~Prospective reimbursement~~	~~Limit for nursing facility level of care~~
~~Foster group care~~	~~Prospective reimbursement. See 441—185.106(234)~~	~~Rehabilitative treatment and supportive services rate~~
~~Foster family home~~	~~Fee schedule~~	~~Emergency care rate (See 441—subrule 156.11(2))~~
~~Camps~~	~~Fee schedule~~	~~$117.30 per day~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement	Upper limit
~~Hourly rate providers:~~		
~~Adult day care~~	~~Fee schedule~~	~~$12.24 per hour~~
~~HCBS MR waiver~~	~~Fee schedule. See 79.1(15)~~	~~$12.24 per hour~~
~~Home care agency~~	~~Fee schedule~~	~~$12.24 per hour~~
~~Home health agency~~	~~Fee schedule~~	~~$12.24 per hour~~
~~Day camp~~	~~Fee schedule~~	~~$12.24 per hour~~
Home health agency:		
Specialized respite	*Rate for nursing services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed $294 per day*
Basic individual respite	*Rate for home health aide services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Home care agency:		
Specialized respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$31.50 per hour not to exceed $294 per day*
Basic individual respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$16.80 per hour not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Nonfacility care:		
Specialized respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$31.50 per hour not to exceed $294 per day*
Basic individual respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$16.80 per hour not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Facility care:		
Hospital or nursing facility providing skilled care	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for skilled nursing facility level of care*
Nursing facility	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for nursing facility level of care*
Intermediate care facility for the mentally retarded	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for ICF/MR level of care*
Residential care facilities for persons with mental retardation	*$12.24 per hour*	*$12.24 per hour not to exceed contractual daily per diem*
Foster group care	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem rate for rehabilitative treatment and supportive services*
Camps	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Adult day care	*$12.24 per hour*	*$12.24 per hour not to exceed rate for regular adult day care services*
Child care facilities	*$12.24 per hour*	*$12.24 per hour not to exceed contractual daily per diem*
5. Nursing care	Agency's financial and statistical cost report and Medicare percentage rate per visit	Cannot exceed ~~$74.25~~ *$74.77* per visit

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement	Upper limit
6. Counseling		
Individual:	Fee schedule	~~$10~~ *$10.07* per unit
Group:	Fee schedule	~~$39.98~~ *$40.26* per hour
7. Consumer-directed attendant care:		
Agency provider	Fee agreed upon by consumer and provider	~~$18.36~~ *$18.49* per hour ~~$106.08~~ *$106.82* per day
Individual provider	Fee agreed upon by consumer and provider	~~$12.24~~ *$12.33* per hour ~~$71.40~~ *$71.90* per day
8. Interim medical monitoring and treatment:		
Home health agency:		
Provided by home health aide	*Rate for home health aide services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate*
Provided by nurse	*Rate for nursing services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate*
Provided by a registered group child care home, registered family child care home, or licensed child care center	*Contractual rate. See 441—170.4(7)*	*$12.24 per hour*
HCBS MR waiver service providers, including:		
1. Supported community living	No change	
2. Respite care providers, including:		
~~Nonfacility care:~~	~~Retrospectively limited prospective rates. See 79.1(15)~~	~~$12.24 per hour.~~
~~Facility care:~~		
~~Hospital or skilled nursing facility~~	~~Prospective reimbursement~~	~~Limit for skilled nursing facility level of care~~
~~Nursing facility, or intermediate care facility for the mentally retarded~~	~~Prospective reimbursement~~	~~Limit for nursing facility level of care~~
~~Foster group care~~	~~Prospective reimbursement. See 441—185.106(234)~~	~~Rehabilitative treatment and supportive services rate~~
Home health agency:		
Specialized respite	*Rate for nursing services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed $294 per day*
Basic individual respite	*Rate for home health aide services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Home care agency:		
Specialized respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$31.50 per hour not to exceed $294 per day*
Basic individual respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$16.80 per hour not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement	Upper limit
Nonfacility care:		
Specialized respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$31.50 per hour not to exceed $294 per day*
Basic individual respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$16.80 per hour not to exceed $294 per day*
Group respite	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Facility care:		
Hospital or nursing facility providing skilled care	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for skilled nursing facility level of care*
Nursing facility	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for nursing facility level of care*
Intermediate care facility for the mentally retarded	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem for ICF/MR level of care*
Residential care facilities for persons with mental retardation	*$12.24 per hour*	*$12.24 per hour not to exceed contractual daily per diem*
Foster group care	*$12.24 per hour*	*$12.24 per hour not to exceed daily per diem rate for rehabilitative treatment and supportive services*
Camps	*Retrospectively limited prospective rates. See 79.1(15)*	*$12.24 per hour not to exceed $294 per day*
Adult day care	*$12.24 per hour*	*$12.24 per hour not to exceed rate for regular adult day care services*
Child care facilities	*$12.24 per hour*	*$12.24 per hour not to exceed contractual daily per diem*
3. Supported employment	No change	
4. Nursing	Fee schedule as determined by Medicare	Maximum Medicare rate *converted to an hourly rate*
5. Home health aides	Retrospective cost-related	Maximum ~~Medicaid~~ *Medicare* rate ~~in effect on 6/30/99 plus 2%~~ *converted to an hourly rate*
6. Personal emergency response system	Fee schedule	Initial one-time fee of ~~$38.15~~ *$38.42*. Ongoing monthly fee of ~~$26.01~~ *$26.19*.
7. Home and vehicle modifications	No change	
8. Consumer-directed attendant care:		
Agency provider	Fee agreed upon by consumer and provider	~~$18.36~~ *$18.49* per hour ~~$106.08~~ *$106.82* per day
Individual provider	Fee agreed upon by consumer and provider	~~$12.24~~ *$12.33* per hour ~~$71.40~~ *$71.90* per day
9. Interim medical monitoring and treatment:		
Home health agency:		
Provided by home health aide	*Rate for home health aide services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed the maximum daily per diem for ICF/MR level of care*
Provided by nurse	*Rate for nursing services provided by a home health agency (encounter services-intermittent services)*	*Maximum Medicare rate converted to an hourly rate not to exceed the maximum daily per diem for ICF/MR level of care*

HUMAN SERVICES DEPARTMENT[441](cont'd)

Provider category	Basis of reimbursement	Upper limit
Provided by a registered group child care home, registered family child care home, or licensed child care center	*Contractual rate. See 441—170.4(7)*	*$12.24 per hour not to exceed the maximum daily per diem for ICF/MR level of care*
HCBS physical disability waiver service providers, including:		
1. Consumer-directed attendant care:		
Agency provider	Fee agreed upon by consumer and provider	~~$18.36~~ *$18.49* per hour ~~$106.08~~ *$106.82* per day
Individual provider	Fee agreed upon by consumer and provider	~~$12.24~~ *$12.33* per hour ~~$71.40~~ *$71.90* per day
2. Home and vehicle modification providers	No change	
3. Personal emergency response system	Fee schedule	Initial one-time fee of ~~$45.90~~ *$46.22*. Ongoing monthly fee of ~~$35.70~~ *$35.95*.
4. Specialized medical equipment	No change	
5. Transportation	No change	

Amend subrule 79.1(15) as follows:

Amend the catchwords as follows:

79.1(15) Reimbursement for HCBS MR and BI supported community living~~, respite,~~ and supported employment *and HCBS AIDS/HIV, BI, elderly, ill and handicapped, and MR respite when basis of reimbursement is retrospectively limited prospective rate. This includes home health agencies providing group respite; nonfacility providers of specialized, basic individual, and group respite; camps; and home care agencies providing specialized, basic individual, and group respite.*

Amend paragraph **"b,"** by adopting the following **new** subparagraphs:

(6) For respite care provided in the consumer's home, only the cost of care is reimbursed.

(7) For respite care provided outside the consumer's home, charges may include room and board.

Amend paragraph **"c,"** catchwords, as follows:

c. Prospective rates for new providers *other than respite.*

Amend paragraph **"d,"** catchwords and subparagraph **(5)**, as follows:

d. Prospective rates for established providers *other than respite.*

(5) Prospective rates for services *other than respite* shall be subject to retrospective adjustment as provided in paragraph "~~e~~ *f.*"

Reletter paragraphs **"e"** and **"f"** as **"f"** and **"g"** and adopt the following **new** paragraph **"e"**:

e. Prospective rates for respite shall be agreed upon between the consumer, interdisciplinary team and the provider up to the maximum, subject to retrospective adjustment as provided in paragraph "f."

ITEM 13. Amend rule **441—83.1(249A)** by adopting the following **new** definitions in alphabetical order:

"Basic individual respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals without specialized needs requiring the care of a licensed registered nurse or licensed practical nurse.

"Group respite" is respite provided on a staff-to-consumer ratio of less than one to one.

"Medical assessment" means a visual and physical inspection of the consumer, noting deviations from the norm, and a statement of the consumer's mental and physical condition that can be amendable to or resolved by appropriate actions of the provider.

"Medical intervention" means consumer care in the areas of hygiene, mental and physical comfort, assistance in feeding and elimination, and control of the consumer's care and treatment to meet the physical and mental needs of the consumer in compliance with the plan of care in areas of health, prevention, restoration, and maintenance.

"Medical monitoring" means observation for the purpose of assessing, preventing, maintaining, and treating disease or illness based on the consumer's plan of care.

"Specialized respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals with specialized medical needs requiring the care, monitoring or supervision of a licensed registered nurse or licensed practical nurse.

"Usual caregiver" means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

ITEM 14. Amend rule 441—83.2(249A) as follows:

Amend subrule **83.2(1)** by adopting the following **new** paragraph **"e"**:

e. To be eligible for interim medical monitoring and treatment services the consumer must be:

(1) Under the age of 21;

(2) Currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. (The home health aide services for which the consumer is eligible must be maximized before the consumer accesses interim medical monitoring and treatment.);

(3) Residing in the consumer's family home or foster family home; and

(4) In need of interim medical monitoring and treatment as ordered by a physician.

Amend subrule **83.2(2)** by adopting the following **new** paragraph **"c"**:

c. Interim medical monitoring and treatment services must be needed because all usual caregivers are unavailable to provide care due to one of the following circumstances:

(1) Employment. Interim medical monitoring and treatment services are to be received only during hours of employment.

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(2) Academic or vocational training. Interim medical monitoring and treatment services provided while a usual caregiver participates in postsecondary education or vocational training shall be limited to 24 periods of no more than 30 days each per caregiver as documented by the service worker. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the limit.

(3) Absence from the home due to hospitalization, treatment for physical or mental illness, or death of the usual caregiver. Interim medical monitoring and treatment services under this subparagraph are limited to a maximum of 30 days.

(4) Search for employment.

1. Care during job search shall be limited to only those hours the usual caregiver is actually looking for employment, including travel time.

2. Interim medical monitoring and treatment services may be provided under this paragraph only during the execution of one job search plan of up to 30 working days in a 12-month period, approved by the department service worker or targeted case manager pursuant to 441—subparagraph 170.2(2)"b"(5).

3. Documentation of job search contacts shall be furnished to the department services worker or targeted case manager.

ITEM 15. Amend rule 441—83.6(249A) as follows:

441—83.6(249A) Allowable services. Services allowable under the ill and handicapped waiver are homemaker services, home health services, adult day care services, respite care services, nursing services, counseling services, ~~and~~ consumer-directed attendant care services, *and interim medical monitoring and treatment services* as set forth in rule 441—78.34(249A).

ITEM 16. Amend rule **441—83.21(249A)** by adopting the following **new** definitions in alphabetical order:

"Basic individual respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals without specialized needs requiring the care of a licensed registered nurse or licensed practical nurse.

"Group respite" is respite provided on a staff-to-consumer ratio of less than one to one.

"Specialized respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals with specialized medical needs requiring the care, monitoring or supervision of a licensed registered nurse or licensed practical nurse.

"Usual caregiver" means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

ITEM 17. Amend subrule **83.22(2)**, paragraph **"b,"** as follows:

b. The total monthly cost of the elderly waiver services shall not exceed the established monthly cost of the level of care. Aggregate monthly costs are limited as follows:

Skilled level of care	Nursing level of care
$2,480	~~$852~~ *$1,052*

ITEM 18. Amend rule **441—83.41(249A)** by adopting the following **new** definitions in alphabetical order:

"Basic individual respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals without specialized needs requiring the care of a licensed registered nurse or licensed practical nurse.

"Group respite" is respite provided on a staff-to-consumer ratio of less than one to one.

"Specialized respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals with specialized medical needs requiring the care, monitoring or supervision of a licensed registered nurse or licensed practical nurse.

"Usual caregiver" means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

ITEM 19. Amend rule **441—83.60(249A)** by adopting the following **new** definitions in alphabetical order:

"Basic individual respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals without specialized needs requiring the care of a licensed registered nurse or licensed practical nurse.

"Group respite" is respite provided on a staff-to-consumer ratio of less than one to one.

"Medical assessment" means a visual and physical inspection of the consumer, noting deviations from the norm, and a statement of the consumer's mental and physical condition that can be amendable to or resolved by appropriate actions of the provider.

"Medical intervention" means consumer care in the areas of hygiene, mental and physical comfort, assistance in feeding and elimination, and control of the consumer's care and treatment to meet the physical and mental needs of the consumer in compliance with the plan of care in areas of health, prevention, restoration, and maintenance.

"Medical monitoring" means observation for the purpose of assessing, preventing, maintaining, and treating disease or illness based on the consumer's plan of care.

"Specialized respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals with specialized medical needs requiring the care, monitoring or supervision of a licensed registered nurse or licensed practical nurse.

"Usual caregiver" means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

ITEM 20. Amend rule 441—83.61(249A) as follows:

Amend subrule **83.61(1)** by adopting the following **new** paragraph **"i"**:

i. To be eligible for interim medical monitoring and treatment services the consumer must be:

(1) Under the age of 21;

(2) Currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. (The home health aide services for which the consumer is eligible must be maximized before the consumer accesses interim medical monitoring and treatment.);

(3) Residing in the consumer's family home or foster family home; and

(4) In need of interim medical monitoring and treatment as ordered by a physician.

Amend subrule **83.61(2)** by adopting the following **new** paragraph **"h"**:

h. Interim medical monitoring and treatment services must be needed because all usual caregivers are unavailable to provide care due to one of the following circumstances:

(1) Employment. Interim medical monitoring and treatment services are to be received only during hours of employment.

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(2) Academic or vocational training. Interim medical monitoring and treatment services provided while a usual caregiver participates in postsecondary education or vocational training shall be limited to 24 periods of no more than 30 days each per caregiver as documented by the service worker. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the limit.

(3) Absence from the home due to hospitalization, treatment for physical or mental illness, or death of the usual caregiver. Interim medical monitoring and treatment services under this subparagraph are limited to a maximum of 30 days.

(4) Search for employment.

1. Care during job search shall be limited to only those hours the usual caregiver is actually looking for employment, including travel time.

2. Interim medical monitoring and treatment services may be provided under this paragraph only during the execution of one job search plan of up to 30 working days in a 12-month period, approved by the department service worker or targeted case manager pursuant to 441—subparagraph 170.2(2)"b"(5).

3. Documentation of job search contacts shall be furnished to the department services worker or targeted case manager.

ITEM 21. Amend rule 441—83.66(249A) as follows:

441—83.66(249A) Allowable services. Services allowable under the HCBS MR waiver are supported community living, respite, personal emergency response system, nursing, home health aide, home and vehicle modifications, supported employment, ~~and~~ consumer-directed attendant care services, *and interim medical monitoring and treatment services* as set forth in rule 441—78.41(249A).

ITEM 22. Amend rule **441—83.81(249A)** by adopting the following **new** definitions in alphabetical order:

"Basic individual respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals without specialized needs requiring the care of a licensed registered nurse or licensed practical nurse.

"Group respite" is respite provided on a staff-to-consumer ratio of less than one to one.

"Medical assessment" means a visual and physical inspection of the consumer, noting deviations from the norm, and a statement of the consumer's mental and physical condition that can be amendable to or resolved by appropriate actions of the provider.

"Medical intervention" means consumer care in the areas of hygiene, mental and physical comfort, assistance in feeding and elimination, and control of the consumer's care and treatment to meet the physical and mental needs of the consumer in compliance with the plan of care in areas of health, prevention, restoration, and maintenance.

"Medical monitoring" means observation for the purpose of assessing, preventing, maintaining, and treating disease or illness based on the consumer's plan of care.

"Specialized respite" means respite provided on a staff-to-consumer ratio of one to one or higher to individuals with specialized medical needs requiring the care, monitoring or supervision of a licensed registered nurse or licensed practical nurse.

"Usual caregiver" means a person or persons who reside with the consumer and are available on a 24-hour-per-day basis to assume responsibility for the care of the consumer.

ITEM 23. Amend rule 441—83.82(249A) as follows:

Amend subrule **83.82(1)** by adopting the following **new** paragraph **"j"**:

j. To be eligible for interim medical monitoring and treatment services the consumer must be:

(1) Under the age of 21;

(2) Currently receiving home health agency services under rule 441—78.9(249A) and require medical assessment, medical monitoring, and regular medical intervention or intervention in a medical emergency during those services. (The home health aide services for which the consumer is eligible must be maximized before the consumer accesses interim medical monitoring and treatment.);

(3) Residing in the consumer's family home or foster family home; and

(4) In need of interim medical monitoring and treatment as ordered by a physician.

Amend subrule **83.82(2)** by adopting the following **new** paragraph **"b"**:

b. Interim medical monitoring and treatment services must be needed because all usual caregivers are unavailable to provide care due to one of the following circumstances:

(1) Employment. Interim medical monitoring and treatment services are to be received only during hours of employment.

(2) Academic or vocational training. Interim medical monitoring and treatment services provided while a usual caregiver participates in postsecondary education or vocational training shall be limited to 24 periods of no more than 30 days each per caregiver as documented by the service worker. Time spent in high school completion, adult basic education, GED, or English as a second language does not count toward the limit.

(3) Absence from the home due to hospitalization, treatment for physical or mental illness, or death of the usual caregiver. Interim medical monitoring and treatment services under this subparagraph are limited to a maximum of 30 days.

(4) Search for employment.

1. Care during job search shall be limited to only those hours the usual caregiver is actually looking for employment, including travel time.

2. Interim medical monitoring and treatment services may be provided under this paragraph only during the execution of one job search plan of up to 30 working days in a 12-month period, approved by the department service worker or targeted case manager pursuant to 441—subparagraph 170.2(2)"b"(5).

3. Documentation of job search contacts shall be furnished to the department services worker or targeted case manager.

ITEM 24. Amend rule 441—83.86(249A) as follows:

441—83.86(249A) Allowable services. Services allowable under the brain injury waiver are case management, respite, personal emergency response, supported community living, behavioral programming, family counseling and training, home and vehicle modification, specialized medical equipment, prevocational services, transportation, supported employment services, adult day care, ~~and~~ consumer-directed attendant care services, *and interim medical monitoring and treatment services* as set forth in rule 441—78.43(249A).

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 249A.4 and 2000 Iowa Acts, House File 2555, section 1, subsection 1 and section 11; Senate File 2193, section 21; and Senate File 2435, section 8, subsection 16, section 31, subsection 15, and section 44, the Department of Human Services proposes to amend Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," and Chapter 81, "Nursing Facilities," appearing in the Iowa Administrative Code.

These amendments implement the following changes to the Medicaid program as mandated by the General Assembly:

- Policy is revised to allow for Medicaid reimbursement for family and pediatric nurse practitioners who are employed by a hospital and are providing services in a hospital-owned facility or in another location that is not on or part of the hospital's licensed premises.

Currently, hospitals employing family and pediatric nurse practitioners are not reimbursed for services provided by these practitioners, when the practitioners are providing services in a satellite location (i.e., not on the licensed premises of the hospital). This amendment would allow hospitals employing family and pediatric nurse practitioners to receive reimbursement for the practitioners' services where these practitioners are providing services in a setting in which the hospital cannot receive reimbursement for "outpatient hospital services" (e.g., a satellite clinic) and where these practitioners are not able to bill for their services "incident-to" their supervising physician (i.e., because they are not employed by that physician and because "incident-to" billing is a function of an employment relationship between a physician and auxiliary practitioner, such as a nurse practitioner, not an employment relationship between a hospital and an auxiliary practitioner).

- All of the reimbursement rates for the following noninstitutional providers are increased by 7/10 of 1 percent (hereinafter referred to as "0.7 percent" or "0.7%"): ambulances; area education agencies; birth centers; certified registered nurse anesthetists; community mental health centers; durable medical equipment, prosthetic devices and medical supply dealers; family planning clinics; hearing aid dealers; lead inspection agencies; maternal health centers; opticians; orthopedic shoe dealers; rehabilitation agencies; and screening centers.
- The reimbursement rate for the following noninstitutional providers, excluding anesthesia and dental services, is increased to the rate in effect on January 1, 2000, under the fee schedule established for Iowa under the federal Medicare program, which incorporates the resource-based relative value scale (hereinafter referred to as "RBRVS methodology"): audiologists, chiropractors, clinics, family and pediatric nurse practitioners, nurse midwives, optometrists, physical therapists, physicians, podiatrists, and psychologists.

The Seventy-eighth General Assembly directed the Department to adopt the RBRVS methodology based on a report prepared by the Department in consultation with the Iowa Medical Society, the Iowa Osteopathic Medical Association, and the Iowa Academy of Family Physicians.

At the current time, Medicaid fees for the above providers are the result of an outdated payment methodology and inconsistent provider increases. This is the result of the current Medicaid fee schedule being an outgrowth of the "usual, customary and reasonable" payment approach that is currently being used by fewer and fewer payors. Medicare's RBRVS payment methodology is being increasingly used by commercial and private payors as well as other states' Medicaid programs.

The cornerstone of the RBRVS plan was to base physician reimbursement on the amount of work it takes physicians to diagnose and treat patients, instead of paying based on physicians' charge histories, which vary widely. By tying payments to work adjusted by costs of practicing medicine in different parts of the country, the assumption was that Medicare would more equitably reimburse physicians across specialties and geographic areas. The RBRVS payment methodology reapportions payments to providers in such a way as to increase payments for primary and preventive care services, at the expense of specialty and procedure-related services.

The Iowa-specific, RBRVS-based Medicare fee schedule is released to the public in mid-November of each year and implemented by Medicare on January 1. These changes adopt the January 1, 2000, Medicare rates.

- The reimbursement rate for dentists is increased to 75 percent of the "usual and customary rate."
- The dispensing fee for pharmacists is increased by 0.7 percent.
- The reimbursement rate for community mental health centers is increased by 16.63 percent and the 0.7 percent increase provided above for noninstitutional providers, for a total of 17.33 percent.
- Home health agency providers shall be paid the maximum Medicare rate.
- The reimbursement rate for psychiatric medical institutions for children is increased to rates based on actual costs on June 30, 2000, not to exceed a maximum of $147.20 per day.
- The reimbursement rate for hospitals is increased by 3 percent.
- The maximum reimbursement rate for nursing facilities is increased by changing the maximum from the seventieth percentile of facility costs based on 1999 cost reports to the same percentile based on June 30, 2000, cost reports. It is estimated the maximum Medicaid nursing facility rate will increase from $85.93 to $87.86 effective July 1, 2000.
- Nursing facilities are required to include expenses attributable to the home or principal office or headquarters in their cost reports. They are also required to conduct prior to admission a resident assessment of all persons seeking nursing facility placement. The assessment information shall be similar to the data in the minimum data set (MDS) resident assessment tool.
- A case-mix add-on factor is added for nursing facilities providing intermediate and skilled care. Participating nursing facilities with higher than average patient care service expenses and higher than average aggregate care needs of residents will receive an add-on of $5.20 per day to their reimbursement rate. Participating nursing facilities with

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lower than average patient care service expenses and higher than average aggregate care needs of residents will receive an add-on of $2.60 per day to their reimbursement rate. Freestanding nursing facilities providing skilled care that exceeds the Iowa case-mix nursing facility average will receive an add-on of $5.20 per day to their reimbursement rate.

The current reimbursement system for Iowa nursing facilities provides a facility rate and maximum rate based only on costs. Many states, with federal encouragement, have adopted reimbursement systems which factor in the care needs of residents, providing a higher rate of reimbursement to facilities that care for residents with greater care needs. The Department, with the support of the Iowa nursing home industry, plans to begin moving the Iowa reimbursement system in this direction.

It is believed this change will encourage facilities to accept and retain more difficult-to-care-for residents. A consultant has been hired on contract to make recommendations for further changes in the reimbursement system. Additional changes to the reimbursement system will likely be sought for the next fiscal year.

It is anticipated these amendments, with the exception of the changes implementing the RBRVS methodology, will also be adopted on an emergency basis by the Council on Human Services at its June 8, 2000, meeting to be effective July 1, 2000. The legislature mandated a November 1, 2000, effective date for the changes implementing the RBRVS methodology for the following providers: audiologists, chiropractors, clinics, family and pediatric nurse practitioners, nurse midwives, optometrists, physical therapists, physicians, podiatrists, and psychologists.

These amendments do not provide for waiver in specified situations because they confer a benefit on providers by allowing additional Medicaid reimbursement for family and pediatric nurse practitioners and increasing reimbursement to affected providers. The General Assembly directed the Department to implement these changes, with no provisions for exceptions. All providers of the same category should be reimbursed on the same basis.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before July 5, 2000.

These amendments are intended to implement Iowa Code section 249A.4 and 2000 Iowa Acts, House File 2555, section 1, subsection 1, paragraphs "a," "b," "e," "f," and "j," and section 7; Senate File 2193, sections 12 and 20, subsection 3; and Senate File 2435, section 8, subsection 16, and section 31, subsection 1, paragraph "h," subsection 2, paragraph "c," and subsection 13, and section 39.

The following amendments are proposed.

ITEM 1. Amend rule 441—78.31(249A) as follows:

Amend subrule 78.31(1), introductory paragraph, as follows:

78.31(1) Covered hospital outpatient services. Payment will be approved only for the following outpatient hospital services and medical services when provided on the licensed premises of the hospital *or pursuant to subrule 78.31(5)*. Hospitals with alternate sites approved by the department of inspections and appeals are acceptable sites. All outpatient services listed in paragraphs "g" to "m" are subject to a random sample retrospective review for medical necessity by the Iowa Foundation for Medical Care. All services may also be subject to a more intensive retrospective review if abuse is suspected. Services in paragraphs "a" to "f" shall be provided in hospitals on an outpatient basis and are subject to no further limitations except medical necessity of the service.

Adopt the following **new** subrule:

78.31(5) Services rendered by family or pediatric nurse practitioners employed by a hospital. Hospitals may be reimbursed for services rendered by family or pediatric nurse practitioners who are employed by the hospital and providing services in a facility or other location that is owned by the hospital, but is not on or part of the hospital's licensed premises, if reimbursement is not otherwise available for the services rendered by these employed nurse practitioners. As a condition of reimbursement, employed family and pediatric nurse practitioners rendering these services must enroll with the Medicaid program, receive a provider number, and designate the employing hospital to receive payment. Claims for services shall be submitted by the employed family or pediatric nurse practitioner. Payment shall be at the same fee-schedule rates as those in effect for independently practicing family or pediatric nurse practitioners under 441—subrule 79.1(2).

ITEM 2. Amend rule 441—79.1(249A) as follows:

Amend subrule **79.1(2)**, Basis of reimbursement provider categories "Ambulance," "Area education agencies," "Audiologists," "Birth centers," "Certified registered nurse anesthetists," "Chiropractors," "Clinics," "Community mental health centers," "Dentists," "Durable medical equipment, prosthetic devices and medical supply dealers," "Family planning clinics," "Family or pediatric nurse practitioner," "Hearing aid dealers," "Home health agencies," "Hospitals (Inpatient)," "Hospitals (Outpatient)," "Intermediate care facilities for the mentally retarded," "Lead inspection agency," "Maternal health centers," "Nurse-midwives," "Nursing facilities," "Opticians," "Optometrists," "Orthopedic shoe dealers," "Physical therapists," "Physicians (doctors of medicine or osteopathy)," "Podiatrists," "Prescribed drugs," "Psychiatric medical institutions for children," "Psychologists," "Rehabilitation agencies," and "Screening centers," as follows:

Provider category	Basis of reimbursement	Upper limit
Ambulance	Fee schedule	Ground ambulance: Fee schedule in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*. Air ambulance: A base rate of ~~$208.08~~ *$209.54* plus ~~$7.80~~ *$7.85* per mile for each mile the patient is carried.
Area education agencies	Fee schedule	Fee schedule in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*

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Provider category	Basis of reimbursement	Upper limit
Audiologists	Fee schedule	Fee schedule in effect 6/30/99 plus 2% *Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology*
Birth centers	Fee schedule	Fee schedule in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*
Certified registered nurse anesthetists	Fee schedule	Fee schedule in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*
Chiropractors	Fee schedule	Fee schedule in effect 6/30/99 plus 2% *Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology*
Clinics	Fee schedule	Fees as determined by the physician fee schedule *Maximum physician reimbursement rate*
Community mental health centers	Fee schedule	Reimbursement rate for center in effect ~~6/30/99~~ *6/30/00* plus ~~5~~ *17.33%*
Dentists	Fee schedule	~~Fee schedule in effect 6/30/99 plus 2%~~ *75% of usual and customary rate*
Durable medical equipment, prosthetic devices and medical supply dealers	Fee schedule. See 79.1(4)	Fee schedule in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*
Family planning clinics	Fee schedule	Fees in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*
Family or pediatric nurse practitioner	Fee schedule	Fee schedule in effect 6/30/99 plus 2% *Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology*
Hearing aid dealers	Fee schedule plus product acquisition cost	Fee schedule in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*
Home health agencies		
(Encounter services-intermittent services)	Retrospective cost-related	Maximum ~~Medicaid~~ *Medicare* rate ~~in effect on 6/30/99 plus 2%~~
(Private duty nursing or personal care and VFC vaccine administration for persons aged 20 and under)	Interim fee schedule with retrospective cost settling based on ~~Medicaid~~ *Medicare* methodology	Retrospective cost settling according to ~~Medicaid~~ *Medicare* methodology ~~not to exceed the rate in effect on 6/30/99 plus 2%~~
Hospitals (Inpatient)	Prospective reimbursement See 79.1(5)	Reimbursement rate in effect ~~6/30/99~~ *6/30/00* increased by ~~2%~~ *3%*
Hospitals (Outpatient)	Prospective reimbursement for providers listed at 441—paragraphs 78.31(1)"a" to "f." See 79.1(16)	Ambulatory patient group rate (plus an evaluation rate) and assessment payment rate in effect on ~~6/30/99~~ *6/30/00* increased by ~~2%~~ *3%*
	Fee schedule for providers listed at 441—paragraphs 78.31(1)"g" to "n." See 79.1(16)	Rates in effect on ~~6/30/99~~ *6/30/00* increased by ~~2%~~ *3%*
Intermediate care facilities for the mentally retarded	Prospective reimbursement. See 441—82.5(249A)	Eightieth percentile of facility costs as calculated from ~~12/31/98~~ *12/31/99* cost reports

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Provider category	Basis of reimbursement	Upper limit
Lead inspection agency	Fee schedule	Fee schedule in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*
Maternal health centers	Reasonable cost per procedure on a prospective basis as determined by the department based on financial and statistical data submitted annually by the provider group	Fee schedule in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*
Nurse-midwives	Fee schedule	Fee schedule in effect 6/30/99 plus 2% *Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology*
Nursing facilities		
1. Nursing facility care	Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A)	Seventieth percentile of facility costs as calculated from all ~~6/30/99~~ *6/30/00* cost reports
2. Skilled nursing care	No change	
Opticians	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Reimbursement rate for provider in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*
Optometrists	Fee schedule. Fixed fee for lenses and frames; other optical materials at product acquisition cost	Reimbursement rate for provider in effect 6/30/99 plus 2% *Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology*
Orthopedic shoe dealers	Fee schedule	Reimbursement rate for provider in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*
Physical therapists	Fee schedule	Fee schedule in effect 6/30/99 plus 2% *Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology*
Physicians (doctors of medicine or osteopathy)	Fee schedule. See 79.1(7)	Fee schedule in effect 6/30/99 plus 2% *Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology*
Podiatrists	Fee schedule	Fee schedule in effect 6/30/99 plus 2% *Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology*
Prescribed drugs	See 79.1(8)	~~$4.10~~ *$4.13* or ~~$6.38~~ *$6.42* dispensing fee (See 79.1(8) "a" and "e")
Psychiatric medical institutions for children		

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Provider category	Basis of reimbursement	Upper limit
(Inpatient)	Prospective reimbursement	Reimbursement rate for provider based on per diem rates for actual costs on ~~6/30/99~~ *6/30/00*, not to exceed a maximum of ~~$145.74~~ *$147.20* per day
(Outpatient day treatment)	Fee schedule	Fee schedule in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*
Psychologists	Fee schedule	Reimbursement rate for provider in effect 6/30/99 plus 2% *Rate in effect on 1/1/00 under the fee schedule established for Iowa under the federal Medicare program, incorporating the resource-based relative value scale (RBRVS) methodology*
Rehabilitation agencies	Retrospective cost-related	Reimbursement rate for agency in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*
Screening centers	Fee schedule	Reimbursement rate for center in effect ~~6/30/99~~ *6/30/00* plus ~~2%~~ *0.7%*

Amend subrule **79.1(8)**, paragraph **"a,"** second and third unnumbered paragraphs, as follows:

The basis of payment for prescribed drugs for which the MAC has been established shall be the lesser of the MAC plus a professional dispensing fee of ~~$4.10~~ *$4.13* or the pharmacist's usual and customary charge to the general public.

The basis of payment for drugs for which the MAC has not been established shall be the lesser of the EAC plus a professional dispensing fee of ~~$6.38~~ *$6.42* or the pharmacist's usual and customary charge to the general public.

Amend subrule **79.1(9)** by adopting the following **new** paragraph:

j. Freestanding skilled facilities with a case-mix index above the statewide average for the previous reporting period shall receive a case-mix adjustment of $5.20 added to their daily rate for a six-month period. The case-mix index of each facility and the statewide average case-mix index are calculated by the United States Health Care Financing Administration from the minimum data set (MDS) report submitted by each facility pursuant to 441—subrule 81.13(9).

ITEM 3. Amend rule **441—81.1(249A)** by adopting the following **new** definitions in alphabetical order:

"Case-mix add-on" means additional Medicaid reimbursement based on the acuity and care need level of residents of a nursing facility.

"Minimum data set" or "MDS" refers to a federally required resident assessment tool. Information from the MDS is used by the federal Health Care Financing Administration to determine the facility's case-mix index for purposes of the case-mix add-on provided by paragraph 81.6(16)"f." MDS is described in subrule 81.13(9).

ITEM 4. Amend rule 441—81.6(249A) as follows:

Amend subrule **81.6(16)**, paragraphs **"c"** and **"e,"** as follows:

c. For non-state-owned nursing facilities, the reimbursement rate shall be established by determining, on a per diem basis, the allowable cost plus the established inflation factor ~~plus~~ *and* the established incentive factor, subject to the maximum allowable cost ceiling*, plus any applicable case-mix add-on*.

e. Effective ~~January 1, 1999~~ *July 1, 2000*, the basis for establishing the maximum reimbursement rate for non-state-owned nursing facilities shall be the seventieth percentile of participating facilities' per diem rates as calculated from the ~~December 31, 1998~~ *June 30, 2000*, report of "unaudited compilation of various costs and statistical data."

~~Beginning July 1, 1999, the basis for establishing the maximum reimbursement rate for non-state-owned nursing facilities shall be the seventieth percentile of participating facilities' per diem rates as calculated from the June 30, 1999, report of "unaudited compilation of various costs and statistical data" submitted by each facility on medical assistance cost reports. A facility which does not have a current cost report on file with the department as of June 30, 1999, shall continue to receive the per diem rate in effect for that facility on June 30, 1999, until the facility's costs are above that rate or until June 30, 2000, whichever is earlier.~~

Further amend subrule **81.6(16)** by relettering paragraphs **"f"** and **"g"** as **"g"** and **"h,"** respectively, and adopting the following **new** paragraph **"f"**:

f. Notwithstanding paragraph "e," a semiannual case-mix factor shall be calculated and applied to the payment rates for certain facilities as follows:

(1) A case-mix index for each facility and the statewide average case-mix index are calculated by the United States Health Care Financing Administration from the minimum data set (MDS) report submitted by each facility pursuant to 441—subrule 81.13(9). A patient care cost per patient day is calculated by the department from the facility's most recent financial and statistical cost report by dividing the facility's patient care costs by patient days. This is compared to the statewide average for patient care costs computed as of every June 30 and December 31.

(2) Facilities with a case-mix index derived from MDS reports that exceeds the Iowa nursing facility average and with a patient care service cost that exceeds the average for all participating nursing facilities for the previous reporting period shall receive an addition of $5.20 to their payment rate for a six-month period.

(3) Facilities with a case-mix index that exceeds the Iowa nursing facility average and with a patient care service cost that is less than the average for all participating facilities for the previous reporting period shall receive an addition of $2.60 to their payment rate for a six-month period.

Amend subrule 81.6(17), introductory paragraph, as follows:

81.6(17) Cost report documentation. ~~Beginning July 1, 1999, all~~ *All* nursing facilities shall submit semiannual cost reports based on the closing date of the facility's fiscal year

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and the midpoint of the facility's fiscal year, that incorporate ~~additional~~ documentation as set forth below. ~~Initially, the additional documentation shall provide baseline information by describing the status of the facility with reference to the information requested as of July 1, 1999, and subsequently the additional documentation shall describe the status of the facility for the period of the cost report.~~ The ~~additional~~ documentation ~~to be~~ incorporated in the cost reports shall include all of the following information:

Further amend subrule **81.6(17)** by adopting the following **new** paragraph:

c. An itemization of expenses attributable to the home or principal office or headquarters of the nursing facility included in the administrative cost line item.

ITEM 5. Amend subrule **81.13(9)** by adopting the following **new** paragraph:

g. Preadmission resident assessment. The facility shall conduct prior to admission a resident assessment of all persons seeking nursing facility placement. The assessment information gathered shall be similar to the data in the minimum data set (MDS) resident assessment tool.

ARC 9868A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 514I.5(8), the Department of Human Services proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," appearing in the Iowa Administrative Code.

This amendment increases the income limits for the HAWK-I Program from 185 percent of the federal poverty level to 200 percent of the federal poverty level, the maximum amount allowable under federal law.

Under current policy, income limits for children under the HAWK-I program are from 133 percent to 185 percent of the federal poverty level. The Seventy-eighth General Assembly directed the Department to increase the income limits to 200 percent of the federal poverty level, providing coverage to as many uninsured children as possible. This amendment increases the income limits of the HAWK-I Program to the full extent allowed under federal law.

The Department projects that an additional 6,075 children will be eligible for the HAWK-I Program for state fiscal year 2001. An additional $669,793 in state dollars was requested to fund HAWK-I expansion to 200 percent of the federal poverty level. The General Assembly did not specifically appropriate any additional state dollars to fund the expansion. Rather, moneys in the HAWK-I trust fund shall be used to offset any program costs for state fiscal year 2001.

This amendment does not provide for waiver in specified situations because it confers a benefit by allowing the Department of Human Services to provide for coverage of medical services for more children under the HAWK-I Program.

The substance of this amendment is also Adopted and Filed Emergency and is published herein as **ARC 9869A**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before July 5, 2000.

This amendment is intended to implement Iowa Code section 514I.8(2)"c" as amended by 2000 Iowa Acts, House File 2555, section 9.

ARC 9870A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 252D.22 and 2000 Iowa Acts, House File 2135, section 3, the Department of Human Services proposes to amend Chapter 95, "Collections," appearing in the Iowa Administrative Code.

These amendments require the Collection Services Center (CSC) to use the date of withholding, e.g., the employee's payday, rather than the day CSC receives the payment when crediting a support payment made by income withholding. These changes conform the rules to a recent amendment to state statute.

1998 Iowa Acts, chapter 1170, section 8, amended the income withholding statute to remove, as of October 1, 1999, the requirement that a payor of income (e.g., the employer) report the payday to CSC when the payment of income was submitted to CSC. In 1999, the Department adopted a rule change to implement that 1998 change in state statute. The rule would have used the date CSC received the support payment rather than the date the employer withheld the support from the wages as the date of the payment. However, the Administrative Rules Review Committee (ARRC) disagreed with the change and decided to delay implementation of the change until the legislature could revisit the issue. The Seventy-eighth General Assembly agreed with ARRC and adopted 2000 Iowa Acts, House File 2135, to continue the policy of using the obligor employee's payday to credit a payment made by income withholding. House File 2135 also directed the Department to rescind any rules in conflict with House File 2135 and provided that the Act's changes would be effective upon enactment. House File 2135 was enacted on April 20, 2000.

With two exceptions, these amendments replace the rescinded rules with the same language in effect before the 1999 rule change. The exceptions are that (1) these rules no longer refer to rebates since the $50 rebate payments to families in the Family Investment Program were removed from state law in July 1998, and (2) these rules retain an exception for payments received at the end of the month from payors of income as well as obligors.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waiver in specified situations because they confer a benefit on obligors. By requiring the CSC to use the date of withholding, the obligor will receive credit as of the date the obligor is paid and loses control of the funds.

It is anticipated these amendments will also be adopted on an emergency basis by the Council on Human Services at its June 8, 2000, meeting to be effective June 8, 2000.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before July 5, 2000.

These amendments are intended to implement Iowa Code sections 252B.15 and 252D.17 as amended by 2000 Iowa Acts, House File 2135, section 2.

The following amendments are proposed.

ITEM 1. Amend rule **441—95.1(252B)**, definition of "date of collection," as follows:

"Date of collection" shall mean the date that a support payment is received by the ~~unit~~ *department or the legal entity of any state or political subdivision actually making the collection, or the date that a support payment is withheld from the income of a responsible person by an employer or other income provider, whichever is earlier.*

ITEM 2. Rescind rule 441—95.3(252B) and adopt the following **new** rule in lieu thereof:

441—95.3(252B) Crediting of current and delinquent support. The amounts received as support from the obligor shall be credited as the required support obligation for the month in which they are collected. Any excess shall be credited as delinquent payments and shall be applied to the immediately preceding month, and then to the next immediately preceding month until all excess has been applied. Funds received as a result of federal tax offsets shall be credited according to rule 441—95.7(252B).

The date of collection shall be determined as follows:

95.3(1) Payments from income withholding. Payments collected as the result of income withholding are considered collected in the month in which the income was withheld by the income provider. The date of collection shall be the date on which the income was withheld.

a. For the purpose of reporting the date the income was withheld, the department shall notify income providers of the requirement to report the date income was withheld and shall provide Form 470-3221, "Income Withholding Return Document," to those income providers who manually remit payments. When reported on this form or through other electronic means or multiple account listings, the date of collection shall be used to determine support distributions. When the date of collection is not reported, support distributions shall initially be issued based on the date of the check. If proof of the date of collection is subsequently provided, any additional payments due the recipient shall be issued.

b. When the collection services center (CSC) is notified or otherwise becomes aware that a payment received from an income provider pursuant to 441—Chapter 98, Division II, includes payment amounts such as vacation pay or severance pay, these amounts are considered irrevocably withheld in the months documented by the income provider.

95.3(2) Payments from state or political subdivisions. Payments collected from any state or political subdivision are considered collected in the same month the payments were actually received by that legal entity or the month withheld by an income provider, whichever is earlier. Any state or political subdivision transmitting payments to the department shall be responsible for reporting the date the payments were collected. When the date of collection is not reported, support distributions shall be initially issued based on the date of the state's or political subdivision's check. If proof of the date of collection is subsequently provided, any additional payments due the recipient shall be issued.

95.3(3) Additional payments. An additional payment in the month which is received within five calendar days prior to the end of the month shall be considered collected in the next month if:

a. The CSC is notified or otherwise becomes aware that the payment is for the next month, and

b. Support for the current month is fully paid.

This rule is intended to implement Iowa Code section 252B.15 and section 252D.17 as amended by 2000 Iowa Acts, House File 2135, section 2.

ARC 9871A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 217.6 and 2000 Iowa Acts, Senate File 2435, section 31, subsection 15, and section 44, the Department of Human Services proposes to amend Chapter 130, "General Provisions," and Chapter 170, "Child Day Care Services," appearing in the Iowa Administrative Code.

These amendments update income guidelines and the fees parents pay for child care services based on their monthly gross income to be consistent with the federal poverty guidelines for 2000 and implement new provider rate ceilings, except for nonregistered family day care homes.

The Seventy-eighth General Assembly directed the Department to set provider reimbursement rates based on the rate reimbursement survey completed in December 1998, and to set rates in a manner so as to provide incentives for a nonregistered provider to become registered.

These amendments do not provide for any waivers in specific situations because these changes confer a benefit on consumers, by providing an increase in the income eligibility guidelines, and on providers, by increasing reimbursement rates. In addition, these changes were mandated by the legislature, with no provisions for exceptions.

It is anticipated these amendments will also be adopted on an emergency basis by the Council on Human Services at its June 8, 2000, meeting to be effective July 1, 2000.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before July 5, 2000.

These amendments are intended to implement Iowa Code section 234.6 and 2000 Iowa Acts, Senate File 2435, section 31, subsection 12, and Senate File 2344, section 14.

The following amendments are proposed.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subrule **130.3(1)**, paragraph **"d,"** subparagraph **(2)**, as follows:

(2) Income eligible status. The monthly gross income according to family size is no more than the following amounts:

Family Size	For Child Care Monthly Gross Income						All Other Services Monthly Gross Income Below
	A		B		C		
1 Member	~~$ 687~~	*$ 696*	~~$ 961~~	*$ 974*	~~$1,202~~	*$1,219*	$ 583
2 Members	~~922~~	*938*	~~1,290~~	*1,313*	~~1,613~~	*1,641*	762
3 Members	~~1,157~~	*1,179*	~~1,619~~	*1,651*	~~2,024~~	*2,064*	942
4 Members	~~1,392~~	*1,421*	~~1,948~~	*1,989*	~~2,435~~	*2,486*	1,121
5 Members	~~1,627~~	*1,663*	~~2,277~~	*2,328*	~~2,847~~	*2,910*	1,299
6 Members	~~1,862~~	*1,904*	~~2,606~~	*2,666*	~~3,258~~	*3,332*	1,478
7 Members	~~2,097~~	*2,146*	~~2,935~~	*3,004*	~~3,669~~	*3,755*	1,510
8 Members	~~2,332~~	*2,388*	~~3,264~~	*3,343*	~~3,766~~	*4,178*	1,546
9 Members	~~2,567~~	*2,629*	~~3,593~~	*3,681*	~~3,863~~	*4,601*	1,581
10 Members	~~2,802~~	*2,871*	~~3,922~~	*4,019*	~~3,960~~	*4,701*	1,612

For child care, Column A, add ~~$235~~ *$242* for each additional person over 10 members. For child care, Column B, add ~~$329~~ *$338* for each additional person over 10 members. For child care, Column C, add ~~$97~~ *$100* for each additional person over 10 members. For other services, add $33 for each additional person over 10 members.

Column A is used to determine income eligibility when funds are insufficient to serve additional families beyond those already receiving services or requiring protective child care and applications are being taken from families who are at or below 100 percent of the federal poverty guidelines and in which the parents are employed at least 28 hours per week or are under the age of 21 and participating in an educational program leading to a high school diploma or equivalent or from parents under the age of 21 with a family income at or below 100 percent of the federal poverty guidelines who are participating, at a satisfactory level, in an approved training or education program. (See 441—paragraphs 170.2(3)"a" and "c.")

Column B is used to determine income eligibility when funds are insufficient to serve additional families beyond those already receiving services or requiring protective child care and applications are being taken from families with an income of more than 100 percent but not more than 140 percent of the federal poverty level whose members are employed at least 28 hours per week (see 441—paragraph 170.2(3)"d") or when there is adequate funding and no waiting lists and applications are being taken from families applying for services, with the exception of families with children with special needs.

Column C is used to determine income eligibility for families with children with special needs.

ITEM 2. Amend rule 441—130.4(234) as follows:

Amend subrule **130.4(3)**, introductory paragraph and "Monthly Income Increment Levels According to Family Size" table, as follows:

130.4(3) Child care services. The monthly income chart and fee schedule for child care services in a licensed child care center, an exempt facility, a registered family or group child care home, a nonregistered family child care home, *or* in-home care~~, or relative care~~ are shown in the following table:

Monthly Income Increment Levels According to Family Size

Income Increment Levels	1	2	3	4	5	6	7	8	9	10	Half-Day Fee
A	~~653~~ *661*	~~877~~ *891*	~~1100~~ *1120*	~~1323~~ *1350*	~~1546~~ *1579*	~~1770~~ *1809*	~~1993~~ *2039*	~~2216~~ *2268*	~~2440~~ *2498*	~~2663~~ *2727*	.00
B	~~688~~ *696*	~~923~~ *938*	~~1158~~ *1179*	~~1393~~ *1421*	~~1628~~ *1663*	~~1863~~ *1904*	~~2098~~ *2146*	~~2333~~ *2388*	~~2568~~ *2629*	~~2803~~ *2871*	.50
C	~~726~~ *735*	~~974~~ *990*	~~1222~~ *1245*	~~1471~~ *1500*	~~1719~~ *1756*	~~1967~~ *2011*	~~2215~~ *2266*	~~2464~~ *2521*	~~2712~~ *2776*	~~2960~~ *3032*	1.00
D	~~767~~ *776*	~~1029~~ *1045*	~~1291~~ *1315*	~~1553~~ *1584*	~~1815~~ *1854*	~~2077~~ *2123*	~~2340~~ *2393*	~~2602~~ *2662*	~~2864~~ *2932*	~~3126~~ *3201*	1.50
E	~~810~~ *819*	~~1087~~ *1104*	~~1363~~ *1389*	~~1640~~ *1673*	~~1917~~ *1958*	~~2193~~ *2242*	~~2471~~ *2527*	~~2747~~ *2811*	~~3024~~ *3096*	~~3301~~ *3381*	2.00
F	~~855~~ *865*	~~1147~~ *1166*	~~1440~~ *1466*	~~1732~~ *1767*	~~2024~~ *2067*	~~2316~~ *2368*	~~2609~~ *2668*	~~2901~~ *2969*	~~3193~~ *3269*	~~3486~~ *3570*	2.50

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Monthly Income Increment Levels According to Family Size

Income Increment Levels	1	2	3	4	5	6	7	8	9	10	Half-Day Fee
G	~~903~~ *914*	~~1212~~ *1231*	~~1520~~ *1548*	~~1829~~ *1866*	~~2137~~ *2183*	~~2446~~ *2500*	~~2755~~ *2818*	~~3064~~ *3135*	~~3372~~ *3453*	~~3681~~ *3770*	3.00
H	~~954~~ *965*	~~1279~~ *1300*	~~1605~~ *1635*	~~1931~~ *1970*	~~2257~~ *2305*	~~2583~~ *2641*	~~2909~~ *2976*	~~3235~~ *3311*	~~3561~~ *3646*	~~3887~~ *3981*	3.50
I	~~1007~~ *1019*	~~1351~~ *1373*	~~1695~~ *1727*	~~2039~~ *2081*	~~2383~~ *2434*	~~2728~~ *2788*	~~3072~~ *3142*	~~3416~~ *3496*	~~3760~~ *3850*	~~4105~~ *4204*	4.00
J	~~1063~~ *1076*	~~1427~~ *1450*	~~1790~~ *1823*	~~2154~~ *2197*	~~2517~~ *2571*	~~2880~~ *2945*	~~3244~~ *3318*	~~3608~~ *3692*	~~3971~~ *4066*	~~4334~~ *4439*	4.50
K	~~1123~~ *1136*	~~1507~~ *1531*	~~1890~~ *1926*	~~2274~~ *2320*	~~2658~~ *2715*	~~3042~~ *3109*	~~3426~~ *3504*	~~3810~~ *3899*	~~4193~~ *4293*	~~4577~~ *4688*	5.00
L	~~1186~~ *1200*	~~1591~~ *1617*	~~1996~~ *2033*	~~2402~~ *2450*	~~2807~~ *2867*	~~3212~~ *3284*	~~3618~~ *3700*	~~4023~~ *4117*	~~4428~~ *4534*	~~4834~~ *4950*	5.50
M	~~1252~~ *1267*	~~1680~~ *1707*	~~2108~~ *2147*	~~2536~~ *2587*	~~2964~~ *3027*	~~3392~~ *3467*	~~3820~~ *3908*	~~4248~~ *4348*	~~4676~~ *4788*	~~5104~~ *5228*	6.00

ITEM 3. Amend subrule **170.4(7)**, paragraph **"a,"** Table I and Table II, as follows:

Table I
Half-Day Rate Ceilings For Basic Care

Age Group	Day Care Center	Registered Family Home	Registered Group Home	Nonregistered Family Home
Infant and Toddler	~~$11.50~~ *$12.45*	~~$9.00~~ *$10.00*	~~$8.50~~ *$9.00*	$8.19
Preschool	~~$9.50~~ *$10.50*	$9.00	~~$7.88~~ *$8.55*	$7.19
School Age	~~$8.50~~ *$9.00*	$9.00	~~$7.88~~ *$8.33*	$7.36

Table II
Half-Day Rate Ceilings For Special Needs Care

Age Group	Day Care Center	Registered Family Home	Registered Group Home	Nonregistered Family Home
Infant and Toddler	~~$28.13~~ *$48.00*	~~$11.25~~ *$15.75*	~~$11.00~~ *$12.38*	$10.24
Preschool	~~$28.55~~ *$28.13*	~~$9.72~~ *$14.63*	~~$10.28~~ *$12.38*	$8.99
School Age	~~$29.93~~ *$28.04*	$13.50	~~$11.47~~ *$11.25*	$9.20

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Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6 and 2000 Iowa Acts, Senate File 2435, section 31, subsection 15, and section 44; and House File 2555, section 1, subsection 1, and section 11, the Department of Human Services proposes to amend Chapter 150, "Purchase of Service," appearing in the Iowa Administrative Code.

These amendments update fiscal year changes and rate increases mandated by the Seventy-eighth General Assembly. Adoption, independent living, home studies, and shelter care providers are given a cost-of-living adjustment of 5 percent.

All current shelter care providers are currently reimbursed by the Department at the maximum rate of $79.70 per day. In order for the current shelter care providers to realize the full 5 percent increase, it is necessary to apply the 5 percent increase to:

- The current maximum reimbursement per diem rate of $79.70, raising the maximum to $83.69.
- Each per diem (combined service and maintenance) provider rate currently reimbursed by the Department, re-

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sulting in a per diem increase of $3.99.

- The provider's actual and allowable unit cost plus inflation based on the most recently submitted and audited financial and statistical report, increasing the cost by $3.99.
- The statewide average actual and allowable unit cost plus inflation based upon the most recently submitted and audited financial and statistical reports as of May 15, 2000, increasing the rate by $3.99.

These amendments do not provide for a waiver in specific situations because they confer a benefit by increasing reimbursement rates. All independent living, shelter care, and adoption providers should be reimbursed on the same basis.

It is anticipated these amendments will also be adopted on an emergency basis by the Council on Human Services at its June 8, 2000, meeting to be effective July 1, 2000.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before July 5, 2000.

These amendments are intended to implement Iowa Code section 234.6 and 2000 Iowa Acts, House File 2555, section 1, subsection 1, paragraph "d," and Senate File 2435, section 31, subsections 7 and 14.

The following amendments are proposed.

ITEM 1. Amend subrule **150.3(5)**, paragraph **"p,"** as follows:

Amend subparagraph **(1)** as follows:

(1) Unless otherwise provided for in 441—Chapter 156, rates for shelter care shall not exceed ~~$79.70~~ *83.69* per day based on a 365-day year.

Amend subparagraph **(2)**, introductory paragraph, and numbered paragraph **"1,"** introductory paragraph, as follows:

(2) For the fiscal year beginning July 1, ~~1999~~ *2000*, the maximum reimbursement rates for services provided under a purchase of social service agency contract (adoption; local purchase services including adult day care, adult support, adult residential, community supervised apartment living arrangement, sheltered work, work activity, and transportation; shelter care; family planning; and independent living) shall be the same as the rates in effect on June 30, ~~1999~~ *2000*, except under any of the following circumstances:

1. If a new service was added after June 30, ~~1999~~ *2000*, the initial reimbursement rate for the service shall be based upon actual and allowable costs. A new service does not include a new building or location or other changes in method of service delivery for a service currently provided under the contract.

Further amend subparagraph **(2)**, numbered paragraph **"3,"** as follows:

3. For the fiscal year beginning July 1, ~~1999~~ *2000*, the combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the financial and statistical report submitted to the department. The maximum reimbursement rate shall be ~~$79.70~~ *83.69* per day. If the department reimburses the provider at less than the maximum rate, but the provider's cost report justifies a rate of at least ~~$79.70~~ *83.69* the department shall readjust the provider's reimbursement rate to the actual and allowable cost plus the inflation factor or ~~$79.70~~ *83.69*, whichever is less.

Further amend subparagraph **(2)** by adopting the following **new** numbered paragraph **"4"** and rescinding numbered paragraph **"5"**:

4. For the fiscal year beginning July 1, 2000, the purchase of service reimbursement rate for adoption, independent living services, and shelter care shall be increased by 5 percent of the rates in effect on June 30, 2000. The 5 percent increase in shelter care rates results in a per diem increase of $3.99. The shelter care providers actual and allowable cost plus inflation shall be increased by $3.99. For state fiscal year 2001 beginning July 1, 2000, the established statewide average actual and allowable rate shall be increased by $3.99.

ITEM 2. Amend the implementation clause following **441—Chapter 150, Division I**, to read as follows:

These rules are intended to implement Iowa Code section 234.6 and ~~1999 Iowa Acts, House File 760, section 33, subsections 6, 8, and 9~~ *2000 Iowa Acts, House File 2555, section 1, subsection 1, paragraph "d," and Senate File 2435, section 31, subsection 7.*

ITEM 3. Amend subrule **150.22(7)**, paragraph **"p,"** as follows:

Amend subparagraph **(1)**, introductory paragraph, and numbered paragraph **"1,"** introductory paragraph, as follows:

(1) For the fiscal year beginning July 1, ~~1999~~ *2000*, the maximum reimbursement rates for local purchase services, including adult day care, adult support, adult residential, community supervised apartment living arrangement, sheltered work, work activity, and transportation shall be the same as the rates in effect on June 30, ~~1999~~ *2000*, except under any of the following circumstances:

1. If a new service was added after June 30, ~~1999~~ *2000*, the initial reimbursement rate for the service shall be based upon actual and allowable costs. A new service does not include a new building or location or other changes in method of service delivery for a service currently provided under the contract.

ITEM 4. Amend the implementation clause following **441—Chapter 150, Division II**, to read as follows:

These rules are intended to implement Iowa Code section 234.6 and ~~1999 Iowa Acts, House File 760, section 33, subsection 6~~ *2000 Iowa Acts, Senate File 2435, section 31, subsection 7.*

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6 and 2000 Iowa Acts, Senate File 2435, section 31, subsection 15, and section 44, the Department of Human Services proposes to amend Chapter 156, "Payments for Foster Care and Foster Parent Training," and Chapter 201, "Subsidized Adoptions," appearing in the Iowa Administrative Code.

These amendments implement the increases to foster family homes and adoptive homes mandated by the Seventy-eighth General Assembly.

The daily foster family care and adoption payment rates are increased as follows: for a child aged 0 through 5 from

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$13.79 to $14.00, for a child aged 6 through 11 from $14.54 to $14.78, for a child aged 12 through 15 from $16.28 to $16.53, and for a child aged 16 and over from $16.32 to $16.53.

The maximum foster family basic monthly maintenance rate and the maximum adoption subsidy rate for children remain at 70 percent of the United States Department of Agriculture's estimate of the cost to raise a child in the Midwest with a cost-of-living increase added for Fiscal Year 2001.

These amendments do not provide for any waivers in specified situations because these changes confer a benefit on foster parents and adoptive parents by increasing the foster family daily maintenance rate and the maximum adoption subsidy rate.

It is anticipated these amendments will also be adopted on an emergency basis by the Council on Human Services at its June 8, 2000, meeting to be effective July 1, 2000.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before July 5, 2000.

These amendments are intended to implement Iowa Code section 234.6 and 2000 Iowa Acts, Senate File 2435, section 31, subsection 6.

The following amendments are proposed.

ITEM 1. Amend rule 441—156.6(234) as follows:

Amend subrule 156.6(1) as follows:

156.6(1) Basic rate. A monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule:

Age of child	Daily rate
0 through 5	~~$13.79~~ *$14.00*
6 through 11	~~14.54~~ *14.78*
12 through 15	~~16.28~~ *16.53*
16 and over	~~16.32~~ *16.53*

Further amend rule **441—156.6(234)**, implementation clause, to read as follows:

This rule is intended to implement Iowa Code section 234.38 and ~~1999 Iowa Acts, House File 760, section 33, subsection 5~~ *2000 Iowa Acts, Senate File 2435, section 31, subsection 6.*

ITEM 2. Amend **441—Chapter 201**, implementation clause, to read as follows:

These rules are intended to implement Iowa Code sections 600.17 to 600.21 and 600.23; and ~~1999 Iowa Acts, House File 760, section 33, subsection 5~~ *2000 Iowa Acts, Senate File 2435, section 31, subsection 6.*

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HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 2000 Iowa Acts, Senate File 2193, sections 4(5), 6(3) and (4), and 21, the Department of Human Services proposes to adopt Chapter 161, "Iowa Senior Living Trust Fund," and Chapter 162, "Nursing Facility Conversion and Long-Term Care Services Development Grants," Iowa Administrative Code.

These rules implement provisions of 2000 Iowa Acts, Senate File 2193, the Iowa Senior Living Program Act. The goal of the Iowa Senior Living Program Act is to create a comprehensive long-term care system that is consumer-directed, provides a balance between the alternatives of institutionally and noninstitutionally provided services, and contributes to the quality of the lives of persons who are elderly or adults with disabilities in Iowa.

These rules implement the Iowa Senior Living Trust Fund created in the state treasury under the authority of the Department of Human Services and define and structure nursing facility conversion grants and long-term care services development grants to be made from the Iowa Senior Living Trust Fund by the Department.

The Iowa Senior Living Trust Fund is funded by receipt of federal revenue from public nursing facilities participating in the medical assistance program. The Department shall provide increased reimbursement to the participating public facilities for nursing facility services provided under the Medicaid program. The facilities shall retain $5,000 of additional reimbursement received per agreement as a processing payment and shall refund the remainder of the additional reimbursement through intergovernmental transfer to the Department. The Department shall deposit the federal share of the refund (less the $5,000 retained by the nursing facility) in the Iowa Senior Living Trust Fund and shall credit the nonfederal share of the refund to the Department's medical assistance appropriation.

Under these rules, Iowa nursing facilities will be eligible to apply for grants for capital or other one-time expenditure costs to assist with the cost of converting all or a portion of the facility to an assisted living facility or other alternatives to nursing facility care, and providers of long-term care services and nursing homes will be eligible to apply for grants to develop additional needed long-term care alternatives other than assisted living. These alternatives can then be funded through a Medicaid Home- and Community-Based Services (HCBS) waiver.

The rules establish criteria for awarding grants and set limits on funding. The General Assembly appropriated $20 million from the Senior Living Trust Fund for state fiscal year 2001 to provide these grants.

Conversion grants are limited to $1,000,000 per facility, with an additional $100,000 if the provider agrees to also provide adult day care, child care for children with special needs, safe shelter for victims of dependent adult abuse, or respite care. The maximum conversion grant per assisted living unit is $45,000. Service development grants are limited to $150,000 for HCBS waiver services. These rules also provide for an architectural and financial feasibility study allowance for conversion or service development grants of up to $15,000.

These rules do not provide for any waivers in specific situations because creation of the trust fund and awarding of grants will confer a benefit on providers and consumers. Participation by public nursing facilities in the creation of the trust fund is voluntary. All participants in the creation of the fund and all grant applicants should be subject to the same rules.

It is anticipated these rules will also be adopted on an emergency basis by the Council on Human Services at its June 8, 2000, meeting to be effective July 1, 2000.

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Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before July 5, 2000.

Oral presentations may be made by persons appearing at the following meetings. Written comments will also be accepted at these times.

Cedar Rapids - July 11, 2000 Cedar Rapids Regional Office Iowa Building - Suite 600 Sixth Floor Conference Room 411 Third St. S.E. Cedar Rapids, Iowa 52401	11 a.m.
Council Bluffs - July 5, 2000 CPI Conference Room Council Bluffs Regional Office 417 E. Kanesville Boulevard Council Bluffs, Iowa 51501	10 a.m.
Davenport - July 10, 2000 Davenport Area Office Bicentennial Building - Fifth Floor Large Conference Room 428 Western Davenport, Iowa 52801	11 a.m.
Des Moines - July 11, 2000 Des Moines Regional Office City View Plaza Conference Room 104 1200 University Des Moines, Iowa 50314	10 a.m.
Mason City - July 7, 2000 Mason City Area Office Mohawk Square, Liberty Room 22 North Georgia Avenue Mason City, Iowa 50401	11 a.m.
Ottumwa - July 6, 2000 Ottumwa Area Office Conference Room 3 120 East Main Ottumwa, Iowa 52501	11 a.m.
Sioux City - July 7, 2000 Sioux City Regional Office Fifth Floor 520 Nebraska St. Sioux City, Iowa 51101	1:30 p.m.
Waterloo - July 5, 2000 Waterloo Regional Office Pinecrest Office Building Conference Room 402 1407 Independence Avenue Waterloo, Iowa 50703	10 a.m.

Any persons who intend to attend a public hearing and have special requirements such as hearing or vision impairments should contact the Office of Policy Analysis at (515)281-8440 and advise of special needs.

These rules are intended to implement 2000 Iowa Acts, Senate File 2193, sections 4, 5, and 6.

The following amendments are proposed.

ITEM 1. Adopt the following new chapter:

CHAPTER 161
IOWA SENIOR LIVING TRUST FUND

PREAMBLE

These rules describe the Iowa senior living trust fund created by 2000 Iowa Acts, Senate File 2193, and explain how public nursing facilities can participate in a program for funding of the senior living trust fund.

441—161.1(78GA,SF2193) Definitions.

"Department" means the Iowa department of human services.

"Senior living coordinating unit" means the senior living coordinating unit created within the Iowa department of elder affairs pursuant to Iowa Code section 231.58 as amended by 2000 Iowa Acts, Senate File 2193, section 13.

"Senior living program" means the Iowa senior living program established by 2000 Iowa Acts, Senate File 2193.

"Senior living trust fund" or "trust fund" means the Iowa senior living trust fund created by 2000 Iowa Acts, Senate File 2193, section 4, in the state treasury under the authority of the department.

441—161.2(78GA,SF2193) Funding and operation of trust fund.

161.2(1) Moneys from intergovernmental agreements and other sources. Moneys received by the department through intergovernmental agreements for the senior living program and moneys received by the department from other sources for the senior living trust fund, including grants, contributions, and participant payments, shall be deposited in the senior living trust fund.

161.2(2) Use of moneys. Moneys deposited in the trust fund shall be used only for the purposes of the senior living program as specified in 2000 Iowa Acts, Senate File 2193, and in rule 441—161.3(78GA,SF2193).

441—161.3(78GA,SF2193) Allocations from the senior living trust fund. Moneys deposited in the senior living trust fund shall be used only as provided in appropriations from the trust fund to the department of human services and the department of elder affairs and for purposes, including the awarding of grants, as specified in 2000 Iowa Acts, Senate File 2193, section 6, and in 441—Chapter 162.

441—161.4(78GA,SF2193) Participation by government-owned nursing facilities.

161.4(1) Participation agreement. Iowa government-owned nursing facilities participating in the Iowa Medicaid program and wishing to participate in the funding of the senior living trust fund shall contact the Department of Human Services, Division of Medical Services, Fifth Floor, 1305 E. Walnut, Des Moines, Iowa 50319-0114, for information regarding the conditions of participation. Upon acceptance of the conditions of participation, the facility shall sign Form 470-3763, Participation Agreement.

161.4(2) Reimbursement. Upon acceptance of the participation agreement, the department shall authorize increased reimbursement to the participating facility for nursing facilities services provided under the Medicaid program. The facility shall retain $5,000 of the additional reimbursement received per agreement as a processing payment and shall refund the remainder of the additional reimbursement through intergovernmental transfer to the department for deposit of the federal share (less the $5,000 retained by the facility) in

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the Iowa senior living trust fund and the nonfederal share of money in the medical assistance appropriation.

These rules are intended to implement 2000 Iowa Acts, Senate File 2193, sections 4 and 5.

ITEM 2. Adopt the following **new** chapter:

CHAPTER 162
NURSING FACILITY CONVERSION AND LONG-TERM CARE SERVICES DEVELOPMENT GRANTS

PREAMBLE

These rules define and structure grants to be made from the Iowa senior living trust fund, hereafter referred to as the trust fund.

Grants are available to nursing facilities for capital or other one-time expenditure costs incurred for conversion of all or a portion of the facility to an assisted living facility or other alternatives to nursing facility care, and to noninstitutional providers of long-term care for development of other needed long-term care alternatives.

These rules implement provisions of 2000 Iowa Acts, Senate File 2193, which establishes an overall goal of moving toward a balanced, comprehensive, affordable, high quality long-term care system.

441—162.1(78GA,SF2193) Definitions.

"Adult day care" means structured social, habilitation, and health activities provided in a congregate setting to alleviate deteriorating effects of isolation; to aid in transition from one living arrangement to another; to provide a supervised environment while the regular caregiver is working or otherwise unavailable; or to provide a setting for receipt of multiple health services in a coordinated setting.

"Affordable" means rates for payment of services that do not exceed the rates established for providers of medical and health services under the medical assistance program. In relation to services provided by a home- and community-based waiver services provider, "affordable" means that the total monthly cost of the home- and community-based waiver services provided do not exceed the maximum cost for that level of care as established by rule by the department.

In relation to assisted living, "affordable" means rates for the costs not paid by medical assistance are less than or equal to 110 percent of the maximum prevailing fair market rent for the same size apartment under guidelines of the applicable United States Department of Housing and Urban Development (HUD) low-rent housing program in the area where the assisted living program is located, plus 185 percent of the maximum federal supplemental security income benefit for an individual or couple (as applicable). Rates for the costs paid by medical assistance may not exceed the rates established for payment under the medical assistance home- and community-based services (HCBS) elderly waiver program.

"Assisted living program" means an assisted living program certified or voluntarily accredited by the Iowa department of elder affairs under Iowa Code chapter 231C as amended by 2000 Iowa Acts, Senate File 2193, section 14.

"Child care for children with special needs" means physical, emotional, and social care delivered up to ten hours a day to children under the age of 18 by a service provider approved for participation in the medical assistance waivers in lieu of care by the parent or legal guardian.

"Department" means the Iowa department of human services.

"Director" means the director of the Iowa department of human services.

"Distinct portion of a nursing facility" means a clearly identifiable area or section within a nursing facility, consisting of at least a living unit, wing, floor, or building containing contiguous rooms.

"Efficient and economical care" means services provided within the reimbursement limits for the services under 441—subrule 79.1(2) for Medicaid home- and community-based services (HCBS) waivers and for less than the cost of comparable services provided in a nursing facility.

"Grantee" means the recipient of a grant.

"HCBS waivers" means Medicaid home- and community-based services waivers under 441—Chapter 83, which provide service funding for specific eligible consumer populations in Iowa.

"Long-term care alternatives" means those services specified under HCBS waivers as available services for elderly persons or adults with disabilities; elder group homes certified under Iowa Code chapter 231B; assisted living programs certified or voluntarily accredited under Iowa Code chapter 231C as amended by 2000 Iowa Acts, Senate File 2193, section 14; and the PACE program. These are services other than nursing facility care provided to the elderly and persons with disabilities.

"Long-term care service development" means either of the following:

1. The remodeling of existing space and, if necessary, the construction of additional space required to accommodate development of long-term care alternatives, excluding the development of assisted living programs or elder group home alternatives.
2. New construction for long-term care alternatives, excluding new construction of assisted living programs or elder group homes, if the senior living coordinating unit determines that new construction is more cost-effective for the grant program than the conversion of existing space.

"Medical assistance program" means the program established in Iowa Code chapter 249A and otherwise referred to as Medicaid or Title XIX.

"Nursing facility" means a licensed nursing facility as defined in Iowa Code section 135C.1 or a licensed hospital as defined in Iowa Code section 135B.1, a distinct part of which provides long-term care nursing facility beds.

"Nursing facility conversion" means either of the following:

1. The remodeling of nursing facility space existing on July 1, 1999, and certified for medical assistance nursing facility reimbursement and, if necessary, the construction of additional space required to accommodate an assisted living program.
2. New construction of an assisted living program if existing nursing facility beds are no longer licensed and the senior living coordinating unit determines that new construction is more cost-effective for the grant program than the conversion of existing space.

"PACE program" means a program of all-inclusive care for the elderly established pursuant to 42 U.S.C. Section 1396u-4 that provides delivery of comprehensive health and social services to seniors by integrating acute and long-term care services, and that is operated by a public, private, nonprofit, or proprietary entity. "Pre-PACE program" means a PACE program in the initial start-up phase that provides the same scope of services as a PACE program.

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"Persons with disabilities" means persons 18 years of age or older with disabilities as disability is defined in Iowa Code section 225B.2.

"Respite care" means temporary care of an aged adult, or an adult or child with disabilities, to relieve the usual caregiver from continuous support and care responsibilities. Components of respite care services are supervision, tasks related to the individual's physical needs, tasks related to the individual's psychological needs, and social and recreational activities. A facility providing respite care must provide some respite care in the facility, but may also provide in-home respite.

"Safe shelter for victims of dependent adult abuse" means board, room, and services provided to persons identified by a department dependent adult abuse investigator as victims of dependent adult abuse.

"Senior" means elder as defined in Iowa Code section 231.4.

"Senior living coordinating unit" means the planning group established in Iowa Code section 231.58 as amended by 2000 Iowa Acts, Senate File 2193, section 13, or its designee.

"Senior living program" means the senior living program created by 2000 Iowa Acts, Senate File 2193, to provide for long-term care alternatives, long-term care service development, and nursing facility conversion.

"Trust fund" means the Iowa long-term care trust fund established by 2000 Iowa Acts, Senate File 2193, section 4.

"Underserved area" means a county in which the number of currently licensed nursing facility beds and certified or accredited assisted living units is less than or equal to 4.4 percent of the number of individuals 65 years of age or older according to the most current census data. In addition, the department, in determining if a county is underserved, may consider additional information gathered through its own research or submitted by an applicant including, but not limited to, any of the following:

1. Availability of and access to long-term care alternatives relative to individuals eligible for medical assistance.
2. The current number of seniors and persons with disabilities and the projected number of these individuals.
3. The current number of seniors and persons with disabilities requiring professional nursing care and the projected number of these individuals.
4. The current availability of long-term care alternatives and any anticipated changes in the availability of these alternatives.

441—162.2(78GA,SF2193) Availability of grants. In any year in which funds are available for new nursing facility conversion or long-term care services development grants, the department shall issue a request for applications for grants. The amount of money granted shall be contingent upon the funds available. The use of funds appropriated to award grants shall be in compliance with legislation and at the direction of the senior living coordinating unit.

There is no entitlement to any funds available for grants awarded pursuant to this chapter. The department may award grants to the extent funds are available and, within its discretion, to the extent that applications are approved.

441—162.3(78GA,SF2193) Grant eligibility.

162.3(1) Eligible applicants. A grant applicant shall be:

a. A licensed nursing facility that has been an approved provider under the medical assistance program under the same ownership for the three-year period prior to application for the grant.

b. A provider of long-term care services, including one not covered by the medical assistance program, that has been in business for at least three years under the same owner.

162.3(2) Types and amounts of grants.

a. Architectural and financial feasibility study allowance. An architectural and financial feasibility study allowance may be awarded solely for costs directly attributable to development of the architectural and financial review documentation associated with conversion or service development. Architectural and financial feasibility study allowances for conversion or service development grants are limited to $15,000, not to exceed actual costs for each project.

b. Conversion grants. A conversion grant may be awarded to convert all or a portion of a licensed nursing facility to affordable certified assisted living units (limited to $45,000 per unit) and for capital or one-time expenditures including, but not limited to, start-up expenses, training expenses, and operating losses for the first year of operation following conversion.

Conversion grants are limited to a total of $1,000,000 per facility, with an additional $100,000 if the provider agrees to also provide adult day care, child care for children with special needs, safe shelter for victims of dependent adult abuse, or respite care.

A grant application which expands resident capacity of an existing nursing facility shall not be considered. A grant that requires additional space to accommodate supportive services related to the functioning of the long-term care alternative, such as dining rooms, kitchen and recreation areas, or other community-use areas may be considered.

c. Long-term care services development grant. A long-term care services development grant may be awarded for capital or one-time expenditures to develop needed long-term care services covered under a Medicaid HCBS waiver or to develop a PACE program. Expenditures may include, but are not limited to, start-up expenses, training expenses, and operating losses for the first year of operation. Service development grants are limited to $1,000,000 per PACE program, and $150,000 for HCBS waiver services.

162.3(3) Criteria for grant applicants. A grant shall be awarded only to an applicant meeting all of the following criteria:

a. The applicant is located in an area determined by the senior living coordinating unit to be underserved with respect to a particular long-term care alternative service.

b. The applicant is able to provide a minimum matching contribution of 20 percent of the total cost of any conversion, remodeling, or construction. Costs used by grantees to match grant funds shall be directly attributable to the costs of conversion or service development.

c. Grants applications from nursing facilities shall be considered only from facilities with an established history of providing quality long-term care services. Facilities shall be in substantial compliance with federal Medicaid participation requirements as evidenced at a minimum by all of the following:

(1) No identified deficiencies which pose a significant risk to resident health and safety at the time of application.

(2) No more than one isolated event resulting in actual harm to residents during the current Medicaid certification period.

(3) No citations for a pattern of events resulting in actual harm to residents for three years prior to application.

d. Grants to applicants other than nursing facilities shall be considered from applicants only when:

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(1) There is substantial compliance with Medicare and Medicaid participation requirements or other applicable provider certification requirements at the time of application.

(2) Compliance exists with Medicare and Medicaid requirements, if applicable, for a three-year period prior to application.

(3) Compliance exists with the criminal background check system, if applicable.

e. The applicant agrees to do all of the following as applicable to the type of grant:

(1) Participate in the medical assistance program and maintain a medical assistance client participation rate of at least 40 percent, subject to the demand for participation by persons eligible for medical assistance. Applicants shall also agree that persons able to pay the costs of assisted living shall not be discharged from their living unit due to a change in payment source.

(2) Provide a service delivery package that is affordable for those persons eligible for services under the medical assistance home- and community-based services waiver program.

(3) Provide a refund of the grant to the senior living trust fund on a prorated basis if the applicant or the applicant's successor in interest: ceases to operate an affordable long-term care alternative within the first ten-year period of operation following the awarding of the grant; fails to maintain a participation rate of 40 percent in accordance with subparagraph (1) within the first ten-year period of operation following the awarding of the grant; or discharges persons able to pay the costs of assisted living from their living unit due to a change in payment source.

f. The applicant must demonstrate that the proposed method of construction, whether new or remodeling, is the most cost-effective for the grant program and, when developing assisted living units, must agree that a specified number of existing nursing facility beds will not continue to be licensed.

162.3(4) Allowable and nonallowable costs.

a. Examples of allowable costs include:

(1) Professional fees incurred specifically for conversion of facility or service development, including architectural, financial, legal, human resources, research, and marketing fees.

(2) Construction costs for the remodeling of existing space and, if necessary, the construction of additional space required to accommodate assisted living program services or other alternatives to nursing facility care or new construction of an assisted living facility or other alternative to nursing facility care if existing nursing facility beds are no longer licensed and the department determines that new construction is more cost-effective for the grant program than the conversion of existing space.

(3) Start-up and training expenses and operating losses for the first year.

b. Examples of nonallowable costs include:

(1) Costs of travel, personal benefits, and other facility programs or investments.

(2) Construction costs to remodel nursing facility space that will remain in use for nursing facility care.

(3) Any costs associated with operation and maintenance of a non-grant-related facility or service.

(4) Any costs incurred above per unit grant amounts.

441—162.4(78GA,SF2193) Grant application process.

162.4(1) Public notice of grant availability. When funds are available for new grants, the department shall announce through public notice the opening of a competitive application period. The announcement shall include information on how agencies may obtain an application package and the deadlines for submitting an application.

162.4(2) Request for applications. The department shall distribute grant application packages for nursing facility conversion and long-term care service development grants upon request. Applicants desiring to apply for a grant shall submit Form 470-3759, Application for Nursing Facility Conversion Grant, or Form 470-3760, Application for Long-Term Care Service Development Grant, with accompanying documentation to the department by the date established in the application package. If an application does not include the information specified in the grant application package or if it is late, it will be disapproved.

The application must be submitted by the legal owner of the nursing facility or long-term care provider. In cases in which the provider licensee does not hold title to the real property in which the service is operated, both the licensee and the owner of the real property must submit a joint application. Form 470-3759 or Form 470-3760 must be signed by an individual authorized to bind the applicant to perform legal obligations. The title of the individual must be stated.

162.4(3) Application requirements.

a. Prior to submission of an application, the applicant must arrange and conduct a community assessment and solicit public comment on the plans proposed in the grant application. In soliciting public comment the applicant must at a minimum:

(1) Publish an announcement in a local or regional newspaper of the date, time, and location of a public meeting regarding the proposed project, with a brief description of the proposed project.

(2) Post notice of the meeting at the nursing facility or applicant's offices and at other prominent civic locations.

(3) Notify potentially affected clients and their families of the proposed project, of the potential impact on them, and of the public meeting at least two weeks prior to the public meeting.

(4) Advise the department of the public meeting date at least two weeks before the scheduled meeting.

(5) Address the following topics at the public meeting: a summary of the proposed project, the rationale for the project, and resident retention and relocation issues.

(6) Receive written and oral comments at the meeting and provide for a seven-day written comment period following the meeting.

(7) Summarize all comments received at the meeting or within the seven-day written comment period and submit the summary to the department as part of the application package.

b. Grant applications shall contain, at a minimum, the following information:

(1) Applicant identification and a description of the agency and its resources, which will demonstrate the ability of the applicant to carry out the proposed plan.

(2) Information to indicate the nursing facility applicant's extent of conversion of all or a portion of its facility to an assisted living program or development of other long-term care alternatives. Current and proposed bed capacity shall be given as well as the number of beds to be used for special services. Nursing facility and noninstitutional providers shall describe outpatient services they wish to develop.

(3) A request for an architectural and financial feasibility study allowance, if desired.

(4) Demonstration at a minimum of the following:

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1. Public support for the proposal exists. Evidence of public support shall include, but not be limited to, the following: the summary of all comments received at the public meeting or within the seven-day written comment period and letters of support from the area agency on aging; the local board of health; local provider or consumer organizations such as the local case management program for the frail elders, resident advocate committee or Alzheimer's chapter; and consumers eligible to receive services from the developed long-term care alternative.

2. The proposed conversion or service development will have a positive impact on the overall goal of moving toward a balanced, comprehensive, high-quality, long-term care system.

3. Conversion of the nursing facility or a distinct portion of the nursing facility to an assisted living program or development of an alternative service will offer efficient and economical long-term care services in the service area described by the applicant.

4. The assisted living program or other alternative services are otherwise not likely to be available in the service area described by the applicant for individuals eligible for services under the medical assistance program.

5. If applicable, a resulting reduction in the availability of nursing facility services will not cause undue hardship to those individuals requiring nursing facility services for a period of at least ten years.

6. Conversion to an assisted living program or development of other alternative services will result in a lower per client reimbursement to the grant applicant under the medical assistance program.

7. The service delivery package will be affordable for individuals eligible for services under the medical assistance home- and community-based services waiver program.

8. Long-term care alternatives will be available and accessible to individuals eligible for medical assistance and other individuals with low or moderate income.

9. Long-term care alternative services are needed based on the current and projected numbers of seniors and persons with disabilities, including those requiring assistance with activities of daily living in the service area described by the applicant.

10. Long-term care alternatives in the service area are needed based on the community needs assessment and upon current availability and any anticipated changes in availability.

162.4(4) Selection of grantees. All applications received by the department within the designated time frames and meeting the criteria set forth in rule 441—162.3(78GA, SF2193) and subrule 162.4(3) shall be reviewed by the department under the direction of the senior living coordinating unit.

If grant applications that meet the minimum criteria exceed the amount of available funds, scoring criteria shall be used to determine which applicants shall receive a grant. Scoring shall be based on the following:

1. The degree to which the county or counties in the service area described by the grant applicant are underserved - up to 20 points. If more than one county is in the service area, a weighted average shall be used.

2. The level of community support as identified by the community-based assessment, public meeting comments, and letters of support and the degree of collaboration among local service providers - up to 20 points.

3. For conversion grants, the number of licensed beds eliminated or converted to special needs beds, with evidence that the resulting reduction in licensed beds will not cause a hardship for persons requiring nursing services - up to 20 points.

4. The number of added services to fill a service need gap - up to 20 points.

5. Evidence of an adequate plan to carry out the requirements of this chapter and regulations pertaining to the long-term care alternative service - up to 20 points.

6. Costs of long-term care alternative services to consumers - up to 30 points.

7. Evidence of the ability and commitment to make proposed alternatives accessible to low- and moderate-income persons - up to 20 points.

162.4(5) Notification of applicants. Applicants shall be notified whether the grant proposal is approved or denied. Denial of an application in one year does not preclude submission of an application in a subsequent year.

441—162.5(78GA,SF2193) Grant dispersal stages. Following approval of an applicant's grant proposal by the department, the grant process shall proceed through the following stages:

162.5(1) Completion of architectural and financial feasibility study.

a. An architectural and financial feasibility study shall be completed pursuant to the guidelines included in the applicable grant application package and applicable service regulations.

(1) For facility conversion, construction, or remodeling, the architectural plan shall provide schematic drawings at a minimum of one-eighth scale consisting of the building site plan, foundation plan, floor plan, cross section, wall sections, and exterior elevations.

(2) The grantee shall comply with all local, state and national codes pertaining to construction; and certification, licensure, or accreditation requirements applicable to the long-term care alternative.

(3) Construction documents, budget cost estimates, and related services must be rendered by a professional architect or engineer registered in Iowa.

b. Payment of up to $15,000 may be issued to each approved applicant to proceed with the architectural and financial feasibility study if requested in the original application. By making a request for an architectural and financial feasibility study allowance, the applicant agrees that the funds will be used solely for costs directly attributable to development of the architectural and financial review documentation associated with conversion or service development.

c. All grantees must submit the completed study documents within the time frame identified in the request for application together with an itemized accounting of the expenditure of any allowance funds. Any unexpended architectural and financial review allowance funds shall be returned to the department.

162.5(2) Review of architectural and financial feasibility study. The department shall review the architectural and financial feasibility study materials and shall grant or deny approval to develop or obtain final budget estimates for the proposed project. Approval to proceed shall be granted only if the architectural and financial feasibility study supports the ability of the grantee to meet the minimum grant criteria and to complete the proposed project as set forth in the original application.

162.5(3) Completion of final budget estimate. Grantees approved to proceed with the final budget estimate shall submit the final budget estimates, any revisions to previously submitted materials, and a request for a grant in a specific

HUMAN SERVICES DEPARTMENT[441](cont'd)

amount. The matching fund amount to be paid by the grantee must be stated in the request.

162.5(4) Review of final budget estimate. The department shall review the final budget estimate and issue a notice of award for a grant in a specific amount if the final budget estimate supports the ability of the grantee to meet the minimum grant criteria and to complete the proposed project as set forth in the original application.

441—162.6(78GA,SF2193) Project contracts. The funds for approved applications shall be awarded through a contract entered into by the department and the applicant.

441—162.7(78GA,SF2193) Grantee responsibilities.

162.7(1) Records and reports.

a. The grantee shall maintain the following records:

(1) Consumer participation records that identify persons by payment source.

(2) Complete and separate records regarding the expenditure of senior living trust funds for the grant amounts received.

b. Recipients of grants shall submit a bimonthly progress report to the department and senior living coordinating unit beginning the second month following project approval through project completion.

c. Recipients shall submit annual cost reports to the department, in conformance with policies and procedures established by the department, regarding the project for a period of ten years after the date the grantee begins operation of its facility as an assisted living facility or other long-term care alternative.

162.7(2) Reasonable access. The grantee shall allow access to records at reasonable times by duly authorized representatives of the department for the purpose of conducting audits and examinations and for preparing excerpts and transcripts. This access to records shall continue for a period of ten years from the date the grantee begins operation as an assisted living facility or other long-term care alternative.

162.7(3) Relinquishment of license. The grantee shall relinquish the nursing facility bed license for any facility space converted to assisted living or alternatives to nursing facility care for a ten-year period.

162.7(4) Acceptance of financial responsibility. The grantee shall accept financial responsibility for all costs over and above the grant amount which are related to project completion.

162.7(5) Participation in the medical assistance program. The grantee shall participate in the medical assistance program as a provider of nursing facility services if the grantee continues to provide any nursing facility services.

162.7(6) Segregation of medical assistance residents forbidden. The grantee shall not segregate medical assistance residents in an area, section, or portion of an assisted living program or long-term care alternative service. Grantees shall allow a resident who is converting from private-pay to medical assistance to remain in the resident's living unit if the resident is able to pay the rate and shall not relocate the resident solely due to a change in payment source.

441—162.8(78GA,SF2193) Offset. The department may deduct the amount of any refund due from a grantee from any money owed by the department to the grantee or the grantee's successor in interest.

441—162.9(78GA,SF2193) Appeals. Applicants dissatisfied with the department's actions regarding applications for grants and grantees dissatisfied with actions regarding a grant may file an appeal with the director. The letter of appeal must be received by the director within five working days of the date of the notice and must include a request for the director to review the action and the reasons for dissatisfaction. Within ten working days of the receipt of the appeal, the director shall review the appeal request and issue a final decision.

No disbursements shall be made to any applicant for a period of five working days following the notice awarding the original grants. If an appeal is filed within the five days, all disbursements shall be held pending a final decision on the appeal.

These rules are intended to implement 2000 Iowa Acts, Senate File 2193, section 6.

ARC 9874A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 163, "Adolescent Pregnancy Prevention and Services to Pregnant and Parenting Adolescents Programs," appearing in the Iowa Administrative Code.

These amendments provide that grants to pregnancy prevention programs that are developed after July 1, 2000, shall be awarded to programs which are comprehensive in scope and which are based on existing models that have demonstrated positive outcomes. Priority in the awarding of grants shall be given to programs that serve areas of the state which demonstrate the highest percentage of unplanned pregnancies of females aged 13 or older but younger than age 18 within the geographic area to be served by the grant.

These amendments do not provide for waivers in specified situations because these changes were mandated by the Seventy-eighth General Assembly.

It is anticipated these amendments will also be adopted on an emergency basis by the Council on Human Services at its June 8, 2000, meeting to be effective July 1, 2000.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before July 5, 2000.

These amendments are intended to implement Iowa Code section 234.6 and 2000 Iowa Acts, Senate File 2435, section 3, subsection 11.

The following amendments are proposed.

ITEM 1. Amend rule **441—163.1(234)** by adopting the following **new** definition in alphabetical order:

"Percentage of pregnancies" means the total number of births to mothers aged 13 years of age and older but younger than 18 years of age in the service area for the most recent year for which data is available divided by the total number of births statewide for the same age group and the same year.

ITEM 2. Amend subrule 163.3(1) as follows:

HUMAN SERVICES DEPARTMENT[441](cont'd)

163.3(1) Grants will be awarded to eligible applicants for specifically designed projects. Preference in awarding grants shall be given to projects which ~~utilize~~ *use* a variety of community resources and agencies. *Priority in awarding of points for community grants shall be given to programs that serve areas of the state which demonstrate the highest percentage of pregnancies of females aged 13 years of age or older but younger than age 18 within the geographic area to be served by the grant.* Projects selected for the adolescent pregnancy prevention statewide campaign, adolescent pregnancy evaluation grant, and state coalition grants will be eligible for noncompetitive funding for up to three years, pending availability of funds and based upon satisfactory progress toward program goals. Projects which do not make satisfactory progress toward program goals shall be required to competitively bid for refunding. After three years, all projects must competitively bid for refunding.

Projects funded *prior to July 2000* under the community adolescent pregnancy prevention and services grants are eligible for funding for up to nine years, pending availability of funds ~~and based upon satisfactory progress toward program goals~~ *if the programs are comprehensive in scope and have demonstrated positive outcomes. Grants awarded after July 2000 must be comprehensive in scope and be based on existing models that have demonstrated positive outcomes.*

An increasing grantee match will be required. A 5 percent grantee match will be required in year one. The match will increase by 5 percent each subsequent year a project receives funding. In-kind matches may be applied toward the grantee match. Projects which do not make satisfactory progress toward program goals shall be required to competitively bid for refunding.

ITEM 3. Amend subrule **163.4(2)**, paragraph **"d,"** as follows:

d. Statement of problem and need, *including information demonstrating the percentage of pregnancies of females aged 13 years of age or older but younger than age 18 within the geographic area to be served.*

ITEM 4. Amend subrule 163.5(3), introductory paragraph, and paragraph **"i,"** as follows:

163.5(3) ~~A weighted~~ *Weighted* scoring criteria will be used to determine grant awards. The maximum ~~amount~~ *number* of points possible is ~~110~~ *125*. Determination of final point awards will be based on the following:

i. Overall quality and impact of program ~~and consideration of legislative preference areas~~—10 points.

Further amend subrule 163.5(3) by adding the following **new** paragraph **"k"**:

k. Consideration of legislative priority area—15 points.

ARC 9875A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code section 217.6 and 2000 Iowa Acts, House File 2555, section 1, subsection 1, and section 11, and Senate File 2435, section 31, subsection 15, and section 44, the Department of Human Services proposes to amend Chapter 185, "Rehabilitative Treatment Services," appearing in the Iowa Administrative Code.

This amendment discontinues during state fiscal year 2001 the practice of allowing individual rehabilitative treatment and supportive service (RTSS) rates to be renegotiated and implements a rate increase, both as mandated by the General Assembly. RTSS providers will receive a 5 percent across-the-board cost-of-living adjustment that shall be applied to each individual provider's state-negotiated rate.

This amendment does not provide for any waivers in specific situations because these changes were mandated by the legislature, with no provisions for exceptions.

It is anticipated this amendment will also be adopted on an emergency basis by the Council on Human Services at its June 8, 2000, meeting to be effective July 1, 2000.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before July 5, 2000.

This amendment is intended to implement Iowa Code section 234.6 and 2000 Iowa Acts, House File 2555, section 1, subsection 1, paragraph "c," and Senate File 2435, section 31, subsections 9 and 14.

The following amendment is proposed.

Amend subrule **185.112(1)**, paragraph **"k,"** as follows:

k. Once a negotiated rate is established based on the provisions of this subrule, it shall not be changed or renegotiated during the time period of this rule except in the following circumstances:

(1) By mutual consent of the provider and the regional administrator of the host region based upon the factors delineated at paragraph 185.112(1)"f~~,~~" *except that rates shall not be changed or renegotiated for the period of July 1, 2000, through June 30, 2001.*

(2) In accordance with paragraph 185.112(6)"b~~,~~" *except that rates shall not be changed or renegotiated for services not assumed by a new provider for the period of July 1, 2000, through June 30, 2001.*

(3) ~~When~~ *Rates may be changed when* funds are appropriated for an across-the-board increase. Effective July 1, ~~1999~~ *2000*, a ~~2~~ *5* percent across-the-board ~~increase~~ *cost-of-living adjustment* will be applied.

ARC 9865A

RACING AND GAMING COMMISSION[491]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby gives Notice of Intended Action to rescind Chapter 1, "Organization and Operation," and adopt a new Chapter 1 with the same title; amend Chapter 4, "Contested Cases and Other

RACING AND GAMING COMMISSION[491](cont'd)

Proceedings"; rescind Chapter 5, "Applications for Track Licenses and Racing Dates," and adopt a new Chapter 5, "Track and Excursion Boat Licensees' Responsibilities"; rescind Chapter 6, "Criteria for Granting Licenses and Determining Race Dates"; amend Chapter 7, "Greyhound Racing," Chapter 9, "Harness Racing," Chapter 10, "Thoroughbred Racing," and Chapter 13, "Occupational and Vendor Licensing"; rescind Chapter 20, "Application Process for Excursion Boats and Racetrack Enclosure Gaming License," and Chapter 21, "Criteria for Granting an Excursion Boat and Racetrack Enclosure Gaming License"; amend Chapter 22, "Manufacturers and Distributors," and Chapter 24, "Accounting and Cash Control"; rescind Chapter 25, "Riverboat Operation"; and amend Chapter 26, "Rules of the Games," Iowa Administrative Code.

This rule making proposes to rescind current Chapters 1, 5, 6, 20, 21, and 25 and to put in place new Chapters 1 and 5. There have been no new rules added of any substance. This rule making only rewrites existing rules to make them consistent with current practice, eliminates redundant rules, and moves some current rules to more appropriate chapters. The chapters that are being rescinded basically mirror each other except that some are for pari-mutuel facilities and others for excursion boat gambling facilities. These amendments make the rules of the Commission more clear and concise and ensure that each licensee is treated fairly.

These amendments are not subject to waiver, pending adoption of a uniform waiver rule.

This rule making was sent to all the licensees prior to its going before the Commission. No comments were received.

Any person may make written suggestions or comments on the proposed amendments on or before July 10, 2000. Written material should be directed to the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa 50309. Persons who wish to convey their views orally should contact the Commission office at (515)281-7352.

Also, there will be a public hearing on July 10, 2000, at 9 a.m. in the office of the Racing and Gaming Commission, 717 E. Court, Suite B, Des Moines, Iowa. Persons may present their views at the public hearing either orally or in writing.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

The following amendments are proposed.

ITEM 1. Rescind **491—Chapter 1** and adopt in lieu thereof the following **new** chapter:

CHAPTER 1
ORGANIZATION AND OPERATION

491—1.1(99D,99F) Function. The racing and gaming commission was created by Iowa Code chapter 99D and is charged with the administration of the Iowa pari-mutuel wagering Act and excursion boat gambling Act. Iowa Code chapters 99D and 99F mandate that the commission shall have full jurisdiction over and shall supervise all race meetings and gambling operations governed by Iowa Code chapters 99D and 99F.

491—1.2(99D,99F) Organization and operations.

1.2(1) The racing and gaming commission is located at 717 E. Court, Suite B, Des Moines, Iowa 50309; telephone (515)281-7352. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

1.2(2) The racing and gaming commission consists of five members. The membership shall elect a chairperson and vice-chairperson in July of each year. No chairperson shall serve more than two consecutive one-year full terms.

1.2(3) The commission meets periodically throughout the year and shall meet in July of each year. Notice of a meeting is published on the commission's Web site at www3.state.ia.us/irgc/ at least five days in advance of the meeting or will be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas are available to any interested persons not less than five days in advance of the meeting. All meetings shall be open to the public unless a closed session is voted by four members or all members present for the reasons specified in Iowa Code section 21.5. The operation of commission meetings shall be governed by the following rules of procedure:

a. A quorum shall consist of three members.

b. When a quorum is present, a position is carried by an affirmative vote of the majority of the entire membership of the commission.

c. Persons wishing to appear before the commission should submit a written request to the commission office not less than ten working days prior to the meeting. The administrator or commission may place a time limit on presentations after taking into consideration the number of presentations requested.

d. Special or electronic meetings may be called by the chair only upon a finding of good cause and shall be held in strict accordance with Iowa Code section 21.4 or 21.8.

e. The presiding officer may exclude any person from the meeting for behavior that disrupts or obstructs the meeting.

f. Cases not covered by this rule shall be governed by the 1990 edition of Robert's Rules of Order Newly Revised.

491—1.3(99D,99F) Administration of the commission. The commission shall appoint an administrator for the racing and gaming commission who shall be responsible for the day-to-day administration of the commission's activities.

491—1.4(17A,22,99F) Open records. Except as provided in Iowa Code sections 17A.2(11)"f" and 22.7, all public records of the commission shall be available for public inspection during business hours. Requests to obtain records may be made either by mail, telephone, or in person. Minutes of commission meetings, forms, and other records routinely requested by the public may be obtained without charge or viewed on the commission's Web site. Other records requiring more than ten copies may be obtained upon payment of the actual cost for copying. This charge may be waived by the administrator.

491—1.5(17A,99D,99F) Forms. All forms utilized in the conduct of business with the racing and gaming commission shall be available from the commission upon request. These forms include but are not limited to:

1.5(1) Racetrack or excursion boat license application. This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the facility, and description of proposed operation. The form may include other information the commission deems necessary to make a decision on the license application. The qualified nonprofit corporation and the boat operator, if different than the qualified nonprofit corporation, shall pay a nonrefundable application fee to offset the commission's cost for processing the application in the amount of $25,000. The fee shall be $5,000 for each subse-

quent application involving the same operator and the same qualified sponsoring organization. Additionally, the applicant shall remit an investigative fee of $15,000 to the department of public safety to do background investigations as required by the commission. The department of public safety shall bill the applicant/licensee for additional fees as appropriate and refund any unused portion of the investigative fee within 90 days after the denial or operation begins.

1.5(2) Renewal application for racing license. This form shall contain, at a minimum, the full name of the applicant, racing dates, simulcast proposal, feasibility of racing facility, distribution to qualified sponsoring organizations, table of organization, management agreement, articles of incorporation and bylaws, lease agreements, financial statements, information on the gambling treatment program, and description of racetrack operations. The form may include other information the commission deems necessary to make a decision on the license application.

1.5(3) Renewal application for excursion boat license. This form shall contain, at a minimum, the full name of the applicant, annual fee, distribution to qualified sponsoring organizations, table of organization, internal controls, operating agreement, hours of operation, casino operations, Iowa resources, contracts, guarantee bond, notarized certification of truthfulness, and gambling treatment program. The form may include other information the commission deems necessary to make a decision on the license application. An annual fee to operate an excursion gambling boat shall be based on the passenger-carrying capacity including crew. The fee shall be $5 per person capacity and accompany this application.

1.5(4) Renewal application for racetrack enclosure license. This form shall contain, at a minimum, the full name of the applicant, annual fee, casino operations, internal controls, Iowa resources, guarantee bond, and notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application. A $1,000 application fee must accompany this license application.

1.5(5) Occupational license application. This form shall contain, at a minimum, the applicant's full name, social security number, residence, date of birth, and other personal identifying information that the commission deems necessary. A fee set by the commission shall apply to this application. (Refer to 491—Chapter 13 for additional information.)

1.5(6) Application for season approvals. This form shall contain, at a minimum, a listing of the department heads and racing officials, minimum purse, purse supplements for Iowa-breds, grading system (greyhound racing only), schedule and wagering format, equipment, security plan, certification, and any other information the commission deems necessary for approval. This request must be submitted 45 days prior to the meet. Any changes to the items approved by the commission shall be requested in writing by the licensee and subject to the written approval of the administrator or commission representative before the change occurs.

1.5(7) Manufacturers and distributors license application. This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. (Refer to 491—Chapter 22 for additional information.)

491—1.6(99D,99F) Limitation on location and number of racetracks and excursion gambling boats.

1.6(1) The number of licenses to conduct horse racing shall be one for a racetrack located in Polk County. The number of licenses to conduct dog racing shall be two, one for a racetrack located in Dubuque County and one for a racetrack located in Pottawattamie County. The total number of licenses issued to conduct gambling games on excursion boats shall not exceed ten and shall be restricted to the counties where such boats were operating (or licensed to operate in the future) as of May 1, 1998.

1.6(2) Notwithstanding subrule 1.6(1), with the approval of the commission:

a. A licensed facility may be sold and a new license may be issued for operation in the same county.

b. A licensee may move to a new location within the same county.

c. If a license is surrendered, not renewed, or revoked, a new license may be issued for operation in the same county.

1.6(3) A licensee seeking an increase in the number of gaming machines or gaming tables must obtain prior approval from the commission. In the request for approval from the commission, a licensee shall demonstrate to the commission's satisfaction that the additional gaming equipment:

a. Will have a positive economic impact on the community in which the licensee operates;

b. Will benefit the residents of Iowa;

c. Will result in increased distributions to qualified organizations entitled to distributions under Iowa Code section 99F.6(4)"a";

d. Is necessary to satisfy overall excess demand in the particular market in which the licensee is located;

e. Will result in permanent improvements and land-based development in Iowa;

f. Is supported within the broader community in which the licensee operates;

g. Will not have a detrimental impact on the financial viability of other licensees operating in the market in which the licensee operates;

h. Is consistent with legislative intent concerning the purpose of excursion gambling boats or the definition of "racetrack enclosure" and the purpose of gambling games at racetrack enclosures; and

i. If for a racetrack enclosure, will benefit the horse or greyhound industries in Iowa.

The various criteria set forth may not have the same importance in each instance, and other factors may present themselves in the consideration of the increase. The criteria are not listed in any order of priority.

In addition to the foregoing criteria, a licensee requesting additional gaming machines shall demonstrate to the commission's satisfaction that the licensee is in compliance with applicable statutes, rules, and orders, has not had any material violation of any statutes, rules, or orders in the previous 12 months, and has taken sufficient steps to address the social and economic burdens of problem gambling.

491—1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates. The commission sets forth the following criteria which the commission will consider when deciding whether to issue a license to conduct racing or gaming in Iowa. The various criteria may not have the same importance in each instance and other factors may present themselves in the consideration of an application or applications for a license. The criteria are not listed in order of priority. After the initial consideration for issuing a li-

cense, applicable criteria need only be considered when an applicant has demonstrated a deficiency.

1.7(1) Compliance. The commission will consider whether or not the applicant is and has been in compliance with the terms and conditions specified in Iowa Code section 99D.9 or 99F.4.

1.7(2) Revenue provided by facility. The commission will consider the amount of revenue to be provided by the proposed facility to the state and local communities through direct taxation on its operation and indirect revenues from tourism, ancillary businesses, creation of new industry, and taxes on employees and patrons.

1.7(3) Viability. The commission will consider whether the proposed operation is economically viable and properly financed.

1.7(4) Security. The commission will consider whether the proposed operation is planned in a manner that provides adequate security for all aspects of its operation and for the people working at and visiting the facility.

1.7(5) Efficient and safe operation. The commission will consider whether the proposed facility is planned in a manner that promotes efficient and safe operation of all aspects of its facility.

1.7(6) Efficient, safe, and enjoyable for patrons. The commission will consider whether the proposed facility, including, but not limited to, parking facilities, concessions, the casino/grandstand, access to cashier windows, and restrooms, is planned in a manner that promotes efficient, safe, and enjoyable use by patrons.

1.7(7) Compliance with applicable state and local laws. The commission will consider whether the proposed facility is in compliance with applicable state and local laws regarding fire, health, construction, zoning, and other similar matters.

1.7(8) Employ appropriate persons. The commission will consider whether the applicant will employ the persons necessary to operate the facility in a manner consistent with the needs, safety, and interests of all persons who will be at the facility.

1.7(9) Population. The commission will consider the population of the area to be served by a facility together with location of other facilities of whatever nature within and without the state. The commission may engage an independent firm proficient in market feasibility studies in the industry for specific analysis of any application to determine the potential market of any proposed facility as well as the impact on existing licensees.

1.7(10) Community support. The commission will consider support within the community in which a proposed facility is to be located for the promotion and continuation of racing or gaming.

1.7(11) Character and reputation. The commission will consider whether there is substantial evidence that the officers, directors, partners, or shareholders of the applicant are not of good repute and moral character. Any evidence concerning an officer's, director's, partner's, or shareholder's current or past conduct, dealings, habits, or associations relevant to that individual's character and reputation may be considered. The commission may consider all relevant facts surrounding alleged criminal or wrongful conduct resulting in the filing of criminal charges, a conviction, nolo contendere, no contest or Alford pleas entered by the applicant or operator in any court or administrative proceedings. A criminal conviction of an individual shall be conclusive evidence that the individual committed the offense for which the individual was convicted, but this does not preclude the commission from considering evidence that the individual committed additional offenses. The commission shall decide what weight and effect evidence about an officer, director, partner, or shareholder should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character. Officers, directors, partners, and shareholders who have a significant interest in the management, ownership, operation, or success of an application may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role in such matters.

1.7(12) Nurture the racing industry. The commission will consider whether the proposed racetrack operation would serve to nurture, promote, develop, and improve the racing industry in Iowa and provide high quality racing in Iowa.

1.7(13) Purses. The commission will consider whether the proposed racetrack operation will maximize purses.

1.7(14) Breeders. The commission will consider whether the proposed racetrack operation is beneficial to Iowa breeders.

1.7(15) Gaming integrity. The commission will consider whether the proposed operation would ensure that gaming is conducted with a high degree of integrity in Iowa.

1.7(16) Economic development. The commission will consider whether the proposed operation will maximize economic development.

1.7(17) Tourism. The commission will consider whether the proposed operation is beneficial to Iowa tourism.

1.7(18) Employment opportunities. The commission will consider the number and quality of employment opportunities for Iowans the proposed operation will create and promote.

1.7(19) Sale of Iowa products. The commission will consider how the proposed operation will promote the development and sale of Iowa products.

1.7(20) Shore development. The commission will consider the amount and type of shore developments associated with the excursion gambling boat project.

1.7(21) The commission will consider such other factors as may arise in the circumstances presented by a particular application.

These rules are intended to implement Iowa Code chapters 99D and 99F.

ITEM 2. Amend subrule **4.6(5)**, paragraph **"h,"** as follows:

h. A licensee may appeal a board of stewards' decision. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal *shall be on a form prescribed by the commission or* must contain numbered paragraphs and set forth the name of the person seeking *the* review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, *and the* name, address, and telephone number of the person seeking *the* review or that person's representative~~, or shall be on a form prescribed by the commission~~. *If a licensee is granted a stay of a suspension, pursuant to 491—4.45(17A), and the ruling is upheld in a contested case proceeding, then the board of stewards may reassign the dates of suspension so that the suspension dates are served in the state of Iowa.*

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 3. Rescind **491—Chapter 5** and adopt in lieu thereof the following **new** chapter:

CHAPTER 5
TRACK AND EXCURSION BOAT
LICENSEES' RESPONSIBILITIES

491—5.1(99D,99F) In general. For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license to race or operate a gaming facility has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of the license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.

491—5.2(99D,99F) Annual reports. Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13. The audit of financial transactions and condition of licensee's operation shall include an internal control letter, a balance sheet, and a profit-and-loss statement pertaining to the licensee's activities in the state. If the licensee's fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar year basis shall be included in the report. In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

5.2(1) The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; taxable attendance and the dollar amount remitted to the state; total mutuel handle and taxes paid to state, city, and county; unclaimed winnings; purses paid indicating sources; total breakage and disbursements; and the disbursements of 1 percent of the triples.

5.2(2) The annual audit report required by Iowa Code section 99F.13 shall include:

a. A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, and gambler's treatment; and admission fees.

b. A report on whether material weaknesses in internal accounting control exist.

c. A report on whether the licensee has followed the system of internal accounting control approved by the administrator.

491—5.3(99D,99F) Information. The licensee shall submit all information specifically requested in writing by the commission or commission representative.

491—5.4(99D,99F) Uniform requirements.

5.4(1) Maintenance of grounds and facilities. Each licensee shall at all times maintain its grounds and facilities so as to be neat and clean, well landscaped, painted and in good repair, handicapped accessible, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance.

5.4(2) Facilities for commission. Each licensee shall provide reasonable, adequately furnished office space, including utilities, direct long-distance access for voice and data lines, custodial services, and necessary office equipment, and, if applicable, work space on the boat for the exclusive use of the commission employees and officials. The licensee shall also make available appropriate parking places for commission staff.

5.4(3) Sanitary facilities for patrons. Each licensee shall, on every day of operation, provide adequate and sanitary toilets and washrooms and furnish free drinking water for patrons and persons having business on the licensee's grounds.

5.4(4) First-aid room. Each licensee shall equip and maintain adequate first-aid facilities and have in attendance, during the hours of operation, either a physician, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician, all properly licensed according to requirements of the Iowa department of public health.

5.4(5) Security force.

a. Peace officer. Each licensee shall ensure that a person who is a certified peace officer is present during all gaming hours, unless permission is otherwise granted by the administrator.

b. Employ adequate security. Each licensee shall employ sufficient security to remove a person violating a provision of Iowa Code chapter 99D or 99F, commission rules, or orders; any person deemed to be undesirable by racing and gaming commission officials; or any person engaging in a fraudulent practice from the licensed premises. Security shall also be provided in and about the grounds to secure restricted areas such as the barn area, kennel area, paddock, and testing area.

c. Incident reports. The licensee shall be required to file a written report, within 72 hours, detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99D or 99F, a commission rule or order, or internal controls; or is removed for reasons specified under paragraph 5.4(5)"b." In addition to the written report, the licensee shall provide immediate notification to the commission and DCI representatives on duty or, if representatives are not on duty, provide notification on each office's messaging system if the incident involved employee theft, criminal activity, Iowa Code chapter 99D or 99F violations, or gaming receipts.

d. Ejection or exclusion. A licensee may eject or exclude any person, licensed or unlicensed, from the grounds or a part thereof of the the licensee's facility, solely of the licensee's own volition and without any reason or excuse given, provided ejection or exclusion is not founded on race, creed, color, disability, or national origin.

Reports of all ejections or exclusions for any reason shall be made promptly to the commission representative and DCI and shall state the circumstances. The name of the person must be reported when ejected or excluded for more than one gaming day.

The commission may exclude any person ejected by a licensee from any or all pari-mutuel facilities or excursion gambling boats controlled by any licensee upon a finding that attendance of the person would be adverse to the public interest.

5.4(6) Firearms possession within casino.

a. No patron or employee of the licensee, including the security department members, shall possess or be permitted to possess any pistol or firearm within a casino without the express written approval of the administrator unless:

(1) The person is a peace officer, on duty, acting in the peace officer's official capacity; or

(2) The person is a peace officer possessing a valid peace officer permit to carry weapons who is employed by the licensee and who is authorized by the administrator to possess such pistol or firearm while acting on behalf of the licensee within that casino.

b. Each casino licensee shall post in a conspicuous location at each entrance to the casino a sign that may be easily read stating, "Possession of any firearm within the casino without the express written permission of the Iowa racing and gaming commission is prohibited".

5.4(7) Videotaping. Licensees are required to conduct continuous surveillance with the capability of videotaping all gambling activities under Iowa administrative rules 661— Chapter 23, promulgated by the department of public safety.

5.4(8) Commission approval of contracts and business arrangements.

a. No track or boat operator shall enter into any contract or business arrangement, verbal or written, with any related party, or in which the term exceeds three years or the total value of the contract exceeds $50,000, without first submitting advance written notice thereof to the commission and obtaining commission approval therefor.

b. Purpose of contract review. The commission conducts reviews of contracts to serve the public interests in order that:

(1) Gaming is free from criminal and corruptive elements.

(2) Gaming-related funds are directed to the lawful recipient.

(3) Gaming profits are not improperly distributed.

c. Related parties. Other contract submittal requirements notwithstanding, contracts negotiated between the operator and a related party must be accompanied by an economic and qualitative justification.

d. Review criteria. The commission shall approve all contracts that, in their opinion, represent a normal business transaction. The commission may deny approval of any contract that, in their sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. This rule does not prohibit the commission from changing the approved ownership or beneficial interest.

5.4(9) Cash access restrictions.

a. Satellite terminal. A licensee shall not permit or facilitate the operation of a satellite terminal, as defined in Iowa Code section 527.2, or any other device or arrangement, by which credit is given to a licensee's customer through use of a credit card, as defined by Iowa Code section 537.1301(16). This provision, however, does not prohibit:

(1) The exchange of money for tokens, chips, or other forms of credit to be wagered on gambling games as specifically authorized by Iowa Code section 99F.9(4); or

(2) The sale of lodging, food, beverages, or other nongambling services or products by credit card purchase.

b. Satellite debit terminals. Satellite terminals, as defined in Iowa Code section 527.2, or any other devices or arrangements by which cash is dispensed to a licensee's customer through use of an access device that results in a debit to a customer asset account shall be located in nongambling areas of the licensee's facility as approved by the commission.

c. Checks. The acceptance of personal checks shall be allowed; however, "counter" checks shall not be allowed. All checks accepted must be deposited in a bank by the close of the banking day following acceptance.

5.4(10) Taxes and admission fees.

a. Annual taxes and fees. All taxes and fees, whose collection by the state is authorized under Iowa Code chapters 99D and 99F, shall be accounted for on a fiscal-year basis, each fiscal year beginning on July 1 and ending on June 30.

b. Admission fees.

(1) Excursion gambling boat. Admission fees, whose collection by the state is authorized under Iowa Code section 99F.10(2), shall be set for the following fiscal year by the commission on or before the June meeting of the commission. The total amount payable to the commission shall be determined on a per-boat basis with each responsible licensee paying a proportionate amount of the total amount consistent with Iowa Code section 99F.10(4).

(2) Racetrack enclosure. Admission fees as required by Iowa Code section 99D.14(2) shall be collected in lieu of any fees imposed by Iowa Code section 99F.10.

(3) Fee free passes. A fee free pass may be issued at the discretion of the facility for persons actually working in the facility. The facility must maintain a fee free pass logbook, available for inspection by commission or DCI representatives. The logbook must reflect the following information: date the fee free pass is being used; user's name and date of birth (verified by photo ID); company or purpose that the fee free pass is being used for; issuer; pass number; time out; and time in. Fee free passes shall only be issued on a daily basis and must be returned before the individual who is using the fee free pass leaves the facility grounds. Fee free passes are subject to the license requirements of 491—paragraph 13.2(5)"a." A fee free pass may be used by an employee who has forgotten the employee's license but may not be used to avoid obtaining a duplicate license. An occupational license issued by the commission may be used in lieu of a fee free pass. A holder of a fee free pass will not be counted toward admission for tax purposes.

c. Submission of taxes and admission fees. All moneys collected for and owed to the commission or state of Iowa under Iowa Code chapter 99F shall be accounted for and itemized on a weekly basis on a form provided by the commission. A week shall begin on Monday and end on Sunday. The reporting form must be received in the commission office by 3 p.m. on Wednesday following the week's end. The moneys owed, according to the reporting form, must be received in the treasurer's office by 11 a.m. on the Thursday following the week's end. Additionally, each licensee shall file a monthly report indicating adjusted gross receipts received from gambling games, total number of admissions, and amount of admission fees paid. These reports shall be by calendar month and filed by close of the third business day following the end of the month.

d. Admission tracking requirement. All entrances used for admission of patrons must have a counting device of a type approved by the commission.

5.4(11) Rate of tax revenue. Each licensee shall prominently display at the licensee's gambling facility the annual percentage rate of state and local tax revenue collected by

state and local government from the gambling facility annually.

5.4(12) Gambling treatment program.

a. The holder of a license to operate gambling games shall adopt and implement policies and procedures designed to:

(1) Identify problem gamblers; and

(2) Prevent previously identified problem gamblers from gambling at the licensee's facility or other facilities licensed by the state of Iowa.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

(1) Training of key employees to identify and report suspected problem gamblers;

(2) Procedures for recording and tracking identified problem gamblers;

(3) Policies designed to prevent serving alcohol to intoxicated casino patrons;

(4) Steps for removing problem gamblers from the casino; and

(5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include information on the availability of the gambling treatment program in a substantial number of its advertisements and printed materials.

5.4(13) Records regarding ownership.

a. In addition to other records and information required by these rules, each licensee shall maintain the following records regarding the equity structure and owners:

(1) If a corporation:

1. A certified copy of articles of incorporation and any amendments thereto.

2. A copy of bylaws and amendments thereto.

3. A current list of officers and directors.

4. Minutes of all meetings of stockholders and directors.

5. A current list of all stockholders and stockholders of affiliates, including their names and the names of beneficial shareholders.

6. A complete record of all transfers of stock.

7. A record of amounts paid to the corporation for issuance of stock and other capital contributions and dates thereof.

8. A record, by stockholder, of all dividends distributed by the corporation.

9. A record of all salaries, wages, and other remuneration (including perquisites), direct and indirect, paid by the corporation during the calendar or fiscal year to all officers, directors, and stockholders with an ownership interest at any time during the calendar or fiscal year, equal to or greater than 5 percent of the outstanding stock of any class of stock.

(2) If a partnership:

1. A schedule showing the amounts and dates of capital contributions, the names and addresses of the contributors, and percentage of interest in net assets, profits, and losses held by each.

2. A record of the withdrawals of partnership funds or assets.

3. A record of salaries, wages, and other remuneration (including perquisites), direct and indirect, paid to each partner during the calendar or fiscal year.

4. A copy of the partnership agreement and certificate of limited partnership, if applicable.

(3) If a sole proprietorship:

1. A schedule showing the name and address of the proprietor and the amount and date of the original investment.

2. A record of dates and amounts of subsequent additions to the original investment and withdrawals therefrom.

3. A record of salaries, wages, and other remuneration (including perquisites), direct or indirect, paid to the proprietor during the calendar or fiscal year.

b. All records regarding ownership shall be located in a place approved by the commission.

c. If the licensee is publicly held, upon the request of the administrator, the licensee shall submit to the commission one copy of any report required to be filed by such licensee or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency. If the licensee is privately held, upon the request of the administrator, the licensee shall submit financial, ownership, or other entity records for an affiliate.

5.4(14) Retention, storage, and destruction of books, records, and documents.

a. Except as otherwise provided, all original books, records, and documents pertaining to the licensee's operations shall be:

(1) Prepared and maintained in a complete and accurate form.

(2) Retained at a site approved by the administrator until audited.

(3) Held immediately available for inspection by the commission during business hours of operations.

(4) Organized and indexed in such a manner as to provide immediate accessibility to the commission.

b. For the purpose of this subrule, "books, records, and documents" shall be defined as any book, record, or document pertaining to or prepared or generated by the licensee including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, contracts, and personnel records.

c. All original books, records, and documents may be copied and stored on microfilm, microfiche, or other suitable media system approved by the administrator.

d. No original book, record, document, or suitable media copy may be destroyed by a licensee, for three years, without the prior approval of the administrator.

5.4(15) Remodeling. For any change to be made to the facility itself directly associated with racing or gaming or in the structure of the boat itself, the licensee must first submit plans to and receive the approval of the administrator.

491—5.5(99D) Pari-mutuel uniform requirements.

5.5(1) Insect and rodent control. The licensee shall provide systematic and effective insect and rodent control, including control of flies, mosquitoes, fleas, and mice, to all areas of licensee's premises at all times during a race meeting.

5.5(2) Results boards, totalizators required. Each licensee shall provide and maintain computerized totalizators and electronic boards showing odds, results, and other racing information located in plain view of patrons.

5.5(3) Photo finish camera. A licensee shall provide two electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each racing animal in at least hundredths of a second. The location and operation of the photo finish device must be approved by the commission before its first use in a race. The licensee shall promptly post a photograph, on a monitor, of each photo finish for win, place or show, or for fourth place in superfecta races, in an area accessible to the public. The licensee shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other

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times as required by the commission. On request by the commission, the licensee shall provide, without cost, a print of a photo finish to the commission. A photo finish of each race shall be maintained by the licensee for not less than six months after the end of the race meeting, or such other period as may be requested by the commission.

5.5(4) Electric timing device. Any electric timing device used by the licensee shall be approved by the commission.

5.5(5) Official scale. The licensee shall provide and maintain in good working order official scales or other approved weighing devices. The licensee shall provide to the stewards certification of the accuracy of the scales at the beginning of each race meeting or more frequently if requested by the stewards.

5.5(6) Lighting. Each licensee shall provide and maintain adequate illumination in the barn/kennel area, parking area, and racetrack area.

5.5(7) Fencing. The stable and kennel areas should be properly fenced as defined by the commission and admission permitted only in accord with rules of the commission.

5.5(8) Guest passes. The licensee shall develop a policy to be approved by the stewards for the issuance of guest passes for entrance to the kennel or stable area. The guest pass is not an occupational license and does not permit the holder to work in any capacity or in any way confer the benefits of an occupational license to participate in racing. The license holder shall be responsible for the conduct of the guest pass holder.

491—5.6(99F) Excursion gambling boat uniform requirements.

5.6(1) Boat design.

a. The minimum passenger capacity necessary for an excursion gambling boat is 250.

b. Boats must be self-propelled. A boat may contain more than one "vessel" as defined by the U.S. Coast Guard. In order to be utilized for gaming purposes, the vessel containing the casino must either contain a permanent means of propulsion or have its means of propulsion contained in an attached vessel. In the event that the vessel containing the casino is propelled by a second vessel, the boat will be considered self-propelled only when the vessels are designed, constructed, and operated as a single unit.

5.6(2) Excursions.

a. Length. The excursion season shall be from April 1 through October 31 of each calendar year. An excursion gambling boat must operate at least one excursion each day for 100 days during the excursion season to operate during the off-season, although a waiver may be granted by the commission in the first year of a boat's operation if construction of the boat was not completed in time for the boat to qualify. Excursions shall consist of a minimum of two hours in transit during the excursion season. The number of excursions per day is not limited. During the excursion season and the off-season, while the excursion gambling boat is docked, passengers may embark or disembark at any time during its business hours pursuant to Iowa Code section 99F.4(17).

b. Dockside completion of excursions. If, during the excursion season, the captain determines that it would be unsafe to complete any portion of an excursion, or if mechanical problems prevent the completion of any portion of an excursion, the boat may be allowed to remain at the dock or, if the excursion is underway, return to the dock and conduct the gaming portion of the excursion while dockside, unless the captain determines that passenger safety is threatened.

c. Notification. If an excursion is not completed due to reasons specified in paragraph 5.6(2)"b," a commission representative shall be notified as soon as is practical.

These rules are intended to implement Iowa Code chapters 99D and 99F.

ITEM 4. Rescind and reserve **491—Chapter 6**.

ITEM 5. Adopt **new** rule 491—7.2(99D) as follows:

491—7.2(99D) Track licensee's responsibilities.

7.2(1) Racetrack. Each licensee shall provide a race course which:

a. Is constructed and elevated in a manner that is safe and humane for greyhounds.

b. Has a surface, including cushion subsurface and base, constructed of materials and to a depth that adequately provides for the safety of the greyhounds.

c. Has a drainage system approved by the commission.

d. Must be approved by the commission and be subject to periodic inspections by the commission.

7.2(2) Patrol films or videotapes. Each licensee shall at all times during a race meeting provide and maintain personnel and equipment necessary to produce adequate motion pictures or videotapes and record with the same personnel and equipment each race from start to finish. Films and videotapes shall be retained and secured by the licensee until the first day of the following racing season.

7.2(3) Communications. Each licensee shall install and maintain in good working order communications systems among the stewards, pari-mutuel department, starting gate/box, public address announcer, paddock, testing area, and necessary on-track officials.

ITEM 6. Rescind subrule **7.3(3)**, paragraph **"e,"** and adopt in lieu thereof the following **new** paragraph:

e. Disclosure to the racing secretary of the true and entire ownership of each greyhound in the trainer's care upon arrival on licensee's property, or at time of license application, or entry, whichever event occurs first, and making revision immediately upon any subsequent change in ownership. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a greyhound, shall be attached to the registration certificate for the greyhound and filed with the racing secretary.

ITEM 7. Amend subrule **7.9(7)**, paragraph **"b,"** as follows:

b. The racing secretary is responsible for maintaining a file of all National Greyhounds Association lease (or appropriate substitute) and ownership papers on greyhounds racing at the meeting. The racing secretary shall inspect all papers and documents dealing with owners and trainers, partnership agreements, appointments of authorized agents, and adoption of kennel names to be sure they are accurate, complete, and up to date. The racing secretary has the authority to demand the production of any documents or other evidence in order to be satisfied as to their validity and authenticity to ensure compliance with the rules. *The racing secretary shall be responsible for the care and security of the papers while the greyhounds are located on licensee's property. Disclosure is made for the benefit of the public and all documents pertaining to the ownership or lease of a greyhound filed with the racing secretary shall be available for public inspection.*

ITEM 8. Rescind and reserve subrule **9.2(6)**, paragraph **"d,"** subparagraph **(2)**.

RACING AND GAMING COMMISSION[491](cont'd)

ITEM 9. Amend subrule **9.2(7)** by adopting the following **new** paragraph **"l"**:

l. Registration. The racing secretary shall be responsible for the care and security of all registrations and supporting documents submitted by the trainer while the horses are located on licensee's property. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership or lease of a horse filed with the racing secretary shall be available for public inspection.

ITEM 10. Rescind subrule **9.3(1)**, paragraph **"a,"** subparagraph **(6)**, and adopt in lieu thereof the following **new** subparagraph:

(6) Trainers shall register with the racing secretary, on a form provided by the racing secretary, all horses which are intended to race at the meeting stating their names, age, sex, color, breeding, and disclosing any and all person(s) having any interest in said horse(s). Any change in ownership shall be reported immediately to, and approved by, the commission representative and recorded by the racing secretary. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a horse, shall be attached to the registration certificate for the horse and filed with the racing secretary. This registration must be presented to the racing secretary immediately upon arrival of the trainer and all changes must be reported within 24 hours after taking place.

ITEM 11. Rescind and reserve subrule **10.2(6)**, paragraph **"d,"** subparagraph **(2)**.

ITEM 12. Amend subrule **10.2(7)** by adopting the following **new** paragraph **"l"**:

l. Registration. The racing secretary shall be responsible for the care and security of all registrations and supporting documents submitted by the trainer while the horses are located on licensee's property. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership or lease of a horse filed with the racing secretary shall be available for public inspection.

ITEM 13. Adopt **new** rule 491—10.3(99D) as follows:

491—10.3(99D) Track licensee's responsibilities.

10.3(1) Stalls. The licensee shall ensure that racing animals are stabled in individual box stalls; that the stables and immediate surrounding area are maintained in approved sanitary condition at all times; that satisfactory drainage is provided; and that manure and other refuse are kept in separate boxes or containers at locations distant from living quarters and promptly and properly removed.

10.3(2) Paddocks and equipment. The licensee shall ensure that paddocks, starting gates and other equipment subject to contact by different animals be kept in a clean condition and free of dangerous surfaces.

10.3(3) Receiving barn and stalls. Each licensee shall provide a conveniently located receiving barn or stalls for the use of horses arriving during the meeting. The barn shall have adequate stable room and facilities, hot and cold water, and stall bedding. The licensee shall employ attendants to operate and maintain the receiving barn or stalls in a clean and healthy condition.

10.3(4) Fire protection. The licensee shall develop and implement a program for fire prevention on licensee premises in accordance with applicable state fire codes. The licensee shall instruct employees working on licensee premises in procedures for fire prevention and evacuation. The licensee shall, in accordance with state fire codes, prohibit the following:

a. Smoking in horse stalls, in feed and tack rooms, and in the alleyways.

b. Sleeping in feed rooms or stalls.

c. Open fires and oil- or gasoline-burning lanterns or lamps in the stable area.

d. Leaving electrical appliances in use unattended or in unsafe proximity to walls, beds or furnishings.

e. Keeping flammable materials, including cleaning fluids or solvents, in the stable area.

10.3(5) Horsemen's bookkeeper.

a. General authority. The horsemen's bookkeeper shall maintain the records and accounts and perform the duties described herein and maintain such other records and accounts and perform such other duties as the licensee and commission may prescribe.

b. Records.

(1) The records shall include the name, mailing address, social security number or federal tax identification number, and the state or country of residence of each horse owner, trainer, or jockey participating at the race meeting who has funds due or on deposit in the horsemen's account.

(2) The records shall include a file of all required statements of partnerships, syndicates, corporations, assignments of interest, lease agreements, and registrations of authorized agents.

(3) All records of the horsemen's bookkeeper shall be kept separate and apart from the records of the licensee.

(4) All records of the horsemen's bookkeeper including records of accounts and moneys and funds kept on deposit are subject to inspection by the commission at any time.

c. Moneys and funds on account.

(1) All moneys and funds on account with the horsemen's bookkeeper shall be maintained:

1. Separate and apart from moneys and funds of the licensee;

2. In a trust account designated as "horsemen's trust account"; and

3. In an account insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(2) The horsemen's bookkeeper shall be bonded in accordance with commission stipulations.

(3) The amount of purse money earned is credited in the currency of the jurisdiction in which the race was run. There shall be an appeal for any exchange rate loss at the time of transfer of funds from another jurisdiction.

d. Payment of purses.

(1) The horsemen's bookkeeper shall receive, maintain, and disburse the purses of each race and all stakes, entrance money, jockey fees, purchase money in claiming races, all applicable taxes and other moneys that properly come into possession in accordance with the provisions of commission rules.

(2) The horsemen's bookkeeper may accept moneys due belonging to other organizations or recognized meetings, provided prompt return is made to the organization to which the money is due.

(3) The fact that purse money has been distributed prior to the issuance of a laboratory report shall not be deemed a finding that no chemical substance has been administered, in violation of these rules, to the horse earning such purse money.

(4) The horsemen's bookkeeper shall disburse the purse of each race and all stakes, entrance money, jockey fees and purchase money in claiming races, and all applicable taxes, upon request, within 48 hours of receipt of notification that

all tests with respect to such races have cleared the drug testing laboratory (commission chemist) as reported by the stewards. Minimum jockey mount fees may be disbursed prior to notification that the tests have cleared the testing laboratory.

(5) Absent a prior request, the horsemen's bookkeeper shall disburse moneys to the persons entitled to receive same within 15 days after the last race day of the race meeting, including purses for official races, provided that all tests with respect to such races have cleared the drug testing laboratory as reported by the stewards, and further provided that no protest or appeal has been filed with the stewards or the commission.

(6) In the event a protest or appeal has been filed with the stewards or the commission, the horsemen's bookkeeper shall disburse the purse within 48 hours of receipt of dismissal or a final nonappealable order disposing of such protest or appeal.

e. No portion of purse money other than jockey fees shall be deducted by the licensee for itself or for another, unless so requested in writing by the person to whom purse moneys are payable or by the person's duly authorized representative. The horsemen's bookkeeper shall mail to each owner at the close of each race meeting a duplicate of each record of a deposit, withdrawal, or transfer of funds affecting the owner's racing account.

10.3(6) Starting gate.

a. During racing hours a licensee shall provide at least two operable padded starting gates that have been approved by the commission.

b. During designated training hours a licensee shall make at least one starting gate and qualified starting gate employee available for schooling.

c. If a race is started at a place other than in a chute, the licensee shall provide and maintain in good operating condition backup equipment for moving the starting gate. The backup equipment must be immediately available to replace the primary moving equipment in the event of failure.

10.3(7) Distance markers.

a. A licensee shall provide and maintain starting point markers and distance poles in a size and position clearly seen from the steward's stand.

b. The starting point markers and distance poles must be marked as follows:

1/4 poles	red and white horizontal stripes
1/8 poles	green and white horizontal stripes
1/16 poles	black and white horizontal stripes
220 yards	green and white
250 yards	blue
300 yards	yellow
330 yards	black and white
350 yards	red
400 yards	black
440 yards	red and white
550 yards	black and white horizontal stripes
660 yards	green and white horizontal stripes
770 yards	black and white horizontal stripes
870 yards	blue and white horizontal stripes

10.3(8) Detention enclosure. Each licensee shall maintain a detention enclosure for use by the commission in securing from horses who have run in a race, samples of urine, saliva, blood or other bodily substances or tissues for chemical analysis. The enclosure shall include a wash rack, commission veterinarian office, a walking ring, at least four stalls, workroom for the sample collectors with hot and cold running water and glass observation windows for viewing of the horses from the office and workroom. An owner, trainer, or designated representative, licensed by the commission, shall be with a horse in the detention barn at all times.

10.3(9) Ambulance. A licensee shall maintain, on the grounds during every day when its track is open for racing or exercising, an ambulance for humans and an ambulance for horses, each equipped according to prevailing standards and staffed by medical doctors, paramedics, or other personnel trained to operate them. When an ambulance is used for transfer of a horse or patient to medical facilities, a replacement ambulance must be furnished by the track to comply with this rule.

10.3(10) Helmets and vests. The licensee shall not allow any person to exercise any horse on association grounds unless that person is wearing a protective helmet and safety vest of a type approved by the commission.

10.3(11) Racetrack.

a. The surface of a racetrack, including cushion, subsurface, and base, must be designed, constructed, and maintained to provide for the safety of the jockeys and racing animals.

b. Distances to be run shall be measured from the starting line at a distance three feet out from the inside rail.

c. A licensee shall provide an adequate drainage system for the racetrack.

d. A licensee shall provide adequate equipment and personnel to maintain the track surface in a safe training and racing condition. The licensee shall provide backup equipment for maintaining the track surface. A licensee that conducts races on a turf track shall:

(1) Maintain an adequate stockpile of growing medium; and

(2) Provide a system capable of adequately watering the entire turf course evenly.

e. Rails.

(1) Racetracks, including turf tracks, shall have inside and outside rails, including gap rails, designed, constructed, and maintained to provide for the safety of jockeys and horses. The design and construction of rails must be approved by the commission prior to the first race meeting at the track.

(2) The top of the rail must be at least 38 inches but not more than 44 inches above the top of the cushion. The inside rail shall have no less than a 24-inch overhang with a continuous smooth cover.

(3) All rails must be constructed of materials designed to withstand the impact of a horse running at a gallop.

10.3(12) Patrol films or videotapes. Each licensee shall provide:

a. A videotaping system approved by the commission. Cameras must be located to provide clear, panoramic head-on views of each race. Separate monitors, which simultaneously display the images received from each camera and are capable of simultaneously displaying a synchronized view of the recordings of each race for review, shall be provided in the stewards' stand. The location and construction of video towers must be approved by the commission.

b. One camera, designated by the commission, to videotape the prerace loading of all horses into the starting gate and shall continue to videotape them until the field is dispatched by the starter.

c. One camera, designated by the commission, to videotape the apparent winner of each race from the finish line until the horse has returned, the jockey has dismounted, and the equipment has been removed from the horse.

RACING AND GAMING COMMISSION[491](cont'd)

d. At the discretion of the stewards, video camera operators to videotape the activities of any horses or persons handling horses prior to, during, or following a race.

e. That races run on an oval track be recorded by at least three video cameras. Races run on a straight course must be recorded by at least two video cameras.

f. Upon request to the commission, without cost, a copy of a videotape of a race.

g. Videotapes recorded prior to, during, and following each race to be maintained by the licensee for not less than six months after the end of the race meeting, or such other period as may be requested by the stewards or the commission.

h. A viewing room in which, on approval by the stewards, an owner, trainer, jockey, or other interested individual may view a videotape recording of a race.

i. Following any race in which there is an inquiry or objection, to the public on designated monitors, the videotaped replays of the incident in question which were utilized by the stewards in making their decision.

10.3(13) Communications.

a. Each licensee shall provide and maintain in good working order a communication system between the:

(1) Stewards' stand;
(2) Racing office;
(3) Tote room;
(4) Jockeys' room;
(5) Paddock;
(6) Test barn;
(7) Starting gate;
(8) Weigh-in scale;
(9) Video camera locations;
(10) Clocker's stand;
(11) Racing veterinarian;
(12) Track announcer;
(13) Location of the ambulances (equine and human); and
(14) Other locations and persons designated by the commission.

b. A licensee shall provide and maintain a public address system capable of clearly transmitting announcements to the patrons and to the stable area.

ITEM 14. Rescind subrule **10.4(1)**, paragraph **"b,"** subparagraph **(6)**, and adopt in lieu thereof the following **new** subparagraph:

(6) Disclosure to the racing secretary of the true and entire ownership of each horse in the trainer's care, custody, or control. Any change in ownership shall be reported immediately to, and approved by, the commission representative and recorded by the racing secretary. The disclosure, together with all written agreements and affidavits setting out oral agreements pertaining to the ownership for or rights in and to a horse, shall be attached to the registration certificate for the horse and filed with the racing secretary.

ITEM 15. Rescind and reserve subrule **13.2(5)**, paragraph **"a."**

ITEM 16. Rescind and reserve subrule **13.2(6)**.

ITEM 17. Rescind and reserve **491—Chapters 20** and **21**.

ITEM 18. Amend 491—Chapter 22 by adopting the following **new** rule:

491—22.24(99F) Movement of slot machines and video games of chance. Reports must be filed with the commission on movements of slot machines and video games of chance into and out of the state of Iowa. Reports must be submitted on forms provided by the commission and must be received in the commission office no later than 15 calendar days after the movement.

ITEM 19. Rescind and reserve rules **491—24.13(99F)** through **491—24.15(99F)**.

ITEM 20. Rescind and reserve **491—Chapter 25**.

ITEM 21. Amend 491—Chapter 26 by adopting the following **new** rule:

491—26.9(99F) Gambling games authorized.

26.9(1) Dice, roulette, twenty-one, big-six (roulette), red dog, baccarat, and poker are authorized as table games.

26.9(2) Slot machines, progressive slot machines, video poker, and all other video games of chance will be allowed as machine games, subject to the approval of individual game prototypes. For racetrack enclosures, video machine as used in Iowa Code section 99F.1(9) shall mean video keno and any video machine game version of a table or card game including but not limited to those listed in subrule 26.9(1). A weighted average of the theoretical payout percentage as defined in subrule 26.15(6) on all machine games shall be posted at the main casino entrance, cashier cages, and slot booths.

ARC 9876A

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 425, "Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers," Iowa Administrative Code.

Currently, an applicant for a dealer's or used vehicle wholesaler's license must certify compliance with zoning requirements. Items 1 and 3 amend this procedure to require written evidence of compliance with zoning requirements. This change will ensure that applicants are aware of zoning requirements. Item 2 updates an Iowa Acts citation. No waiver provisions have been included in these amendments. It was determined that waivers are not appropriate.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: jfitzge@max.state.ia.us.

TRANSPORTATION DEPARTMENT[761](cont'd)

5. Be received by the Director's Staff Division no later than July 5, 2000.

A meeting to hear requested oral presentations is scheduled for Friday, July 7, 2000, at 1 p.m. in the DOT Conference Room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be received by the Director's Staff Division at the address listed in this Notice no later than 32 days after publication of this Notice in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapters 322 and 322C.

Proposed rule-making actions:

ITEM 1. Amend subrule 425.10(6) as follows:

425.10(6) Zoning. The applicant shall ~~certify on the application~~ *provide to the office of vehicle services written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states* that the applicant's principal place of business and any extensions comply with all applicable zoning provisions or are a legal nonconforming use.

ITEM 2. Amend rule **761—425.31(322)**, implementation clause, as follows:

This rule is intended to implement Iowa Code ~~section 322.5 as amended by 1999 Iowa Acts, Senate File 203, section 23~~ *Supplement subsection 322.5(5)*.

ITEM 3. Amend subrule 425.52(1) as follows:

425.52(1) Application for license.

a. To apply for a license as a used vehicle wholesaler, the applicant shall complete Form 417004, "Used Vehicle Distributor/Wholesaler Application for License," and submit it to the office of vehicle services.

b. The applicant shall ~~certify on the application~~ *provide to the office of vehicle services written evidence, issued by the office responsible for the enforcement of zoning ordinances in the city or county where the applicant's business is located, which states* that the applicant's designated location complies with all applicable zoning provisions or is a legal nonconforming use.

c. If the applicant is a corporation, the applicant shall certify on the application that the corporation complies with all applicable state requirements for incorporation.

ARC 9866A

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 602, "Classes of Driver's Licenses," Chapter 605, "License Issuance," and Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

Items 1 and 2 move a reference to Iowa Code section 321.191 from rule 761—602.3(321) to rule 761—605.9(321) and delete superfluous language.

Items 3 and 4 establish the pilot project authorized by 2000 Iowa Acts, House File 2538, section 5. This legislation authorizes the Department to conduct a pilot project at two driver's license stations pursuant to rules adopted by the Department. In conducting the pilot project, the legislation provides that the Department may waive payment of or refund fees for a renewal or duplicate of a driver's license or nonoperator's identification card if the Department determines that the service standard for timely issuance has not been met or an error on the license or identification card requires the applicant to return to the driver's license station.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: jfitzge@ max.state.ia.us.
5. Be received by the Director's Staff Division no later than July 5, 2000.

A meeting to hear requested oral presentations is scheduled for Friday, July 7, 2000, at 10 a.m. in the DOT Conference Room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

After adoption, the Department intends to file these amendments "emergency" in accord with Iowa Code paragraph 17A.5(2)"b" and make them effective upon filing, on the ground that these amendments will confer a benefit on members of the public who experience service that does not meet the standards established in the new rule language.

These amendments are intended to implement 2000 Iowa Acts, House File 2538, section 5.

Proposed rule-making actions:

ITEM 1. Rescind rule **761—602.3(321)**.

ITEM 2. Amend rule 761—605.9(321), introductory paragraph, as follows:

761—605.9(321) ~~Payment of fee.~~ ***Fees for driver's licenses.*** *Fees for driver's licenses are specified in Iowa Code section 321.191.* A license fee may be paid by cash, check or money order. If payment is by check, the following requirements apply:

ITEM 3. Adopt **new** rule 761—605.10(321) as follows:

761—605.10(321) Waiver or refund of license fees—pilot project. This rule establishes the pilot project authorized by 2000 Iowa Acts, House File 2538, section 5.

605.10(1) The department may waive payment of or refund the fee for a renewal or duplicate of a driver's license if:

a. An error occurs during the issuance process and is discovered by the applicant at the time of issuance. However, the fee shall not be waived or refunded if the error is discov-

TRANSPORTATION DEPARTMENT[761](cont'd)

ered by department staff and is corrected within the 30-minute time period specified in paragraph "c" of this subrule.

b. An error occurs during the issuance process and is discovered during the edit process of updating the driver record, and the error requires the applicant to return to the driver's license station to have the error corrected.

c. The applicant is required to wait more than 30 minutes to renew a license or obtain a duplicate license. This 30-minute time period is determined by using an automated customer numbering system that monitors waiting time.

605.10(2) The department shall not waive payment of or refund a fee if the applicant does not have in the applicant's possession at the time of application the previously issued driver's license.

605.10(3) The department shall not waive payment of or refund fees for any of the following transactions: reinstatements following sanctions, new applications, or applications requiring knowledge or skills testing.

605.10(4) This pilot project is limited to issuance activity at the driver's license stations in Burlington, Iowa, and Davenport, Iowa.

This rule is intended to implement 2000 Iowa Acts, House File 2538, section 5.

ITEM 4. Amend rule 761—630.2(321) by adopting the following new subrule:

630.2(6) This subrule establishes the pilot project authorized by 2000 Iowa Acts, House File 2538, section 5.

a. The department may waive payment of or refund the fee for a renewal or duplicate of a nonoperator's identification card if:

(1) An error occurs during the issuance process and is discovered by the applicant at the time of issuance. However, the fee shall not be waived or refunded if the error is discovered by department staff and is corrected within the 30-minute time period specified in subparagraph (3).

(2) An error occurs during the issuance process and is discovered during the edit process of updating the identification record, and the error requires the applicant to return to the driver's license station to have the error corrected.

(3) The applicant is required to wait more than 30 minutes to renew a nonoperator's identification card or obtain a duplicate card. This 30-minute time period is determined by using an automated customer numbering system that monitors waiting time.

b. The department shall not waive payment of or refund a fee if the applicant does not have in the applicant's possession at the time of application the previously issued nonoperator's identification card.

c. The department shall not waive payment of or refund fees for new applications.

d. This pilot project is limited to issuance activity at the driver's license stations in Burlington, Iowa, and Davenport, Iowa.

ARC 9877A

UTILITIES DIVISION[199]

Notice of Termination

Pursuant to the authority of Iowa Code section 17A.4(1)"b," the Iowa Utilities Board (Board) gives notice that on May 15, 2000, the Board issued an order in Docket No. RMU-99-10, In re: Restoration of Agricultural Lands During and After Pipeline Construction, "Order Terminating Rule Making."

On September 15, 1999, the Board issued an order commencing a rule making to receive public comment on the adoption of land restoration rules. The Board proposed to rescind current Chapter 9 and replace it with a new Chapter 9. Notice of Intended Action was published in IAB Vol. XXII, No. 7 (10/6/99), p. 573, as **ARC 9400A**. Written comments were filed on or before October 28, 1999, and a workshop to receive oral comments was held on November 17, 1999.

Pursuant to the authority of Iowa Code section 17A.4(1)"b" (1999), the Utilities Board terminates the rule making. The Board will issue an Order Initiating Rule Making and Notice of Intended Action in the near future to receive additional comment on a new set of proposed land restoration rules.

ARC 9878A

UTILITIES DIVISION[199]

Notice of Intended Action

Twenty-five interested persons, a governmental subdivision, an agency or association of 25 or more persons may demand an oral presentation hereon as provided in Iowa Code section 17A.4(1)"*b*."

Notice is also given to the public that the Administrative Rules Review Committee may, on its own motion or on written request by any individual or group, review this proposed action under section 17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to Iowa Code sections 17A.4, 476.1, and 476.2 and Iowa Code Supplement sections 479.29, 479A.14, and 479B.20, the Utilities Board (Board) gives notice that on May 19, 2000, the Board issued an order in Docket No. RMU-99-10, In re: Restoration of Agricultural Lands During and After Pipeline Construction, "Order Commencing Rule Making."

On September 15, 1999, the Board issued an order in Docket No. RMU-99-10, In re: Restoration of Agricultural Lands During and After Pipeline Construction, "Order Commencing Rule Making" to receive public comment on the adoption of land restoration rules. The Notice of Intended Action was published in the IAB Vol. XXII, No. 7 (10/6/99) p. 573, as **ARC 9400A**. Written comments were filed on or before October 28, 1999, and a workshop to receive oral comments was held on November 17, 1999. On November 24, 1999, the Board issued an "Order Scheduling Additional Comments." Additional comments were filed on or before December 8, 1999.

Pursuant to the authority of Iowa Code section 17A.4(1)"b," on May 15, 2000, the Board issued an order In re: Restoration of Agricultural Lands During and After Pipeline Construction, "Order Terminating Rule Making," published herein as **ARC 9877A**. At the November 17, 1999, oral presentation, in the rule making noticed as **ARC 9400A** (herein the pretermination proceeding will be identified as **ARC 9400A**), the Board stated its intent to receive additional written and oral comments on a new set of proposed land restoration rules. (Tr. 197). After considering fully all written and oral submissions and the 180-day rule-making parameters, the Board terminated **ARC 9400A** and is issuing new proposed land restoration rules in this Notice of Intended Action. The proposed new rules incorporate written and oral comments regarding **ARC 9400A**. This Notice will discuss the proceedings that resulted in the proposed new rules. The rule-making docket, identified as Docket No.

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RMU-99-10, will remain the same to facilitate continuity between the previous and current rule-making proceeding.

The Board is proposing to rescind current 199 IAC Chapter 9 and replace it with a new Chapter 9. Currently, Chapter 9 sets the standards for underground improvements, soil conservation structures, and restoration of agricultural lands after pipeline construction. The rules apply to pipelines transporting any solid, liquid, or gaseous substance except water, including intrastate and interstate natural gas pipelines and hazardous liquid pipelines.

New Chapter 9 is intended to implement the changes adopted in 1999 Iowa Acts, chapter 85 [Senate File 160], including prescribing standards for the restoration of land for agricultural purposes during and after pipeline construction. The legislation amended Iowa Code sections 479.29, 479.45, 479.48, 479A.14, 479A.24, 479A.27, 479B.20, 479B.29, and 479B.32.

1999 Iowa Acts, chapter 85, amended Iowa Code chapters 479, 479A, and 479B to focus the Board's authority to establish standards for the restoration of agricultural lands during and after pipeline construction. The amendments directed the Board to adopt rules which include a list of items in the statutes. The legislation affirms the county boards of supervisors' authority to inspect projects and gives the county boards of supervisors the authority to file a complaint with the Board in order to seek civil penalties for noncompliance with various requirements. The new chapter requires petitioners for permits or federal certificates for pipeline construction to file a written land restoration plan and provide copies to all landowners. The proposed rules, pursuant to the statute, allow the application of different provisions, which are contained in agreements with landowners, and define compensable losses.

In the new Chapter 9, the Board sets out a procedure for review of land restoration plans. Those pipeline companies that are subject to Iowa Code chapters 479 and 479B and, therefore, must file a petition for pipeline permit shall file a land restoration plan at the time they file a petition for permit or application for amendment of permit with the Board. Those interstate pipeline companies that are subject to Iowa Code chapter 479A and have construction projects requiring a certificate from the Federal Energy Regulatory Commission (FERC) must file a land restoration plan at least 120 days prior to construction. The proposed rules describe the contents of a land restoration plan and set out detailed requirements for land restoration.

Written comments in **ARC 9400A** were filed by the Consumer Advocate Division of the Department of Justice (Consumer Advocate), Alliant Energy-IES Utilities Inc. and Interstate Power Company (Alliant), MidAmerican Energy Company (MidAmerican), Northern Natural Gas Company and Northern Border Pipeline (Northern), Alliance Pipeline L.P. (Alliance), BP Amoco Pipelines-North America (Amoco) and the Iowa Petroleum Council (IPC). ANR Pipeline Company (ANR) and Grundy County Board of Supervisors filed letters announcing their intention to participate in the workshop but not making specific comments. Poweshiek County filed a letter supporting the rules as drafted but did not make specific comments. The Office of Grundy County Engineer (Grundy County) filed late comments on November 15, 1999.

At the November 17, 1999, workshop, in **ARC 9400A**, panel discussions were held on the definition of pipeline construction, FERC environmental assessments, preapproval of land restoration plans for hazardous liquid, intrastate and interstate natural gas pipelines, storage of topsoil on traveled ways, temporary tile repair, mandatory county inspections, postconstruction drainage issues, and the proposed rules. Northern, Alliance, IPC, Consumer Advocate, the Iowa Farm Bureau Federation (Farm Bureau), MidAmerican, Delaware County Supervisor Shirley Helmrichs, and landowners Todd Voss, Jack and Debbie Hartman, Jim Shover, and Gary Mugge participated in the workshop discussions.

Additional comments in **ARC 9400A** were filed by Consumer Advocate, Northern, Farm Bureau, Robert and Susan Garner, Allen Cassel, Mr. and Mrs. Donald Langbehn, Richard and Betty Lynch, James L. Shover, Michael J. Ryan, Gordon Mau, Ed Offerman, ANR, Shirley E. Helmrichs, and Henry Bechtel. Kathryn A. Hall filed additional comments on December 10, 1999. On December 22, 1999, Sherwood Jackson filed comments, and Amoco filed comments on December 28, 1999.

Alliance and Northern asserted that the statutory language in Iowa Code Supplement section 479A.14(12) exempting any pipeline projects that have received a Federal Energy Regulatory Commission (FERC) certificate by June 1, 1999, from the land restoration requirements should be incorporated in subrule 9.1(1). 2000 Iowa Acts, House File 2247, amended Iowa Code chapter 479A by removing the provision that the land restoration requirements of Iowa Code Supplement section 479A.14 did not apply to interstate natural gas pipeline construction projects that had received a certificate from FERC prior to June 1, 1999. 2000 Iowa Acts, House File 2247, is effective July 1, 2000. In order to avoid any future confusion, a sentence will be added to subrule 9.1(1) to clarify that certain construction commenced during 1999 is not subject to the requirements of new Chapter 9.

MidAmerican suggested clarification of the definition of "landowner" in paragraph 9.1(3)"c" and the addition of a definition of "property interest." The definition of "landowner" is set forth in various sections of Iowa Code chapters 479 and 479B. Pursuant to Iowa Code sections 479.5 and 479B.4, a landowner, for informational meeting notices, is "a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property." Persons residing on the property must also be notified but are not classified as landowners. For payment of damages, pursuant to Iowa Code sections 479.46(7), 479A.25(7), and 479B.30(7), the term "landowner" includes a farm tenant.

With the possible exception of contract purchasers, tenants do not usually possess property rights that allow the tenants to dictate how the property is treated. Where the legislature intended the term "landowner" to have more than its usual meaning, or to give rights to persons who are not the landowner, it has specifically done so. Expanding the term creates ambiguities and difficulty in determining who is entitled. Nonowners can be difficult to identify and locate. See Anstey v. Iowa State Commerce Commission, 292 N.W.2d 380 (Iowa 1980). The Board does not believe a specific statement in the rule is necessary to allow landowners to have another party represent their interests. Paragraph 9.1(3)"c" is modified by deleting the second sentence in the definition.

The interstate pipeline companies objected to paragraph 9.1(3)"f" because of the procedural burdens of filing a land restoration plan for "construction." Northern, IPC, and Amoco suggested exempting minor projects. Northern sought clarification that certain activities it considered maintenance not be considered "construction." Northern suggested exempting normal operation or maintenance activities, construction for emergency or safety purposes,

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construction required by state or local governmental agencies or authorities, and construction on property owned or leased by the pipeline company. Consumer Advocate and Farm Bureau maintained the exemption for emergency construction could be a potential loophole and that activities construed as maintenance could also damage the land.

The definition of "pipeline construction" is of critical importance because, under Iowa Code Supplement sections 479.29(1), 479A.14(1), and 479B.20(1), the land restoration standards apply to pipeline construction. The Board believes a broad definition of construction is necessary to carry out the intent of the legislature to protect and restore Iowa agricultural land. The determination of the breadth of the definition of "pipeline construction" is within the Board's discretion in this rule making. To prevent the creation of a serious loophole in the applicability of the standards in these rules, the definition will include installation, replacement, operation, and maintenance involving a significant disturbance to the land, and removal of a pipeline. The Board recognizes that, for public safety reasons, emergency repairs sometimes must be conducted in a manner inconsistent with this chapter. For this reason, the definition of "pipeline construction" in paragraph 9.1(3)"f" will exempt emergency repairs. While that means the land restoration standards technically will not apply to emergency repairs, if the definition is adopted, the Board will emphatically urge the pipeline companies to make every reasonable effort, whenever they disturb the soil, to fully restore agricultural land in compliance with the standards in this chapter.

The definition of "pipeline construction" is also important with regard to interstate natural gas pipelines because, under Iowa Code Supplement section 479A.14(9), a land restoration plan must be filed prior to the initiation of construction. Proposed rule 9.2(479, 479A, 479B) requires a specific land restoration plan filing for all interstate natural gas pipeline construction projects requiring a certificate from the Federal Energy Regulatory Commission. For the generally less significant interstate natural gas construction projects that do not require a federal certificate, these rules provide a sufficient level of specificity in methods, procedures, and restoration results to deem that the rules constitute a land restoration plan. This approach is consistent with Iowa Code Supplement sections 479.29(9) and 479B.20(9), which require a land restoration plan for intrastate and hazardous liquid pipeline projects only when the pipeline company files a petition for a permit. Lesser projects not requiring a permit are subject to the standards in these rules, but are not required to be individually addressed in a plan. Interstate natural gas projects will be handled in the same way.

Turning to Northern's other assertions, construction required by state or local governments, such as road projects, may impact privately owned agricultural land. Exemption is not appropriate. Also, since the land restoration standards apply only to agricultural land, no exception is necessary for land that has been leased or purchased by a pipeline company and used for nonagricultural purposes.

Alliant suggested the term "proper notice" to the county inspector be defined. Northern also supported defining the term and recommended language. In the panel discussion, Consumer Advocate, Farm Bureau, Delaware County Supervisor Shirley Helmrichs, and several landowners asserted that it was important for the county inspector to inspect and approve all land restoration. The county inspector should be informed when critical functions occur. New paragraph 9.1(3)"g" will require the county inspector receive at least 24 hours' written notice prior to trenching, tile repairing, or backfilling at a specific location. (With the addition of new paragraph 9.1(3)"g," subsequent paragraphs have been relettered.)

MidAmerican and Northern commented about the possible implication of a general reference to soil conservation agencies rather than to a specific agency in paragraph 9.1(3)"h" (formerly 9.1(3)"g"). Northern suggested the paragraph reference only the Iowa Natural Resources Conservation Service. MidAmerican and Northern's apparent concern is what type of groups could be classified as soil conservation agencies. The Board recognizes their concern and will clarify paragraph 9.1(3)"h" by adding the phrase "federal or state soil conservation agencies." The reference to "soil conservation agencies" in paragraph 9.1(3)"i" will also be modified by adding the phrase "federal or state soil conservation agencies" for the same reasons.

Northern also recommended deleting "timber" as a soil conservation practice in paragraph 9.1(3)"h" because it may be too broad. The Board agrees with Northern. The term "timber" could encompass natural woods and other wooded areas that are not intended to be used for land conservation purposes. Paragraph 9.1(3)"h" will be modified by substituting "tree plantings" for the term "timber" and the phrase "but not limited to" will also be added.

Northern recommended clarifying the definition of "topsoil" set forth in paragraph 9.1(3)"k" (formerly 9.1(3)"j") by deleting the last sentence and adding the phrase "whether in cultivated or uncultivated soil" to the first sentence. Delaware County Supervisor Shirley Helmrichs maintained the definition of "topsoil" should be more detailed, and cited as an example the change in color between topsoil and subsoil. Landowner Gordon Mau suggested adding a reference to the organic content and color of typical topsoil. The Board finds merit in these suggestions and will revise the definition accordingly.

Rule 9.2(479,479A,479B) sets forth when a plan is required. In written and oral comments, many commenters proposed filing a generic plan, which could be preapproved by the Board. The commenters contended that the filing of a generic plan would eliminate the need for individual plan preparation and Board consideration in each proceeding. Consumer Advocate and Farm Bureau suggested the pipeline companies file generic plans for all construction plus maintenance, repair, and emergency work. The plans would be subject to Board review both at filing and periodically thereafter.

One of the advantages of a generic plan would be that the landowners could be informed of the company's plan early in the process. However, with a generic plan, the landowners would not have the opportunity for input into the plan content, nor could the Board address any unique aspects of the project. The Board declines to modify rule 9.2(479,479A, 479B) concerning a generic plan. As previously discussed, specific plans are only required when permits or certificates are required by the state or FERC. Pipeline companies are not precluded by the rule from submitting a model plan for review and comment in advance of a petition for federal or state construction authorization. Additionally, construction activities not requiring permits or certificates from the Board or FERC remain subject to the land restoration requirements but not individual plans. The rules in Chapter 9 effectively provide the generic plan for construction not requiring the filing of a specific plan.

Amoco opposed the inclusion of information pertaining to the purpose and nature of the pipeline project as required by paragraph 9.2"a""1" (now 9.2(1)"a") as part of the plan.

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Amoco contended the information could be confidential and that the plan is not the proper forum for information unrelated to land restoration. The information benefits the landowners that receive a copy of the plan. In addition, the information will be available through the Iowa pipeline permitting process, which includes public informational meetings, notice and hearing. Paragraph 9.2(1)"a" will be proposed without change.

Amoco proposed deleting the phrase "good cause" from subrule 9.2"b" (now 9.2(2)). Amoco contended the subrule sets an unnecessary threshold of proof to obtain a waiver to accept plan variations. On January 18, 2000, the Board issued an order in Docket No. RMU-00-1, "In re: Rule Waivers," to implement changes in Governor Vilsack's Executive Order 11, issued September 14, 1999, which requires each agency to adopt uniform waiver rules. The Board will modify subrule 9.2(2) to reference 199 IAC 1.3(17A,474) to reflect the current and future waiver rule, whichever is in effect at a particular time.

Northern and Alliance suggested subrule 9.2"c" (now 9.2(3)) be modified to include a FERC Environmental Assessment (EA) as an alternative to a land restoration plan. Consumer Advocate was not opposed to the suggestion if the EA was comparable to the Environmental Impact Statement (EIS). Farm Bureau contended an EA was not as comprehensive as an EIS, usually does not cover all required areas of a land restoration plan, and has less opportunity for public input than an EIS. The Board's role is to review the land restoration plans to ensure that Iowa requirements will be met. If an EA contains the information necessary to make this determination, there is no reason why it cannot be utilized. The Board has found the EA information sufficient in Docket No. WRU-99-35-233, Northern Natural Gas Company, and will modify the rule to include EAs.

Northern also recommended the Board define EIS and EA by citing the FERC definition. The Board finds merit in Northern's recommendation and will modify the rule to cite the federal regulation containing these definitions.

Northern and Alliance opposed the 120-day prefiling requirement in subrule 9.3(2). They argued the FERC certificate may be issued less than 120 days before the planned start of construction and the process could be delayed by the filing requirement. The Board must balance the timeliness of federal actions with the time needed for review and distribution of the approved plan. The Board will modify subrule 9.3(2) to accept draft environmental documents or best-available information at the beginning of the review period, and to allow conditional decisions if final information is not available.

Amoco and IPC objected to the requirements set forth in subrule 9.4(1) that topsoil be stripped from the subsoil storage area. They contended there is no evidence that placing subsoil on the topsoil is harmful and alleged this is not a common industry practice. If topsoil is stripped from the subsoil storage area, the subsoil and the topsoil will never come in contact so they cannot be mixed. This separation is common practice for gas pipelines and is required by the FERC Upland Erosion Control, Revegetation, and Maintenance Plan. The subrule will be proposed without change.

Consumer Advocate recommended adding stringent requirements for staking the area to be topsoiled because of instances in which it was difficult to verify that the required amount of the topsoil had been removed. The Board is reluctant to add stringent requirements for staking to subrule 9.4(1) as suggested by Consumer Advocate since none of the landowners, nor the comments of a county inspector provided by the Delaware County Supervisor, indicate a problem in this area.

Landowner Gordon Mau suggested removing all topsoil regardless of depth from both the trench and the entire working right-of-way. The Board believes removing topsoil from the working right-of-way would risk more damage to the topsoil and place underlying tile lines at greater risk than leaving it in place. The working right-of-way can be 50 feet and more in width, and, especially in deep topsoil stripping, 50+ feet adds up to such a large volume of earth that Mr. Mau's proposal is not practical. The exception would be if wet conditions threatened mixing of topsoil and subsoil by construction equipment, and that is addressed in subrule 9.4(10).

Farm Bureau and landowners Ed Offerman and Gordon Mau opposed the 12-inch limit on topsoil removal, contending that all topsoil should be removed from the trench whatever its depth. Neither the FERC Upland Erosion Control, Revegetation, and Maintenance Plan, nor current Iowa rules were designed to replace all the topsoil. The intent was to ensure that a layer of fertile soil covers the right-of-way area after construction. However, the practice is not without precedent. The Agricultural Impact Mitigation Agreement (AIMA) for the 1998 Northern Border Project required the removal of all topsoil, up to 36 inches deep, both from the trench and subsoil storage area. The Illinois AIMA for the Alliance Project required topsoil removal up to 36 inches in the pipeline trench and 12 inches on the subsoil storage area. FERC also adopted these requirements for Northern Border Project 2000, the ANR portion of the Independence Pipeline and Market Link Expansion Projects, and the ANR Wisconsin Expansion project. Therefore, subrule 9.4(1) will be amended to require that the actual depth of the topsoil, not to exceed 36 inches, will first be stripped from the area to be excavated above the pipeline and to a maximum of 12 inches from the adjacent subsoil storage area.

Alliance and Northern opposed the prohibition against using stored topsoil as a roadway without landowner consent. Alliance alleged this is a fairly standard construction practice, which should not require landowner agreement to implement. Northern maintained that storing topsoil on traveled ways may be unavoidable and proposed the rule allow the practice when the construction right-of-way is limited. Consumer Advocate argued that placing topsoil on the traveled way increases the risk of mixing with the subsoil. Farm Bureau also opposed this practice. The Board believes this matter is of sufficient concern to landowners that it should not be done without their consent and the requirement in the rule will remain as proposed.

Delaware County Supervisor Shirley Helmrichs and landowner Michael J. Ryan maintained that topsoil had been used for entrance roads and ramps instead of right-of-way storage. They also contended that land leveling to facilitate construction was done without separating the topsoil. Topsoil should not be used for entrance roads and ramps or removed from the landowner's property without consent. Nor should land leveling be performed without storing and replacing the topsoil. Paragraph 9.4(1)"b" will be modified to prohibit the use of topsoil for such purposes.

Alliant suggested the clearance requirement in subrule 9.4(2) apply only "when possible." Subrule 9.4(2) will be proposed without change. The 12-inch clearance requirement is intended to provide workspace between the pipeline and tile line without affecting the other facility and is consistent with federal pipeline safety standards for both gas and liquid pipelines.

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Subrule 9.4(2) sets forth the requirements for temporary and permanent repair of drain tile. IPC, Amoco and Northern suggested the requirement in paragraph 9.4(2)"b" that flowing tile lines be temporarily repaired immediately be deleted. Northern recommended that the rule state repairs to flowing lines be made "promptly" rather than "immediately." IPC and Amoco recommended requiring temporary repair only "to the extent practical." Northern contended repair of tile lines that are parallel to the trench would be impractical. IPC and Amoco asserted that temporary repair of dry tile lines should not be required. Northern suggested the rule require temporary repairs to dry tile lines within 30 days rather than 4; Alliance suggested 20 days.

Northern regarded water in the trench as inevitable in many cases and a manageable problem. IPC and Amoco stated that they consider allowing tile to flow into the trench or, in the alternative, plugging the tile to be options. They argued they should be allowed to choose between temporary repair and paying damages. Consumer Advocate challenged the practicality of payments. Consumer Advocate and Farm Bureau also questioned if pumping of large amounts of trench water would create erosion or wetness problems for the landowner.

Farm Bureau, Delaware County Supervisor Helmrichs, and landowners Cassel, Shover, and the Garners maintained that temporary tile repairs are needed to prevent wet soil conditions on the right-of-way and adjacent lands. They stated wet soils could cause problems such as difficult construction, soil mixing, and compaction. Landowner Gary Mugge contended that unrepaired tile during construction had caused flooding and crop damage on his land, as well as soil compaction. Landowners Cassel and Mau said unrepaired tile lines need to be capped to keep mud out if trench water reaches open tile ends. The Langbehns favored temporary repairs for wet or dry lines but pointed out the need for animal guards on lines left open.

The comments from farm and landowner interests indicate that the fundamental concerns to be addressed are maintaining drainage from adjacent lands during and after construction and preventing entry of mud and debris into the open ends of cut tile. It appears these concerns can be protected without requiring temporary repair in all instances. The Board also recognizes that if tile lines are crossed at a sharp angle, the ends of cut tile lines may be too far apart for temporary repair to be practical. If water flows from unrepaired tile lines, the presence of water in the trench has minimal impact on the construction of the pipeline.

The Board will make several modifications to paragraph 9.4(2)"b" based on these comments. Repairs to flowing tile lines must be made as soon as is practicable. Temporary repairs to lines that remain dry will not be required if permanent repairs can be made within ten days. Temporary repair will not be required if the ends of the tile line are too widely separated for temporary repair to be practical. The open ends of unrepaired tile lines must be protected from entry of mud if water rises, foreign material, or small animals. Plugging of upstream tile lines will not be permitted. The rules do not provide for payment of damages in lieu of repairs.

Alliance recommended paragraph 9.4(2)"c" be modified to include a statement that the tile line marker will have to be moved to the edge of the right-of-way to accommodate the spoil bank and various construction activities. Grundy County recommended requiring a wheel-type trenching machine to help establish the location of existing lines.

The spoil bank is created when the trench is dug. The locations of tile lines in the trench wall are then noted and marker flags or stakes placed in the spoil bank. No construction occurs on the spoil bank to disturb the markers. If areas of the trench away from the tile line were backfilled, the spoil pile next to the exposed tile would remain. No situation can be envisioned that would require moving the stakes to the edge of the right-of-way. The Board agrees that wheel trenchers leave smooth and even trench sides which may make it easier to find cut tile lines than in a backhoe excavation. However, no one type of machine is suitable in all soil or working conditions. The paragraph will be proposed without change.

Paragraph 9.4(2)"d" sets forth the requirements for permanent repairs. Alliance argued that a pipeline company should be allowed to backfill the trench and later re-excavate tile lines for permanent repairs. Amoco and IPC suggested deletion of the requirement for permanent repairs before backfilling. The Board opposes backfilling the trench prior to final repairs. Reexcavating the trench to repair tile would be more difficult and expensive than leaving the trench open at the point of tile crossing. Any error would leave unrepaired tile behind. The Board declines to incorporate the suggestions.

The Langbehns recommended that if clay tile is replaced with corrugated plastic tile, the plastic tile should be a larger size since corrugated plastic tile will not have the same capacity as clay tile. The Board agrees that replacing clay tile with the same diameter of corrugated plastic tile would reduce the flow capacity of the tile line. Paragraph 9.4(2)"d" will be amended to state that replacement tile must be of a "size and flow capacity" at least equal to the tile being replaced.

Alliance asserted paragraph 9.4(2)"e" should not require inspection of each repair and suggested a sampling should be sufficient. Amoco and IPC questioned whether county inspector approval of all tile repairs was a practical requirement. A county inspector is specifically required by Iowa Code Supplement sections 479.29(4), 479A.14(4) and 479B.20(4) to be present on the site and at each phase and separate activity of specified actions, including restoration of underground improvements. A sampling would not satisfy that requirement. The paragraph will be clarified to state that each permanent tile repair is to be inspected by the county inspector.

Landowner Ryan alleged that an 18-inch rock rolled off the pipeline right-of-way from a spoil pile. Mr. Ryan stated he subsequently hit the rock and damaged his silage chopper. The Board acknowledges it is possible that during soil stockpiling or rock hauling chunks of rock could end up off the easement along with other debris from the right-of-way. Paragraph 9.4(3)"a" will be modified to state that the pipeline company shall examine the area adjacent to the easement and along access roads on which rock was hauled and shall remove any debris or large rocks which may have rolled or blown over from the right-of-way or fallen from vehicles.

Amoco and IPC suggested paragraph 9.4(3)"b" be amended to allow spilled petroleum or chemical products to be "remediated" instead of removed. This type of spill can sometimes be treated in place using biological or chemical agents. This practice is not uncommon during environmental cleanups. Paragraph 9.4(3)"b" will be amended to allow in situ remediation of chemical petroleum spills.

Landowners Cassel and Offerman contended that on a recent project, the contractor tilled the soil less than 18 inches deep. Landowner Mau stated that only one tillage pass was made, and it was done under wet conditions leaving the soil hard and lumpy with large clods. The Garners reported that

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the contractor attempted to till with undersized equipment and could not till 18 inches deep. Landowner Ryan maintained that between wet conditions and the type of equipment used the contractor could not till more than 8 inches deep, and counted the future addition of 12 inches of topsoil to say that 18 inches of tillage would be achieved. Farm Bureau also reported inadequate deep tillage in recent pipeline construction.

While these comments primarily allege violations of Agricultural Impact Mitigation Agreement standards which the Board has no authority to address, the commenters make a valid point: Attempting to till in wet conditions hampers deep tillage efforts and leaves the soil in unsatisfactory condition. Paragraph 9.4(4)"a" will be modified to require tillage be done when soil conditions are appropriate.

Northern suggested that the requirement that roads be tilled not apply to roads that will remain in service. While it seems unlikely that the rule would be misapplied in this manner, there is a technical conflict with subrule 9.4(9), which requires that roads to remain in service be left in serviceable condition. Paragraph 9.4(4)"a" will be modified by adding language excepting roads that will remain in service.

Amoco and IPC proposed substituting "elevation and grade" for "line and grade" in subrule 9.4(5). The Board finds merit in the suggestion and will modify the subrule by substituting "elevation" for "line."

Alliance contended subrule 9.4(6) should require the seed mix restore the original ground cover "type," not the same species, otherwise there might be an unnecessary diversity of seeding requirements. Alliance appeared concerned that it might be required to prepare a customized seed mix exactly reproducing the disturbed plant species for each tract crossed. To preclude such an interpretation, subrule 9.4(6) will be modified by adding the phrase "or a comparable" ground cover.

Alliance maintained that a local highway department might object to leaving field entrances in place and that a landowner request only need be acceded to if it complies with all required permits. The Board agrees that leaving a field entrance permanently in place may require approval of the highway authority and, if such approval is not forthcoming, it may not be possible to accede to a landowner request.

Landowner Mau requested the Board strengthen subrule 9.4(9). According to Mr. Mau, the FERC environmental inspector ordered an access road removed before all land restoration work on the property was completed. Although the Board cannot control a FERC inspector, future disagreement over whether completion of construction includes completion of land restoration can be prevented. Subrule 9.4(9) will be amended by adding the phrase "Upon completion of construction and land restoration." The modification makes clear that some roads may still be needed for a time after the pipe is installed.

Three landowners noted an additional problem with construction in wet conditions that was not anticipated by subrule 9.4(10): rutting so deep that underlying tile lines were crushed. Although the tile was eventually repaired, the crushed lines contributed to other drainage problems. The phrase "or underground drainage structures may be damaged" will be added to the subrule.

Delaware County Supervisor Helmrichs suggested more specific criteria for construction in wet conditions, such as a certain rut depth or amount of rainfall. Amoco questioned who would decide if "construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed" and how this would be determined. Because the impact of rutting or rainfall will depend on local circumstances, such as the nature of the soil and prior rainfall, the Board does not believe it practical to create specific criteria. The Board believes this decision is best left to the on-site judgment of the county inspector.

Amoco and IPC proposed revisions to subrule 9.4(10) that would limit application of this rule to agricultural lands and allow the land restoration plan to specify other preventive or remedial actions. The companies noted that construction in wet conditions might be unavoidable if areas of chronically wet soil are encountered. The application of these rules is limited to agricultural land and it is unnecessary to repeat this throughout the rules. The Board agrees there may be other ways of preventing soil mixing; for example, use of pads or mats to drive over. Subrule 9.4(10) will be amended to give more flexibility in the options available to reduce the damage to the soil or tile lines.

In the recently adopted FERC Rule 18 CFR Part 157.6(d)3(iv), (Docket No. RM98-17-000, Order No. 609, effective 11/25/99), notices to landowners of a pipeline certificate filing must include "how the landowner may contact the applicant, including a local or toll-free number and a name of a specific person to contact who is knowledgeable about the project." For additional work to be done under existing certificates, 15 CFR Part 157.203(d)2(ii) requires the notice include "the name and phone number of a company representative that is knowledgeable about the project."

In its original comments, Northern suggested rule 9.5(479, 479A,479B) be struck because FERC's rule adequately covers this issue. However, the FERC rule affects only interstate natural gas pipelines. Other pipelines are also affected by the Iowa rules, so rule 9.5(479,479A,479B) cannot be eliminated. In subsequent comments, Northern proposed language stating that this rule should not apply when the FERC rule is followed.

The Farm Bureau maintained its members have reported difficulty locating a contact person. Delaware County Board Supervisor Helmrichs reported that, in a recent project, many landowners' only contacts with the company were cell phone numbers that were disconnected after construction, thus supporting the need for a longer term contact point. One landowner strongly supported a point of contact requirement, stating that pipeline personnel are mobile and it is hard to contact the same person twice. Another also referred to problems finding someone with whom to discuss their concerns.

The FERC rule does not ensure that a point of contact will remain available once construction is completed. Nor does it ensure that this person would be an appropriate contact for claims. The Board finds the FERC rule insufficient to fully protect Iowa's interests, and does not support Northern's proposal that Iowa rules not apply when the FERC rule is in effect.

Consumer Advocate suggested revising rule 9.5(479, 479A,479B) by including a toll-free telephone number and an Iowa mailing address, specifying that information and changes must be communicated in writing, requiring a designated point of contact be available for five years rather than one year after construction, requiring response to any landowner inquiry or claim within 48 hours, and adding a new section on identification of an agent for service of process in Iowa. Farm Bureau supported Consumer Advocate's comments.

The Board finds merit in Consumer Advocate's suggestion regarding a toll-free telephone number. It should not cost landowners to seek information from the company, and

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is consistent with the FERC rule. The Board also agrees with Consumer Advocate's recommendation that the information and changes be communicated in writing. Consumer Advocate asserted that it might take more than a year to settle all damage claims. Five years seems no less arbitrary than one year. A better idea might be to require landowners have a contact point until their damage claims are settled. Rule 9.5(479,479A,479B) will be modified to provide for a toll-free telephone number, communication of contact information changes in writing, and maintaining a point of contact for individuals until their damage claims are resolved. The Board believes the proposed rules sufficiently address designating a contact for landowner inquiries and declines to propose Consumer Advocate's additional suggestions.

Alliance contended that a separate agreement made in accordance with rule 9.6(479,479A,479B) that varies from the Board's rules would by definition be inconsistent with those rules and requested clarification. The Board would note that it is not a violation of these rules to accommodate reasonable landowner requests as long as they are not inconsistent with the restoration requirements.

The Farm Bureau and a number of the landowner commenters sought more authority for the county inspector. One landowner questioned whether the penalty provisions of the laws were adequate deterrents. Enforcement powers can only be granted by the legislature and cannot be created by the Board.

Several landowner commenters were also critical of the performance of the county inspectors and the FERC Environmental Inspectors. Responsibility for the performance of the county inspector lies with the county board of supervisors, and the FERC inspector with FERC. Any failings in this area are not within the authority of the Board to address by rule.

Some landowner commenters suggested rules limiting the size of a work "spread" or the number of simultaneous construction activities, because on past projects there were not enough county inspectors to properly cover all ongoing activities. The responsibility of having adequate personnel to fulfill its obligations lies with the county. Although the laws sometimes refer to "the inspector," no limit is set on the number of inspectors the county can hire, within reason. The laws provide that the reasonable costs of county inspection will be borne by the pipeline company, so the county should not be under financial restraint in staffing.

Other landowner comments sought adoption of rules on damage claim issues. One landowner argued that the state of Iowa should enforce contracts made between landowners and pipeline companies. Grundy County suggested the Board require contractors to post a performance bond and a certificate of insurance with the county. Consumer Advocate also raised issues of compensation. However, the Board has little, if any, authority in these matters, particularly with regard to the counties, and these remedies are not available through the Board.

The IPC and Delaware County Supervisor Helmrichs recommended rules for crossing of county roads. The county, not the Board, determines the manner in which county roads are crossed by pipelines. These comments appear to arise from misunderstanding due to the frequent practice of having the county inspectors inspect pipeline road crossings in addition to their land restoration duties.

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed rules. The statement must be filed on or before July 5, 2000, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to Docket No. RMU-99-10. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

Since the rule-making docket will be a continuation from **ARC 9400A**, the comments should contain new arguments not previously presented to the Board. The Board also requests the commenters specifically address the following: (1) the definition of pipeline construction; (2) what activities constitute pipeline maintenance; (3) what activities constitute pipeline operation; (4) what is a significant disturbance to the soil; (5) the definition of proper notice; (6) filing requirements with the Board under paragraph 9.3(2)"c" for interstate natural gas pipelines; and (7) topsoil removal.

A public hearing to receive comments on the proposed rules will be held at 10 a.m. on July 19, 2000, in the Board's hearing room at the address listed above.

Pursuant to Iowa Code section 479.29(1), the Board will distribute copies of this Notice of Intended Action to each county board of supervisors.

These rules are intended to implement Iowa Code chapters 479, 479A, and 479B.

The following rules are proposed.

Rescind 199—Chapter 9 and adopt the following **new** chapter in lieu thereof:

CHAPTER 9
RESTORATION OF AGRICULTURAL LANDS DURING AND AFTER PIPELINE CONSTRUCTION

199—9.1(479,479A,479B) General information.

9.1(1) Authority. The standards contained herein are prescribed by the Iowa utilities board pursuant to the authority granted to the board in Iowa Code Supplement sections 479.29, 479A.14, and 479B.20, relating to land restoration standards for pipelines. The requirements of this chapter do not apply to interstate natural gas pipeline projects that were both constructed between June 1, 1999, and July 1, 2000, and that also received a certificate from the Federal Energy Regulatory Commission prior to June 1, 1999.

9.1(2) Purpose. The purpose of this chapter is to establish standards for the restoration of agricultural lands during and after pipeline construction. Agricultural lands disturbed by pipeline construction shall be restored in compliance with these rules.

9.1(3) Definitions. The following words and terms, when used in these rules, shall have the meanings indicated below:

a. "Agricultural land" shall mean:

(1) Land which is presently under cultivation, or

(2) Land which has previously been cultivated and not subsequently developed for nonagricultural purposes, or

(3) Cleared land capable of being cultivated.

b. "Drainage structures" or "underground improvements" means any permanent structure used for draining agricultural lands, including tile systems and buried terrace outlets.

c. "Landowner" means a person listed on the tax assessment rolls as responsible for the payment of real estate taxes imposed on the property.

d. "Pipeline" means any pipe, pipes, or pipelines used for the transportation or transmission of any solid, liquid, or gaseous substance, except water, in intrastate or interstate commerce.

e. "Pipeline company" means any person, firm, copartnership, association, corporation, or syndicate engaged in or organized for the purpose of owning, operating, or controlling pipelines.

f. "Pipeline construction" means installation, replacement, operation and maintenance involving substantial disturbance to the land, and removal of a pipeline, but shall not include emergency repairs.

g. "Proper notice" to the county inspector means that the pipeline company and its contractor shall keep the person responsible for the inspection continually informed of the work schedule and any schedule changes, and shall provide at least 24 hours' written notice before trenching, permanent tile repair, or backfilling is undertaken at any specific location.

h. "Soil conservation practices" means any land conservation practice recognized by federal or state soil conservation agencies including, but not limited to, grasslands and grassed waterways, hay land planting, pasture, and tree plantings.

i. "Soil conservation structures" means any permanent structure recognized by federal or state soil conservation agencies including but not limited to toe walls, drop inlets, grade control works, terraces, levees, and farm ponds.

j. "Till" means to loosen the soil in preparation for planting or seeding by plowing, chiseling, discing, or similar means. For the purposes of this chapter, agricultural land planted using no-till-planting practices is also considered tilled.

k. "Topsoil" means the uppermost part of the soil frequently designated as the plow layer, or the soil depth sometimes referred to as the A horizon, which represents the depth of the soil that is ordinarily moved in tillage, or its equivalent in uncultivated soils. Topsoil can ordinarily be distinguished from subsoil by its higher organic content and darker color.

199—9.2(479,479A,479B) Filing of land restoration plans. Land restoration plans shall be prepared pursuant to Iowa Code Supplement sections 479.29(9) and 479B.20(9) and this chapter for pipeline construction projects requiring a permit or an amendment to a permit which proposes pipeline construction or relocation. Plans for interstate natural gas pipeline construction projects requiring a certificate from the Federal Energy Regulatory Commission shall be prepared pursuant to Iowa Code Supplement section 479A.14(9) and this chapter.

9.2(1) Content of plan. A land restoration plan shall include but not be limited to the following:

a. A brief description of the purpose and nature of the pipeline construction project.

b. A description of the sequence of events that will occur during pipeline construction.

c. A description of how compliance with subrules 9.4(1) to 9.4(10) will be accomplished.

d. The plan should include the point of contact for landowner inquiries or claims as provided for in rule 9.5(479,479A,479B).

9.2(2) Plan variations. The board may by waiver accept variations from this chapter in such plans if the pipeline company is able to satisfy the standards set forth in 199 IAC 1.3(17A,474) and if the alternative methods would restore the land to a condition as good as or better than provided for in this chapter.

9.2(3) Environmental impact statement, environmental assessments, and agreements. Preparation of a separate land restoration plan for an interstate natural gas company project subject to Federal Energy Regulatory Commission authority may be waived by the board if the requirements of Iowa Code Supplement section 479A.14 are substantively satisfied in an environmental impact statement or environmental assessment, as defined in 18 CFR Section 380.2, and as accepted and modified by the Federal Energy Regulatory Commission certificate issued for the project. Preparation of a separate land restoration plan may be waived by the board if an agricultural impact mitigation or similar agreement is reached by the pipeline company and the appropriate agencies of the state of Iowa and the requirements of this chapter are substantively satisfied therein. If an environmental impact statement, environmental assessment or agreement is used to fully or partially meet the requirements of a land restoration plan, the statement or agreement shall be filed with the board and shall be considered to be, or to be part of, the land restoration plan for purposes of this chapter.

199—9.3(479,479A,479B) Procedure for review of plan.

9.3(1) A pipeline company that is subject to Iowa Code section 479.5 or 479B.4 shall file its proposed plan with the board at the time it files its petition for permit pursuant to 199 IAC 10.2(479) or 13.2(479B), or a petition for amendment to permit which proposes pipeline construction or relocation pursuant to 199 IAC 10.9(2) or 13.9(479B). Review of the land restoration plan will be coincident with the board's review of the application for permit, and objections to the proposed plan may be filed as part of the permit proceeding.

9.3(2) A pipeline company that is subject to Iowa Code chapter 479A shall file a proposed land restoration plan, or a petition requesting waiver of the plan filing requirement, with the board and the office of consumer advocate no later than 120 days prior to the date construction is scheduled to commence. If the pipeline company seeks waiver of the requirement that a plan be filed, and instead proposes board acceptance of a Federal Energy Regulatory Commission environmental impact statement or environmental assessment, or of an agricultural impact mitigation or similar agreement, the filing shall include a copy of that document. If the document is not final at the time filing is required, the most recent draft or a statement of the anticipated relevant contents shall be filed. If a Federal Energy Regulatory Commission environmental impact statement or environmental assessment information, final or draft, is filed, the filing shall identify the specific provisions which contain the subject matter required by Iowa Code Supplement section 479A.14(1).

a. Any interested person may file an objection on or before the twentieth day after the date the plan is filed.

b. Within 45 days of the filing of the plan or waiver request, the board will issue a decision on whether the filing demonstrates that the land restoration requirements of Iowa Code Supplement section 479A.14 and of these rules will be met. The board may impose terms and conditions if the filing is found to be incomplete or unsatisfactory. The board's action may also be conditional pending confirmation that the Federal Energy Regulatory Commission will not impose terms and conditions that are not consistent with the action taken by the board.

c. Interstate natural gas pipeline companies proposing pipeline construction requiring a Federal Energy Regulatory Commission certificate shall include a copy of 199—Chapter 9 in the notice mailed to affected landowners required by Federal Energy Regulatory Commission Rule 18 CFR Part 157.6(d). Interstate natural gas pipeline companies proposing pipeline construction requiring a Federal Energy Regula-

tory Commission certificate shall also file the following with the board:

(1) A copy of the landowner notification required by Federal Energy Regulatory Commission Rule 18 CFR Part 157.6(d), filed coincident with the mailing to landowners.

(2) Notice of any open public meeting with Iowa landowners scheduled by the company or by the Federal Energy Regulatory Commission.

(3) Copies of letters from Iowa landowners concerning the project filed with the Federal Energy Regulatory Commission, within 20 days of such filing.

(4) A copy of any agricultural impact mitigation or similar agreement reached with another state.

9.3(3) After the board has accepted the plan, but prior to construction, the pipeline company shall provide copies of the plan to all landowners of property that will be disturbed by the construction, and to the county board of supervisors and the county engineer of each affected county. However, if a waiver is granted pursuant to subrule 9.3(2), an interstate natural gas pipeline company need not provide landowners with second copies of environmental impact statements or environmental assessments if copies are provided to landowners by the Federal Energy Regulatory Commission.

199—9.4(479,479A,479B) Restoration of agricultural lands.

9.4(1) Topsoil separation and replacement.

a. Removal. Topsoil removal and replacement in accordance with this rule is required for any open excavation associated with the construction of a pipeline unless otherwise provided in these rules. The actual depth of the topsoil, not to exceed 36 inches, will first be stripped from the area to be excavated above the pipeline and, to a maximum of 12 inches, from the adjacent subsoil storage area. Topsoil shall also be removed and replaced in accordance with these rules at any location where land slope or contour is significantly altered to facilitate construction.

b. Soil storage. The topsoil and subsoil shall be segregated, stockpiled, and preserved separately during subsequent construction operations. The spoil piles shall have sufficient separation to prevent mixing during the storage period. Topsoil shall not be used to construct field entrances or drives, or be otherwise removed from the property, without the written consent of the landowner. Topsoil shall not be stored or stockpiled at locations that will be used as a traveled way by construction equipment without the written consent of the landowner.

c. Topsoil removal not required. Topsoil removal is not required where the pipeline is installed by plowing, jacking, boring, or other methods which do not require the opening of a trench. If provided for in a written agreement with the landowner, topsoil removal is not required if the pipeline can be installed in a trench with a top width of 18 inches or less.

d. Backfill. The topsoil shall be replaced so the upper portion of the pipeline excavation and the crowned surface, and the cover layer of the area used for subsoil storage, contain only the topsoil originally removed. The depth of the replaced topsoil shall conform as nearly as possible to the depth removed. Where excavations are made for road, stream, drainage ditch, or other crossings, the original depth of topsoil shall be replaced as nearly as possible.

9.4(2) Temporary and permanent repair of drain tile.

a. Pipeline clearance from drain tile. Where underground drain tile is encountered, the pipeline shall be installed in such a manner that the permanent tile repair can be installed with at least 12 inches of clearance from the pipeline.

b. Temporary repair. The following standards shall be used to determine if temporary repair of agricultural drainage tile lines encountered during pipeline construction is required.

(1) Any underground drain tile damaged, cut, or removed and found to be flowing or which subsequently begins to flow shall be temporarily repaired as soon as practicable and the repair shall be maintained as necessary to allow for its proper function during construction of the pipeline. The temporary repairs shall be maintained in good condition until permanent repairs are made.

(2) If tile lines are dry and water is not flowing, temporary repairs are not required if the permanent repair is made within ten days of the time the damage occurred.

(3) Temporary repair is not required if the angle between the trench and the tile lines places the tile end points too far apart for temporary repair to be practical.

(4) If temporary repair of the line is not made, the upstream exposed tile line shall not be obstructed but shall nonetheless be screened or otherwise protected to prevent the entry of foreign materials and small animals into the tile line system, and the downstream tile line entrance shall be capped or filtered to prevent entry of mud or foreign material into the line if the water level rises in the trench.

c. Marking. Any underground drain tile damaged, cut, or removed shall be marked by placing a highly visible flag in the trench spoil bank directly over or opposite such tile. This marker shall not be removed until the tile has been permanently repaired and the repairs have been approved and accepted by the county inspector.

d. Permanent repairs. Tile disturbed or damaged by pipeline construction shall be repaired to its original or better condition. Permanent repairs shall be completed as soon as is practical after the pipeline is installed in the trench and prior to backfilling of the trench over the tile line. Permanent repair and replacement of damaged drain tile shall be performed in accordance with the following requirements:

(1) All damaged, broken, or cracked tile shall be removed.

(2) Only unobstructed tile shall be used for replacement.

(3) The tile furnished for replacement purposes shall be of a quality, size and flow capacity at least equal to that of the tile being replaced.

(4) Tile shall be replaced so that its original gradient and alignment are restored, except where relocation or rerouting is required for angled crossings. Tile lines at a sharp angle to the trench shall be repaired in the manner shown on Drawing No. IUB PL-1 at the end of this chapter.

(5) The replaced tile shall be firmly supported to prevent loss of gradient or alignment due to soil settlement. The method used shall be comparable to that shown on Drawing No. IUB PL-1 at the end of this chapter.

(6) Before completing permanent tile repairs, all tile lines shall be examined visually, by probing, or by other appropriate means on both sides of the trench within any work area to check for tile that might have been damaged by construction equipment. If tile lines are found to be damaged, they must be repaired to operate as well after construction as before construction began.

e. Inspection. Prior to backfilling of the applicable trench area, each permanent tile repair shall be inspected for compliance by the county inspector.

f. Backfilling. The backfill surrounding the permanently repaired drain tile shall be completed at the time of the repair and in a manner that ensures that any further backfilling will not damage or misalign the repaired section of the tile

UTILITIES DIVISION[199](cont'd)

line. The backfill shall be inspected for compliance by the county inspector.

g. Subsurface drainage. Subsequent to pipeline construction and permanent repair, if it becomes apparent the tile line in the area disturbed by construction is not functioning correctly or that the land adjacent to the pipeline is not draining properly, which can reasonably be attributed to the pipeline construction, the pipeline company shall make further repairs or install additional tile as necessary to restore subsurface drainage.

9.4(3) Removal of rocks and debris from the right-of-way.

a. Removal. The topsoil, when backfilled, and the easement area shall be free of all rock larger than three inches in average diameter not native to the topsoil prior to excavation, unless otherwise provided for in a written agreement. Where rocks over three inches in size are present, their size and frequency shall be similar to adjacent soil not disturbed by construction. The top 24 inches of the trench backfill shall not contain rocks in any greater concentration or size than exist in the adjacent natural soils. Consolidated rock removed by blasting or mechanical means shall not be placed in the backfill above the natural bedrock profile. In addition, the pipeline company shall examine areas adjacent to the easement and along access roads, and shall remove any large rocks or debris which may have rolled or blown from the right-of-way or fallen from vehicles.

b. Disposal. Rock which cannot remain in or be used as backfill shall be disposed of at locations and in a manner mutually satisfactory to the company and the landowner. Soil from which excess rock has been removed may be used for backfill. All debris attributable to the pipeline construction and related activities shall be removed and disposed of properly. For the purposes of this rule, debris shall include spilled oil, grease, fuel, or other petroleum or chemical products. Such products and any contaminated soil shall be removed for proper disposal or treated by appropriate in situ remediation.

9.4(4) Restoration of area of soil compaction.

a. Agricultural restoration. Agricultural land, including off right-of-way access roads traversed by heavy construction equipment that will be removed, shall be deep tilled to alleviate soil compaction upon completion of construction on the property. If the topsoil was removed from the area to be tilled, the tillage shall precede replacement of the topsoil. At least three passes with the deep tillage equipment shall be made. Tillage shall be at least 18 inches deep in land used for crop production and 12 inches deep on other lands, and shall be performed under soil moisture conditions which permit effective working of the soil. Upon agreement, this tillage may be performed by the landowners or tenants using their own equipment.

b. Rutted land restoration. Rutted land shall be graded and tilled until restored to as near as practical to its preconstruction condition. On land from which topsoil was removed, the rutting shall be remedied before the topsoil is replaced.

9.4(5) Restoration of terraces, waterways, and other erosion control structures. Existing soil conservation practices and structures damaged by the construction of a pipeline shall be restored to the elevation and grade existing at the time of pipeline construction unless otherwise agreed to by the landowner in a written agreement. Any drain lines or flow diversion devices impacted by pipeline construction shall be repaired or modified as needed. Soil used to repair embankments intended to retain water shall be well compacted. Disturbed vegetation shall be reestablished, including a cover crop when appropriate. Restoration of terraces shall be in accordance with Drawing No. IUB PL-2 at the end of this chapter. Such restoration shall be inspected for compliance by the county inspector.

9.4(6) Revegetation of untilled land.

a. Crop production. Agricultural land not in row crop or small grain production at the time of construction, including hay ground and land in conservation or set-aside programs, shall be reseeded, including use of a cover crop when appropriate, following completion of deep tillage and replacement of the topsoil. The seed mix used shall restore the original or a comparable ground cover unless otherwise requested by the landowner. If the land is to be placed in crop production the following year, paragraph "b" below shall apply.

b. Delayed crop production. Agricultural land used for row crop or small grain production which will not be planted in that calendar year due to the pipeline construction shall be seeded with an appropriate cover crop following replacement of the topsoil and completion of deep tillage. However, cover crop seeding may be delayed if construction is completed too late in the year for a cover crop to become established and in such instances is not required if the landowner or tenant proposes to till the land the following year.

9.4(7) Future installation of drain tile or soil conservation structures.

a. Future drain tile. At locations where the proposed installation of underground drain tile is made known in writing to the company prior to the securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will permit proper clearance between the pipeline and the proposed tile installation.

b. Future practices and structures. At locations where the proposed installation of soil conservation practices and structures is made known in writing to the company prior to the securing of an easement on the property and has been defined by a qualified technician, the pipeline shall be installed at a depth which will allow for future installation of such soil conservation practices and structures and retain the integrity of the pipeline.

9.4(8) Restoration of land slope and contour. Upon completion of construction, the slope, contour, grade, and drainage pattern of the disturbed area shall be restored as nearly as possible to its preconstruction condition. However, the trench may be crowned to allow for anticipated settlement of the backfill. Excessive or insufficient settlement of the trench area, which visibly affects land contour or undesirably alters surface drainage, shall be remediated by means such as regrading and, if necessary, import of appropriate fill material. Disturbed areas in which erosion causes formation of rills or channels, or areas of heavy sediment deposition, shall be regraded as needed. On steep slopes, methods such as sediment barriers, slope breakers, or mulching shall be used as necessary to control erosion until vegetation can be reestablished.

9.4(9) Restoration of areas used for field entrances and temporary roads. Upon completion of construction and land restoration, field entrances or temporary roads built as part of the construction project shall be removed and the land made suitable for return to its previous use. Areas affected shall be regraded as required by subrule 9.4(8) and deep tilled as required by subrule 9.4(4). If by agreement or at landowner request a field entrance or road is to be left in place, it shall be left in a graded and serviceable condition.

UTILITIES DIVISION[199](cont'd)

9.4(10) Construction in wet conditions. Construction in wet soil conditions shall not commence or continue at times when or locations where the passage of heavy construction equipment may cause rutting to the extent that the topsoil and subsoil are mixed, or underground drainage structures may be damaged. To facilitate construction in soft soils, the pipeline company may elect to remove and stockpile the topsoil from the traveled way, install mats or padding, or use other methods acceptable to the county inspector. Topsoil removal, storage, and replacement shall comply with subrule 9.4(1).

199—9.5(479,479A,479B) Designation of a pipeline company point of contact for landowner inquiries or claims. For each pipeline construction project subject to this chapter, the pipeline company shall designate a point of contact for landowner inquiries or claims. The designation shall include the name of an individual to contact and a toll-free telephone number and address through which that person can be reached. This information shall be provided to all landowners of property that will be disturbed by the pipeline project prior to commencement of construction. Any change in the point of contact shall be promptly communicated in writing to landowners. A designated point of contact shall remain available for all landowners for at least one year following completion of construction and for landowners with unresolved damage claims until such time as those claims are settled.

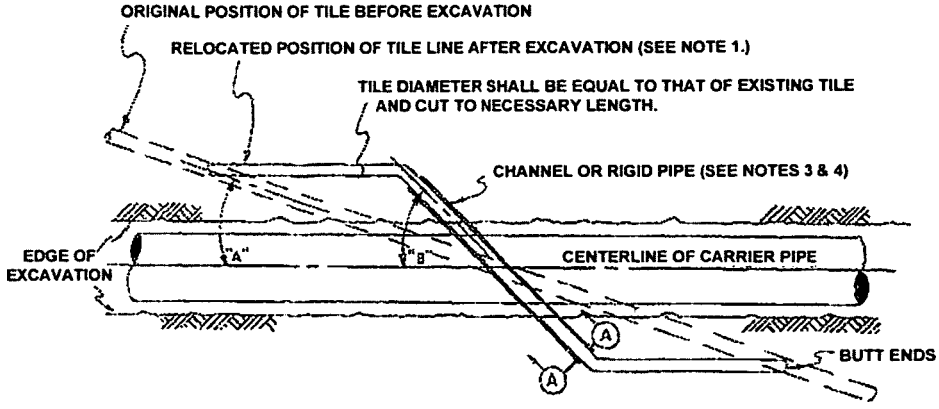
199—9.6(479,479A,479B) Separate agreements. This chapter does not preclude the application of provisions for protecting or restoring property that are different from those contained in this chapter, or in a land restoration plan, which are contained in easements or other agreements independently executed by the pipeline company and the landowner. The alternative provision shall not be inconsistent with state law or these rules. The agreement shall be in writing and a copy provided to the county inspector.

199—9.7(479,479A,479B) Enforcement. A pipeline company shall fully cooperate with county inspectors in the performance of their duties under Iowa Code Supplement sections 479.29, 479A.14, and 479B.20, including giving proper notice of trenching, permanent tile repair, or backfilling. If the pipeline company or its contractor does not comply with the requirements of Iowa Code Supplement sections 479.29, 479A.14, or 479B.20, with the land restoration plan, or with an independent agreement on land restoration or line location, the county board of supervisors may petition the utilities board for an order requiring corrective action to be taken or seeking imposition of civil penalties, or both. Upon receipt of a petition from the county board of supervisors, the board will schedule a hearing and such other procedures as appropriate. The county will be responsible for investigation and for prosecution of the case before the board.

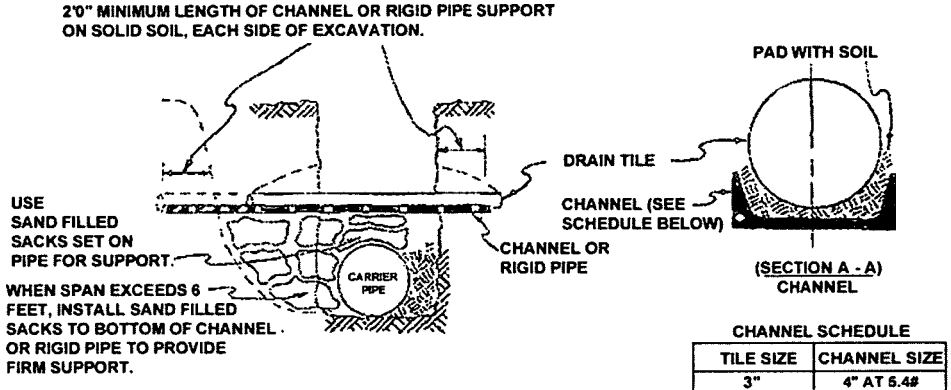
UTILITIES DIVISION[199](cont'd)

Drawing No. IUB PL-1

RESTORATION OF DRAIN TILE



(PLAN VIEW)

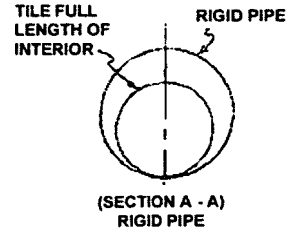


(METHOD OF SUPPORT - - ELEVATION)

CHANNEL SCHEDULE

TILE SIZE	CHANNEL SIZE
3"	4" AT 5.4#
4" - 5"	5" AT 6.7#
6" - 9"	7" AT 9.8#
10" & LARGER	10" AT 15.3#

NOTES:
1. TILE SHALL BE RELOCATED AS SHOWN WHEN ANGLE "A" BETWEEN PIPELINE AND ORIGINAL TILE IS LESS THAN 20° UNLESS OTHERWISE AGREED TO BY LANDOWNER AND COMPANY.
2. ANGLE "B" SHALL BE 45° FOR USUAL WIDTHS OF TRENCH. FOR EXTRA WIDTHS, IT MAY BE GREATER.
3. DIAMETER OF RIGID PIPE SHALL BE OF ADEQUATE SIZE TO ALLOW FOR THE INSTALLATION OF THE TILE FOR THE FULL LENGTH OF THE RIGID PIPE.
4. OTHER METHODS OF SUPPORTING DRAIN TILE MAY BE USED IF THE ALTERNATE PROPOSED IS EQUIVALENT IN STRENGTH TO THE CHANNEL SECTIONS SHOWN AND IF APPROVED BY THE LANDOWNER.

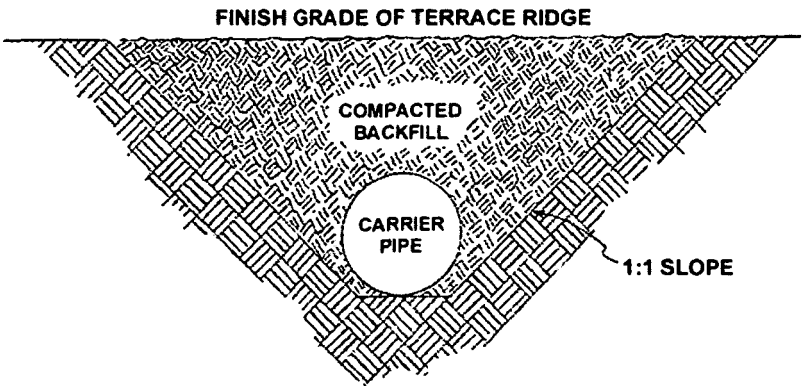


IUB PL-1

UTILITIES DIVISION[199](cont'd)

Drawing No. IUB PL-2

RESTORATION OF TERRACE



NOTE:

COMPACTION OF BACKFILL TO BE EQUAL TO THAT OF THE UNDISTURBED ADJACENT SOIL.

IUB PL-2

These rules are intended to implement Iowa Code Supplement sections 479.29, 479A.14, and 479B.20.

ARC 9864A

ELDER AFFAIRS DEPARTMENT[321]

Adopted and Filed Emergency

Pursuant to the authority of 2000 Iowa Acts, Senate File 2193, section 7, subsection 2, and section 21, the Department of Elder Affairs hereby adopts Chapter 28, "Iowa Senior Living Program—Home- and Community-Based Services for Seniors," Iowa Administrative Code.

These rules implement provisions of 2000 Iowa Acts, Senate File 2193, the Iowa Senior Living Program Act. The goal of the Iowa Senior Living Program Act is to create a comprehensive long-term care system that is consumer-directed, provides a balance between the alternatives of institutionally and noninstitutionally provided services, and contributes to the quality of the lives of Iowans.

Funds are available from the Iowa Senior Living Trust Fund to the Area Agencies on Aging and subcontracting long-term care providers for designing and expanding home- and community-based services to low- and moderate-income seniors to promote independence and delay the use of institutional care. These rules set procedure for disbursement of the funds to the Area Agencies on Aging and their subcontractors for state fiscal year (SFY) 2001 and call for incorporation of the disbursement of funds for subsequent state fiscal years into the existing procedure for disbursement of other senior service funds. Allowable and priority uses for the funds and reporting requirements for the Area Agencies on Aging and their subcontractors and the department are established.

These rules do not provide for any waivers in specific situations because disbursement of the trust fund will confer a benefit on providers and consumers. Participation by long-term care providers is voluntary.

In compliance with Iowa Code section 17A.4(2), the Department of Elder Affairs has consulted with an advisory group consisting of providers, consumers and other members of the public regarding these rules and finds that further notice and public participation are unnecessary prior to implementation because these rules implement 2000 Iowa Acts, Senate File 2193, section 21, which authorizes the Department to adopt emergency rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these rules should be waived and these rules be made effective May 19, 2000, as authorized by 2000 Iowa Acts, Senate File 2193, section 21.

These rules are also published herein under Notice of Intended Action as **ARC 9884A** to allow for public comment.

The Commission of Elder Affairs adopted these rules May 15, 2000.

These rules are intended to implement 2000 Iowa Acts, Senate File 2193, sections 7, 9, and 10.

These rules became effective May 19, 2000.

The following **new** chapter is adopted.

CHAPTER 28
IOWA SENIOR LIVING PROGRAM—HOME- AND COMMUNITY-BASED SERVICES FOR SENIORS

PREAMBLE

These rules implement provisions of 2000 Iowa Acts, Senate File 2193, which establish an overall goal of moving toward a balanced, comprehensive, affordable, high quality long-term care system.

Funds are available to area agencies on aging and subcontracting long-term care providers for designing and expanding home- and community-based services to low- and moderate-income seniors to promote independence and delay the use of institutional care.

321—28.1(78GA,SF2193) Purpose.

28.1(1) The purpose of the Iowa senior living program, home- and community-based services for seniors, is to create a comprehensive long-term care system that is consumer-directed, provides a balance between institutional and noninstitutional services, and contributes to the quality of the lives of Iowans.

28.1(2) Funds appropriated from the senior living trust fund for home- and community-based services for seniors shall be used for activities related to the design, maintenance, or expansion of home- and community-based services for seniors including, but not limited to, adult day care, personal care, respite, homemaker, chore, and transportation services, which promote the independence of seniors and delay the use of institutional care by seniors with low and moderate incomes.

321—28.2(78GA,SF2193) Definitions. For the purposes of these rules, the following definitions apply unless the context otherwise requires:

"AAA" or "area agency on aging" means the grantee agency in a planning and service area designated by the commission for the Iowa department of elder affairs to develop and administer the multiyear area plan for a comprehensive and coordinated system of services for elders and to carry out the duties specified in Iowa Code chapter 231.

"Administration cost" means the direct and indirect costs incurred by the grantee in managing the grant.

"Client participation" means a payment system with an established fee or cost that allows:

1. A senior with low income to receive services for a voluntary contribution toward the cost of the service;
2. A senior with moderate income to receive services at less than the full service delivery cost; and
3. A senior with above moderate income to purchase services at full cost.

"Community-based adult services committee" or "CBAS" means the group consisting of representatives appointed by the departments of elder affairs, human services, inspections and appeals, and public health; Iowa Foundation for Medical Care; Iowa association of area agencies on aging; and Iowa state association of counties.

"Contract" means the purchase of units of services on behalf of an aggregate clientele.

"Department" means the department of elder affairs, the state agency responsible for administration of the Older Americans Act, and Iowa Code chapter 231.

"Direct service" means a service to a client that is administered by the area agency on aging and provided by employees of the area agency on aging.

"Grant" means the use of funds to underwrite an operation in support of the existence of a specific service provider.

"Income" means wages, salaries, business income, social security benefits, veterans administration benefits, disability payments (government or private), retirement or pension

plan income, annuity income, interest income, supplemental security income, welfare payments, and other cash income.

"Long-term care services" means those services specified under the medical assistance home- and community-based services waiver for the elderly or the National Aging Program Information System (NAPIS) and designed to directly promote the independence of seniors and to delay the use of institutional care by seniors with low and moderate income.

"Low income":

1. For purposes of determining client eligibility for financial assistance under 2000 Iowa Acts, Senate File 2193, section 7, means income of less than 300 percent of SSI;

2. For purposes of funding distribution means income at or below the official poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

"Medical assistance program" means the financial assistance programs established in cooperation between the state of Iowa and the Health Care Financing Administration (HCFA) under the Medicaid state plan for lower income Iowans with health and social needs.

"Moderate income" means income that is equal to or greater than 300 percent of SSI and less than 300 percent of the federal poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

"National Aging Program Information System" or "NAPIS" means the reporting system in which the Older Americans Act requires participation by providers receiving funding from the provisions of the Act.

"Older Americans Act" means the Older Americans Act of 1965, as amended through December 31, 1992 (Public Law 89-73).

"Provider" means individuals, agencies, public and private for-profit and not-for-profit organizations and other entities delivering long-term care services funded under these rules.

"Rural" means incorporated areas with a population of less than 20,000 and unincorporated areas.

"Senior" means an individual who is 60 years of age or older as provided in Iowa Code section 231.4 and 42 U.S.C. § 1396(u)(4).

"Senior living coordinating unit" or "SLCU" means the senior living coordinating unit created within the department of elder affairs, pursuant to Iowa Code section 231.58, or its designee.

"Senior living program" means the senior living program created in 2000 Iowa Acts, Senate File 2193, to provide for long-term care services, long-term care service development, and nursing facility conversion.

"Senior living trust" means the funding mechanism established in 2000 Iowa Acts, Senate File 2193.

"Subcontractor of the area agencies on aging" means a provider receiving funds by contract or similar arrangement with an area agency on aging.

"Supplemental security income (SSI)" means the income level defined each year by the Social Security Administration (SSA) for the nationwide federal assistance program administered by SSA, which guarantees the defined minimum level of income for needy aged, blind, or disabled individuals by providing a basic cash support.

"Underserved" means:

1. An area underserved for long-term care service; and

2. For service funding purposes, also means individuals aged 60 and over who are unable to access needed services or areas where the service identified as needed is not available either because there is no provider for that service or because existing providers of that service are regularly unable to deliver the amount of service identified as needed by individuals aged 60 and over.

"Voucher" means the mechanism used to purchase a specific service from a vendor on behalf of an individual client or clients.

321—28.3(78GA,SF2193) Disbursement of funds.

28.3(1) Administration. The department may use up to 7 percent of the service dollars appropriated to the department from the senior living trust fund for purposes of implementing and administering the functions delegated to the department by the Iowa senior living program Act.

28.3(2) Identification of service needs.

a. The department in collaboration with the area agencies on aging shall conduct on a four-year cycle a statewide needs assessment designed to identify individuals aged 60 and over and areas underserved for long-term care services.

b. The department may withhold up to $100,000 for each four-year cycle from the service dollars appropriated to the department from the senior living trust fund to carry out this function.

c. The department shall seek partners and other funding sources to share the cost of implementing the survey.

28.3(3) Funding formula. The department shall allocate senior living trust funds to the area agencies on aging as established in 2000 Iowa Acts, Senate File 2193, section 7, utilizing, at a minimum, a formula that:

a. Shall triple weight all of the following:

(1) Individuals 75 years of age and older.

(2) Individuals aged 60 and older who are members of a racial minority.

(3) Individuals 60 years of age and older who reside in rural areas.

(4) Individuals who are 60 years of age and older who have incomes at or below the official poverty guideline as defined each year by the Office of Management and Budget and adjusted by the Secretary of the U.S. Department of Health and Human Services.

b. Shall single weight for individuals 60 years of age and older.

The department shall use the best available population data, including but not limited to U.S. census reports, to calculate allotments under this subrule.

28.3(4) Process for disbursement of funds to the AAAs for state fiscal year 2001.

a. Area agencies on aging shall submit area plan addenda by August 1, 2000.

b. Plans for disbursement of senior living trust funds shall be submitted to the CBAS and SLCU for review and advice prior to final approval by the commission for the department of elder affairs.

c. First and second quarter funds shall be transferred to the AAAs following commission approval and receipt of funds, but no later than October 1, 2000. Funds shall be transferred on the first day of the quarter thereafter.

28.3(5) Process for disbursement of funds to the AAAs for subsequent state fiscal years.

a. The process shall be incorporated into the area plan process outlined in the Older Americans Act of 1965, 42 U.S.C. Sec. 306 and 321—Chapter 4.

b. Plans for disbursement of senior living trust funds shall be submitted to the CBAS and SLCU for review and advice prior to final approval by the commission for the department of elder affairs.

321—28.4(78GA,SF2193) Use of funds by AAAs.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

28.4(1) Eligible use of funds.

a. The area agency on aging may use up to 7 percent of the service dollars for purposes of developing, implementing and administering local long-term care services, and for collecting and reporting required data.

b. For state fiscal year 2001 only, the AAA may use up to 10 percent of the service dollars for area costs associated with creating and implementing, in cooperation with the department, the required reporting mechanism for tracking met and unmet needs as well as the statewide computerized data base of information on services available to older Iowans.

c. The remaining funds contracted to the AAAs by the department from the senior living trust fund will be used to:

(1) Provide long-term care services to enhance the ability of the client to appropriately avoid or delay institutionalization;

(2) Provide services through:

1. Enhancement and expansion of existing providers to serve new clients, provide new units of service to existing clients, and serve new areas;

2. Identification and development of new providers; and

3. Addition of a new funding source to maintain current service levels when service levels would otherwise decline due to a loss of purchasing power; and

(3) Provide services to low- and moderate-income Iowans aged 60 and over.

d. The area agencies on aging may use client participation for services funded under 2000 Iowa Acts, Senate File 2193, section 7. When client participation is used:

(1) The area agency on aging shall not use Older Americans Act funding for the same service category when providing direct service.

(2) The area agency on aging shall not contract Older Americans Act funds and senior living trust funds to a provider for the same service category.

(3) Eligibility shall be based on self-declaration by the client or on declaration on the client's behalf by the client's authorized representative. If the provider or AAA has reason to believe that the declaration is inaccurate or misrepresents the client's financial status, the provider or AAA may require documentation of income and resources, and subsequently may discontinue further financial assistance from the senior living trust fund if the individual is found ineligible.

(4) Funds generated through client participation must be used to purchase the respective service for which the funds were received.

e. Senior living trust fund dollars shall not be used to purchase a service when the client is eligible for third-party purchase of that service by sources such as Medicare, Medicaid, Medicaid home- and community-based services (HCBS) waiver and private long-term care insurance.

f. The AAA shall not use senior living trust funds to replace existing funding for a long-term care service. The department may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the AAA to another long-term care service for the elderly and results in an increase in total AAA funding for long-term care services to seniors equal to the senior living trust fund dollars used for replacement.

28.4(2) Reallotment of unobligated funds.

a. If the department determines prior to the end of the fiscal year that an AAA will have unused funds, the department may reallot the unused funds to one or more AAAs in accordance with demonstrated utilization. The AAAs receiving these reallotted funds shall obligate them by the end of the fiscal year in which they are reallotted.

b. Any unobligated funds remaining at the end of the state fiscal year shall be returned to the department and deposited in the Iowa senior living trust fund.

321—28.5(78GA,SF2193) Disbursement of funds to AAA subcontractors.

28.5(1) Criteria to receive senior living trust funds as a subcontractor of an AAA.

a. The applicant for senior living trust funds must demonstrate that the proposed long-term care alternative service or services:

(1) Are responsive to the service priorities identified by the AAA; or

(2) Will address other significant unmet service needs of eligible seniors as documented by the applicant.

b. The applicant must document the ability to provide the proposed services and the related administration, financial tracking and reporting required by a subcontractor under these rules.

c. The subcontractor must agree to meet the criteria set out in this subrule in addition to criteria established by the AAA in its request for proposal and contract.

d. The subcontractor shall ensure that all employees providing in-home care to clients have had a criminal background check and have been cleared for said functions in accordance with Iowa Code section 135C.33.

e. No senior living trust funds shall be contracted to a provider that has been prohibited from participating in the Medicare or medical assistance programs.

f. The subcontractor shall commit to seeking third-party reimbursement when available.

28.5(2) Disbursement of funds to the AAA subcontractors.

a. Method. Area agencies on aging may use the method or methods of disbursing funds determined to best ensure effective provision of services that address identified and documented unmet needs including contracts, grants, vouchers and direct services.

b. Process for disbursement for state fiscal year 2001.

(1) Each AAA shall issue a request for proposals and application packets no later than June 10, 2000.

(2) The application packet shall contain at a minimum the standard application format and accompanying forms; an explanation of required documentation including, but not limited to, community support, provider capacity to deliver the proposed service, and provider commitment to deliver cost-effective long-term care services to low- and moderate-income elders; a list of priority services for the area; and a time line for and explanation of the AAA's process.

(3) Provider applications shall be due at the respective AAA office by July 1, 2000, for review by AAA staff and advisory boards.

(4) Funds shall be disbursed by the AAAs following the receipt of funds.

c. For subsequent state fiscal years, senior living trust fund service dollars appropriated under 2000 Iowa Acts, Senate File 2193, section 7, shall be disbursed to subcontractors through the area plan process as described in 321—4.20(231) and 321—4.21(231).

28.5(3) Prioritization of service contracts. The AAA may prioritize service contracts and funding levels for reasons that include, but are not limited to, the following:

a. Local prioritization to fulfill unmet needs.

b. Provider commitment matching funds.

c. Provider commitment to use client participation.

d. Cost.

e. History of providing quality service.

ELDER AFFAIRS DEPARTMENT[321](cont'd)

28.5(4) Eligible uses of senior living trust funds by subcontractors.

a. Funds contracted by an AAA from the senior living trust fund shall be used to provide long-term care services to enhance the ability of Iowans aged 60 and over with low or moderate income to appropriately avoid or delay institutionalization.

b. An AAA subcontractor may use client participation for services funded under 2000 Iowa Acts, Senate File 2193, section 7, for persons with moderate income or above if the subcontractor does not receive Older Americans Act funding for the same service category.

c. The AAA subcontractor shall not use senior living trust funds to replace existing funding for a long-term care service. The AAA may grant an exception in order to enhance access to a service if the displaced funding is subsequently dedicated by the subcontractor to another long-term care service for the elderly and results in an increase in total funding for long-term care services by the subcontractor to seniors equal to the senior living trust fund dollars used for replacement.

321—28.6(78GA,SF2193) Reporting requirements.

28.6(1) Area agency on aging subcontractors.

a. Area agency on aging subcontractors shall submit monthly reports to the area agency on aging.

b. Subcontractor monthly reports shall provide data by month and year to date for:

(1) Total number of clients served;

(2) Number of clients receiving financial assistance from medical assistance programs; and

(3) By service category, for each client receiving financial assistance from senior living trust funds, the number of units of service provided, the number of units of service not provided and the reasons services were not provided, and expenditures.

c. Subcontractors shall provide other information as requested by the contracting AAA.

d. Subcontractors shall participate in the NAPIS client registration process.

e. Reporting forms are available from the contracting AAA.

28.6(2) Area agencies on aging.

a. Area agencies on aging shall at a minimum submit monthly reports to the department.

b. Each AAA shall use the NAPIS client registration process for clients receiving assistance from the senior living trust fund.

c. Each AAA shall report by month and year to date:

(1) Total number of clients served;

(2) By service category, the number of clients receiving financial assistance from senior living trust funds, the number of units of service provided, number of units of service not provided and the reasons services were not provided, and expenditures;

(3) Utilization of funds; and

(4) Performance outcomes from funded services.

d. Original report forms for duplication are available from the department.

28.6(3) Department.

a. The department shall submit bimonthly reports to the senior living coordinating unit that include the following information by month and year to date:

(1) Total number of clients served;

(2) Number of clients receiving financial assistance from medical assistance programs;

(3) By service category, an aggregate for clients receiving financial assistance from senior living trust funds, the number of units of service provided, number of units of service not provided and the reasons services were not provided, and expenditures; and

(4) Comparative data for services not provided.

b. The department, in cooperation with the department of human services, shall submit an annual report to the governor and the general assembly concerning the impact of moneys disbursed under 2000 Iowa Acts, Senate File 2193, on the availability of long-term care services in Iowa. The report shall include, but not be limited to, year-end totals for and analysis of the information reported bimonthly by the departments to the SLCU.

These rules are intended to implement 2000 Iowa Acts, Senate File 2193, sections 7, 9 and 10.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/14/00.

ARC 9869A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 514I.5(8), the Department of Human Services hereby amends Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," appearing in the Iowa Administrative Code.

This amendment increases the income limits for the HAWK-I Program from 185 percent of the federal poverty level to 200 percent of the federal poverty level, the maximum amount allowable under federal law.

Under current policy, income limits for children under the HAWK-I Program are from 133 percent to 185 percent of the federal poverty level. The Seventy-eighth General Assembly directed the Department to increase the income limits to 200 percent of the federal poverty level, providing coverage to as many uninsured children as possible. This amendment increases the income limits of the HAWK-I Program to the full extent allowed under federal law.

The Department projects that an additional 6,075 children will be eligible for the HAWK-I Program for state fiscal year 2001. An additional $669,793 in state dollars was requested to fund HAWK-I expansion to 200 percent of the federal poverty level. The General Assembly did not specifically appropriate any additional state dollars to fund the expansion. Rather, moneys in the HAWK-I trust fund shall be used to offset any program costs for state fiscal year 2001.

The Department of Human Services finds that notice and public participation are impracticable because there is not time to allow for notice and public participation prior to the effective date of July 1, 2000. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment confers a benefit by raising the income eligibility limits and providing medical coverage to as many uninsured children as possible under federal law. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2).

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment does not provide for waiver in specified situations because it confers a benefit by allowing the Department of Human Services to provide for coverage of medical services for more children under the HAWK-I Program.

This amendment is also published herein under Notice of Intended Action as **ARC 9868A** to allow for public comment.

The HAWK-I Board adopted this amendment May 16, 2000.

This amendment is intended to implement Iowa Code section 514I.8(2)"c" as amended by 2000 Iowa Acts, House File 2555, section 9.

This amendment shall become effective July 1, 2000.

The following amendment is adopted.

Amend subrule 86.2(2), introductory paragraph, as follows:

86.2(2) Income. Countable income shall not exceed ~~185~~ *200* percent of the federal poverty level for a family of the same size when determining initial and ongoing eligibility for the program.

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ARC 9863A

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 505.8(2), the Insurance Division hereby amends Chapter 16, "Replacement of Life Insurance and Annuities," Iowa Administrative Code.

In December 1999, the Insurance Division adopted Chapter 16, Division II based on a version of the National Association of Insurance Commissioners (NAIC) model regulation governing the replacement of life insurance and annuities. Division II has an effective date of July 1, 2000. Rule 16.25(507B) has an effective date of January 1, 2001. The NAIC recently adopted a revised version of its model regulation, and these amendments conform the Insurance Division's rules to the NAIC model. These amendments do not change the effective dates of current Division II of Chapter 16.

Pursuant to Iowa Code section 17A.4(2), the Commissioner finds that notice and public participation are unnecessary as the rules being amended have not yet taken effect and merely conform the rules to the NAIC model. The Commissioner further finds that, since these amendments increase protections to consumers, it would be contrary to the public interest to delay implementation of Division II of Chapter 16.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Commissioner finds that these amendments will confer a benefit on the public by increasing consumer protections in the replacement of life insurance and annuity products. Therefore, the normal effective date of these amendments should be waived and these amendments should be made effective upon filing with the Administrative Rules Coordinator on May 17, 2000.

These amendments became effective May 17, 2000.

These amendments are intended to implement Iowa Code chapter 507B.

The following amendments are adopted.

ITEM 1. Amend rule **191—16.22(507B)**, definitions of "financed purchase" and "sales material," as follows:

"Financed purchase" means the purchase of a new policy involving the actual *or intended* use of funds obtained by the withdrawal or surrender of, or by borrowing from, values of an existing policy to pay all or part of any premium due on a new policy ~~issued by the same insurer~~. *For purposes of a regulatory review of an individual transaction only,* ~~If~~ *if* a ~~request for~~ withdrawal, surrender, or borrowing involving the policy values of an existing policy ~~is accompanied by direction~~ *is used* to pay premiums on a new policy owned by the same policyholder *and issued by the same company,* within ~~13~~ *4* months before or *13 months* after the effective date of the new policy ~~and is known by the insurer~~, it will be deemed prima facie evidence of ~~a financed purchase.~~ *the policyholder's intent to purchase the new policy with existing policy values. This prima facie standard is not intended to increase or decrease the monitoring obligations contained in paragraph 16.25(1)"e."*

"Sales material" means a sales illustration and any other written, printed or electronically presented information created, completed or provided by the company or producer that is used in the presentation to the policy or contract owner ~~and which describes the benefits, features and costs of the specific~~ *related to the* policy or contract which is purchased.

ITEM 2. Amend paragraph **16.23(1)"b"** as follows:

b. Group life insurance or group annuities where there is no direct solicitation of individuals by an insurance producer. Direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating or enrolling individuals or, when initiated by an individual member of the group, assisting with the selection of investment options offered by a single ~~provider~~ *insurer* in connection with enrolling that individual. Group life insurance or group annuity certificates marketed through direct-response solicitation shall be subject to the provisions of rule 16.28(507B).

ITEM 3. Amend paragraph **16.23(1)"f"** as follows:

f. Except as noted below, policies or contracts used to fund:

(1) to (4) No change.

These rules shall apply to policies or contracts used to fund any plan or arrangement that is funded solely by contributions an employee elects to make, whether on a pretax or after-tax basis, and where the insurance company has been notified that plan participants may choose from among two or more annuity providers or policy providers and there is a direct solicitation of an individual employee by an insurance producer for the purchase of a contract or policy. As used in this subrule, direct solicitation shall not include any group meeting held by an insurance producer solely for the purpose of educating individuals about the plan or arrangement or enrolling individuals in the plan or arrangement or, when initiated by an individual employee, assisting with the selection of investment options offered by a single ~~provider~~ *insurer* in connection with enrolling that individual employee.

ITEM 4. Amend subrule 16.24(2), introductory paragraph, as follows:

16.24(2) If the applicant does have an existing policy or contract, the producer shall present and read to the applicant, not later than at the time of taking the application, a notice

regarding replacements in the form as described in Appendix A ~~or A1~~ or other substantially similar form approved by the commissioner. *No approval shall be required when amendments to the notice are limited to the omission of references not applicable to the product being sold or replaced.*

ITEM 5. Amend subrule 16.25(4) as follows:

16.25(4) Each insurer that uses producers shall require with each application for life insurance or for an annuity that indicates an existing policy or contract a completed notice regarding replacements as contained in Appendix A ~~or A1~~.

ITEM 6. Amend paragraph **16.26(1)"d"** as follows:

d. Provide to the policy or contract owner notice of the right to return the policy or contract within 30 days of the delivery of the contract and receive an unconditional full refund of all premiums or considerations paid on it including any policy fees or charges or, in the case of a variable or market value adjustment policy or contract, a payment of the cash surrender value provided under the policy or contract plus the fees and other charges deducted from the gross premiums or considerations or imposed under such policy or contract. The notice may be included in Appendix A~~, A1~~ or C.

ITEM 7. Amend paragraph **16.28(2)"a"** as follows:

a. Provide to applicants or prospective applicants with the policy or contract a notice, as described in Appendix C, or other substantially similar form approved by the commissioner. In these instances the insurer may delete the references to the producer, including the producer's signature, *and references not applicable to the product being sold or replaced,* without having to obtain approval of the form from the commissioner. The insurer's obligation to obtain the applicant's signature shall be satisfied if it can demonstrate that it has made a diligent effort to secure a signed copy of the notice referred to in this paragraph. The requirement to make a diligent effort shall be deemed satisfied if the insurer includes in the mailing a self-addressed, postage prepaid envelope with instructions for the return of the signed notice referred to in this subrule; and

ITEM 8. Amend subrule 16.29(3) as follows:

16.29(3) Where it is determined that the requirements of these rules have not been met, the replacing insurer shall provide to the policy owner an in-force illustration if available or policy summary for the replacement policy or available disclosure document for the replacement contract and the appropriate notice regarding replacements in Appendix A~~, A1~~ or C.

ITEM 9. Amend **191—Chapter 16, Division II**, by rescinding **Appendix A1**.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/14/00.

ARC 9887A

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

The amendments provide water quality certification pursuant to Section 401 of the federal Clean Water Act (33 U.S.C. Section 1341) for five new Corps Nationwide Permits (NWPs) and six modified NWPs.

Notice of Intended Action was published in the November 17, 1999, Iowa Administrative Bulletin as **ARC 9478A**. One public hearing was held and comments were accepted through December 20, 1999. A responsiveness summary was prepared addressing all the comments received. This document is available from the Department of Natural Resources and the Administrative Rules Coordinator. No specific changes were made in response to the comments received, as it is believed that changes to the Corps' NWPs as discussed below address most of the comments received.

The adopted amendments do differ slightly from the amendments as published in the Notice of Intended Action. The Corps did not adopt a Regional General Permit as originally proposed, and the adopted amendments do not reference such a Regional General Permit. However, the Corps has made significant changes to the NWPs as discussed below.

At the time the Notice of Intended Action was published, the Corps had not finalized the NWPs. On March 9, 2000, the Corps published the final NWPs in the Federal Register (Volume 65, Number 47). Changes to the NWPs are briefly described below:

- For most of the new and modified NWPs, the Corps has established a 0.5 acre limit (i.e., activities disturbing or affecting more than ½ acre cannot be authorized under an NWP) with notification to the district engineer being required for most activities that result in the loss of greater than 0.1 acre of waters of the United States.
- For NWPs 39, 40, 42, and 43, the Corps has imposed a 300 linear foot limit for filling and excavating stream beds.
- The Corps increased the notification review period to 45 days.
- The Corps revised nine general permit conditions and added two new general conditions. The new NWP general conditions limit activities in designated critical resource waters and fill in waters of the United States within 100-year floodplains. All above-grade fill under NWPs 29, 39, 40, 42, 43, and 44 is prohibited within the FEMA-mapped 100-year floodplain below the headwaters of any stream. Within the headwaters, above-grade fill is prohibited within the FEMA-mapped regulatory floodway, and any above-grade fill in the flood fringe must meet FEMA standards.

In addition to the above changes, the Corps has agreed to impose additional regional conditions (i.e., conditions that are applicable in Iowa) as listed below:

1. Sideslopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if it is not armored.
2. NWPs with mitigation may require recording of the permit with the Registrar of Deeds or other appropriate official charged with the responsibility for maintaining records of title to or interest in real property and provide proof of recording to the Corps.
3. Mitigation shall be scheduled for construction prior to or concurrent with the construction of the main project.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments will become effective July 19, 2000.

The following amendments are adopted.

Amend subrule **61.2(2)**, paragraph **"h,"** as follows:

h. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. The repair and maintenance of a drainage district ditch as defined in 567—70.2(455B,481A) will not be considered a violation of the antidegradation policy for the purpose of implementing Title IV of these rules. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, ~~26,~~ 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, *39,* ~~and~~ 40, *41, 42, 43, and 44* as promulgated ~~December 13, 1996~~ *March 9, 2000*, are certified pursuant to Section 401 of the Clean Water Act. Regional permit numbers 2, 7, 12, and 20 of the Rock Island District of the Corps are also certified. No specific Corps permit or 401 certification is required for activities covered by these permits unless required by the nationwide permit or the Corps, and the activities are allowed subject to the terms of the nationwide and regional permits.

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ARC 9889A

SECRETARY OF STATE[721]

Adopted and Filed

Pursuant to the authority of Iowa Code section 47.1, the Secretary of State hereby amends Chapter 21, "Election Forms and Instructions," Iowa Administrative Code.

Iowa Code section 44.17 permits candidates of nonparty political organizations to file nominations by petition, limiting each organization to one candidate for each partisan office. However, there is no guidance provided regarding what to do if nomination petitions are received from more than one candidate from the same nonparty political organization for the same office, or if a nomination petition is received from a nonparty political organization candidate for an office for which the same organization has also nominated a candidate by convention.

New rule 21.201(44) provides a method for determining which nomination to accept if a convention nomination and one or more nomination petitions are received, or if more than one nomination petition is received, or if more than one convention nomination is received from candidates seeking the same office and claiming affiliation with the same nonparty political organization. The new rule provides that the election commissioner accept the convention nominee if

SECRETARY OF STATE[721](cont'd)

only one is received; if not, the names of all candidates from the same nonparty political organization seeking the same office will be placed into a receptacle. The state or county commissioner, as appropriate, or a designee will then draw from the receptacle the name of the person who will be designated as the organization's candidate. All other candidates will be placed on the ballot as candidates nominated by petition.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 19, 2000, as **ARC 9785A**. A public hearing was scheduled for May 9, 2000; however, no one appeared at the hearing to speak. Comments and suggestions received from members of the Administrative Rules Review Committee have been incorporated into the adopted rule.

Changes made from the comments received by the agency require the commissioner to provide notice to the candidates involved.

This rule was adopted by the Secretary of State on May 25, 2000.

This rule will become effective July 19, 2000.

This rule is intended to implement Iowa Code section 44.17.

The following **new** rule is adopted.

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.

[Filed 5/26/00, effective 7/19/00]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 6/14/00.

* SUMMARY OF DECISIONS
THE SUPREME COURT OF IOWA
FILED JUNE 1, 2000

Note: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA 50319, for a fee of 40 cents per page.

No. 99-1876. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. ACKERMAN.

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered en banc. Per curiam. (4 pages $1.60)

A district court judge found attorney John W. Ackerman of the Waterloo area to be in contempt after he obtained a dismissal of a criminal case based on a motion containing misleading facts. The county attorney presented evidence at the contempt hearing of two other similar incidents. The court forwarded the matter to our board of professional ethics and conduct. Ackerman maintained the misrepresentations were an honest mistake. The commission found Ackerman's misrepresentations and his presentation of the ex parte dismissal order without notice to the county attorney violated our code of professional responsibility for lawyers. The commission recommended a reprimand. **OPINION HOLDS:** We do not think Ackerman's conduct can be written off as a mere mistake. At its most basic level a court must be able to rely on the reliability of factual representations submitted by lawyers. A pattern of misstating facts causes the distinction between reckless disregard and deliberate deceit to become blurred. Such misrepresentations cannot be explained away by claims of disorganization and confusion. We also note that Ackerman is a repeat offender, having been reprimanded in 1990. We suspend Ackerman's license to practice law in Iowa indefinitely, with no possibility of reinstatement for thirty days from the date of filing of this opinion. Costs are assessed against Ackerman.

No. 99-1663. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. SULLINS.

On review of the report of the Grievance Commission. **LICENSE SUSPENDED.** Considered en banc. Per curiam. (4 pages $1.60)

The present proceeding revolves around attorney Ray Sullins' pattern of neglect in four professional relationships. **OPINION HOLDS:** The central theme in this exasperating case is "stonewalling," a stubborn refusal to address a clear duty. Sullins is unwilling or unable to discharge the duties required in the practice. Sullins seems to have raised procrastination to a high art. He has consistently spurned the inquiries of our board of ethics and conduct in exactly the same manner demonstrated with his clients. Sullins is also no neophyte procrastinator. In this proceeding he faces his fourth professional sanction since 1986, the other three being public reprimands. This is enough. We

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*Reproduced as submitted by the Court

No. 99-1663. IOWA SUPREME CT. BD. OF PROF'L ETHICS & CONDUCT v. SULLINS. (continued)

direct that Sullins' license to practice law in the courts of this State be suspended indefinitely with no possibility of reinstatement for one year from the date of this opinion. We will not grant any application for reinstatement unless Sullins demonstrates an ability and willingness to deliver competent legal services with reasonable promptness, and to comply with the deadlines imposed in our rules of practice. Costs are assessed against Sullins.

No. 97-2070. DAMMANN v. DAMMANN.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Carroll County, Gary L. McMinimee, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered en banc. Per curiam. (11 pages $4.40)

This case involves the ongoing dispute between the children of Lester and Ruby Dammann, now deceased, over the disposition of their parents' assets. The dispute concerns the effort by four of the children to collect on a promissory note that was initially owed by their brother, LeRoy, to their father. The district court entered judgment against LeRoy and his wife Freda, and in favor of LeRoy's four siblings, for $43,160, the amount still unpaid on the note. On appeal, our court of appeals reversed, holding that issue preclusion barred plaintiffs from recovering against defendants on the note because the issue of whether the note was forgiven by Lester had been decided in defendants' favor in a prior probate court proceeding. We granted further review. **OPINION HOLDS:** I. We conclude that plaintiffs' action on the promissory note is not barred by a prior probate court proceeding. In the previous probate proceedings the issues ultimately adjudicated by the courts were different from the ultimate question in the present case as to whether Lester had in fact forgiven the note. Issue preclusion principles therefore do not apply. We vacate the court of appeals decision on that issue. II. We conclude the district court did not abuse its discretion by refusing to allow the executor of Ruby's estate to testify concerning his conclusion about whether the note had been forgiven. The testimony was mostly hearsay. III. We find the district court did not err in allowing deposition testimony of plaintiffs' expert witnesses. IV. We find no error concerning the instructions given to the jury.

No. 98-0030. KELLEY v. STORY COUNTY.

Appeal from the Iowa District Court for Story County, Steven J. Oeth and Timothy J. Finn, Judges. **AFFIRMED.** Considered en banc. Opinion by McGiverin, C. J. Dissent by Snell, J. (25 pages $10.00)

Jim Kelley owns residential property at which Story County sheriff's officers executed an arrest warrant for William Vary. When the door was not

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No. 98-0030. KELLEY v. STORY COUNTY. (continued)

answered after the officers knocked and identified themselves, they forcefully entered damaging two doors. Kelley filed a small claims action against Story County and its sheriff seeking compensation for the damage. The district associate judge concluded that the officers exercised due care under Iowa Code section 804.15 (1997), and thus the county and sheriff were immune from liability under Iowa Code chapter 670. The district court affirmed, and also concluded the damage did not constitute a taking of private property under article I, section 18 of the Iowa Constitution. We granted Kelley's application for discretionary review. **OPINION HOLDS:** I. The damage caused to Kelley's property was more in the nature of a tort and did not constitute a taking of private property. We agree the officers complied with Iowa Code section 804.15, which allows officers to use reasonable force to enter private premises in executing an arrest warrant. The county's right to provide for the safety and welfare of its citizens in enforcing criminal laws outweighs any economic impact on Kelley's property. II. We agree the county is immune under Iowa Code section 670.4(3) for any tort claim by Kelley for compensation because the officers met the "exercising due care" requirement. **DISSENT ASSERTS:** Article I, section 18 of our Iowa Constitution is broad enough to include Kelley's claim for property damage. It provides that "private property shall not be taken for public use without just compensation." Kelley's damaged doors were "taken" just as surely as if they were removed or destroyed. Eminent domain cases are of no relevance because the words "eminent domain" are not included in the constitutional language. The proper exercise of police power has no bearing on interpreting this constitutional language. This is a per se taking case which obviates the need to consider rules that balance a property owner's interests against police regulatory action. I would reverse and remand this case for entry of judgment against Story County.

No. 98-484. OSAGE CONSERVATION CLUB v. BOARD OF SUPERVISORS.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Mitchell County, John S. Mackey, Judge. **DECISION OF COURT OF APPEALS AFFIRMED; DISTRICT COURT JUDGMENT REVERSED; CASE REMANDED.** Considered en banc. Opinion by McGiverin, C.J. (10 pages $4.00)

The Osage Conservation Club owns a parcel of land zoned "A" agricultural. James and Rebecca Havig own land directly north of the Club's property. The Havigs submitted a proposed subdivision plat to the Mitchell County planning and zoning commission and requested their property be rezoned from "A" agricultural to "R-1" residential. The commission published notice and held a public hearing. It approved the Havigs' final plat, including the rezoning of their property. The commission forwarded its decision and

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No. 98-484. OSAGE CONSERVATION CLUB v. BOARD OF SUPERVISORS. (continued)

recommendation to the county's board of supervisors. The board did not hold a special hearing or publish notice of the proposed zoning change as required under Iowa Code sections 335.6 and 335.7 (1997). Club representatives appeared at the board's regular meeting, but did not raise the board's noncompliance with the statutory notice and hearing requirements. The board approved the proposed subdivision plat and rezoning of the property. The Club filed a certiorari action in district court, but did not challenge the board's jurisdiction or authority to act. The court dismissed the Club's petition, and the Club appealed. We transferred it to the court of appeals, which concluded, sua sponte, that the board did not have subject matter jurisdiction to render a decision and rezone the property because it did not issue a notice of or hold a public hearing. The board seeks further review. **OPINION HOLDS:** I. We conclude that by failing to comply with the statutorily required public notice and hearing requirements of sections 335.6 and 335.7, the board did not have subject matter jurisdiction to approve the application for rezoning of the subdivision. II. We further conclude that the district court, sitting as an appellate court in certiorari review, likewise did not have subject matter jurisdiction to consider the merits of the board's rezoning decision. In light of the above, cases discussing the distinction between subject matter jurisdiction and authority to hear a particular case are not controlling here. We affirm the decision of the court of appeals, reverse the district court judgment, and remand the case to the board.

No. 98-1283. HAMM v. ALLIED MUT. INS. CO.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by McGiverin, C.J. (17 pages $6.80)

On December 16, 1995, Darlene Hamm was a passenger in a vehicle which was driven by Allen J. Breese and insured under a policy issued by Allstate Insurance Company. While stopped at a stoplight, the Breese vehicle was struck from behind by a vehicle driven by Minh Bao Vien. Hamm sustained personal injuries as a result of the collision and her husband had a loss of consortium claim. Hamms were insured under an automobile insurance policy issued by Allied Mutual Insurance Company, which included underinsured motorist (UIM) coverage in the amount of $25,000. On August 5, 1996, Hamms settled their claims with Vien's insurance company for the policy limits of $20,000, but this amount was insufficient to compensate Hamm for her injuries and damages. The Hamms were unable to settle their UIM claim with Allied and filed suit against Allied and Allstate on January 15, 1998, seeking to recover the policy limits of UIM coverage. Allied raised the expiration of the policy limitations period as an affirmative defense, contending that any claim by the Hamms for UIM coverage was barred

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No. 98-1283. HAMM v. ALLIED MUT. INS. CO. (continued)

because it was not brought within two years of the accident as Allied asserts is required by the language of the policy. The court agreed with Allied and dismissed the petition against it. Hamms appeal. **OPINION HOLDS:** We conclude that the purpose of the policy language which states, "[w]e may not be sued under the Underinsured Motorist coverage on any claim that is barred by the tort statute of limitations," is to disallow a UIM claim if the insured has allowed the underlying tort claim to become barred by not settling or bringing suit within the period of limitations. We also conclude that because the Hamms' claim for UIM benefits is based on a contractual theory, the applicable limitations period is that provided by statute, ten years. This period did not begin to run until the date that Allied breached the contract and denied the Hamms' request for UIM benefits under the Allied policy. Hamms settled with the tortfeasor within two years and preserved their right to recover UIM benefits under the Allied policy within ten years of the date that Allied denied their claim for benefits. We recognize that our holding may seem inconsistent with our decisions in *Morgan* and *Douglass* where we decided that similar policy language means that the limitations period is two years and commences on the date of the accident. Upon our review, however, we believe that we mischaracterized the policy language at issue in *Morgan* and *Douglass* concerning the applicable limitations period for a UM claim and when it commences. We, therefore, expressly overrule *Morgan* and *Douglass* in that regard. Thus, we reverse the district court judgment and remand for further appropriate proceedings.

No. 98-1988. PREFERRED RISK MUT. INS. CO. v. FEDERATED MUT. INS. CO.

Appeal from the Iowa District Court for Woodbury County, Robert C. Clem, Judge. **AFFIRMED ON BOTH APPEALS.** Considered en banc. Opinion by Carter, J. (6 pages $2.40)

Thomas and Holly Peterson were injured when an automobile Thomas was driving, with Holly as a passenger, collided with an uninsured motorist. The Petersons were covered by a Preferred Risk insurance policy providing uninsured motorist coverage in excess of other available insurance. Thomas's vehicle was owned by his employer, Midwest Equipment, Inc., which insured the automobile through Federated Mutual. Its policy provided uninsured motorist coverage of $100,000 to the directors, officers, partners, or owners of the company but declared that the uninsured motorist coverage was zero for any other insureds under the policy. Preferred Risk brought this declaratory judgment action, challenging Federated Mutual's attempt to provide no uninsured motorist coverage to the Petersons. The district court ruled the Petersons were entitled to uninsured motorist coverage under Federated Mutual's policy in an amount equal to the statutory minimum. Federated Mutual appeals. Preferred Risk cross-appeals. **OPINION HOLDS:** I. (continued)

No. 98-1988. PREFERRED RISK MUT. INS. CO. v. FEDERATED MUT. INS. CO. (continued)

Because the record contains no document executed by Midwest, the named insured, that satisfies the required declination of coverage under section 516A.1 (1995), the district court correctly determined that uninsured motorist coverage was available under Federated Mutual's policy for the Petersons. II. The consequence of this is to render Federated Mutual responsible to the Petersons for uninsured motorist coverage in the minimum amount of $20,000 required by Iowa Code sections 516A.2 and 321A.1(10), not the $100,000 limit applicable to other categories of insureds under the policy. III. We do not interpret the district court's ruling that the Petersons were each entitled to the statutory minimum amount of uninsured motorist coverage as denying Federated Mutual's right to set off against that sum any workers' compensation payments or other medical expense payments made to the Petersons. That issue was not before the court. We affirm the district court on both appeals.

No. 98-0917. HERITAGE BANK v. LOVETT.

Appeal from the Iowa District Court for Ida County, Richard J. Vipond and Gary E. Wenell, Judges. **AFFIRMED.** Considered en banc. Opinion by Carter, J. (8 pages $3.20)

Richard Bennett, an employee of Culligan Water Conditioning, illegally obtained approximately $10,000 from an ATM card stolen from Donald and Luella Buell while performing services at their home. Heritage Bank issued the ATM card to the Buells. Heritage, which under federal law could debit Buells' account for $50, filed an action against Culligan and its local owners seeking reimbursement on the theories of *respondeat superior* and negligent hiring. The district court granted Culligan's summary judgment motion, holding (1) Heritage couldn't recover under *respondeat superior* because Bennett's actions were not within the scope of his employment, (2) Heritage's loss was its own direct loss and not a loss suffered by the Buells to which Heritage could be subrogated, and (3) Culligan owed Heritage no duty to protect it from Bennett's criminal acts. Heritage has appealed. **OPINION HOLDS:** I. Heritage's attempt to claim against Culligan as Buells' subrogee fails for two reasons. First, Heritage suffered the loss of funds sought to be recovered in its own right and not as a result of satisfying any loss sustained by the Buells. Heritage could not become subrogated to the rights of another by payments made to its own direct detriment. Second, the rights to which a subrogee succeeds are the same as and no greater than those of the person from whom the subrogee seeks to be substituted. The Buells only lost $50, and that sum is not at issue in the litigation. II. We likewise reject Heritage's claim that it was entitled to statutory subrogation under Iowa Code section 554.4407. This statute pertains to checks or bills of exchange drawn on banks and does not govern electronic funds transfers. We affirm the district court's judgment.

No. 98-1583. J.A.H. v. TRINITY REG'L HOSP.

Appeal from the Iowa District Court for Webster County, Gary L. McMinimee, Judge. **AFFIRMED.** Considered en banc. Per curiam.

(3 pages $1.20)

In 1996 J.A.H. filed separate actions, one against Trinity Regional Hospital and Marti Anderson, and the other against Wadle & Associates and Anita Jordan, in both cases alleging the defendants negligently treated his mother's mental health problems, causing her to become estranged from him. The Polk County District Court granted summary judgment in the Wadle case in 1997. On appeal we affirmed the district court, holding that Wadle and Jordan did not owe a legal duty to nonpatient third parties. *J.A.H. ex rel. R.M.H. v. Wadle & Assocs.*, 589 N.W.2d 256 (Iowa 1999). We further ruled J.A.H. had no viable cause of action, even though his claim for loss of consortium was an independent one based on the defendants' duty to his mother. In 1998, the district court granted the present defendants' motion for partial summary judgment, concluding the earlier district court ruling in the Wadle case constituted issue preclusion on the claim the defendants owed J.A.H. a duty. The court, however, ruled plaintiff's claim for loss of consortium was still viable. The case was ultimately dismissed on additional grounds. J.A.H. has appealed. **OPINION HOLDS:** Our decision in *Wadle* controls. J.A.H. has no viable cause of action for loss of parental consortium. We affirm the district court's ruling.

No. 98-2029. HOLLAND BROS. CONSTR. CO. v. IOWA STATE BD. OF TAX REVIEW.

Appeal from the Iowa District Court for Polk County, D.J. Stovall, Judge. **REVERSED AND REMANDED WITH DIRECTIONS.** Considered en banc. Opinion by Lavorato, J. (12 pages $4.80)

In 1992, Holland Bros. Construction decided to sell at auctions most of the assets used in its road construction business. The auctions of the heavy equipment, machinery, vehicles, and other items generated gross receipts to Holland. Holland ceased its road construction business following the auction. During 1993, the Iowa Department of Revenue and Finance audited Holland for the period from January 1, 1988, through December 31, 1992. The audit resulted in an additional sales tax assessment based on the auction sale. The department also assessed penalties and interest. Holland protested this assessment. Although an administrative law judge concluded the auction sale did qualify for the casual sales tax exemption in Iowa Code section 422.45(6) (1991), the department director on an intra-agency appeal concluded that the exemption did not apply. The director also concluded the tax penalty was properly imposed. The decision was affirmed on appeal to the State Board of Tax Review and on judicial review by the district court. Holland appeals. **OPINION HOLDS:** Contrary to the department's claim, Iowa Code section 422.42(12)(b) is not the exclusive casual sales exemption applicable to the

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No. 98-2029. HOLLAND BROS. CONSTR. CO. v. IOWA STATE BD. OF TAX REVIEW. (continued)

liquidation of a trade or business. A liquidation sale may therefore qualify for a casual sales exemption under section 422.42(12)(a) when, as here, the sale is nonrecurring and the sale is outside the regular course of the seller's business. A liquidation sale is deemed to be outside the regular course of the seller's business when it involves assets such as equipment, machinery, and furnishings that are not sold as inventory. To the extent that Iowa Administrative Code rule 701—18.28 is inconsistent with our holding that section 422.42(12)(b) is not the exclusive casual sales exemption for liquidation sales, it is invalid and therefore unenforceable. Contrary to the district court's decision, we conclude that section 422.42(12)(a) rather than section 422.42(12)(b) applies to Holland's auction sale. We further conclude that the auction sale was—as a matter of law—a casual sale under Iowa Code section 422.42(12)(a) and therefore exempt from Iowa sales tax. Our decision means there is no audit deficiency to support the tax assessment and penalty in this case. We reverse and remand this case to the district court for remand to the board with directions to cancel the assessment and penalty.

No. 98-580. ACCO UNLTD. CORP. v. CITY OF JOHNSTON.

Appeal from the Iowa District Court for Polk County, Linda R. Reade, Judge. **AFFIRMED.** Considered en banc. Opinion by Larson, J.

(11 pages $4.40)

Andrew Christenson owned, and ACCO Unlimited leased, property in the City of Johnston. The property lies within a floodplain where flooding has been a problem for many years. Following a flood in 1993, the Economic Development Administration (EDA) made federal flood relief grants available to cities in Polk County. Johnston applied for a grant to fund construction of a new street and other improvements. The EDA, concerned that this would stimulate development in the adjacent floodplain, required assurances that the property owners would not do so. The Beaverdale Little League, owner of property adjacent to Christenson's, furnished such an assurance. Christenson, however, expressed a desire to develop his property in the floodplain. The EDA subsequently conditioned the grant on the city providing evidence it had either acquired the Christenson property, obtained restrictive covenants, or rezoned it as a conservation district. The city thereafter began condemnation proceedings. Christenson and ACCO sued the city, seeking a permanent injunction and declaratory relief. Following a trial, the district court found the city had a legitimate public purpose in condemning the property and dismissed the action. Christenson and ACCO appeal. **OPINION HOLDS:** I. We reject Christenson's procedural due process arguments that the condemnation was a de facto conservation easement forbidden by Iowa Code section 457A.1 (1995), or that the city should have followed the statutory procedure for rezoning in order to regulate the future use of the land. The city did not

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No. 98-580. ACCO UNLTD. CORP. v. CITY OF JOHNSTON.
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attempt to obtain a de facto rezoning or a de facto conservation easement; it simply condemned the land for flood control purposes. II. Condemning Christenson's land for the purpose of maintaining the floodplain and preserving the water storage capability of the land is a reasonable and necessary public purpose for which condemnation may be used. We reject Christenson's substantive due process arguments. III. The city's decision to condemn the Christenson property but not the little league property does not violate Christenson's equal protection rights. The little league agreed not to develop their property. Christenson did not give a similar assurance and, in fact, expressed a contrary intent. The city's decision bears a rational relationship to its interest in promoting flood control. IV. Because we reject Christenson's constitutional arguments on their merits, it is unnecessary to address the city's motion, made on election-of-remedy grounds, to dismiss the appeal.

98-926. KLOSTER v. HORMEL FOODS CORP.

Appeal from the Iowa District Court for Marion County, Paul R. Huscher, Judge. **VACATED AND REMANDED ON CROSS-APPEAL.** Considered en banc. Opinion by Snell, J. (7 pages $2.80)

On January 30, 1995, while Kloster was employed by Hormel, he sustained an injury to his lower back. The next day Hormel sent him to see Dr. Formanek, a chiropractor frequently retained by Hormel. Formanek indicated Kloster was not to return to work prior to a follow-up exam on February 1. Kloster's manager became enraged and ordered Kloster to return to work the next morning. Kloster did, but kept his appointment with Formanek. Over the course of the next several weeks Kloster continued to seek treatment. For about two weeks Kloster arrived at work at 7:00 a.m., left to see Dr. Formanek at 10:00 a.m. and then went home for the day. Hormel terminated Kloster for gross misconduct when it discovered Kloster's appointments were actually on alternate days in the afternoon. Kloster filed suit alleging improper interference with medical care and retaliatory discharge. A jury ruled in favor of Hormel on the retaliatory discharge claim, but found Hormel intentionally and improperly interfered with Kloster's medical care. The jury found, however, that Kloster did not sustain any actual damages. Kloster appealed and Hormel cross-appealed. **OPINION HOLDS:** Kloster's tort claim falls within the ambit of Iowa's workers' compensation statutes. Iowa Code section 85.27 (1997) provides that an employee who is dissatisfied with the care proffered may petition the industrial commissioner for relief. Kloster did not raise his claim before the industrial commissioner as required by Iowa Code section 85.27, therefore he did not exhaust all adequate administrative remedies and the district court lacked authority to entertain the action. We sustain the cross-appeal, vacate the jury verdict, and remand for dismissal of the plaintiff's petition.

No. 98-1959. BARNES v. STATE.

Appeal from the Iowa District Court for Polk County, Artis I. Reis, Judge. **AFFIRMED.** Considered en banc. Opinion by Larson, J.

(6 pages $2.40)

The plaintiffs, eighteen State employees and their union, sued the State for failing to comply with Iowa Code section 85.27 (1995) (workers' compensation) and Iowa Code chapter 91A (wage collection statute). The plaintiffs claimed the State violated section 85.27 by requiring employees to use sick leave or vacation time to attend medical appointments for treatment of workers' compensation injuries. They sought damages and an injunction against the State to prevent future violations. The district court dismissed the action on the grounds the workers' compensation commissioner had exclusive jurisdiction and the State is immune from such suits. The court did not rule on the plaintiffs' motion for class certification. On appeal, the plaintiffs contend the workers' compensation law is not exclusive in this case because it does not afford them an adequate remedy. They maintain their claims for loss of wages are independent from their underlying personal injuries, and the number of claimants is so large they should be allowed to pursue the claim as a class action in the district court. **OPINION HOLDS: I.** Section 85.27 clearly provides an adequate remedy because it gives the plaintiffs the right to receive wages for time lost for medical appointments. Any claim based on wages denied under this section must be brought in a workers' compensation proceeding. The mere possibility that a class action in the district court might be more efficient does not make the remedy inadequate. **II.** While the plaintiffs pled their case in district court as a claim for lost *wages*, they appear now to focus on a claim for lost *time*: lost sick leave and vacation. The plaintiffs' petition failed to give the State fair notice that they were demanding reinstatement of lost vacation and sick leave under their employment contracts. The district court properly dismissed the plaintiffs' petition.

98-1839. REGIONAL RETIREMENT LIVING, INC. v. BOARD OF REVIEW.

Appeal from the Iowa District Court for Wapello County, James Q. Blomgren, Judge. **AFFIRMED.** Considered en banc. Per curiam.

(5 pages $2.00)

Sylvan Woods filed for a property tax exemption contending it was a nonprofit corporation devoted exclusively to charitable purposes under Iowa Code section 427.1(8) (1997). Sylvan Woods' claim was timely filed on June 30, 1998, pursuant to section 427.1(14). The county assessor's office denied the exemption, and Sylvan Woods filed an appeal to the district court. The district court dismissed the appeal on the ground Sylvan Woods failed to exhaust all administrative remedies. Sylvan Woods has appealed. **OPINION HOLDS:** Under Iowa Code section 441.37, Sylvan Woods was authorized to file an appeal of its tax assessment with the board of review between April 16

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98-1839. REGIONAL RETIREMENT LIVING, INC. v. BOARD OF REVIEW. (continued)

and May 5. Such complaints must be heard by the board before judicial relief may be had. Because Sylvan Woods only filed for an exemption under section 427.1(14), it voluntarily waived any recourse it had under section 441.37 and failed to exhaust its administrative remedies. We affirm the district court's ruling dismissing this case.

98-2193. CITY OF SIOUX CITY v. SIOUXLAND ENG'G ASSOCS.

Appeal from the Iowa District Court for Woodbury County, John Ackerman, Judge. **REVERSED AND REMANDED.** Considered en banc. Per curiam. (5 pages $2.00)

Siouxland Engineering Associates (SEA) and the City of Sioux City each obtained judgments against the other in litigation arising out of SEA's work for the City on a reservoir and other projects. Contrary to the parties' joint request made before trial for setoff and entry of a single judgment, the district court rendered separate judgments, one in favor of the City for $62,139, and one for SEA on its counterclaim in the amount of $42,804.72. Shortly after the judgments were entered, Raymond Freese, a judgment creditor of SEA, served a garnishment on the City and filed a notice of docket levy. SEA and the City again moved for setoff and the trial court granted the motion, unaware of Freese's garnishment. After Freese moved for reconsideration, the court reinstated the original separate judgments, ruling that neither SEA nor the City established equitable grounds upon which a prayer for setoff could be sustained. The City appeals. **OPINION HOLDS:** Our reading of Iowa Rule of Civil Procedure 225 leads us to conclude setoff is mandatory when both parties to an action agree to it. This effectively removes from the court any discretion it may previously have had. The trial court's decision is reversed and the case remanded to set off the judgments.

98-1719. IN RE C.B.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Woodbury County, Patrick H. Tott, Associate Juvenile Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered en banc. Opinion by Cady, J. (12 pages $4.80)

A mother appealed a juvenile court order terminating her parental rights to two of her six children. The court of appeals reversed, finding that the record was insufficient to support termination, DHS did not use reasonable efforts to facilitate visitation, and the mother's recent lifestyle changes made unification possible. We granted further review. **OPINION HOLDS:** I. We find the mother adequately raised the issue of sufficiency of the evidence to (continued)

98-1719. IN RE C.B. (continued)

support termination on appeal by challenging it in terms of the reasonableness of DHS reunification efforts. It is not required that she target the reasonable efforts argument to each specific statutory subsection under which her rights were terminated. II. The mother did not object to reunification efforts, other than visitation, until the termination proceeding. Thus, in considering the sufficiency issue, our focus is on the services provided and her response, not on services she now claims DHS failed to provide. III. We find the children could not be returned to the mother at the time of the termination hearing, and substantial evidence supports all grounds for termination. The problem was not with services, but with her response to them. Moreover, failure to provide visitation in the last months before the termination hearing did not impact the outcome. We affirm the juvenile court order terminating parental rights.

98-1998. SWARTZENDRUBER v. SCHIMMEL.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Johnson County, Larry J. Conmey, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT AFFIRMED.** Considered en banc. Opinion by Cady, J. (9 pages $3.60)

At the end of his shift on January 7, 1994, Philip Swartzendruber was experiencing hip and back pain. The next day, feeling intense pain and struggling to walk, he went to an emergency room and learned his artificial hip socket was loose. After returning home Swartzendruber informed his employer about his injury, uncertain if he could report to work as scheduled on January 10. At the time, Swartzendruber understood the nature of the injury and believed it was related to his work on January 7. Swartzendruber was examined by his orthopedic physician on January 13, 1994, who informed him the hip would require surgery and he might not fully recover from the condition. On the same day, Swartzendruber reported his condition to his employer as a work injury. Swartzendruber filed a petition for workers' compensation benefits on January 11, 1996. The industrial commissioner granted the employer summary judgment on grounds the petition was filed beyond the statute of limitations. The district court affirmed the decision on judicial review and Swartzendruber appealed. We transferred the case to the court of appeals which reversed the district court, finding Swartzendruber did not know of the seriousness of his injury until January 13, 1994 when he saw the orthopedic surgeon. We granted further review. **OPINION HOLDS:** I. The two-year limitation period begins to run when an employee discovers, or should discover in the exercise of diligence, the nature, seriousness, and probable compensable character of the injury or disease. II. If it is reasonably possible an injury is serious enough to be compensable as a disability, the seriousness component of the test is satisfied. III. Swartzendruber experienced intense pain and had a difficult time walking on January 8, 1994. His

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98-1998. SWARTZENDRUBER v. SCHIMMEL. (continued)

condition was serious enough for him to seek medical attention at an emergency room, and he was told by a doctor that his artificial hip was loose and he needed to see his orthopedic specialist. This type of information is entirely consistent with the possibility of a serious injury. When a worker is referred to a specialist by an examining physician, the specialist is not required to confirm the seriousness of an injury before knowledge of the seriousness of the injury may be imputed to the worker. Swartzendruber's uncertainty about his ability to report to work also reflects the possibility that the injury was serious enough to prevent him from working and was consistent with the duty to investigate. IV. Considering all the facts in a light most favorable to Swartzendruber, we agree with the district court that a reasonable person would have knowledge of all three components of the discovery rule on January 8, 1994. The evidence presented by Swartzendruber in response to the motion for summary judgment did not generate a contrary finding. V. The petition filed on January 11, 1996 was untimely, and we vacate the court of appeals' decision and affirm the district court.

98-1938. UNITED FIRE & CAS. CO. v. IOWA DIST. CT.

Certiorari to the Iowa District Court for Sioux County, Gary Wenell, Judge. **WRIT SUSTAINED.** Considered en banc. Opinion by Cady, J. (6 pages $2.40)

Mabel and Victor Victoria purchased an automobile liability policy from United Fire and Casualty Company while they were residents of Iowa. After the Victorias moved to Colorado, Mabel was killed in an automobile accident while a passenger in her car driven by her son. United filed a declaratory judgment action seeking a ruling that it had no obligation to provide coverage because of a "family member exclusion" in the policy. The Victorias argued at trial that applicable Colorado law did not permit such an exclusion. The district court agreed and reformed the policy under Colorado law to delete the exclusion. On United's appeal, in *United Fire & Casualty Co. v. Victoria,* 576 N.W.2d 118, 121 (Iowa 1998), we found "the Victorias had failed to prove" Colorado law would prohibit the exclusion and the district court erred in reforming the policy. We therefore reversed the decision and remanded it "for further proceedings." On remand, the Victorias moved to amend their pleadings to challenge the exclusion under Colorado law. The district court granted the motion and ordered a new hearing. We granted United's petition for writ of certiorari. **OPINION HOLDS:** Our prior holding on the previously litigated family exclusion issue became the law of the case and was controlling on the trial court. No right of retrial survived the remand and the trial court had no discretion but to enter judgment for United. It was error to permit an amendment to the pleadings on the resolved issued. We sustain the writ.

No. 98-2066. IN RE MARRIAGE OF SOJKA.

Appeal from the Iowa District Court for Washington County, Dan F. Morrison (motion to adjudicate points of law) and Robert Bates (modification order), Judges. **REVERSED AND REMANDED.** Considered en banc. Opinion by Neuman, J. (5 pages $2.00)

Patricia and James Sojka's 1992 dissolution decree incorporated the parties' agreement requiring James to continue to pay child support for their college-age children as well as one-third of the children's tuition, books, room and board. His obligation for such costs was not to exceed the amount paid for in-state students at the University of Iowa. James petitioned to modify the child support provision relying on a 1997 amendment to Iowa Code section 598.21 (Supp. 1997). That amendment provides that a divorced parent's obligation to support a child attending college shall not exceed one-third of the total cost of the child's postsecondary education, measured by the cost of in-state tuition, room and board. The district court terminated the former child support provisions of the decree, and limited James' future payments to one-third of the roughly $11,100 annual expenses for his daughter's tuition, books, room, board and fees at the University of Iowa. Patricia has appealed. **OPINION HOLDS:** I. We look to the date of the decree, not to subsequent events, to determine whether a statutory change applies. The 1997 amendment contains no language suggesting retroactive application. To the extent our opinion in *In re Marriage of Williams*, 595 N.W.2d 126 (Iowa 1999), left open any question about the matter, we now hold that section 598.21(5A) applies only to dissolution decrees postdating the statute's enactment. II. James and Patricia's postsecondary child support obligations were mutually agreed upon, and fixed by decree, in 1992, and James can point to no material or substantial change in circumstances warranting a modification of those obligations. We reverse and remand for an order reinstating the prior judgment, and for a hearing on Patricia's claim for attorney fees at trial and on appeal.

No. 98-1349. STATE EX REL. WESTENDORF v. WESTENDORF.

Appeal from the Iowa District Court for Bremer County, Paul W. Riffel, Judge. **AFFIRMED.** Considered en banc. Opinion by Neuman, J. (7 pages $2.80)

Randy and Dawn Westendorf were divorced in 1992 and Dawn was awarded physical care of the three children born during the marriage. Randy was ordered to pay child support for three children in the amount of $350 per month, then when only two children were entitled to support, $327 per month, and for one child, $239. Judgment was also entered against Randy for accrued support in the amount of $6227. In 1997 Randy commenced an action to disestablish paternity of one of the children. Genetic testing confirmed that Randy was not the biological father of the child in question so the key issue at trial was the amount of financial relief Randy could claim under section 600B.41(A)(4) (Supp. 1997). Randy argued that any credit against his cumulative arrearage should reflect *ab initio* his parentage of only two children, not three. The district court held that support for two children was fixed in the original judgment in the sum of $327 per month and that all

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No. 98-1349. STATE EX REL. WESTENDORF v. WESTENDORF. (continued)

payments made by Randy under that decree should be applied toward his cumulative obligation for those two children. The court further held that the arrearage originally calculated on the basis of three children should be reduced to $5817, a sum equivalent to support at the two-child level of $327 per month for the period in question. Randy appealed. **OPINION HOLDS:** I. Res judicata precludes the recalculation of the child support that Randy seeks. The question of support for two children, as well as three, was not only litigated by these same parties but was material, relevant, necessary and essential to the former judgment. II. The district court had no authority to retroactively modify the support order for Randy's two children.

No. 98-1947. GARWICK v. IOWA DEP'T OF TRANSP.

Appeal from the Iowa District Court for Polk County, Donna L. Paulsen, Judge. **AFFIRMED.** Considered en banc. Opinion by Ternus, J. (7 pages $2.80)

In 1996, when Zacharia Garwick was eighteen years old, his driver's license was revoked for sixty days pursuant to Iowa Code section 321J.12(5) (Supp. 1995). This revocation was based on Garwick's violation of Iowa Code section 321J.2A (Supp. 1995), which prohibits a person under the age of twenty-one from driving while having an alcohol concentration of .02 or more. In April 1998, Garwick was arrested and charged with operating while intoxicated (OWI) in violation of Iowa Code section 321J.2 (Supp. 1997), for having an alcohol concentration of .10 or more. Based on the fact that this was Garwick's second revocation, the Iowa Department of Transportation (DOT) revoked Garwick's license for a one-year period pursuant to Iowa Code section 321J.12(1). Garwick contested his one-year revocation, claiming that his prior revocation under section 321J.2A should not be used to enhance the length of his current revocation. The agency and district court on judicial review upheld the revocation. Garwick appeals. **OPINION HOLDS:** I. Garwick's allegation in his petition for judicial review that the department's decision was in violation of a statutory provision and was made upon unlawful procedure is far too unspecific to preserve the double jeopardy challenge he now raises. Furthermore, nothing in the record before us indicates the double jeopardy issue was raised in the proceedings before the agency. Therefore, Garwick has failed to preserve this issue for our review. II. Because Garwick's prior revocation was pursuant to section 321J.2A, it was a revocation under "this chapter"—chapter 321J—and was properly considered by the DOT in determining the length of Garwick's current revocation under section 321J.12(1). The district court did not err in so ruling.

No. 98-28. MINCKS AGRI CENTER, INC., v. BELL FARMS, INC.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Louisa County, John G. Linn, Judge. **COURT OF APPEALS DECISION AFFIRMED; DISTRICT COURT JUDGMENT REVERSED AND CASE REMANDED.** Considered en banc. Opinion by Ternus, J. Dissent by Neuman, J. (25 pages $10.00)

Mincks Agri Center, Inc. is a grain elevator owned by Tim Mincks. Between February and May of 1995 Mincks contracted with Bell Farms to purchase corn and soybeans with delivery to be made at a Muscatine river terminal during October, November and December 1995. Meanwhile, Mincks speculated on the grain futures market, unrelated to Bell Farms' grain contracts. In July 1995 the bank refused to honor $78,000 in checks Tim wrote to cover margin calls on wheat futures, informing him that Mincks had exceeded its lending limit. Tim secured an agreement with Oakville Feed & Grain, Inc. that Oakville would enter into contracts with Mincks' producers on the same terms as the original contracts, and would lease Mincks' premises and continue a grain business at that location. Mincks then voluntarily relinquished its grain dealer license effective September 1, 1995. Although other producers entered into new contracts with Oakville, Bell Farms refused to do so. After Bell Farms did not deliver the grain as required under its contracts, Mincks filed a breach of contract action. The district court ruled that the contracts were enforceable, and a jury ultimately returned a verdict in Mincks' favor. Bell Farms appealed, and the case was transferred to the court of appeals which reversed the trial court, holding that for public policy reasons the contracts were not enforceable because Mincks did not have a grain dealer license. We granted Mincks' application for further review. **OPINION HOLDS:** We agree with the court of appeals that Mincks may not enforce the contracts. Relying on principles set forth in the Restatement (Second) of Contracts sections 178 and 181, we apply a balancing test to determine whether the interest in enforcing the contracts is outweighed by the public policy at stake. On one hand, we find no justifiable expectation of performance, no forfeiture if enforcement is denied, and no special public interest in enforcement of the contracts. On the other hand, we conclude that the policy underlying the licensing requirement is strong; only a refusal to enforce the contracts will further that policy; Mincks' lack of license is serious and is due to its own deliberate acts; and there is a direct connection between Mincks' misconduct, its surrender of its license, and its inability to legally perform the contracts. Under these circumstances, any interest in enforcing these contracts is clearly outweighed by the public policy behind the licensing legislation. The trial court erred in ruling to the contrary. We affirm the court of appeals' decision holding the contracts unenforceable, reverse the district court's contrary judgment, and remand the case for entry of judgment in favor of Bell Farms. **DISSENT ASSERTS:** In my view, the majority's black-and-white approach to enforceability disregards the inherently mutual obligations of such contracts, ignores economically sound remedies available to redress legitimate concerns over future performance, and scuttles the jury's contrary fact-finding on the *real* issue—anticipatory breach. Given the record, I find no error in the trial court's refusal to grant judgment as a matter of law for Bell Farms.

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