



# IOWA ADMINISTRATIVE BULLETIN

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Pages 777 to 852

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## PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [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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**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)

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## Schedule for Rule Making 2005

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. 31 '04	Jan. 19 '05	Feb. 8 '05	Feb. 23 '05	Feb. 25 '05	Mar. 16 '05	Apr. 20 '05	July 18 '05
Jan. 14 '05	Feb. 2	Feb. 22	Mar. 9	Mar. 11	Mar. 30	May 4	Aug. 1
Jan. 28	Feb. 16	Mar. 8	Mar. 23	Mar. 25	Apr. 13	May 18	Aug. 15
Feb. 11	Mar. 2	Mar. 22	Apr. 6	Apr. 8	Apr. 27	June 1	Aug. 29
Feb. 25	Mar. 16	Apr. 5	Apr. 20	Apr. 22	May 11	June 15	Sept. 12
Mar. 11	Mar. 30	Apr. 19	May 4	May 6	May 25	June 29	Sept. 26
Mar. 25	Apr. 13	May 3	May 18	***May 18***	June 8	July 13	Oct. 10
Apr. 8	Apr. 27	May 17	June 1	June 3	June 22	July 27	Oct. 24
Apr. 22	May 11	May 31	June 15	June 17	July 6	Aug. 10	Nov. 7
May 6	May 25	June 14	June 29	***June 29***	July 20	Aug. 24	Nov. 21
***May 18***	June 8	June 28	July 13	July 15	Aug. 3	Sept. 7	Dec. 5
June 3	June 22	July 12	July 27	July 29	Aug. 17	Sept. 21	Dec. 19
June 17	July 6	July 26	Aug. 10	Aug. 12	Aug. 31	Oct. 5	Jan. 2 '06
***June 29***	July 20	Aug. 9	Aug. 24	***Aug. 24***	Sept. 14	Oct. 19	Jan. 16 '06
July 15	Aug. 3	Aug. 23	Sept. 7	Sept. 9	Sept. 28	Nov. 2	Jan. 30 '06
July 29	Aug. 17	Sept. 6	Sept. 21	Sept. 23	Oct. 12	Nov. 16	Feb. 13 '06
Aug. 12	Aug. 31	Sept. 20	Oct. 5	Oct. 7	Oct. 26	Nov. 30	Feb. 27 '06
***Aug. 24***	Sept. 14	Oct. 4	Oct. 19	Oct. 21	Nov. 9	Dec. 14	Mar. 13 '06
Sept. 9	Sept. 28	Oct. 18	Nov. 2	Nov. 4	Nov. 23	Dec. 28	Mar. 27 '06
Sept. 23	Oct. 12	Nov. 1	Nov. 16	***Nov. 16***	Dec. 7	Jan. 11 '06	Apr. 10 '06
Oct. 7	Oct. 26	Nov. 15	Nov. 30	Dec. 2	Dec. 21	Jan. 25 '06	Apr. 24 '06
Oct. 21	Nov. 9	Nov. 29	Dec. 14	***Dec. 14***	Jan. 4 '06	Feb. 8 '06	May 8 '06
Nov. 4	Nov. 23	Dec. 13	Dec. 28	Dec. 30	Jan. 18 '06	Feb. 22 '06	May 22 '06
***Nov. 16***	Dec. 7	Dec. 27	Jan. 11 '06	Jan. 13 '06	Feb. 1 '06	Mar. 8 '06	June 5 '06
Dec. 2	Dec. 21	Jan. 10 '06	Jan. 25 '06	Jan. 27 '06	Feb. 15 '06	Mar. 22 '06	June 19 '06
***Dec. 14***	Jan. 4 '06	Jan. 24 '06	Feb. 8 '06	Feb. 10 '06	Mar. 1 '06	Apr. 5 '06	July 3 '06
Dec. 30	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06

### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
14	Wednesday, December 15, 2004	January 5, 2005
15	Friday, December 31, 2004	January 19, 2005
16	Friday, January 14, 2005	February 2, 2005

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.

\*\*\*Note change of filing deadline\*\*\*

## PUBLICATION PROCEDURES

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

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, 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 publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

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## PUBLIC HEARINGS

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
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**DENTAL EXAMINERS BOARD[650]**

Mandatory reporting, 30.4, 31.14 IAB 11/10/04 <b>ARC 3779B</b> (See also <b>ARC 3777B</b> )	Board Conference Room, Suite D 400 SW Eighth St. Des Moines, Iowa	January 13, 2005 10 a.m.
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**ELDER AFFAIRS DEPARTMENT[321]**

Adult day services programs, 24.1, 24.30 IAB 12/8/04 <b>ARC 3875B</b> ( <b>ICN Network</b> )	Great River AEA 16 3601 West Avenue Rd. Burlington, Iowa	January 6, 2005 1 p.m.
	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	January 6, 2005 1 p.m.
	Room 114, Dairy Education Center Northeast Iowa Community College 1527 Hwy 150 South Calmar, Iowa	January 6, 2005 1 p.m.
	Room 107, North Hall University of Iowa End of North Madison St. Iowa City, Iowa	January 6, 2005 1 p.m.
	Room 22 Iowa Lakes Community College 18th St. Estherville, Iowa	January 6, 2005 1 p.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 6, 2005 1 p.m.
Assisted living programs, 25.1, 25.2, 25.22, 25.29 IAB 12/8/04 <b>ARC 3878B</b> ( <b>ICN Network</b> )	Great River AEA 16 3601 West Avenue Rd. Burlington, Iowa	January 6, 2005 1 p.m.
	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	January 6, 2005 1 p.m.
	Room 114, Dairy Education Center Northeast Iowa Community College 1527 Hwy 150 South Calmar, Iowa	January 6, 2005 1 p.m.
	Room 107, North Hall University of Iowa End of North Madison St. Iowa City, Iowa	January 6, 2005 1 p.m.

**ELDER AFFAIRS DEPARTMENT[321] (Cont'd)**  
**(ICN Network)**

	Room 22 Iowa Lakes Community College 18th St. Estherville, Iowa	January 6, 2005 1 p.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 6, 2005 1 p.m.
Elder group homes, 29.1, 29.9 IAB 12/8/04 <b>ARC 3874B</b> <b>(ICN Network)</b>	Great River AEA 16 3601 West Avenue Rd. Burlington, Iowa	January 6, 2005 1 p.m.
	Loess Hills AEA 13 24997 Hwy 92 Council Bluffs, Iowa	January 6, 2005 1 p.m.
	Room 114, Dairy Education Center Northeast Iowa Community College 1527 Hwy 150 South Calmar, Iowa	January 6, 2005 1 p.m.
	Room 107, North Hall University of Iowa End of North Madison St. Iowa City, Iowa	January 6, 2005 1 p.m.
	Room 22 Iowa Lakes Community College 18th St. Estherville, Iowa	January 6, 2005 1 p.m.
	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 6, 2005 1 p.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

Special requirements for visibility protection, 22.9 IAB 12/8/04 <b>ARC 3871B</b>	Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	January 14, 2005 1 p.m.
Emission standards for contaminants, 23.2 IAB 12/8/04 <b>ARC 3872B</b>	Public Library 3520 86th St. Urbandale, Iowa	January 10, 2005 1 p.m.
Open feedlots, 65.1, 65.2, 65.9, ch 65 div II, 65.100 to 65.112, appendices A and E IAB 12/8/04 <b>ARC 3873B</b>	Fire Station 1904 N. Broadway St. Red Oak, Iowa	January 4, 2005 8:30 a.m.
	Rooms 142–146 DMACC Carroll Campus 906 N. Grant Rd. Carroll, Iowa	January 4, 2005 6:30 p.m.
	Events Center 800 W. 18th St. Spencer, Iowa	January 5, 2005 8:30 a.m.

**ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)**

Lime Creek Nature Center 3501 Lime Creek Rd. Mason City, Iowa	January 5, 2005 6:30 p.m.
Rooms Iowa A/B, Third Floor Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	January 7, 2005 8:30 a.m.

**HUMAN SERVICES DEPARTMENT[441]**

Medicaid—reimbursement for hospital care, 79.1(5) IAB 12/8/04 <b>ARC 3880B</b> (See also <b>ARC 3452B</b> , IAB 7/7/04)	Fifth Floor Northeast Conference Rm. Hoover State Office Bldg. Des Moines, Iowa	December 29, 2004 11 a.m.
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**INSPECTIONS AND APPEALS DEPARTMENT[481]**

Governor's award for quality care, ch 54 IAB 12/8/04 <b>ARC 3848B</b>	Conference Room 319 Lucas State Office Bldg. Des Moines, Iowa	January 4, 2005 10 a.m.
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**INSURANCE DIVISION[191]**

Producers, 31.6 IAB 12/8/04 <b>ARC 3881B</b>	330 Maple St. Des Moines, Iowa	December 29, 2004 2 p.m.
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**MANAGEMENT DEPARTMENT[541]**

Retention of and access to public records, 1.5, 1.7, 1.8, 8.1 to 8.3, 8.12 to 8.14 IAB 11/24/04 <b>ARC 3811B</b>	Room G14 State Capitol Bldg. Des Moines, Iowa	December 16, 2004 10 a.m.
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**MEDICAL EXAMINERS BOARD[653]**

USMLE licensure examination, 9.4(2) IAB 11/24/04 <b>ARC 3824B</b>	Suite C 400 SW Eighth St. Des Moines, Iowa	December 14, 2004 3 p.m.
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**NATURAL RESOURCE COMMISSION[571]**

Gladys Black Eagle Refuge, 52.1(2) IAB 12/8/04 <b>ARC 3862B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 4, 2005 10:30 a.m.
Preference points for nonresident deer hunters, 94.8 IAB 12/8/04 <b>ARC 3861B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	January 4, 2005 10:30 a.m.

**NATURAL RESOURCES DEPARTMENT[561]**

Groundwater hazard documentation, 9.1, 9.2 IAB 12/8/04 <b>ARC 3844B</b>	Fourth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	December 29, 2004 2 p.m.
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**PROFESSIONAL LICENSURE DIVISION[645]**

Cosmetology, amendments to chs 60 to 62, 65 IAB 11/24/04 <b>ARC 3815B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	December 15, 2004 10 to 11 a.m.
Athletic trainers, amendments to chs 351, 352, 354 IAB 11/24/04 <b>ARC 3814B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	December 15, 2004 9 to 10 a.m.
Interpreters for the hearing impaired, chs 360, 364 IAB 12/8/04 <b>ARC 3843B</b>	Fifth Floor Board Conference Room Lucas State Office Bldg. Des Moines, Iowa	January 6, 2005 9 to 10 a.m.

**PUBLIC HEALTH DEPARTMENT[641]**

Quarantine and isolation, 1.12 IAB 11/24/04 <b>ARC 3839B</b> (ICN Network)	State Library Miller State Office Building Des Moines, Iowa	December 14, 2004 10 to 11 a.m.
	Public Library 507 Poplar Atlantic, Iowa	December 14, 2004 10 to 11 a.m.
	Mount Mercy College 1330 Elmhurst Dr. NE Cedar Rapids, Iowa	December 14, 2004 10 to 11 a.m.
	Mason City High School 1700 Fourth SE Mason City, Iowa	December 14, 2004 10 to 11 a.m.
	Ottumwa Regional Hospital 1001 E. Pennsylvania Ottumwa, Iowa	December 14, 2004 10 to 11 a.m.
	Buena Vista University 610 W. Fourth St. Storm Lake, Iowa	December 14, 2004 10 to 11 a.m.
Emergency medical services provider education/training/certification, ch 131 IAB 11/24/04 <b>ARC 3838B</b> (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon

**PUBLIC HEALTH DEPARTMENT[641] (Cont'd)**  
**(ICN Network)**

	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
Emergency medical services—service program authorization, amendments to ch 132 IAB 11/24/04 <b>ARC 3837B</b> <b>(ICN Network)</b>	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
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	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
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	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon

**PUBLIC HEALTH DEPARTMENT[641] (Cont'd)**

Trauma care facility categorization and verification, 134.1, 134.2 IAB 11/24/04 <b>ARC 3835B</b> (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
Trauma triage and transfer protocols, 135.1, 135.2(1) IAB 11/24/04 <b>ARC 3834B</b> (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
Trauma registry, 136.1, 136.2 IAB 11/24/04 <b>ARC 3833B</b> (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon

**PUBLIC HEALTH DEPARTMENT[641] (Cont'd)**  
**(ICN Network)**

	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
Trauma education and training, 137.1 to 137.3 IAB 11/24/04 <b>ARC 3832B</b> <b>(ICN Network)</b>	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon
Iowa law enforcement emergency care provider, 139.1, 139.3, 139.5, 139.6 IAB 11/24/04 <b>ARC 3830B</b> <b>(ICN Network)</b>	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon

**PUBLIC HEALTH DEPARTMENT[641] (Cont'd)**

Emergency medical services system development grants fund, 140.1, 140.4 to 140.6 IAB 11/24/04 <b>ARC 3829B</b> (ICN Network)	Sixth Floor ICN Room Lucas State Office Bldg. Des Moines, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 440 E. Main St. Belmond, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 1712 Le Clark Rd. Carroll, Iowa	December 14, 2004 10 a.m. to 12 noon
	Dubuque Senior High School 1800 Clarke Dr. Dubuque, Iowa	December 14, 2004 10 a.m. to 12 noon
	Public Library 123 S. Linn St. Iowa City, Iowa	December 14, 2004 10 a.m. to 12 noon
	National Guard Armory 11 E. 23rd St. Spencer, Iowa	December 14, 2004 10 a.m. to 12 noon

**TRANSPORTATION DEPARTMENT[761]**

Motorcycle rider education, 635.3 to 635.5 IAB 12/8/04 <b>ARC 3846B</b>	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	January 5, 2005 10 a.m. (if requested)
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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:

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
 AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
   Agricultural Development Authority[25]  
   Soil Conservation Division[27]  
 ATTORNEY GENERAL[61]  
 AUDITOR OF STATE[81]  
 BEEF INDUSTRY COUNCIL, IOWA[101]  
 BLIND, DEPARTMENT FOR THE[111]  
 CAPITAL INVESTMENT BOARD, IOWA[123]  
 CITIZENS’ AIDE[141]  
 CIVIL RIGHTS COMMISSION[161]  
 COMMERCE DEPARTMENT[181]  
   Alcoholic Beverages Division[185]  
   Banking Division[187]  
   Credit Union Division[189]  
   Insurance Division[191]  
   Professional Licensing and Regulation Division[193]  
     Accountancy Examining Board[193A]  
     Architectural Examining Board[193B]  
     Engineering and Land Surveying Examining Board[193C]  
     Landscape Architectural Examining Board[193D]  
     Real Estate Commission[193E]  
     Real Estate Appraiser Examining Board[193F]  
   Savings and Loan Division[197]  
   Utilities Division[199]  
 CORRECTIONS DEPARTMENT[201]  
   Parole Board[205]  
 CULTURAL AFFAIRS DEPARTMENT[221]  
   Arts Division[222]  
   Historical Division[223]  
 ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]  
   City Development Board[263]  
   Grow Iowa Values Board[264]  
   Iowa Finance Authority[265]  
 EDUCATION DEPARTMENT[281]  
   Educational Examiners Board[282]  
   College Student Aid Commission[283]  
   Higher Education Loan Authority[284]  
   Iowa Advance Funding Authority[285]  
   Libraries and Information Services Division[286]  
   Public Broadcasting Division[288]  
   School Budget Review Committee[289]  
 EGG COUNCIL, IOWA[301]  
 ELDER AFFAIRS DEPARTMENT[321]  
 EMPOWERMENT BOARD, IOWA[349]  
 ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
 EXECUTIVE COUNCIL[361]  
 FAIR BOARD[371]  
 GENERAL SERVICES DEPARTMENT[401]  
 HUMAN INVESTMENT COUNCIL[417]  
 HUMAN RIGHTS DEPARTMENT[421]  
   Community Action Agencies Division[427]  
   Criminal and Juvenile Justice Planning Division[428]  
   Deaf Services Division[429]  
   Persons With Disabilities Division[431]  
   Latino Affairs Division[433]  
   Status of African-Americans, Division on the[434]  
   Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]  
INFORMATION TECHNOLOGY DEPARTMENT[471]  
INSPECTIONS AND APPEALS DEPARTMENT[481]  
    Employment Appeal Board[486]  
    Foster Care Review Board[489]  
    Racing and Gaming Commission[491]  
    State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
    Appeal Board, State[543]  
    City Finance Committee[545]  
    County Finance Committee[547]  
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[555]  
NATURAL RESOURCES DEPARTMENT[561]  
    Energy and Geological Resources Division[565]  
    Environmental Protection Commission[567]  
    Natural Resource Commission[571]  
    Preserves, State Advisory Board for[575]  
PERSONNEL DEPARTMENT[581]  
PETROLEUM UNDERGROUND STORAGE TANK FUND  
    BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PUBLIC DEFENSE DEPARTMENT[601]  
    Homeland Security and Emergency Management Division[605]  
    Military Division[611]  
PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
    Substance Abuse Commission[643]  
    Professional Licensure Division[645]  
    Dental Examiners Board[650]  
    Medical Examiners Board[653]  
    Nursing Board[655]  
    Pharmacy Examiners Board[657]  
PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
    Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SEED CAPITAL CORPORATION, IOWA[727]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
    Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS COMMISSION[801]  
VETERINARY MEDICINE BOARD[811]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
    Labor Services Division[875]  
    Workers' Compensation Division[876]  
    Workforce Development Board and  
    Workforce Development Center Administration Division[877]

**ARC 3854B****ACCOUNTANCY EXAMINING  
BOARD[193A]****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 542.4, the Accountancy Examining Board hereby gives Notice of Intended Action to amend Chapter 1, “Definitions,” Chapter 3, “Certification of CPAs,” Chapter 4, “Licensure of LPAs,” Chapter 5, “Renewal of Certificates and Licenses,” Chapter 7, “Certified Public Accounting Firms,” Chapter 8, “Licensed Public Accounting Firms,” Chapter 10, “Continuing Education,” Chapter 13, “Rules of Professional Conduct,” and Chapter 15, “Disciplinary Investigations,” Iowa Administrative Code.

The proposed amendments to Chapter 1 adopt new definitions for terms used in proposed amendments to Chapter 15 of these rules. The proposed amendments to Chapter 3 clarify requirements for issuance of a certificate as a CPA. The proposed amendments to Chapter 4 allow the use of the services of a test administrator. The proposed amendment to Chapter 5 establishes requirements for reinstatement of a lapsed certificate or license. The proposed amendments to Chapters 7 and 8 establish the guidelines for reinstatement of a lapsed firm permit. The proposed amendments to Chapter 10 adopt new mandatory continuing education requirements. The proposed amendments to Chapter 13 adopt new guidelines for record retention. The proposed amendments to Chapter 15 adopt provisions for confidentiality of complaint and investigative information received from the Public Company Accounting and Oversight Board (PCAOB) created by the Sarbanes-Oxley Act of 2002.

These amendments are subject to waiver or variance pursuant to 193—Chapter 5.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before December 28, 2004. Comments should be addressed to Glenda Loving, Accountancy Examining Board, 1920 S.E. Hulsizer, Ankeny, Iowa 50021, or faxed to (515)281-7411. E-mail may be sent to [glenda.loving@iowa.gov](mailto:glenda.loving@iowa.gov).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend **193A—Chapters 1, 4, 5, 7, 8, 10, 13 and 15** by replacing all parenthetical references to “79GA,ch55” with references to “542.”

ITEM 2. Amend rule **193A—1.1(542)** by adopting the following **new** definitions in alphabetical order:

“IRS” means the Internal Revenue Service, United States Department of the Treasury.

“PCAOB” means Public Company Accounting Oversight Board. The PCAOB is a private-sector, nonprofit corporation, created by the Sarbanes-Oxley Act of 2002, to oversee

the auditors of public companies in order to protect the interests of investors and further the public interest.

“SEC” means the United States Securities and Exchange Commission.

ITEM 3. Amend subrules 3.4(1) and 3.4(2) as follows:

**3.4(1)** An individual desiring to take the certified public accountant examination as an initial candidate should apply to the board’s test administrator. ~~Applications~~ *An application* shall not be approved until complete in all respects. A complete application includes a completed application form, the designated fee, *and* all applicable college transcripts ~~and, if required, a certificate of enrollment.~~

**3.4(2)** To be eligible to ~~take to make application~~ *for the examination as a reexamination applicant*, the ~~a~~ candidate shall ~~have fulfilled~~ *fulfill* the requirements of rule 3.3(542).

ITEM 4. Amend rule 193A—3.14(542) as follows:

**193A—3.14(542) Obtaining the certificate.**

**3.14(1)** A candidate who successfully passes the examination, completes the ethics course and examination and meets all of the requirements outlined in rule 193A—3.1(542) shall make application for the certificate on a form which may be obtained from the board office. An applicant for a certificate may be denied the certificate for reasons outlined in ~~subrules~~ *subrule* 3.4(3), 3.4(4), ~~and or~~ 3.4(5) regardless of when the incident occurred.

**3.14(2)** *A candidate who meets the requirements for a certificate outlined in rule 193A—3.1(542) shall file an application for a certificate within three years of the date of passing the examination. If the candidate does not file an application for a certificate within the required time frame, the candidate must comply with the basic continuing education requirements outlined in 193A—10.3(542) prior to filing an application. The required continuing education hours shall include a minimum of seven hours of continuing education devoted to statements on standards for accounting and review services (SSARS).*

ITEM 5. Amend rules 193A—4.2(542) and 193A—4.5(542) as follows:

**193A—4.2(542) Examination application.**

**4.2(1)** An individual desiring to take the examination to qualify for a license as a licensed public accountant shall ~~apply to the board’s test administrator. on a form that may be obtained from the board office or on the board’s Web site.~~ *Different forms will be provided for original examinations and reexaminations.*

**4.2(2)** To be eligible to take the examination, the applicant must meet the requirements of ~~2001 Iowa Acts, chapter 55, section 8(1)(b) Iowa Code section 542.8(1)“b”~~ at the time of filing the application.

**193A—4.5(542) Deadline for filing applications.** Examinations are ordinarily held in June and December of each year, and all applications to take the examinations must be filed ~~during the period of January 1 to March 31 for the June examination, and during the period of July 1 to September 30 for the December examination.~~ *Applications will not be considered as filed until they are complete in all respects. Applications shall be deemed filed on the date received by the board or, if mailed, the date postmarked, but not the date metered, whichever is earlier. Late applications will not be accepted by the deadline established by the board’s test administrator.*

ITEM 6. Rescind rule **193A—4.6(79GA,ch55)**.



## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

ITEM 7. Amend subrule 4.7(3) as follows:

**4.7(3)** The identity of the person taking the examination shall be concealed until after the examination papers have been graded. ~~A grade of at least 75 in each subject shall be passing. Absent a showing of good cause, the board shall accept the passing grade established by the Accreditation Council for Accountancy and Taxation.~~

ITEM 8. Amend rule 193A—4.14(542) as follows:

**193A—4.14(542) Statement Statements on standards for accounting and review services (SSARS) education.** An LPA license applicant ~~who will be responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report on the financial statements~~ shall complete a minimum of seven hours of continuing education devoted to statements on standards for accounting and review services (SSARS) prior to issuance of the license. An LPA license applicant is exempt from this requirement if the applicant has passed the CPA examination provided by the AICPA.

ITEM 9. Amend subrule 5.5(3) as follows:

**5.5(3)** The board may reinstate ~~the an active~~ certificate or license upon the applicant's payment of a penalty of \$100 and ~~provision of evidence of completed continuing education outlined in rule 193A—10.3(79GA, ch55).~~ *completion of all of the following:*

- a. *Paying a penalty of \$100; and*
- b. *Paying the current renewal fee; and*
- c. *Providing evidence of completed continuing education outlined in rule 193A—10.3(542); and*
- d. *Providing a written statement outlining the professional activities of the applicant during the period in which the applicant's license was lapsed. The statement shall describe all services performed which constitute the practice of accounting including, but not limited to, those professional practice activities described in subrule 5.8(2).*

ITEM 10. Adopt **new** subrule 5.5(4) as follows:

**5.5(4)** The board may reinstate an inactive certificate or license upon the applicant's completion of all of the following:

- a. Paying a penalty of \$100; and
- b. Paying the current renewal fee; and
- c. Providing a written statement outlining the professional activities of the applicant during the period in which the applicant's license was lapsed. The statement shall describe all services performed which constitute the practice of accounting including, but not limited to, those professional practice activities described in subrule 5.8(2).

ITEM 11. Adopt **new** subrule 5.5(5) as follows:

**5.5(5)** The board may find probable cause to file charges for unlicensed practice if the individual continues to offer services defined as the practice of accounting while using the title "CPA" or "LPA" during the period of lapsed registration.

ITEM 12. Amend subrule 5.8(7), catchwords, as follows:

**5.8(7)** Reinstatement *to active status.*

ITEM 13. Rescind subrule 7.4(3) and adopt **new** subrules 7.4(3) and 7.4(4) as follows:

**7.4(3)** The board may reinstate the permit upon the payment of the proper renewal fee and a penalty of \$100. The board shall also require a written statement outlining the firm's professional activities during the period of lapsed registration.

**7.4(4)** The board may find probable cause to file charges for unlicensed practice if the firm continues to offer services defined as the practice of accounting while using the title "CPA" during the period of lapsed registration.

ITEM 14. Rescind subrule 8.4(3) and adopt **new** subrules 8.4(3) and 8.4(4) as follows:

**8.4(3)** The board may reinstate the permit upon the payment of the proper renewal fee and a penalty of \$100. The board shall also require a written statement outlining the firm's professional activities during the period of lapsed registration.

**8.4(4)** The board may find probable cause to file charges for unlicensed practice if the firm continues to offer services defined as the practice of accounting while using the title "LPA" during the period of lapsed registration.

ITEM 15. Amend rule 193A—10.5(542) as follows:

**193A—10.5(542) SSARS Mandatory education required.**

**10.5(1)** In each biennial period in which compilation reports are issued, every CPA certificate holder or LPA license holder who is responsible for supervising compilation services or who signs or authorizes someone to sign the accountant's compilation report on the financial statements on behalf of a firm shall complete, as a condition of certificate or license renewal, a minimum of seven hours of continuing education devoted to *financial statement presentation, such as courses covering the statements on standards for accounting and review services (SSARS) and accounting and auditing updates.* When required, the SSARS continuing education shall be completed within the two-year period ending on the December 31 preceding the application for certificate or license renewal.

**10.5(2)** *Every CPA certificate holder or LPA license holder shall complete a minimum of four hours of continuing education devoted to ethics and rules of professional conduct during the two-year period ending December 31, prior to the July 1 biennial renewal date. The first requirement shall be completed by December 31, 2007, for individuals whose renewal date is July 1, 2008, and December 31, 2008, for individuals whose renewal date is July 1, 2009.*

ITEM 16. Rescind subrule **13.5(2)**, paragraph "b," and adopt **new** paragraph "b" in lieu thereof:

b. A copy of the working papers of the CPA or LPA to the extent that such working papers include records which would ordinarily constitute part of the client's books and records and are not otherwise available to the client or easily reconstructed by the client or successor CPA or LPA. Examples of such work include depreciation schedules and LIFO inventory work papers.

ITEM 17. Adopt **new** subrules 13.5(3) to 13.5(6) as follows:

**13.5(3)** Reasonable time. A "reasonable time" for furnishing clients or former clients the records described in subrule 13.5(2) is dependent upon the facts and circumstances. A CPA or LPA should strive to be as responsive as the situation requires in light of the possible adverse consequence of delay to the client or former client. As a general rule of thumb, the CPA or LPA should provide such records within ten business days of a written request.

**13.5(4)** Nonpayment of fees. A CPA or LPA shall not withhold the records described in subrule 13.5(2) from a client or former client based on nonpayment of fees. However, if a CPA or LPA has already issued a tax return, report or other record to a client or former client, the CPA or LPA may, but

## ACCOUNTANCY EXAMINING BOARD[193A](cont'd)

is not required to, request payment of outstanding fees prior to providing a second copy of such records.

**13.5(5)** Documentation and retention. A CPA or LPA shall comply with all professional standards applicable to particular engagements including, but not limited to, standards adopted by recognized standards-setting bodies such as the Public Company Accounting Oversight Board (PCAOB), the Comptroller General of the United States, the Audit Standards Board or other applicable regulatory body.

**13.5(6)** Retention period of attest documentation and working papers. Unless otherwise required by applicable law, a CPA firm shall retain attest documentation and attest working papers for seven years, measured by the report date. If the CPA firm is notified within the seven-year period of a board investigation or disciplinary proceeding, criminal investigation or proceeding, or other governmental investigation or proceeding, which stems from or relates to the documents at issue, such attest documentation and attest working papers shall not be destroyed until the firm has been notified in writing that the investigation or proceeding has been closed or otherwise fully resolved, or seven years from the report date, whichever period is longer.

ITEM 18. Adopt **new** subrules 13.6(7) and 13.6(8) as follows:

**13.6(7)** Reporting requirements. In addition to any other reporting requirement in Iowa Code chapter 542 or these rules, a CPA or LPA shall notify the board within 30 days of:

a. Imposition upon the CPA or LPA of discipline including but not limited to, censure, reprimand, sanction, probation, civil penalty, fine, consent decree or order, suspension, revocation, or modification of a license, certificate, permit or practice rights by:

(1) The SEC, PCAOB, IRS (by the director of practice); or

(2) Another state board of accountancy for cause other than failure to pay a professional fee by the due date or failure to meet the continuing education requirements of another state board of accountancy; or

(3) Any other federal or state agency regarding the CPA's or LPA's conduct while rendering professional services; or

(4) Any foreign authority or credentialing body that regulates the practice of accountancy;

b. Occurrence of any matter reportable that must be reported by the CPA to the PCAOB pursuant to Sarbanes-Oxley Section 102(b)(2)(f) and PCAOB rules and forms adopted pursuant thereto;

c. Any judgment, award or settlement of a civil action or arbitration proceeding in which the CPA or LPA was a party if the matter included allegations of gross negligence, violation of specific standards of practice, fraud, or misappropriation of funds in the practice of accounting; provided however, licensed firms shall notify the board regarding civil judgments, settlements or arbitration awards directly involving the firm's practice of public accounting in this state; or

d. Criminal charges, deferred prosecution or conviction or plea of no contest to which the licensee is a defendant if the crime is:

(1) Any felony under the laws of the United States or any state of the United States or any foreign jurisdiction; or

(2) A misdemeanor if an essential element of the offense is dishonesty, deceit or fraud.

**13.6(8)** Firm's duty to report. The CPA or LPA designated by each firm in accordance with Iowa Code section 542.7(3)"b"(1) or 542.8(12)"b"(1) and these rules as the licensee responsible for the proper registration of the firm shall report any matter reportable under this rule to which a non-

licensee owner with a principal place of business in this state is a party.

ITEM 19. Rescind rule 193A—15.7(272C,79GA,ch55) and adopt **new** rule 193A—15.7(272C,542) as follows:

**193A—15.7(272C,542) Confidentiality of complaint and investigative information.**

**15.7(1)** General provisions. All complaint and investigative information received or created by the board is privileged and confidential pursuant to Iowa Code section 272C.6(4). Such information shall not be released to any person except as provided in that section.

**15.7(2)** Confidentiality of PCAOB information and records.

a. The Public Company Accounting Oversight Board (PCAOB) was created by the Sarbanes-Oxley Act of 2002 (the Act) as a nonprofit corporation under the laws of the District of Columbia. The duties of the PCAOB include the registration of public accounting firms that prepare audit reports for public companies; the promulgation of rules (as approved by the SEC) for auditing, quality control, ethics, independence and other standards relating to the preparation of audit reports; the inspection of registered public accounting firms; the investigation of alleged standards violations; and the imposition of appropriate sanctions following disciplinary proceedings.

b. Pursuant to Section 105(b)(5)(A) of the Act and PCAOB rules, PCAOB investigatory information and records are confidential and privileged, and exempt from disclosure under the federal Freedom of Information Act. PCAOB, in its discretion, may share such information and records, along with the nonpublic sections of inspection reports, with state regulatory authorities as necessary to accomplish the purposes of the Act or to protect investors. As provided in Section 105(b)(5)(B) of the Act, state regulatory authorities are required to maintain such information and records as confidential and privileged.

c. The board shall maintain as confidential PCAOB investigative information and records, and the nonpublic sections of inspection reports, to the extent required by federal law. In the event a licensee is charged by the board in a state disciplinary proceeding based in whole or part upon confidential information or records received from the PCAOB, the board shall take such steps as are required by federal law to preserve the confidentiality of the information and records from the general public.

**ARC 3875B**

**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 Iowa Code sections 231.14, 231D.2 and 231D.3, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 24, "Adult Day Services Programs," Iowa Administrative Code.

## ELDER AFFAIRS DEPARTMENT[321](cont'd)

These amendments are considered technical changes to the rules to:

1. Remove two definitions no longer needed in the chapter;
2. Amend a definition to correspond with the removal of another definition;
3. Delete and replace a definition used in the chapter; and
4. Clarify the provisions of medication administration.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 6, 2005. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309; or E-mailed to [sherry.james@iowa.gov](mailto:sherry.james@iowa.gov); or faxed to (515)242-3300.

There will be a public hearing on January 6, 2005, at 1 p.m. over the Iowa Communications Network (ICN), at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

Great River Area Education Agency 16  
3601 West Avenue Road (Enter east side of building;  
directions to room will be posted.)

Burlington

Loess Hills Area Education Agency 13  
24997 Hwy 92 (Use east entrance; directions  
to room will be posted.)

Council Bluffs

Northeast Iowa Community College—Dairy  
Education Center  
1527 Hwy 150 South (South of campus  
½ mile; signs will be posted.)

Room 114  
Calmar

University of Iowa  
End of North Madison Street  
North Hall, West Entrance, Room 107 (Signs  
are posted to ICN Room.)  
Iowa City

Iowa Lakes Community College  
18th Street, Room #22 (Enter on west side  
of building; signs are posted for ICN.)  
Estherville

Third Floor Conference Room  
Wallace State Office Building  
East Ninth and Grand  
Des Moines

Any persons who intend to attend the public hearing and who have special requirements, such as those related to hearing or mobility impairments, should contact the Elder Affairs Department and communicate specific needs.

These amendments are intended to implement Iowa Code Supplement chapter 231D.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **321—24.1(231D)** as follows:  
Rescind the definition of “allied health care professional.”

Amend the definition of “health care” to read as follows:  
“Health care” means services provided by a health care professional, ~~allied health care professional~~ or supervised designated health care giver on a part-time or intermittent basis.

Rescind the definition of “self-administration” and adopt the following **new** definition in lieu thereof:

“Self-administration” means a participant’s or a participant’s designee’s taking personal responsibility for all phases of administering all medications.

Rescind the definition of “supervision of self-administration.”

ITEM 2. Rescind rule 321—24.30(231D) and adopt the following **new** rule in lieu thereof:

**321—24.30(231D) Medications.**

**24.30(1)** Each program shall follow a written medication policy that affirms a nurse’s use of the nursing process as given in 655—subrule 6.2(2) to make prudent choices relating to implementation of a participant’s service plan. The service plan shall state whether a participant self-administers medication. The medication policy shall include the following:

a. The program shall not prohibit a participant from self-administering medication unless:

(1) The prescription or service plan states that the participant is not to self-administer the medication; or

(2) The participant or the participant’s legal representative delegates medication administration to the program in the contractual agreement or signed service plan.

b. When self-administration is indicated in a participant’s service plan, the service plan shall specify:

(1) If the participant is to keep a medication in the participant’s own possession; and

(2) Which services the program will provide to assist the participant to self-administer a medication. These services may include, but not be limited to, routine prompting, cueing and reminding; opening of containers or packaging at the direction of the participant; reading instructions or other label information; or transferring a medication from the original prescription containers into suitable dispensing containers, medication reminder boxes or medication cups.

**24.30(2)** When, as specified in a participant’s service plan, medication administration is performed by the program, the following requirements shall apply:

a. The administration of a medication shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the authorized agent in accordance with 655—subrule 6.2(5) and 655—subrule 6.3(1) and Iowa Code chapter 155A.

b. The program shall document in the participant’s record any medication the program has agreed to administer.

c. Medication shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

d. All medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

e. No person other than the dispensing pharmacist shall alter a prescription label.

f. Each participant’s medication shall be received by the program in its original container.

g. Each program shall follow written policies and procedures that comply with federal and state codes, rules and regulations regarding controlled substances.

**ARC 3876B****ELDER AFFAIRS  
DEPARTMENT[321]****Notice of Termination**

Pursuant to the authority of Iowa Code section 231.23(10), the Elder Affairs Department terminates the rule making initiated by its Notice of Intended Action published in the September 29, 2004, Iowa Administrative Bulletin as **ARC 3703B** to amend Chapter 25, "Assisted Living Programs," Iowa Administrative Code.

The Notice proposed to make technical changes in Chapter 25 to:

1. Remove a definition no longer used in the chapter;
2. Change rule language to comply with Iowa Code requirements;
3. Clarify a provision of medication administration; and
4. Clarify the statement regarding alarms on exit doors.

The Department has made changes to these amendments proposed in **ARC 3703B** based on numerous written and oral comments from the general public and other organizations. Therefore, the Department is terminating the rule making commenced in **ARC 3703B** and is issuing a new Notice of Intended Action, published herein as **ARC 3878B**, regarding the proposed amendments.

**ARC 3878B****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 Iowa Code sections 231.14, 231C.1 and 231C.3, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 25, "Assisted Living Programs," Iowa Administrative Code.

These amendments are considered technical changes to the rules to:

1. Remove two definitions no longer used in the chapter;
2. Rescind and replace two definitions used in the chapter;
3. Change rule language to comply with Iowa Code requirements;
4. Clarify the statement regarding alarms on exit doors; and
5. Clarify the provisions of medication administration.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 6, 2005. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309; or E-mailed to [sherry.james@iowa.gov](mailto:sherry.james@iowa.gov); or faxed to (515)242-3300.

There will be a public hearing on January 6, 2005, at 1 p.m. over the Iowa Communications Network (ICN), at which time persons may present their views either orally or in

writing. Access to the public hearing will be available through the following locations:

Great River Area Education Agency 16  
3601 West Avenue Road (Enter east side of building; directions to room will be posted.)  
Burlington

Loess Hills Area Education Agency 13  
24997 Hwy 92 (Use east entrance; directions to room will be posted.)  
Council Bluffs

Northeast Iowa Community College—Dairy Education Center  
1527 Hwy 150 South (South of campus ½ mile; signs will be posted.)  
Room 114  
Calmar

University of Iowa  
End of North Madison Street  
North Hall, West Entrance, Room 107 (Signs are posted to ICN Room.)  
Iowa City

Iowa Lakes Community College  
18th Street, Room #22 (Enter on west side of building; signs are posted for ICN.)  
Estherville

Third Floor Conference Room  
Wallace State Office Building  
East Ninth and Grand  
Des Moines

Any persons who intend to attend the public hearing and who have special requirements, such as those related to hearing or mobility impairments, should contact the Elder Affairs Department and communicate specific needs.

These amendments are intended to implement Iowa Code Supplement chapter 231C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **321—25.1(231C)** as follows:  
Rescind the definition of "allied health care professional."  
Rescind the definition of "personal care" and adopt the following **new** definition in lieu thereof:

"Personal care" means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, and housekeeping that are essential to the health and welfare of the tenant.

Rescind the definition of "self-administration" and adopt the following **new** definition in lieu thereof:

"Self-administration" means a tenant's or a tenant's designee's taking personal responsibility for all phases of administering all medications.

Rescind the definition of "supervision of self-administration."

ITEM 2. Amend rule 321—25.2(231C) to read as follows:

**321—25.2(231C) Program certification.** A program may *shall* become certified by meeting all the requirements in

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Iowa Code Supplement chapter 231C and the applicable rules of this chapter. In addition, a program may be voluntarily accredited by either CARF or JCAHO. For the purpose of these rules, certification is equivalent to licensure. A current certificate shall be visibly displayed within the designated area of the operation of the program.

ITEM 3. Amend subrule **25.22(3)** by adding **new** paragraph **“t”** as follows:

t. A statement as to whether or not the program provides an operating alarm system(s) connected to each exit door.

ITEM 4. Rescind rule 321—25.29(231C) and adopt the following **new** rule in lieu thereof:

**321—25.29(231C) Medications.**

**25.29(1)** Each program shall follow a written medication policy that affirms a nurse's use of the nursing process as given in 655—subrule 6.2(2) to make prudent choices relating to implementation of a tenant's service plan. The service plan shall state whether a tenant self-administers medication. The medication policy shall include the following:

a. The program shall not prohibit a tenant from self-administering medication unless:

(1) The prescription or service plan states that the tenant is not to self-administer the medication; or

(2) The tenant or the tenant's legal representative delegates medication administration to the program in the occupancy agreement or signed service plan.

b. When self-administration is indicated in a tenant's service plan, the service plan shall specify:

(1) If the tenant is to keep a medication within the tenant's dwelling unit;

(2) If a medication is to be kept in a locked storage area within the tenant's dwelling unit; and

(3) Which services the program will provide to assist the tenant to self-administer a medication. These services may include, but not be limited to, routine prompting, cueing and reminding; opening of containers or packaging at the direction of the tenant; reading instructions or other label information; or transferring a medication from the original prescription containers into suitable dispensing containers, medication reminder boxes or medication cups.

**25.29(2)** When, as specified in a tenant's service plan, medication administration is performed by the program, the following requirements shall apply:

a. The administration of a medication shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the authorized agent in accordance with 655—subrule 6.2(5) and 655—subrule 6.3(1) and Iowa Code chapter 155A.

b. The program shall document in the tenant's record any medication the program has agreed to administer.

c. Medication shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

d. All medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

e. No person other than the dispensing pharmacist shall alter a prescription label.

f. Each tenant's medication shall be received by the program in its original container.

g. Each program shall follow written policies and procedures that comply with federal and state codes, rules and regulations regarding controlled substances.

**ARC 3874B**

**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 Iowa Code sections 231.14 and 231B.2, the Elder Affairs Department hereby gives Notice of Intended Action to amend Chapter 29, “Elder Group Homes,” Iowa Administrative Code.

These amendments are considered technical changes to the rules to:

1. Delete and replace two definitions used in the chapter;
2. Remove a definition no longer needed in the chapter;
3. Clarify the provisions of medication administration.

Any interested person may make written suggestions or comments on these proposed amendments on or before January 6, 2005. Such written comments should be directed to the Department of Elder Affairs, 200 10th Street, Des Moines, Iowa 50309; or E-mailed to [sherry.james@iowa.gov](mailto:sherry.james@iowa.gov); or faxed to (515)242-3300.

There will be a public hearing on January 6, 2005, at 1 p.m. over the Iowa Communications Network (ICN), at which time persons may present their views either orally or in writing. Access to the public hearing will be available through the following locations:

Great River Area Education Agency 16  
3601 West Avenue Road (Enter east side of  
building; directions to room will be posted.)  
Burlington

Loess Hills Area Education Agency 13  
24997 Hwy 92 (Use east entrance; directions  
to room will be posted.)  
Council Bluffs

Northeast Iowa Community College—Dairy  
Education Center  
1527 Hwy 150 South (South of campus  
½ mile; signs will be posted.)  
Room 114  
Calmar

University of Iowa  
End of North Madison Street  
North Hall, West Entrance, Room 107 (Signs  
are posted to ICN Room.)  
Iowa City

Iowa Lakes Community College  
18th Street, Room #22 (Enter on west side  
of building; signs are posted for ICN.)  
Estherville

Third Floor Conference Room  
Wallace State Office Building  
East Ninth and Grand  
Des Moines

ELDER AFFAIRS DEPARTMENT[321](cont'd)

Any persons who intend to attend the public hearing and who have special requirements, such as those related to hearing or mobility impairments, should contact the Elder Affairs Department and communicate specific needs.

These amendments are intended to implement Iowa Code Supplement chapter 231B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **321—29.1(231B)** as follows:

Rescind the definition of "personal care" and adopt the following **new** definition in lieu thereof:

"Personal care" means assistance with the essential activities of daily living which may include but are not limited to transferring, bathing, personal hygiene, dressing, grooming, and housekeeping that are essential to the health and welfare of the tenant. However, "personal care" does not include the administration of medications or the services of a registered nurse or licensed practical nurse.

Rescind the definition of "self-administration" and adopt the following **new** definition in lieu thereof:

"Self-administration" means a tenant's or a tenant's designee's taking personal responsibility for all phases of administering all medications.

Rescind the definition of "supervision of self-administration."

ITEM 2. Rescind rule 321—29.9(231B) and adopt the following **new** rule in lieu thereof:

### **321—29.9(231B) Medications.**

**29.9(1)** Each program shall follow a written medication policy that affirms a nurse's use of the nursing process as given in 655—subrule 6.2(2) to make prudent choices relating to implementation of a tenant's service plan. The service plan shall state whether a tenant self-administers medication. The medication policy shall include the following:

a. The program shall not prohibit a tenant from self-administering medication unless:

(1) The prescription or service plan states that the tenant is not to self-administer the medication; or

(2) The tenant or the tenant's legal representative delegates medication administration to the program in the occupancy agreement or signed service plan.

b. When self-administration is indicated in a tenant's service plan, the service plan shall specify:

(1) If the tenant is to keep a medication within the tenant's dwelling unit;

(2) If a medication is to be kept in a locked storage area within the tenant's dwelling unit; and

(3) Which services the program will provide to assist the tenant to self-administer a medication. These services may include, but not be limited to, routine prompting, cueing and reminding; opening of containers or packaging at the direction of the tenant; reading instructions or other label information; or transferring a medication from the original prescription containers into suitable dispensing containers, medication reminder boxes or medication cups.

**29.9(2)** When, as specified in a tenant's service plan, medication administration is performed by the program, the following requirements shall apply:

a. The administration of a medication shall be provided by an Iowa-licensed registered nurse or advanced registered nurse practitioner registered in Iowa or the authorized agent

in accordance with 655—subrule 6.2(5) and 655—subrule 6.3(1) and Iowa Code chapter 155A.

b. The program shall document in the tenant's record any medication the program has agreed to administer.

c. Medication shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

d. All medications shall be labeled and maintained in compliance with label instructions and state and federal laws.

e. No person other than the dispensing pharmacist shall alter a prescription label.

f. Each tenant's medication shall be received by the program in its original container.

g. Each program shall follow written policies and procedures that comply with federal and state codes, rules and regulations regarding controlled substances.

## **ARC 3871B**

### **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(2), the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 22, "Controlling Pollution," Iowa Administrative Code.

The purpose of this amendment is to assist the Department in identifying stationary sources of air pollution potentially subject to the Best Available Retrofit Technology (BART) emission control requirements established by the federal Regional Haze Regulations. The federal Regional Haze Regulations are mandated by the federal Clean Air Act (Clean Air Act, Section 169(a), as codified in 40 CFR 51.301 and 51.308). The Department must comply with the Regional Haze Regulations by December 2007.

Regional haze is visibility impairment at federal mandatory Class I areas (i.e., national parks and wilderness areas) caused by tiny particles that absorb and scatter sunlight, giving the sky a veil of white and brown haze. Previous federal regulations addressed visibility impairment attributable to specific sources. The Regional Haze Regulations address visibility impairment resulting from air pollution transported hundreds of miles and attributable to the cumulative emissions from widely distributed sources.

The federal Regional Haze Regulations were originally promulgated by the U.S. Environmental Protection Agency (EPA) in 1999. Guidelines intending to clarify the BART provisions of the federal Regional Haze Regulations were issued by EPA in 2001. Due to litigation, the BART guidelines were repropoed with modifications on May 5, 2004. The modified guidelines, which must be final by April 15, 2005, are to include a mechanism by which individual sources may be exempted from BART emission control requirements on a case-by-case basis. Due to a lack of certainty regarding aspects of the federal guidelines for the BART provisions of the Regional Haze Regulations, the Department proposes a bifurcated rule-making process.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

This rule would require owners or operators of stationary sources meeting the eligibility criteria for BART to submit source identification and emission unit description information to the Department. The Department would review the information solicited by this proposed rule for completeness and to determine whether each stationary source of air pollution meets the requirements for being considered BART-eligible. Stationary sources not reasonably anticipated to cause or contribute to any visibility impairment in any federal mandatory Class I area would be notified by the Department that they are exempt from further action under BART.

Following the self-identification process set out in this proposed rule making and prior to December 2007, the Department anticipates a future rule making setting out the procedure the Department will follow to comply with the remainder of the BART provisions of the Regional Haze Regulation requirements. Following that rule making, each stationary source of air pollution determined to be BART-eligible would undergo review by the Department to determine whether air pollutant emissions from the source could reasonably be anticipated to cause or contribute to any visibility impairment in any federal mandatory Class I area.

The Department has met with a representative group of potential BART-eligible sources regarding the BART requirements and the time line required by the federal regulations for implementation. Following those meetings, the Department estimates that approximately 40 stationary sources will need to complete the BART Eligibility Certification Form #542-8125. In addition, the Department estimates that approximately 10 stationary sources in the state will be required to submit BART engineering analyses after exemption determinations are completed.

New rule 567—22.9(455B) identifies the characteristics of an air pollution stationary source subject to BART regulation. BART-eligible stationary sources are those sources which have the potential to emit 250 tons or more of any visibility-impairing air pollutant from emissions units that were placed in service between August 7, 1962, and August 7, 1977; and whose operations fall within one or more of the 26 “stationary source categories” listed in rule 567—22.100(455B). Visibility-impairing air pollutants include nitrogen oxides (NO<sub>x</sub>), sulfur dioxide (SO<sub>2</sub>), particulate matter (PM<sub>10</sub>), and volatile organic compounds (VOC). Rule 567—22.9(455B) also requires that by July 1, 2005, affected facilities submit to the Department a completed BART Eligibility Certification Form #542-8125.

Any person may make written suggestions or comments on the proposed amendment on or before January 14, 2005. Written comments should be directed to Wendy Rains, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094; E-mail [wendy.rains@dnr.state.ia.us](mailto:wendy.rains@dnr.state.ia.us).

An informational meeting will be held from 1 to 3 p.m. on December 9, 2004, in the conference rooms of the Department of Natural Resources' Water Supply Office, 401 SW 7th Street, Suite “M,” Des Moines, Iowa. At the informational meeting, Department staff will be available to answer questions about the proposed rule making.

A public hearing will be held on January 14, 2005, at 1 p.m. at the Department's Air Quality Bureau, 7900 Hickman Road, Urbandale, Iowa, at which time comments may be submitted orally or in writing. All comments must be received no later than January 14, 2005.

Any person who intends to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact Wendy Rains at (515) 281-6061 to advise of any specific needs.

This amendment is intended to implement Iowa Code section 455B.133(2).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend 567—Chapter 22 by adopting the following **new** rule:

**567—22.9(455B) Special requirements for visibility protection.**

**22.9(1)** Best available retrofit technology (BART) applicability. Sources shall comply with the provisions of subrule 22.9(2) if the sources fall within numbers 1 through 26 of the “stationary source categories” of air pollutants listed in rule 22.100(455B) and if they meet the following criteria:

a. Any emission unit startup began after August 7, 1962; and

b. Construction of the emission unit commenced on or before August 7, 1977; and

c. The sum of the potential to emit, as “potential to emit” is defined in 567—20.2(455B), from emission units identified above is equal to or greater than 250 tons per year or more of one of the following pollutants: nitrogen oxides, sulfur dioxide, particulate matter (PM<sub>10</sub>), or volatile organic compounds.

**22.9(2)** Duty to self-identify. The owner or operator or designated representative of a facility meeting the conditions of subrule 22.9(1) shall submit two copies of a completed BART Eligibility Certification Form #542-8125. The BART Eligibility Certification Form #542-8125 shall include all information necessary for the department to complete eligibility determinations. The information submitted shall include source identification, description of processes, potential emissions, emission unit and emission point characteristics, date construction commenced and date of startup, and other information required by the department. The completed form shall be submitted to the Air Quality Bureau, Department of Natural Resources, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322, by July 1, 2005.

## ARC 3872B

### 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 23, “Emission Standards for Contaminants,” Iowa Administrative Code.

These proposed amendments include implementation of Iowa Code section 455B.133(10) as amended by 2004 Iowa Acts, House File 2392.

Item 1 would amend subrule 23.2(2) by striking the last sentence. This sentence refers to adequate documentation

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

needed to make application for variances for training fires and the controlled burn of a demolished building. Since this subrule applies to variances for all open burning rules, the last sentence in this subrule is too restrictive. Further, specific language regarding variances from the requirements for a controlled burn of a demolished building is included in the subparagraph for that exemption.

Item 2 would rescind paragraph 23.2(3)“g,” which currently contains the exemption for both training fires and controlled burning of a demolished building, and replace it with the requirements for conducting training fires. Other than the reorganization of paragraph “g” for this purpose, no changes would be made to the requirements for training fires.

Item 3 would create a new paragraph 23.2(3)“j” that details the conditions and requirements for the revised exemption provided to a city for “controlled burning of a demolished building” in accordance with the provisions of Iowa Code section 455B.133(10) as amended by 2004 Iowa Acts, House File 2392. The proposed changes to the requirements for conducting “controlled burning of a demolished building,” in addition to the creation of the new paragraph, are:

- Renumbering and regrouping the requirements for demolished building burns. The requirements are now grouped by category.

- Adding a sentence specifying that a city is the only party that may conduct these burns, and is responsible for ensuring compliance with all rule requirements. This addition is to emphasize that the rule allows only a city to conduct a demolished building burn and that the city must ensure compliance with the rules.

- Adding a requirement that the city council, as “city” and “council” are defined in the Iowa Code, approve all demolished building burns. This change is being made to ensure that a city has a formal mechanism for approving all burns.

- Adding a requirement that the city submit the notification of a demolished building burn at least 10 working days before demolition commences, in addition to the currently required 30 days before burning commences. This addition will make the rule consistent with notification requirements for institutional demolitions specified under the National Emissions Standards for Hazardous Air Pollutants (NESHAP) for asbestos.

- Adding a requirement that documentation of city council approval be submitted with the notification required for all demolished building burns. This change is being made to require documentation that the city council has sanctioned the burn.

- Adding a limit of 1700 square feet for the allowed building size for burns conducted at a designated site outside the city limits. The building size limit is needed to demonstrate modeled attainment with the National Ambient Air Quality Standards (NAAQS) for particulate matter less than or equal to 10 microns in diameter (PM<sub>10</sub>) and carbon monoxide (CO).

- Adding landscape waste and residential waste to the list of materials that may not be burned in the controlled burn of a demolished building. This change is being made to prevent open dumping of residential waste and landscape waste for which other means of disposal are available.

- Decreasing the number of demolished building burns that can be conducted within a 0.6-mile radius within the city limits from three burns in three years to one burn per calendar year. This requirement is included in the amendments to Iowa Code section 455B.133(10).

- Adding limits on the location and number of burns

conducted at a designated site outside the city limits. One burn per day may be conducted at a designated site at least 0.6 of a mile from any building inhabited by a person. These requirements are included in the amendments to Iowa Code section 455B.133(10). In addition, the term “person,” as defined in Iowa Code section 362.2(17), is added. This change clarifies that inhabited building includes a building inhabited by people who are residents or who are employees of a business, but does not include a building inhabited by only livestock or other animals.

- Adding requirements that the city control access to all demolished building burn sites and that representatives of the city who are city employees or who are hired by the city supervise all burns at all times. These requirements are included in the amendments to Iowa Code section 455B.133(10). A clarification is also added to better define “representatives of the city.”

- Adding record-keeping requirements for demolished building burns conducted at a site outside the city limits. This change is to ensure that the city is keeping adequate documentation of all burns.

- Clarifying that the city clerk, as “city” and “clerk” are defined in the Iowa Code, must maintain all required records for all demolished building burns.

- Adding a three-year retention period for all records required for demolished building burns. Records must be kept for three years because exceedances of the NAAQS for PM<sub>10</sub> are tracked over a three-year period.

The Department conducted ambient air quality modeling and determined that if the requirements listed in this rule making are met, then the ambient air quality standards for PM<sub>10</sub> and CO are predicted to be maintained throughout the state. Because of potential impacts to the public health from the controlled burning of demolished buildings, the proposed amendments contain limits on the location and number of controlled burns. For burns conducted within the city limits, each city would be able to undertake no more than one controlled burn of demolished building material in every 0.6-mile-radius circle during each calendar year. For burn sites established outside the city limits, each city would be able to undertake no more than one controlled burn of demolished building material per day, and the site must be located at least 0.6 of a mile from any building inhabited by a person.

A city wishing to conduct additional controlled burns could, in accordance with the variance provisions in 567—subrules 21.2(1) and 23.2(2), request that the Department conduct a special review of the ambient air impacts. Upon conducting this review, the Department would approve or deny the city’s request for any additional controlled burns.

Any person may make written suggestions or comments on the proposed amendments on or before January 17, 2005. Written comments should be directed to Christine Paulson, Department of Natural Resources, Air Quality Bureau, 7900 Hickman Road, Suite 1, Urbandale, Iowa 50322; fax (515) 242-5094; E-mail [christine.paulson@dnr.state.ia.us](mailto:christine.paulson@dnr.state.ia.us).

An informational meeting for those with questions about the rule changes will be held on Wednesday, December 15, 2004, at 1 p.m. at the Urbandale Public Library, 3520 86th Street, Urbandale, Iowa.

A public hearing will be held on Monday, January 10, 2005, at 1 p.m. at the Urbandale Public Library, 3520 86th Street, Urbandale, Iowa, at which time comments may be submitted orally or in writing. All comments must be received no later than January 17, 2005.

Any person who intends to attend the informational meeting or the public hearing and has special requirements such as



## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

those related to hearing or mobility impairments should contact Christine Paulson at (515)242-5154 to advise of any specific needs.

These amendments are intended to implement Iowa Code section 455B.133 as amended by 2004 Iowa Acts, House File 2392.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 23.2(2) as follows:

**23.2(2)** Variances from rules. Any person wishing to conduct open burning of materials not exempted in 23.2(3) may make application for a variance as specified in 567—subrule 21.2(1). In addition to requiring the information specified under 567—subrule 21.2(1), the director may require any person applying for a variance from open burning rules to submit adequate documentation to allow the director to assess whether granting the variance will hinder attainment or maintenance of a National Ambient Air Quality Standard (NAAQS). ~~Adequate documentation requested may include, but is not limited to, the information required under 23.2(3)“g”(2)“2.”~~

ITEM 2. Rescind subrule **23.2(3)**, paragraph “g,” and adopt the following **new** paragraph “g” in lieu thereof:

g. Training fires. For purposes of subrule 23.2(3), a “training fire” is a fire set for the purposes of conducting bona fide training of public or industrial employees in fire fighting methods. For purposes of this paragraph, “bona fide training” means training that is conducted according to the National Fire Protection Association 1403 Standard of Live Fire Training Evolutions (2002 Edition) or a comparable training fire standard. A training fire may be conducted, provided that all of the following conditions are met:

(1) A training fire on a building is conducted with the building structurally intact.

(2) The training fire does not include the controlled burn of a demolished building.

(3) If the training fire is to be conducted on a building, written notification is provided to the department on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building, and is postmarked or delivered to the director at least ten working days before such action commences.

(4) Notification shall be made in accordance with 40 CFR Section 61.145, “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991.

(5) All asbestos-containing materials shall be removed prior to the training fire.

(6) Asphalt roofing may be burned in the training fire only if notification to the director contains testing results indicating that none of the layers of asphalt roofing contain asbestos. During each calendar year, each fire department may conduct no more than two training fires on buildings where asphalt roofing has not been removed, provided that for each of those training fires the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each fire department's limit on the burning of asphalt roofing shall include both training fires and the controlled burning of a demolished building, as specified in 23.2(3)“j.”

(7) Rubber tires shall not be burned during a training fire.

ITEM 3. Amend subrule **23.2(3)** by adopting **new** paragraph “j” as follows:

j. Controlled burning of a demolished building. A city, as “city” is defined in Iowa Code section 362.2(4), with approval of its council, as “council” is defined in Iowa Code section 362.2(8), may conduct a controlled burn of a demolished building. A city is the only party that may conduct such a burn and is responsible for ensuring that all of the following conditions are met:

(1) Prohibition. The controlled burning of a demolished building is prohibited within the city limits of Cedar Rapids, Marion, Hiawatha, Council Bluffs, Carter Lake, Des Moines, West Des Moines, Clive, Windsor Heights, Urbandale, Pleasant Hill, Buffalo, Davenport, Mason City or any other area where area-specific state implementation plans require the control of particulate matter.

(2) Notification requirements. For each building proposed to be burned, the city fire department or a city official, on behalf of the city, shall submit to the department a completed notification postmarked at least 10 working days prior to commencing demolition and at least 30 days before the proposed controlled burn commences. Documentation of city council approval shall be submitted with the notification. Information required to be provided shall include: the exact location of the burn site; the approximate distance to the nearest neighboring residence or business; the method used by the city to notify city residents of the proposed burn; an explanation of why alternative methods of demolition debris management are not being used; and information required by 40 CFR Section 61.145, “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991. Notification shall be provided on DNR Form 542-8010, Notification of an Iowa Training Fire-Demolition or a Controlled Burn of a Demolished Building.

(3) Asbestos removal requirements. All asbestos-containing materials shall be removed before the building to be burned is demolished. The department may require proof that any applicable inspection, notification, removal and demolition occurred, or will occur, in accordance with 40 CFR Section 61.145, “Standard for Demolition and Renovation” of the asbestos National Emission Standard for Hazardous Air Pollutants (NESHAP), as amended through January 16, 1991.

(4) Requirements for asphalt roofing. During each calendar year, each city shall conduct no more than two controlled burns of a demolished building in which asphalt roofing has not been removed, provided that for each controlled burn of a demolished building the asphalt roofing material present has been tested to ensure that it does not contain asbestos. Each city's limit on the burning of asphalt roofing shall include both the controlled burning of a demolished building and training fires, as specified in paragraph 23.2(3)“g.”

(5) Building size limit. For each proposed controlled burn located within the city limits, more than one demolished building may be included in the burn, provided that the sum total of all building material to be burned at a designated site does not exceed 1700 square feet in size. For a controlled burn site located outside the city limits, the sum total of all building material to be burned, per day, may not exceed 1700 square feet in size. For purposes of this subparagraph, “square feet” includes both finished and unfinished basements and excludes unfinished attics, carports, attached garages, and porches that are not protected from weather.

(6) Time of day requirements. The controlled burning of a demolished building may be conducted only between the

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

hours of 6 a.m. and 6 p.m. and only when weather conditions are favorable with respect to surrounding property. The city shall adequately schedule and sufficiently control the burn to ensure that burning is completed by 6 p.m.

(7) Prohibited materials. Rubber tires, chemicals, furniture, carpeting, trade waste, garbage, rubbish, landscape waste, residential waste, and other nonstructural materials shall not be burned.

(8) Limits on the number and location of burns. For burns conducted within the city limits, each city may undertake no more than one controlled burn of demolished building material in every 0.6-mile-radius circle during each calendar year. For burn sites established outside the city limits, each city shall undertake no more than one controlled burn of demolished building material per day. A burn site outside the city limits must be located at least 0.6 of a mile from any building inhabited by a person, as "person" is defined in Iowa Code section 362.2(17).

(9) Requirements for burn access and supervision. The city shall control access to all demolished building burn sites. Representatives of the city who are city employees or who are hired by the city shall supervise the burning of demolished building material at all times.

(10) Record-keeping requirements. For burns conducted within the city limits, the city shall maintain a map of the exact location and date of each controlled burn of a demolished building. For each burn site established outside the city limits, the city shall maintain records of the exact location of each burn site, the date of each demolished building burn, and the square feet of building material burned on each date. All maps and associated records shall be maintained by the city clerk, as "clerk" is defined in Iowa Code section 362.2(7), for a period of at least three years and shall be made available for inspection by the department upon request.

(11) Variance from this paragraph. In accordance with 567—subrules 21.2(1) and 23.2(2), a city may apply for a variance from the specific conditions for controlled burning of a demolished building and may request that the director conduct a review of the ambient air impacts of the request. The director shall approve or deny the request in accordance with 567—subrule 21.2(4).

**ARC 3873B****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 459.103, the Environmental Protection Commission proposes to amend Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The proposed amendments separate Chapter 65 into two divisions, one for confinement feeding operations and one for open feedlots. In addition to creating a separate division for open feedlot rules, minimum design standards for open feedlot manure and effluent control systems are specified.

To summarize, Item 1 creates a separate division and title for confinement feeding operations. Item 2 provides an introductory paragraph to the confinement feeding operations division of the chapter. Items 3, 4 and 5 rescind definitions and subrules specific to open feedlot operations from the confinement feeding operations division. Division II, Open Feedlots, with associated definitions and rules is created in Item 6. Item 7 amends land application of settled open feedlot effluent timing associated with manure control alternatives for open feedlots in Appendix A. Item 8 adopts new Appendix E with siting criteria for alternative technology.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 7, 2005. Written comments should be directed to Gene Tinker, Iowa Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail [gene.tinker@dnr.state.ia.us](mailto:gene.tinker@dnr.state.ia.us).

Also, there will be public hearings as follows, at which time persons may present their views either orally or in writing:

January 4, 2005 8:30 a.m.	Red Oak Fire Station 1904 N. Broadway St. Red Oak, Iowa
January 4, 2005 6:30 p.m.	DMACC – Carroll Campus 906 N. Grant Rd. Rm. 142-146 Carroll, Iowa
January 5, 2005 8:30 a.m.	Spencer Events Center 800 West 18th St. Spencer, Iowa
January 5, 2005 6:30 p.m.	Lime Creek Nature Center 3501 Lime Creek Rd. Mason City, Iowa
January 7, 2005 8:30 a.m.	Kirkwood Community College 6301 Kirkwood Blvd. SW Rooms Iowa A/B, Third Floor Cedar Rapids, Iowa

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.

Any persons who intend to attend the 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 sections 455B.171 to 455B.191 and Iowa Code chapter 459.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend **567—Chapter 65** by adding the following **new** division title prior to rule 567—65.1(455B):

DIVISION I  
CONFINEMENT FEEDING OPERATIONS

ITEM 2. Amend rule 567—65.1(455B), introductory paragraph, as follows:

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567—65.1(455B) Definitions. In addition to the definitions in Iowa Code sections 455B.101 and 455B.171 and Iowa Code section 455B.164 459.102, the following definitions shall apply to division I of this chapter:

ITEM 3. Amend rule 567—65.1(455B) by rescinding the definitions of “open feedlot,” “runoff control basin,” and “solids settling facility.”

ITEM 4. Amend rule 567—65.2(455B) by rescinding subrules 65.2(1) and 65.2(2).

ITEM 5. Amend rule 567—65.9(455B) by rescinding subrule 65.9(2).

ITEM 6. Amend 567—Chapter 65 by adopting the following new division:

DIVISION II
OPEN FEEDLOTS

567—65.100(455B,459) Definitions. In addition to the definitions in Iowa Code sections 455B.101, 455B.171 and 459.102, the following definitions shall apply to division II of this chapter:

“Adjacent” means, for the purpose of determining whether an NPDES permit is required pursuant to 65.102(455B, 459), that two or more animal feeding operations are adjacent if they are separated at their closest points, including any manure control structure, by less than 1,250 feet.

“Animal” means a species classified as cattle, swine, horses, sheep, chickens or turkeys.

“Animal capacity” means the maximum number of animals that the owner or operator will confine in an animal feeding operation at any one time.

“Animal feeding operation” or “AFO” means a lot, yard, corral, building, or other area in which animals are confined and fed and maintained for 45 days or more in any 12-month period, and all structures used for the storage of manure from animals in the operation. An animal feeding operation does not include a livestock market.

Iowa Code section 459.301 provides that two or more animal feeding operations under common ownership or management are deemed to be a single animal feeding operation if they are adjacent or utilize a common area or system for manure disposal. To determine if two or more animal feeding operations are deemed to be one animal feeding operation, the first test is whether the animal feeding operations are under common ownership or management. If they are not under common ownership or management, they are not one animal feeding operation. The second test is whether the two animal feeding operations are adjacent or utilize a common area or system for manure disposal. If the two operations are not adjacent and do not use a common area or system for manure disposal, they are not one animal feeding operation.

“Animal unit” means a unit of measurement based upon the product of multiplying the number of animals of each category by a special equivalency factor, as follows:

- 1. Slaughter and feeder cattle . . . . . 1.000
2. Immature dairy cattle . . . . . 1.000
3. Mature dairy cattle . . . . . 1.400
4. Butcher or breeding swine weighing more than 55 pounds . . . . . 0.400
5. Swine weighing 15 pounds or more but not more than 55 pounds . . . . . 0.100
6. Sheep or lambs . . . . . 0.100
7. Horses . . . . . 2.000
8. Turkeys weighing 112 ounces or more . . . . . 0.018

9. Turkeys weighing less than 112 ounces . . . . . 0.0085

10. Chickens weighing 48 ounces or more . . . . . 0.010

11. Chickens weighing less than 48 ounces . . . . . 0.0025

“Animal unit capacity” means a measurement used to determine the maximum number of animal units that may be maintained as part of an animal feeding operation at any one time, including as provided in Iowa Code sections 459.201 and 459.301.

“Common management” means significant control by a person of the management of the day-to-day operations of each of two or more animal feeding operations.

“Common ownership” means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

“Concentrated animal feeding operation” or “CAFO” means an AFO that is defined as a large CAFO, a medium CAFO, or a designated CAFO.

“Deep well” means a well located and constructed in such a manner that there is a continuous layer of low permeability soil or rock at least 5 feet thick located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

“Designated CAFO” means an AFO that has been designated as a CAFO pursuant to rule 65.103(455B,459).

“Discontinued animal feeding operation” means an animal feeding operation whose structures have been abandoned or whose use has been discontinued as evidenced by the removal of all animals and the owner or operator has no immediate plans to repopulate.

“Discontinued animal feeding operation structure” means an animal feeding operation structure that has been abandoned or whose use has been discontinued as evidenced by the removal of all animals from the structure and the owner or operator has no immediate plans to repopulate.

“Enforcement action” means an action against a confinement feeding operation initiated by the department or the attorney general to enforce the provisions of Iowa Code chapter 455B, Iowa Code chapter 459 or rules adopted pursuant to those chapters. An enforcement action begins when the department issues an administrative order to the person, when the department notifies a person in writing of intent to recommend referral or the commission refers the action to the attorney general pursuant to Iowa Code section 455B.141, 455B.191 or 459.603, or when the attorney general institutes proceedings pursuant to Iowa Code section 455B.112, whichever occurs first. An enforcement action is pending until final resolution of the action by satisfaction of an administrative order, rescission or other final resolution of an administrative order, or satisfaction of a court order, for which all administrative and judicial appeal rights are exhausted, expired, or waived.

“Formed settled open feedlot effluent basin” means a covered or uncovered impoundment used to store manure from an animal feeding operation, which has walls and a floor constructed of concrete, concrete block, wood, steel, or similar materials. Similar materials may include, but are not limited to, plastic, rubber, fiberglass, or other synthetic materials. Materials used in a formed settled open feedlot effluent basin shall have the structural integrity to withstand expected internal and external load pressures.

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“Freeboard” means the difference in elevation between the liquid level and the top of the lowest point of an animal feeding operation structure’s berm or the lowest external outlet from a settled open feedlot effluent basin.

“Grassed waterway” means a natural or constructed channel that is shaped or graded to required dimensions and established in suitable vegetation for the stable conveyance of runoff.

“Iowa Plan” means the Iowa Plan for Open Feedlots as provided in Environmental Protection Division Policy Procedure Number 5-b-15. This negotiated agreement between the department, Environmental Protection Association and Iowa Cattlemen’s Association provided voluntary registration of open feedlots in Iowa and an environmental priority assessment of each registered feedlot. All registered feedlots requiring an NPDES permit are required to be in environmental compliance by March 22, 2006. The effective date of the agreement was March 22, 2001.

“Karst terrain” means land having karst formations that exhibit surface and subterranean features of a type produced by the dissolution of limestone, dolomite, or other soluble rock and characterized by closed depressions, sinkholes, or caves. If a 25-foot vertical separation distance can be maintained between the bottom of an unformed solids settling effluent basin and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain.

“Large concentrated animal feeding operation” or “large CAFO” means an AFO that stables or confines as many as or more than the number of animals specified in any of the following categories:

1. 700 mature dairy cows, whether milked or dry;
2. 1,000 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;
3. 2,500 swine each weighing 55 pounds or more;
4. 10,000 swine each weighing less than 55 pounds;
5. 500 horses;
6. 10,000 sheep or lambs;
7. 55,000 turkeys;
8. 30,000 laying hens or broilers, if the AFO uses a liquid manure handling system;
9. 125,000 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
10. 82,000 laying hens, if the AFO uses other than a liquid manure handling system;
11. 1,000 animal units, where more than one category of animals is maintained using the same type of operation (confinement or open).

“Man-made manure drainage system” means a drainage ditch, flushing system, or other drainage device which was constructed by human beings and is used for the purpose of transporting manure.

“Manure” means animal excreta or other commonly associated wastes of animals including, but not limited to, bedding, compost and raw materials or other materials commingled with manure or set aside for disposal, litter, or feed losses.

“Manure control structure” means a solids settling facility, a formed settled open feedlot effluent basin, an unformed settled open feedlot effluent basin and any vegetative treatment area.

“Medium concentrated animal feeding operation” or “medium CAFO” means any AFO with the type and number of animals that fall within any of the ranges listed in paragraph “a” of this definition and which has been defined or designated as a CAFO. An AFO is defined as a medium CAFO if:

a. The type and number of animals that it stables or confines falls within any of the following ranges:

- (1) 200 to 699 mature dairy cows, whether milked or dry;
- (2) 300 to 999 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;
- (3) 750 to 2,499 swine each weighing 55 pounds or more;
- (4) 3,000 to 9,999 swine each weighing less than 55 pounds;
- (5) 150 to 499 horses;
- (6) 3,000 to 9,999 sheep or lambs;
- (7) 16,500 to 54,999 turkeys;
- (8) 9,000 to 29,999 laying hens or broilers, if the AFO uses a liquid manure handling system;
- (9) 37,500 to 124,999 chickens (other than laying hens), if the AFO uses other than a liquid manure handling system;
- (10) 25,000 to 81,999 laying hens, if the AFO uses other than a liquid manure handling system;
- (11) 300 to 999 animal units, where more than one category of animals is maintained using the same type of operation (confinement or open); and

b. Either one of the following conditions is met:

- (1) Manure or process wastewater is discharged into waters of the state through a man-made manure drainage system; or
- (2) Manure or process wastewater is discharged directly into a water of the state which traverses the operation.

“NPDES permit” means a written permit of the department pursuant to the National Pollutant Discharge Elimination System (NPDES) program, to authorize and regulate the operation of a CAFO.

“Open feedlot” means an unroofed or partially roofed animal feeding operation in which no crop, vegetation, or forage growth or residue cover is maintained during the period that animals are confined in the operation.

“Owner” means the person who has title to the property where the animal feeding operation is located or the person who has title to the animal feeding operation structures. “Owner” does not include a person who has a lease to use the land where the animal feeding operation is located or to use the animal feeding operation structures.

“Permanent vegetation cover” means land which is maintained in perennial vegetative cover consisting of grasses, legumes, or both, and includes, but is not limited to, pastures, grasslands or forages.

“Plan of action” or “POA” means a completed plan for environmental compliance for an open feedlot, which includes a completed application for an NPDES permit, a conceptual design for manure control structures, and a proposed compliance schedule.

“Production area” means that part of an AFO that includes the area in which animals are confined, the manure storage area, the raw materials storage area, and the waste containment areas. The area in which animals are confined includes but is not limited to open lots, housed lots, feedlots, stall barns, free stall barns, milk rooms, milking centers, cow yards, barnyards, medication pens, walkers, animal walkways, and stables. The manure storage area includes but is not limited to lagoons, solids settling facilities, settled open feedlot effluent basins, storage sheds, stockpiles, under house or pit storages, liquid impoundments, static piles, and composting piles. The raw materials storage area includes but is not limited to feed silos, silage bunkers, and bedding materials. The waste containment area includes but is not limited to settling basins and areas within berms and diversions which separate uncontaminated storm water. Also in-

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cluded in the definition of "production area" is any area used in the storage, handling, treatment, or disposal of mortalities.

"Professional engineer" means a person engaged in the practice of engineering as defined in Iowa Code section 542B.2 who is issued a certificate of licensure as a professional engineer pursuant to Iowa Code section 542B.17.

"Release" means an actual, imminent or probable discharge of manure from an animal feeding operation structure to surface water, groundwater, drainage tile line or intake, or to a designated area resulting from storing, handling, transporting or land-applying manure.

"Settled open feedlot effluent" means a combination of manure, precipitation-induced runoff, or other runoff originating from an open feedlot after its settleable solids have been removed.

"Settled open feedlot effluent basin," formerly known as "runoff control basin," means a formed or unformed impoundment which is part of an open feedlot, if the primary function of the impoundment is to collect and store settled open feedlot effluent.

"Shallow well" means a well located and constructed in such a manner that there is not a continuous layer of low permeability soil or rock (or equivalent retarding mechanism acceptable to the department) at least 5 feet thick, the top of which is located at least 25 feet below the normal ground surface and above the aquifer from which water is to be drawn.

"Small concentrated animal feeding operation" or "small CAFO" means an AFO that is designated as a CAFO and is not a large or medium CAFO.

"Solids settling facility" means a basin, terrace, diversion, or other structure which is designed and operated to remove settleable solids from open feedlot runoff.

"Vegetative infiltration basin" or "VIB" means a shallow basin containing perennial grass or forages through which all collected runoff water must infiltrate. Typically these systems include a tile drain system for collecting the infiltrate and bringing the treated runoff to the surface for additional treatment or application to grassland or cropland.

"Vegetative treatment area" or "VTA" means a vegetative area composed of perennial grass or forages used for the treatment of runoff from an open feedlot production system or other process waters.

"Vegetative treatment system" or "VTS" means a collection of treatment components, including at least one component based upon vegetation treatment that is used to manage the runoff from an open feedlot production system or other process waters.

**567—65.101(459) Minimum manure control requirements and reporting of releases.** Water pollution control facilities for open feedlots shall be constructed and maintained to meet the minimum manure control requirements stated in subrules 65.101(1) to 65.101(7) of this rule. A release shall be reported to the department as provided in subrule 65.101(8) of this rule.

**65.101(1)** The minimum level of manure control for any open feedlot shall be the removal of settleable solids from the manure prior to discharge of settled open feedlot effluent into a water of the state.

a. Settleable solids may be removed by use of solids settling facilities or other solid-removal methods. Construction of solids settling facilities shall not be required where existing site conditions provide adequate settleable solids removal.

b. Removal of settleable manure solids shall be considered adequate when the velocity of manure flows has been reduced to less than 0.5 foot per second for a minimum of five

minutes. Sufficient capacity shall be provided in the solids settling facilities to store settled solids between periods of manure application and to provide required flow-velocity reduction for manure flow volumes resulting from precipitation events of less intensity than the ten-year, one-hour frequency event. Solids settling facilities receiving open feedlot runoff shall provide a minimum of 1 square foot of surface area for each 8 cubic feet of runoff per hour resulting from the ten-year, one-hour frequency precipitation event.

**65.101(2)** The minimum level of manure control for an open feedlot covered by the NPDES permit application requirements of 65.102(455B,459) or 65.103(455B,459) shall be retention of all manure flows from the feedlot areas and all other manure-contributing areas resulting from the 25-year, 24-hour precipitation event. Open feedlots that design, construct, and operate manure control facilities in accordance with the requirements of any of the manure control alternatives listed in Appendix A or Appendix E of these rules shall be considered to be in compliance with this rule, unless discharges from the manure control facility cause a violation of state water quality standards. If water quality standards violations occur, the department may impose additional manure control requirements upon the feedlot, as specified in subrule 65.101(3). Control of manure from open feedlots may be accomplished through use of solids settling facilities or other runoff control structures approved by the department. Diversion of uncontaminated surface drainage prior to contact with feedlot or manure storage areas may be required. Manure solids settling facilities shall precede the manure retention structures.

**65.101(3)** If site topography, operation procedures, experience, or other factors indicate that a greater or lesser level of manure control than that specified in subrule 65.101(1) or 65.101(2) is required to provide an adequate level of water pollution control for a specific animal feeding operation, the department may establish different minimum manure control requirements for that operation. In lieu of using the manure control methods specified in subrule 65.101(1) or 65.101(2), the department may allow the use of manure treatment or other methods of manure control if the department determines that an adequate level of manure control will result.

**65.101(4)** Use of alternative technology. In lieu of using the manure control methods specified in subrule 65.101(2), the department may allow an open feedlot covered by the NPDES permit application requirements of 65.102(455B,459) or 65.103(455B,459) to use an alternative technology manure control system, provided the open feedlot satisfactorily demonstrates the alternative system will provide an equivalent level of performance to that achieved by a properly designed and operated 25-year, 24-hour runoff containment system. The specific requirements which must be met for an open feedlot to qualify for use of an alternative treatment technology and the information which must be submitted to the department are outlined in Appendix E. In addition, appropriate modeling must indicate that the alternative system will perform equivalently to conventional manure control methods.

**65.101(5)** No direct discharge of manure, including settled open feedlot effluent, shall be allowed from an animal feeding operation into a publicly owned lake, a sinkhole, or an agricultural drainage well.

**65.101(6)** All manure removed from an animal feeding operation or its manure control facilities shall be land-applied in a manner which will not cause surface water or groundwater pollution. Application in accordance with the provisions of state law, and the rules and guidelines in this

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

chapter, shall be deemed as compliance with this requirement.

**65.101(7)** As soon as practical but not later than six months after the use of an animal feeding operation is discontinued, all manure shall be removed from the discontinued animal feeding operation and its manure control facilities and shall be land-applied.

**65.101(8)** A release, as defined in rule 65.100(455B,459), shall be reported to the department as provided in this subrule. This subrule does not apply to land application of manure in compliance with these rules, or to precipitation- or snowmelt-induced runoff from open feedlots which complies with the minimum control requirements of these rules set forth in 65.101(459).

a. Notification. A person storing, handling, transporting, or land-applying manure from an animal feeding operation who becomes aware of a release shall notify the department of the occurrence of the release by contacting the department at (515)281-8694 as soon as possible but not later than six hours after the onset or discovery of the release. The local police department or the office of the sheriff of the affected county shall also be contacted within the same time period. A sheriff or police chief who has been notified of a release shall immediately notify the department. Reports made pursuant to this subrule shall be confirmed in writing as provided in 65.101(8)“c.”

b. Verbal report. The verbal report of such a release should provide information on as many items listed in 65.101(8)“c” as available information will allow.

c. Written report. The written report of a release shall be submitted at the request of the department within 30 days after the verbal report of the release and shall contain at a minimum the following information:

(1) The approximate location of the alleged release (including at a minimum the quarter-quarter section, township and county in which the release occurred or is discovered).

(2) The time and date of onset of the alleged release, if known, and the time and date of the discovery of the alleged release.

(3) The time and date of the verbal report of the release to the department.

(4) The name, mailing address and telephone number of the person who reported the release.

(5) The name, mailing address and telephone number of any other person with knowledge of the event who may be contacted for further information.

(6) The source of the manure allegedly released (e.g., formed storage, earthen storage, open feedlot manure storage structure, settled open feedlot effluent basin).

(7) The estimated or known volume of manure allegedly released.

(8) The weather conditions at the time of the onset or discovery of the release.

(9) If known, the circumstances under which the alleged release occurred or exists (e.g., overflow, storage structure breach, equipment malfunction or breakdown, land runoff).

(10) The approximate location of the nearest stream or other water body which is or could be impacted by the alleged release, and the proximity to the alleged release of any known tile intakes or tile lines which could be a direct conveyance to a surface water or groundwater.

(11) A description of any containment or remedial measures taken to minimize the impact of the release.

(12) Any information that may assist the department in evaluating the release.

d. Report of subsequent findings. All subsequent findings and laboratory results shall be reported and submitted in writing to the department as soon as they become available.

e. A waiver from the notification requirement of paragraph “a” of this subrule may be granted by the department for a release to a specific drainage tile line or intake if sufficient information is provided to demonstrate that the release to a drainage tile line or intake will not result in a discharge to a water of the state.

**567—65.102(455B,459) NPDES permits required for CAFOs.** Concentrated animal feeding operations (CAFOs) are point sources that require NPDES permits for discharges or potential discharges.

**65.102(1)** Duty to apply. Each CAFO owner or operator must apply for an NPDES permit, except as provided in subrule 65.102(2). The owner or operator of a CAFO that includes an open feedlot area must apply for an individual NPDES permit. The application procedures are prescribed in rule 65.104(455B,459).

**65.102(2)** Exception—“no potential to discharge” determination. An owner or operator of a large CAFO is not required to apply for an NPDES permit if the owner or operator has been notified that the department has determined that the CAFO has “no potential to discharge” manure or process wastewater from both the production area and any land application areas. The term “no potential to discharge” or “NPTD” means that there is no potential for any CAFO manure or process wastewater to be added to a water of the state under any circumstances or climatic condition. In no case may such a determination be made if the operation has had a discharge within the five years prior to the date of request.

a. Request. A request for an NPTD determination shall be made in writing by the applicable permit application date specified in rule 65.104(455B,459). The request shall include all of the information required in subrule 65.104(7) for an application for individual permit and all pertinent information and reasoning supporting the request. Any record of prior discharge must be included. The department may require additional information after review of the request, and may gather additional information through an on-site inspection of the CAFO site.

b. Process for making a determination. The department shall issue a public notice stating that a request has been received. The notice shall be accompanied by a fact sheet that includes: a brief description of the type of facility or activity; a brief summary of the factual basis for the request; and a description of the procedures for reaching a final decision on the determination, including how and when information in support of or opposition to the request may be submitted. The department must base the decision to grant or deny the request on the administrative record, which includes all information submitted in support of or opposition to the request, and any other relevant data gathered by the department. The department must notify the CAFO of its final determination within 90 days of receiving the request. The determination is “final agency action” pursuant to Iowa Code chapter 17A. If the director’s final decision is to deny the request, the owner or operator must apply for a permit within 30 days after the denial.

c. Effect of determination on compliance. Any unpermitted CAFO that discharges manure into a water of the state is in violation of the law even if it has received an NPTD determination. Any CAFO owner or operator that has received an NPTD determination but anticipates changes that could create the potential for a discharge must apply for and obtain coverage under an NPDES permit prior to the change.

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d. Authority to require a permit. Where the department has issued an NPTD determination, the department retains the authority to subsequently require NPDES permit coverage if circumstances at the facility change, if new information becomes available, or if the department determines that the CAFO has a potential to discharge.

**567—65.103(455B,459) Departmental evaluation; CAFO designation.**

**65.103(1)** The department may evaluate any animal feeding operation that is not defined as a large or medium CAFO and designate it as a CAFO if, after an on-site inspection, it is determined to be, or may reasonably be expected to be, a significant contributor of manure or process wastewater to waters of the state. In making this determination, the department shall consider the following factors:

- a. The size of the operation and the amount of manure or process wastewater reaching waters of the state;
- b. The location of the operation relative to waters of the state;
- c. The means of conveyance of manure or process wastewater to waters of the state;
- d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the state; and
- e. Other relevant factors.

**65.103(2)** No animal feeding operation with an animal capacity less than that specified for a medium CAFO shall be designated as a CAFO unless manure or process wastewater from the operation is discharged into a water of the state:

- a. Through a man-made manure or process wastewater drainage system; or
- b. Which traverses the operation.

However, any animal feeding operation determined to be, or reasonably expected to be, a significant contributor of manure or process wastewater to waters of the state shall institute necessary remedial actions within a time period specified by the department to eliminate the conditions warranting the determination if the operation receives a written notification from the department of the need to correct the conditions.

**65.103(3)** The owner or operator of a designated CAFO shall apply for an NPDES permit no later than 90 days after receiving written notice of the designation, unless the required corrective actions are taken prior to that time.

**567—65.104(455B,459) NPDES permits.**

**65.104(1)** Existing animal feeding operations holding an NPDES permit. Animal feeding operations which hold a valid NPDES permit issued prior to [effective date of amendments published under Notice in IAB 10/13/04 as **ARC 3736B**] are not required to reapply for an NPDES permit. However, the operations are required to apply for permit renewal in accordance with subrule 65.104(10).

**65.104(2)** Existing animal feeding operations not holding an NPDES permit. Animal feeding operations in existence on [effective date of amendments published under Notice in IAB 10/13/04 as **ARC 3736B**], which were defined as CAFOs under rules that were in effect prior to [effective date of amendments published under Notice in IAB 10/13/04 as **ARC 3736B**] but have not obtained a permit, shall apply for an NPDES permit prior to [30 days after effective date of amendments published under Notice in IAB 10/13/04 as **ARC 3736B**]. Animal feeding operations in existence on [effective date of amendments published under Notice in IAB 10/13/04 as **ARC 3736B**], which were not defined as CAFOs under rules that were in effect prior to [effective date

of amendments published under Notice in IAB 10/13/04 as **ARC 3736B**], shall apply for an NPDES permit no later than February 13, 2006. Once application has been made, the animal feeding operation is authorized to continue to operate without an NPDES permit until the application has either been approved or disapproved by the department, provided that the owner or operator has submitted all requested information and promptly taken all steps necessary to obtain coverage.

**65.104(3)** Expansion of existing animal feeding operations. A person intending to expand an existing animal feeding operation which, upon completion of the expansion, will be defined as a CAFO shall apply for an NPDES permit at least 180 days prior to the scheduled expansion. Operation of the expanded portion of the facility shall not begin until an NPDES permit has been obtained.

**65.104(4)** New animal feeding operations. A person intending to begin a new animal feeding operation which, upon completion, will be defined as a CAFO shall apply for an NPDES permit at least 180 days prior to the date operation of the new animal feeding facility is scheduled to begin. Operation of the new facility shall not begin until an NPDES permit has been obtained.

**65.104(5)** Permits required as a result of departmental designation. An animal feeding operation which is required to apply for an NPDES permit as a result of departmental designation (in accordance with the provisions of 65.103(455B,459)) shall apply for an NPDES permit within 90 days of receiving written notification of the need to obtain a permit. Once application has been made, the animal feeding operation is authorized to continue to operate without a permit until the application has either been approved or disapproved by the department, provided that the owner or operator has submitted all requested information and promptly taken all steps necessary to obtain coverage.

**65.104(6)** Voluntary permit applications. Applications for NPDES permits received from animal feeding operations which are not defined as CAFOs will be acknowledged and returned to the applicant. NPDES permits will not be issued for facilities which are not defined or designated as CAFOs.

**65.104(7)** Application forms. An application for an NPDES permit shall be made on a form provided by the department. The application shall be complete and shall contain information required by the department. The application shall be signed by the person who is legally responsible for the animal feeding operation and its associated manure or process wastewater control system.

**65.104(8)** Compliance schedule. When necessary to comply with a standard which must be met at a future date, an NPDES permit shall include a schedule for modification of the permitted facility to meet the standard. The schedule shall not relieve the permittee of the duty to obtain a construction permit pursuant to rule 65.105(459).

**65.104(9)** Permit conditions. NPDES permits shall contain conditions considered necessary by the department to ensure compliance with all applicable rules of the department, to ensure that the production area and land application areas are properly operated and maintained, to protect the public health and beneficial uses of state waters, and to prevent water pollution from manure storage or application operations. Any more stringent conditions of Iowa Code chapter 459 and this chapter that apply to animal feeding operations shall govern. For CAFOs that maintain cattle, swine, or poultry, the following conditions shall be included:

- a. Nutrient management plan. Open feedlot CAFOs shall comply with the substantive requirements of

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65.17(459) (except for subrules 65.17(2) and 65.17(11)) and any additional nutrient management plan requirements for CAFOs in these rules by December 31, 2006. Open feedlot CAFOs are not required to submit their nutrient management plan, and plans may be signed and maintained by the operator. CAFOs that seek to obtain coverage under an NPDES permit after December 31, 2006, shall have a nutrient management plan developed and implemented on the date when the permit is issued.

b. Nutrient management plan requirements. In addition to the manure management plan requirements of 65.17(459) (except for subrules 65.17(2) and 65.17(11)), CAFOs shall address the following in the nutrient management plan:

(1) Ensure adequate storage of manure and process wastewater, including procedures to ensure proper operation and maintenance of the storage facilities;

(2) Ensure proper management of mortalities (i.e., dead animals) to ensure that they are not disposed of in a liquid manure, storm water, or process wastewater storage or treatment system that is not specifically designed to treat animal mortalities;

(3) Ensure that clean water is diverted, as appropriate, from the production area;

(4) Prevent direct contact of confined animals with waters of the state;

(5) Ensure that chemicals and other contaminants handled on site are not disposed of in any manure, process wastewater, or stormwater storage or treatment system unless the storage or treatment system is specifically designed to treat such chemicals and other contaminants; and

(6) Include the nutrient content of process wastewater that is land-applied.

c. Reporting requirements. A permittee with outside liquid impoundments must submit quarterly reports by April 10, July 10, October 10 and January 10, following the respective calendar quarters, documenting daily precipitation, the weekly impoundment liquid levels, the volume of liquid removed from the impoundments, and the date, time, duration, and estimated volume of any overflow. All permittees must submit an annual report to the department. The annual report must include:

(1) The number and type of animals in open confinement;

(2) Estimated amount of total manure generated by the CAFO in the previous 12 months (tons/gallons);

(3) Estimated amount of total manure transferred to other persons by the CAFO in the previous 12 months (tons/gallons);

(4) Total number of acres for land application covered by the nutrient management plan and the total number of acres under control of the CAFO that were used for land application of manure in the previous 12 months;

(5) Summary of all manure discharges from the production area that occurred in the previous 12 months, including date, time, and approximate volume; and

(6) A statement indicating whether the current version of the CAFO's nutrient management plan was developed or approved by a certified nutrient management planner.

**65.104(10) Permit renewal.** An NPDES permit may be issued for any period of time not to exceed five years. An application for renewal of an NPDES permit must be submitted to the department at least 180 days prior to the date the permit expires. Each permit to be renewed shall be subject to the rules of the department in effect at the time of renewal. A permitted animal feeding operation which ceases to be a CAFO will be exempted from the requirement to renew an NPDES permit if the permittee can demonstrate to the satisfac-

tion of the department that there is no remaining potential for a discharge of manure that was generated while the operation was a CAFO, other than agricultural stormwater from land application areas.

**65.104(11) Permit modification, suspension or revocation.** The department may modify, suspend, refuse to renew or revoke in whole or in part any NPDES permit for cause. Cause for modification, suspension or revocation of a permit may include the following:

a. Violation of any term or condition of the permit.

b. Obtaining a permit by misrepresentation of fact or failure to disclose fully all material facts.

c. A change in any condition that requires either a temporary or permanent reduction or elimination of the permitted discharge.

d. Failure to retain, make available, or submit the records and information that the department requires in order to ensure compliance with the operation and discharge conditions of the permit.

e. A determination by the department that the continued operation of a CAFO constitutes a clear, present and impending danger to public health or the environment.

**567—65.105(459) Construction permits.**

**65.105(1) Animal feeding operations required to obtain a construction permit.** A CAFO shall obtain a construction permit for constructing, installing, or modifying a manure control system for that operation prior to operating the CAFO; prior to reopening the operation if it was discontinued for 24 months or more; or as required by a compliance schedule after being designated a CAFO.

**65.105(2) Animal feeding operations not required to obtain a construction permit.**

a. A construction permit shall not be required for an animal feeding operation structure used in conjunction with an animal feeding operation with an animal capacity less than that specified for a large or medium CAFO, unless the operation is required to obtain an NPDES permit in accordance with 65.103(1) or 65.103(2).

b. A construction permit shall not be required for an animal feeding operation structure related to research activities and experiments performed under the authority and regulations of a research college.

**65.105(3) Operations that shall not be issued construction permits.**

a. The department shall not issue a construction permit to a person if an enforcement action by the department, relating to a violation of this chapter concerning a confinement feeding operation in which the person has an interest, is pending.

b. The department shall not issue a construction permit to a person for five years after the date of the last violation committed by a person or confinement feeding operation in which the person holds a controlling interest during which the person or operation was classified as a habitual violator under Iowa Code section 459.604.

**65.105(4) Plan review criteria.** Review of plans and specifications shall be conducted to determine the potential of the proposed manure control system to achieve the level of manure control that is required of the animal feeding operation. In conducting this review, applicable criteria contained in federal law, state law, these rules, Natural Resource Conservation Service design standards and specifications unless inconsistent with federal or state law or these rules, and Department of Commerce precipitation data shall be used. If the proposed facility plans are not adequately covered by



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these criteria, applicable criteria contained in current technical literature shall be used.

**65.105(5)** Expiration of construction permits. The construction permit shall expire if construction, as defined in rule 65.106(459), is not begun within one year and completed within three years of the date of issuance of the permit. The director may grant an extension of time to begin construction if it is necessary or justified, upon showing of such necessity or justification to the director, unless a person who has an interest in the proposed operation is the subject of a pending enforcement action, or a person who has a controlling interest in the proposed operation has been classified as a habitual violator.

**65.105(6)** Revocation of construction permits. The department may revoke a construction permit or refuse to renew a permit that will expire in accordance with subrule 65.105(5) if the department determines that the operation of the animal feeding operation constitutes a clear, present and impending danger to public health or the environment.

**65.105(7)** Permit prior to construction. An applicant for a construction permit shall not begin construction at the location of a site planned for the construction of an animal feeding operation structure until the person has been granted a permit by the department for the construction of the structure.

**567—65.106(459) Construction.** For purposes of these rules:

**65.106(1)** Construction of an animal feeding operation structure begins or an animal feeding operation structure is constructed when any of the following occurs:

- a. Excavation for a proposed animal feeding operation structure, or excavation for footings for a proposed animal feeding operation structure.
- b. Installation of forms for concrete for an animal feeding operation structure.
- c. Installation of piping for movement of manure within or between animal feeding operation structures.

**65.106(2)** Construction does not begin upon occurrence of any of the following:

- a. Removal of trees, brush, or other vegetative growth.
- b. Construction of driveways or roads.
- c. General earth moving for leveling or compacting at the site.
- d. Installation of temporary utility services.

**567—65.107(459) Construction permit application.** An open feedlot required to obtain a construction permit in accordance with the provisions of 65.105(1) shall apply for a construction permit at least 90 days before the date that construction, installation, or modification of the manure control system is scheduled to start.

**65.107(1)** Conceptual design. Prior to developing final plans for a manure control system for an open feedlot, a conceptual design and site investigation report may be submitted to the department for review and concurrence.

**65.107(2)** Application for a construction permit for an open feedlot shall be made on a form provided by the department. The application shall include all of the information necessary to enable the department to determine the potential of the proposed manure control system to achieve the level of manure control required of the open feedlot. A construction permit application for an open feedlot shall include the following:

- a. The owner and the name of the open feedlot, including mailing address and telephone number.

- b. The contact person for the open feedlot, including mailing address and telephone number.

- c. The location of the open feedlot.

- d. Whether the application is for:

- (1) Construction or modification of manure control facilities for an existing open feedlot which is not expanding;
- (2) Construction or modification of manure control facilities for an existing open feedlot which is expanding;
- (3) Construction or modification of manure control facilities for a proposed new open feedlot.

- e. The animal unit capacity by animal species of the current open feedlot, if applicable, and of the new or expanded open feedlot.

- f. For a manure storage structure in which manure is stored in a liquid or semiliquid form, an engineering report, construction plans and specifications, prepared by a professional engineer or by Natural Resources Conservation Service personnel, that detail the proposed structures.

- g. A report on the soil and hydrogeologic information of the site, as described in subrule 65.109(2), if an earthen manure control structure or basin is being constructed.

- h. Information (e.g., maps, drawings, aerial photos) that clearly shows the location of the open feedlot areas and all existing and proposed manure control facilities or structures, clean water diversions, and other pertinent features or structures; the location of any other open feedlot areas owned or managed by the owner or operator of the feedlot and located within 1250 feet of the feedlot or its manure control structures; and the location of any nearby public or private wells. Information shall also be provided as to whether proposed facilities or structures will meet all applicable separation distances.

**65.107(3)** In addition to the above requirements, all open feedlots considering alternative technology will be required to submit the following for approval prior to developing final plans:

- a. Siting criteria. Information indicating how the proposed site meets the established Siting Criteria (Appendix E). If the site does not meet specific criteria, information shall be provided to indicate how the operation will address any problems associated with the operation's not meeting such criteria.

- b. Computer modeling. The results of predictive computer modeling for the proposed vegetative treatment system (VTS) to determine suitability of the proposed site for the VTS and to predict performance as compared to a conventional runoff control system. Iowa State University (ISU) has developed models for predicting performance of several VTSs, and can do the modeling upon request. Modeling of VTSs which differ significantly from those covered by the ISU models may be difficult and costly, as additional model development may be required.

- c. Conceptual design. Conceptual design of the proposed VTS, as developed by a professional engineer.

- d. Time line for completion. The time line should already have been provided in the feedlot's plan of action (POA).

- e. NPDES permit. The application for an NPDES permit shall be submitted to the department if not already submitted as part of the feedlot's POA.

**567—65.108(459) Complaint investigations.** Complaints of violations of Iowa Code chapter 455B or 459 or this division, which are received by the department or are forwarded to the department by a county following a county board of supervisors' determination that a complainant's allegation constitutes a violation, shall be investigated by the depart-

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ment if it is determined that the complaint is legally sufficient and an investigation is justified.

**65.108(1)** If, after evaluating a complaint to determine whether the allegation may constitute a violation, without investigating whether the facts supporting the allegation are true or untrue, the county board of supervisors shall forward its finding to the department director.

**65.108(2)** A complaint is legally sufficient if it contains adequate information to investigate the complaint and if the allegation constitutes a violation, without a department investigation of whether the facts supporting the allegation are true or untrue, of rules adopted by the department, Iowa Code chapter 455B or 459, or environmental standards in regulations subject to federal law and enforced by the department.

**65.108(3)** The department in its discretion shall determine the urgency of the investigation, and the time and resources required to complete the investigation, based upon the circumstances of the case, including the severity of the threat to the quality of surface water or groundwater.

**65.108(4)** The department shall notify the complainant and the alleged violator if an investigation is not conducted and shall specify the reason for the decision not to conduct an investigation.

**65.108(5)** The department will notify the county board of supervisors where the violation is alleged to have occurred before doing a site investigation unless the department determines that a clear, present and impending danger to the public health or environment requires immediate action.

**65.108(6)** The county board of supervisors may designate a county employee to accompany the department on the investigation of any site as a result of a complaint.

**65.108(7)** A county employee accompanying the department on a site investigation has the same right of access to the site as the department official conducting the investigation during the period in which the county designee accompanies the department official. The county shall not have access to records required in subrule 65.17(12) or the current nutrient management plan maintained at the facility.

**65.108(8)** Upon completion of an investigation, the department shall notify the complainant of the results of the investigation, including any anticipated, pending or complete enforcement action arising from the investigation. The department shall deliver a copy of the notice to the animal feeding operation that is the subject of the complaint, any alleged violators if different from the animal feeding operation and the county board of supervisors of the county where the violation is alleged to have occurred.

**65.108(9)** When a person who is a departmental official, an agent of the department, or a person accompanying the departmental official or agent is entering the premises of an animal feeding operation, both of the following shall apply:

a. The person may enter at any reasonable time in and upon any private or public property to investigate any actual or possible violation of Iowa Code chapter 455B or 459 or the rules of this division. However, the owner or person in charge shall be notified.

(1) If the owner or occupant of any property refuses admittance to the operation, or if prior to such refusal the director demonstrates the necessity for a warrant, the director may make application under oath or affirmation to the district court of the county in which the property is located for the issuance of a search warrant.

(2) In the application, the director shall state that an inspection of the premises is mandated by the laws of this state or that a search of certain premises, areas, or things designated in the application may result in evidence tending to reveal the existence of violations of public health, safety, or

welfare requirements imposed by statutes, rules or ordinances established by the state or a political subdivision thereof. The application shall describe the area, premises, or thing to be searched, give the date of the last inspection if known, give the date and time of the proposed inspection, declare the need for such inspection, recite that notice of desire to make an inspection has been given to affected persons and that admission was refused if that be the fact, and state that the inspection has no purpose other than to carry out the purpose of the statute, ordinance, or regulation pursuant to which inspection is to be made. If an item of property is sought by the director, it shall be identified in the application.

(3) If the court is satisfied from the examination of the applicant, and of other witnesses, if any, and of the allegations of the application of the existence of the grounds of the application, or that there is probable cause to believe their existence, the court may issue such search warrant.

(4) In making inspections and searches pursuant to the authority of this rule, the director must execute the warrant:

1. Within ten days after the date of issuance.

2. In a reasonable manner, and any property seized shall be treated in accordance with the provisions of Iowa Code chapters 808, 809, and 809A.

3. Subject to any restrictions imposed by the statute, ordinance or regulation pursuant to which inspection is made.

b. The person shall comply with standard biosecurity requirements customarily required by the animal feeding operation which are necessary in order to control the spread of disease among an animal population.

**567—65.109(459) Well separation distances for open feedlots.** Open feedlots, settled open feedlot effluent basins and open feedlot solids settling facilities shall be separated from wells as follows:

Public wells 1000 feet from shallow wells and  
400 feet from deep wells

Private wells 400 feet from both shallow and deep wells

Variations to this rule may be granted by the director if the applicant provides an alternative that is substantially equivalent to this rule or provides improved effectiveness or protection as required by this rule. Variance requests shall be made in writing at the time the construction permit application is submitted. The denial of a variance may be appealed to the commission.

**567—65.110(459) Manure storage structure design requirements.** The requirements in this rule apply to all animal feeding operation structures unless specifically stated otherwise.

**65.110(1)** Drainage tile removal for new construction of a solids settling basin, a settled open feedlot effluent basin, or other manure control structure. Prior to constructing a manure control structure, other than a structure for the storage of manure in an exclusively dry form, the site for the manure control structure shall be investigated for drainage tile lines as provided in this subrule. All applicable records of known drainage tiles shall be examined for the existence of drainage tile lines.

a. Prior to excavation for the berm of an unformed manure storage structure, the owner of the unformed manure storage structure shall follow any one of the following procedures:

(1) An inspection trench at least ten inches wide shall be dug around the structure to a depth of at least 6 feet from the original grade and be at least 50 feet from the projected outside edge of the berm.

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(2) A core trench shall be dug to a depth of at least 6 feet from grade at the projected center of the structure's berm. After investigation for tile lines and after any discovered tile lines are removed, an additional containment barrier shall be constructed underneath the center of the berm. The secondary containment barrier shall meet the same percolation standards as required of the manure control structure being constructed.

b. The drainage tile lines discovered near the site of an unformed manure storage structure shall be removed within 50 feet of the projected outside edge of the structure's berm and within the projected site of the structure including under the berm. Drainage tile lines discovered upgradient from the structure shall be rerouted outside of 50 feet from the berm to continue the flow of drainage. Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located. A device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the unformed manure storage structure is located. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials, or reconnected to upgradient tile lines.

c. The applicant for a construction permit for a formed manure storage structure shall investigate for tile lines during excavation for the structure. Drainage tile lines discovered upgradient from the structure shall be rerouted around the formed manure storage structure to continue the flow of drainage. All other drainage tile lines discovered shall be rerouted, capped, plugged with concrete, Portland cement concrete grout or similar materials or reconnected to upgradient tile lines. Drainage tile lines installed at the time of construction to lower a groundwater table may remain where located. A device to allow monitoring of the water in the drainage tile lines installed to lower the groundwater table and a device to allow shutoff of the drainage tile lines shall be installed if the drainage tile lines do not have a surface outlet accessible on the property where the formed manure storage structure is located.

d. The owner of an open feedlot may utilize other proven methods approved by the department to discover drainage tile lines.

e. Variances to this subrule may be granted by the director if the owner of the open feedlot provides an alternative that is substantially equivalent to this subrule or provides improved effectiveness or protection as required by this subrule. A request for a variance shall be made in writing at the time the application is submitted or prior to investigating for drainage tile lines, whichever is earlier. The denial of a variance may be appealed to the commission.

f. A waiver of this subrule may be granted by the director if sufficient information is provided that the location does not have a history of drainage tile.

g. A written record describing the actions taken to determine the existence of tile lines, the findings, and actions taken to comply with this subrule shall be prepared and submitted as part of the construction certification required under the provisions of 65.111(459).

**65.110(2)** Soil testing for earthen structures. Applicants for construction permits for settled open feedlot effluent basins or other earthen manure storage structures for open feedlots shall submit soils information according to this subrule for the site of the proposed structure. All subsurface soil

classification shall be based on American Society for Testing and Materials Designations D 2487-92 or D 2488-90.

a. Soil corings shall be taken and used in determining subsurface soil characteristics and groundwater elevation and direction of flow of the proposed site for a settled solids effluent basin or other earthen manure storage structure, other than a solids settling basin. Soil corings shall be taken by a qualified person normally engaged in soil testing activities. All soil corings shall be taken by a method (hollow stem auger or other method) that identifies the continuous soil profile and does not result in the mixing of soil layers. The number and location of the soil corings will vary on a case-by-case basis as determined by the designing engineer and accepted by the department. The following are minimum requirements:

(1) A minimum of three soil corings reflecting the continuous soil profile are required for each settled open feedlot effluent basin or other earthen manure storage structure. The corings shall be taken at locations that reflect the continuous soil profile conditions existing within the area of the proposed basin, including conditions found at the corners and the deepest point of the proposed basin. For settled open feedlot effluent basins or other earthen manure storage structures larger than two acres surface area, one additional coring is required for each additional two acres of surface area.

(2) All corings shall be taken to a minimum depth of 10 feet below the bottom elevation of the settled open feedlot effluent basin or other earthen manure storage structure.

(3) If located in karst topography or potential karst terrain, at least one coring shall be taken to a minimum depth of 25 feet below the bottom elevation of the settled solids effluent basin or other earthen manure storage structure or into bedrock, whichever is shallower. If bedrock is encountered, adequate investigation of the bedrock formation shall be made to determine if it consists of limestone, dolomite, or other soluble rock.

b. The soil corings may be used to determine current groundwater levels by completing the corings as temporary monitoring wells and measuring the water levels in these wells seven days after installation.

c. Upon abandonment of the soil core holes, all soil core holes including those developed as temporary water level monitoring wells shall be plugged with concrete, Portland cement concrete grout, bentonite, or similar materials.

d. A report containing the soil and hydrogeologic information on the site shall be submitted with the construction permit application. The report shall include a description of the activities undertaken to determine the soils and hydrogeologic conditions required by 65.110(3) and shall include a description of the geologic units encountered, and a discussion of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the settled open feedlot effluent basin or other earthen manure storage basin.

**65.110(3)** Hydrology: groundwater table. For purposes of these rules, "groundwater table" means the seasonal high water table as determined by a professional engineer and, where a construction permit is required, approved by the department.

a. The seasonal high water table shall be determined by evaluating soil profile characteristics such as color and mottling from soil corings, soil test pits, or other soil profile evaluation methods; water level data from soil corings or other sources; and other pertinent information.

b. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the re-

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quirements of paragraph 65.110(3)"e," the level to which the groundwater table will be lowered will be considered to represent the groundwater table.

c. Applicability of required groundwater table separation distances.

(1) The groundwater table separation distances in 65.110(3)"d"(1) apply to manure control structures being constructed to serve an existing open feedlot, provided the feedlot area being served by the manure control structures does not exceed the geographic feedlot area which existed at the time the open feedlot registered with the department under the Iowa Plan for Open Feedlots. In the event a feedlot did not register under the Iowa Plan for Open Feedlots or the information submitted as part of the feedlot's registration is inadequate to determine the geographic feedlot area which existed at the time of the feedlot's registration, the feedlot's geographic area will be determined by analysis of the 2002 Color Infrared Aerial Photography for that site.

(2) The groundwater table separation distances in 65.110(3)"d"(2) apply to manure control structures being constructed to serve new open feedlots and to existing open feedlots if the feedlot area being served by the manure control structures does not exceed the geographic feedlot area which existed at the time the open feedlot registered with the department under the Iowa Plan for Open Feedlots. In the event a feedlot did not register under the Iowa Plan for Open Feedlots or the information submitted as part of the feedlot's registration is inadequate to determine the geographic feedlot area which existed at the time of the feedlot's registration, the feedlot's geographic area will be determined by analysis of the 2002 Color Infrared Aerial Photography for that site.

d. Groundwater table separation distances.

(1) A minimum separation of two feet between the top of the liner of the settled open feedlot effluent basin or other manure control structure and the seasonal high water table is required. However, the department shall allow the top of the structure's liner to be a maximum of four feet below the seasonal high water table if perimeter drains to artificially lower the groundwater table are installed a minimum of two feet below the top of the basin liner. For purposes of this paragraph, either gravity flow, other nonmechanical, or mechanical systems may be used to artificially lower the groundwater table.

(2) A minimum separation of two feet between the top of the liner of the settled open feedlot effluent basin or other manure control structure and the seasonal high water table is required. However, the department shall allow the top of the structure's liner to be a maximum of four feet below the seasonal high water table if perimeter drains to artificially lower the groundwater table are installed a minimum of two feet below the top of the basin liner. For purposes of this paragraph, only gravity flow or other nonmechanical systems may be used to artificially lower the groundwater table.

e. Permanent artificial lowering of groundwater table. The groundwater table around a settled open feedlot effluent storage basin or other manure control structure may be artificially lowered to levels required in 65.110(3)"d"(1) or 65.110(3)"d"(2) by using a gravity flow tile drainage system or other permanent system for artificial lowering of the groundwater table. For a permitted animal feeding operation, detailed engineering and soil drainage information shall be provided with a construction permit application to confirm the adequacy of the proposed permanent system to provide the required drainage without materially increasing the seepage potential of the site. (See 65.110(1)"b" for monitoring and shutoff requirements for drainage tile lines installed to lower the groundwater table.)

f. Perimeter drains shall be constructed such that a minimum of 50 feet of horizontal separation distance exists between the drains and runoff impounded in the basin. Drain lines shall be placed in a vertical trench and encased in granular material which extends upward to the level of the groundwater table. Where feasible, the drain shall be provided with a gravity flow outlet. In sites where a gravity flow outlet is not feasible, the department may approve use of a mechanical outlet on a case-by-case basis. The perimeter drainage system shall be equipped with a valve to allow the tile flow to be stopped if necessary, and shall be constructed in a manner that allows for monitoring if required.

g. For formed manure storage structures partially or completely constructed below the normal soil surface, a tile drainage system or other permanent system for artificial lowering of groundwater levels shall be installed around the structure if the groundwater table is above the bottom of the structure.

**65.110(4) Karst features.**

a. Construction prohibited. Settled open feedlot effluent basins or other earthen open feedlot manure storage structures which store manure in a liquid or semiliquid form shall not be constructed in areas which drain to known sinkholes or in karst terrain. Karst terrain is defined as sites where less than 25 feet of overburden or loose material exists between the bottom of the proposed manure storage structures and carbonated bedrock or limestone or dolomite formations. Structure sites located within one mile of areas which exhibit karst features such as sinkholes, carbonated bedrock, or solution channeling shall be considered to be located in karst terrain, unless site-specific geologic information is submitted demonstrating that 25 feet of suitable materials exists between the structure bottom and carbonated bedrock or limestone or dolomite.

b. The use of formed structures to store manure is required to store liquid or dry manure in areas of karst terrain.

(1) Formed structures constructed of concrete in areas of karst terrain shall comply with the provisions of 65.15(14) of these rules.

(2) The use of formed structures constructed of materials other than concrete and located in areas which drain to known sinkholes or areas of karst topography may be approved by the department if the proposed structures are designed by a professional engineer, a minimum of 5 feet vertical separation is maintained between the structure bottom and carbonated bedrock, and the engineer certifies and provides data showing the permeability of the geologic material below the structure's base is sufficiently low to provide an adequate barrier to prevent percolation into carbonated bedrock or groundwater.

**65.110(5) Bedrock separation.** A minimum of four feet of separation between an unformed manure storage structure bottom and any bedrock formation is required.

**65.110(6) Other requirements.**

a. Construction in floodplains. Open feedlot manure storage structures located on a floodplain or within a floodway of a river or stream may be required to obtain DNR permits and provide protection from inundation by flood waters, as specified in 567—71.13(455B).

b. Permits for dam construction. Open feedlot manure storage structures exceeding storage capacity or dam height thresholds may be required to obtain DNR permits, as specified in 567—71.3(455B).

**65.110(7) Seals.** Earthen settled open feedlot effluent basins or other earthen manure storage structures used for storing manure and open feedlot effluent in a liquid or semiliquid

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form, and solids settling structures in which feedlot effluent is retained for longer than 72 hours after a runoff event, shall be sealed such that seepage loss through the seal is as low as practically possible. The percolation rate shall not exceed 1/16 inch per day at the design depth of the basin or other structure. Following construction, the results of a testing program which indicate the adequacy of the seal shall be provided to the department in writing prior to start-up of a permitted operation. The owner of an open feedlot not required to obtain a construction permit shall keep a record of the construction methods and materials used to provide the seal and any test results available on the adequacy of the seal.

a. Percolation tests. Percolation tests are required of all unformed settled open feedlot effluent basins or other unformed earthen open feedlot manure storage structures used for storing manure and other open feedlot effluent in a liquid or semiliquid form and solids settling structures in which feedlot effluent is retained longer than 72 hours after a runoff event.

b. Monitoring. Short-term monitoring may be required or performed in lieu of percolation tests or as determined by departmental evaluation pursuant to 65.103(2) to ensure existing manure control structures maintain groundwater separation or meet equivalent performance standards in lieu of modifying an existing structure.

**65.110(8) Liner design and construction standards.** Unformed settled open feedlot effluent basins or other unformed open feedlot manure storage structures used for storing manure and open feedlot effluent in a liquid or semiliquid form, and solids settling structures in which feedlot effluent is retained for longer than 72 hours after a runoff event, which obtain a construction permit after [insert the effective date of these rules] shall comply with the following minimum standards in addition to subrule 65.110(7).

a. If the location of the structure contains suitable materials as determined by the soil corings taken pursuant to subrule 65.109(2), those materials shall be compacted to establish a minimum of a 12-inch liner. A minimum initial overexcavation of 6 inches of material shall be required. The underlying material shall be scarified, reworked and compacted to a depth of 6 inches. The overexcavated materials shall be replaced and compacted.

b. If the location of the proposed structure does not contain suitable materials as determined by the soil corings taken in subrule 65.109(2), suitable materials shall be brought in and compacted to establish a minimum of a 24-inch liner.

c. Where sand seams, gravel seams, organic soils or other materials that are not suitable are encountered during excavation, the area where they are discovered shall be overexcavated a minimum of 24 inches, replaced with suitable materials and compacted.

d. All loose lift material must be placed in lifts of 9 inches or less and compacted. The material shall be compacted at or above optimum moisture content and meet a minimum of 95 percent of the maximum density after compaction as determined by the Standard Proctor test.

e. For purposes of this rule, "suitable materials" means soil, soil combinations or other similar material that is capable of meeting the permeability and compaction requirements. Sand seams, gravel seams, organic soils or other materials generally not suitable for earthen settled open feedlot effluent basins or other earthen open feedlot manure storage structures construction are not considered suitable materials.

f. As an alternative to the above standards, a synthetic liner may be used. If the use of a synthetic liner is planned, the permit application shall outline how the site will be pre-

pared for placement of the liner; the physical, chemical, and other pertinent properties of the proposed liner; and information on the procedures to be used in liner installation and maintenance. In reviewing permit applications which involve use of synthetic liners, DNR will consider relevant synthetic liner standards adopted by industry, governmental agencies, and professional organizations as well as technical information provided by liner manufacturers and others.

**65.110(9) Concrete standards.** Concrete solids settling structures shall comply with the concrete design standards found in 65.15(14).

**65.110(10) Berm erosion control.**

a. The following requirements shall apply to any earthen settled open feedlot effluent basin or other earthen open feedlot manure storage structure constructed after January 1, 2005.

(1) Concrete, riprap, synthetic liners or similar erosion control materials or measures shall be used on the berm surface below pipes where manure will enter the earthen settled open feedlot effluent basin or other earthen open feedlot manure storage structure.

(2) Concrete, riprap, synthetic liners or similar erosion control materials or measures of sufficient thickness and area to accommodate manure removal equipment and to protect the integrity of the liner shall be placed at all locations on the berm, side slopes, and base of the earthen settled open feedlot effluent basin or other earthen open feedlot manure storage structure where agitation or pumping may cause damage to the liner.

(3) Erosion control materials or measures shall be used at the corners of the earthen settled open feedlot effluent basin or other earthen open feedlot manure storage structure.

b. The owner of an open feedlot with an earthen settled open feedlot effluent basin or other earthen open feedlot manure storage structure shall inspect the structure berms at least semiannually for evidence of erosion. Erosion problems found which may impact either structural stability or liner integrity shall be corrected in a timely manner.

**567—65.111(459) Construction certification.** The owner of an open feedlot which obtains a construction permit after [insert the effective date of these rules] shall submit to the department a certification from a professional engineer that all manure storage structures in which manure is stored in a liquid or semiliquid form were:

1. Constructed in accordance with the design plans. If actual construction deviated from the approved plans, the certification shall identify all changes and certify that the changes were consistent with the standards of these rules or statute;

2. Supervised by the professional engineer or a designee of the engineer during critical points of the construction. A designee shall not be the permittee, owner of the confinement feeding operation, a direct employee of the permittee or owner, or the contractor or an employee of the contractor;

3. Inspected by the professional engineer after completion of construction and before commencement of operation; and

4. Constructed in accordance with the drainage tile removal standards of subrule 65.110(1). The certification shall include a report of the findings and actions taken to comply with 65.110(1)"g."

**567—65.112(455B,459) Transfer of legal responsibilities or title.** If title or legal responsibility for a permitted animal feeding operation and its animal feeding operation storage structure is transferred, the person to whom title or legal re-

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sponsibility is transferred shall be subject to all terms and conditions of the permit and these rules. The person to whom the permit was issued and the person to whom title or legal responsibility is transferred shall notify the department of the transfer of legal responsibility or title of the operation within 30 days of the transfer. Within 30 days of receiving a written request from the department, the person to whom legal responsibility is transferred shall submit to the department all information needed to modify the permit to reflect the transfer of legal responsibility. A person who has been classified as a habitual violator under Iowa Code section 455B.191 shall not acquire legal responsibility or a controlling interest in any additional permitted animal feeding operations for the period that the person is classified as a habitual violator. A person who has an interest in an animal feeding operation that is the subject of a pending enforcement action shall not acquire legal responsibility or an interest in any additional permitted animal feeding operations for the period that the enforcement action is pending.

The rules in this division are intended to implement Iowa Code sections 455B.105, 455B.171 to 455B.174, 455B.177 and 455B.186 and Iowa Code chapter 459.

ITEM 7. Amend 567—Chapter 65, **Appendix A**, as follows:

APPENDIX A  
MANURE CONTROL ALTERNATIVES  
FOR OPEN FEEDLOTS

Introduction: Water pollution control requirements for animal feeding operations are given in 567—Chapter 65 of the rules of the Iowa department of natural resources. Under these rules, open feedlots meeting the operation NPDES permit application requirements of rule 567—65.4—104 (455B.459) must also comply with the minimum manure control requirements of subrule 65.2 101(2). Subrule 65.2 101(2) requires that all feedlot runoff and other manure flows resulting from precipitation events less than or equal to the 25-year, 24-hour rainfall event be collected and land applied.

This appendix describes five feedlot runoff control systems that meet the requirements of subrule 65.2 101(2). The systems differ in the volume of manure storage provided and in the frequency of manure application. In general, the time interval between required applications increases with increased storage volume.

A feedlot operator who constructs and operates a manure control facility in accordance with the requirements of any of these five systems will not have additional manure control requirements imposed, unless manure discharges from the facility cause state water quality standards violations. In describing the five systems, the major features of each are first reviewed, followed by detailed information on the construction and operation requirements of the system. The system descriptions are presented in this appendix as follows:

	System	Pages
System 1:	One Manure Application Period Per Year .....	33-35
System 2:	July and <del>November</del> <i>October</i> Manure Application .....	35-37
System 3:	April, July, and <del>November</del> <i>October</i> Manure Application .....	37-39
System 4:	Application After Each Significant Precipitation Event .....	39-41

System 5:	April/May and October/November Manure Application .....	41-43
Figures 1-4	.....	44-45

SYSTEM 1:

ONE MANURE APPLICATION PERIOD PER YEAR

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average annual runoff from all feedlot and nonfeedlot areas which drain into the manure control system (additional storage is required if *manure or* process waters ~~or manure~~ from other sources also drain into the control system).
- Collected manure must be removed from the control system and land applied at least once annually (interval between successive applications cannot exceed 12 months).

DETAILED SYSTEM REQUIREMENTS:

Manure Control System: The manure control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: Manure solids settling facilities which meet or exceed the requirements of subrule 65.2 101(1) must precede the feedlot runoff control system.
2. Feedlot Runoff Control System: The feedlot runoff control system shall, as a minimum, have adequate capacity to store the total wastewater volume determined by summing the following:  
A. to F. No change.

Manure Application Requirements: No change.

SYSTEM 2:

~~JULY AND NOVEMBER~~ *OCTOBER*  
MANURE APPLICATION

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average runoff expected to occur over the eight-month period from December 1 through July 31 from all feedlot and nonfeedlot areas which drain into the manure control system (additional storage is required if *manure or* process waters ~~or manure~~ from other sources also drain into the control system).
- Collected manure may be removed from the control system and land applied during any period of the year that conditions are suitable. While application during other periods will minimize the need for July and ~~November~~ *October* application, sufficient manure must still be disposed of during July and ~~November~~ *October* to reduce the volume of manure remaining in the control system during these months to less than 10 percent of the system's design manure storage volume.

DETAILED SYSTEM REQUIREMENTS:

Manure Control System: The manure control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: Manure solids settling facilities which meet or exceed the requirements of subrule 65.2 101(1) must precede the feedlot runoff control system.
2. No change.

Manure Application Requirements: Manure must be removed from the manure control system and land applied in accordance with the following requirements:

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1. No change.
2. Feedlot Runoff Control System:
  - A. A feedlot operator must comply with the following manure application requirements if application operations are limited to the months of July and ~~November~~ *October*.

During these months, land application shall be conducted at rates sufficient to ensure complete removal of accumulated manure from the runoff control system in ten or fewer application days. Manure removal is considered complete when the manure remaining in the runoff control system occupies less than 10 percent of the system's design manure storage capacity.

During July and ~~November~~ *October*, manure application operations shall be initiated on the first day that conditions are suitable for land application of manure, and application must continue on subsequent days that suitable conditions exist. If unfavorable weather conditions prevent complete application of manure to be accomplished during July or ~~November~~ *October*, application must be continued into the following month. Manure application operations may cease when complete application has been achieved.

Weather and soil conditions are normally considered suitable for land application of manure if:

- Land application areas are not frozen or snow-covered.
- Temperatures during application are greater than 32 degrees Fahrenheit.

- Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding application and no precipitation is occurring on the day of application.

B. A feedlot operator may dispose of accumulated manure during any period of the year that conditions are suitable. While application during other periods will minimize the need for application during July and ~~November~~ *October*, the feedlot operator will still need to dispose of sufficient manure during July and ~~November~~ *October* to reduce the manure volume remaining in the runoff control system during these months to less than 10 percent of the system's design manure storage capacity.

A feedlot operator who does not limit manure application operations to the months of July and ~~November~~ *October* is not required to comply with the specific manure application requirements which apply when application is limited to those months. However, this does not relieve the feedlot operator of the responsibility to conduct application operations at rates and times which are sufficient to ensure that the manure volume remaining in the runoff control system during July and ~~November~~ *October* will be reduced to less than 10 percent of the system's design manure storage capacity.

## SYSTEM 3:

APRIL, JULY AND ~~NOVEMBER~~  
*OCTOBER* MANURE APPLICATION

## MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average runoff expected to occur during the five-month period from December 1 through April 30 from all feedlot and nonfeedlot areas which drain into the manure control system (additional storage is required if *manure or* process waters ~~or manure~~ from other sources also drain into the control system).
- Collected manure may be removed from the control system and land applied during any period of the year that conditions are suitable. While application during other periods will minimize the need for application during the specified

application months, sufficient manure must still be disposed of during April, July and ~~November~~ *October* to reduce the volume of manure remaining in the control system during these months to less than 10 percent of the system's design manure storage volume.

## DETAILED SYSTEM REQUIREMENTS:

Manure Control System: The manure control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: Manure solids settling facilities which meet or exceed the requirements of subrule 65.2 *101(1)* must precede the feedlot runoff control system.
2. No change.

Manure Application Requirements: Manure must be removed from the manure control system and land applied in accordance with the following requirements:

1. No change.
2. Feedlot Runoff Control System:

A. A feedlot operator must comply with the following manure application requirements if application operations are limited to the months of April, July and ~~November~~ *October*.

During these months, land application shall be conducted at rates sufficient to ensure complete removal of accumulated manure from the runoff control system in ten or fewer application days. Manure removal is considered complete when the manure remaining in the runoff control system occupies less than 10 percent of the system's design manure storage capacity.

During April, July and ~~November~~ *October*, manure application operations shall be initiated on the first day that conditions are suitable for land application of manure, and application must continue on subsequent days that suitable conditions exist. If unfavorable weather conditions prevent complete application of manure to be accomplished during any of these months, manure application must be continued into the following month. Manure application operations may cease when complete application has been achieved.

Weather and soil conditions are normally considered suitable for land application of manure if:

- Land application areas are not frozen or snow-covered.
- Temperatures during application are greater than 32 degrees Fahrenheit.

- Precipitation has not exceeded 0.05 inch per day for each of the three days immediately preceding application and no precipitation is occurring on the day of application.

B. A feedlot operator may dispose of accumulated manure during any period of the year that conditions are suitable. While application during other periods will minimize the need for application during April, July and ~~November~~ *October*, the feedlot operator will still need to dispose of sufficient manure during *April*, July and ~~November~~ *October* to reduce the manure volume remaining in the runoff control system during these months to less than 10 percent of the system's design manure storage capacity.

A feedlot operator who does not limit manure application operations to the months of April, July and ~~November~~ *October* is not required to comply with the specific manure application requirements which apply when application is limited to those months. However, this does not relieve the feedlot operator of the responsibility to conduct application operations at rates and times which are sufficient to ensure that the manure volume remaining in the runoff con-

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trol system during April, July and ~~November~~ *October* will be reduced to less than 10 percent of the system's design manure storage capacity.

SYSTEM 4:  
APPLICATION AFTER EACH SIGNIFICANT  
PRECIPITATION EVENT

MAJOR SYSTEM FEATURES: No change.

DETAILED SYSTEM REQUIREMENTS:

Manure Control System: The manure control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: Manure solids settling facilities which meet or exceed the requirements of subrule 65.2 101(1) must precede the feedlot runoff control system.
2. No change.

Manure Application Requirements: No change.

SYSTEM 5:  
APRIL/MAY AND OCTOBER/NOVEMBER  
APPLICATION

MAJOR SYSTEM FEATURES: No change.

DETAILED SYSTEM REQUIREMENTS:

Manure Control System: The manure control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: Manure solids settling facilities which meet or exceed the requirements of subrule 65.2 101(1) must precede the feedlot runoff control system.
2. No change.

Manure Application Requirements: No change.

FIGURE 1. to FIGURE 4. No change.

ITEM 8. Amend 567—Chapter 65 by adopting the following **new** appendix:

APPENDIX E  
SITING CRITERIA FOR  
ALTERNATIVE TECHNOLOGY (AT)

Two vegetative treatment system (VTS) designs are currently considered acceptable in Iowa. These systems are:

**System 1: Vegetative Infiltration Basin (VIB) Followed by Vegetative Treatment Area (VTA)**

**System 2: Stand-Alone Vegetative Treatment Area (VTA)**

**Vegetative Infiltration Basin Followed by Vegetative Treatment Area:** These systems involve discharge of feedlot effluent into a relatively flat area, which is bermed to prevent surface water flow into or out of the area and is planted with permanent vegetation. An extensive tile system installed at a depth of 5 to 6 feet is used to collect infiltrated feedlot effluent from the basin and discharge it into an adjacent VTA for further treatment. As opposed to wetlands, which are designed to maintain a permanent water level, vegetative infiltration basins are designed to maximize water infiltration into the soil and thus normally will have standing water only for short periods of time. Pollutant removal in these systems occurs through filtration of runoff waters through soil, evapotranspiration and plant uptake of nutrients, and pollutant degradation. Solids settling is required prior to discharge of feedlot effluent into the vegetative in-

filtration basin. Soil suitability is essential to ensure adequate filtration and treatment of pollutants. Periodic harvesting of vegetation is required from both the VIB and VTA.

**Stand-Alone Vegetative Treatment Area:** These systems involve discharge of feedlot effluent into areas which are level in one dimension and have a slight slope (less than 5 percent) in the other and are planted to and managed to maintain relatively dense permanent vegetation. System operation involves discharging feedlot runoff evenly across the top width of the VTA and allowing the runoff to slowly flow down slope through the VTA. To maintain even flow throughout the system, several level spreaders must be constructed throughout the length of the VTA. Pollutant removal in these systems occurs through filtration as feedlot effluent flows through the vegetation, attachment of pollutants to roots and soil as runoff waters infiltrate, evapotranspiration and plant uptake of nutrients. Management to maintain a dense vegetative cover is required, as is periodic harvesting of vegetation. Compared to the size of the VTA in the combined VIB/VTA system, the stand-alone VTA is significantly larger relative to the size of the feedlot.

**Other AT Systems:** Although other system designs may be able to meet the equivalent performance standard established under EPA's CAFO rules, the development of such systems has not proceeded to the point where design and operating standards for such systems exist. Until that occurs, such systems will only be considered on a case-by-case basis. For such systems, the producer shall provide DNR with sufficient information to demonstrate that the proposed system will protect both surface waters and groundwaters and is capable of meeting the equivalent performance standard of EPA's regulations. Demonstrating "equivalent performance" shall include, but may not be limited to, providing the results of computer modeling which compares the predicted performance of the proposed systems over a 25-year period with that of a conventional system over the same period.

**Siting Criteria:** Outlined below are criteria which must be met for an open feedlot which requires an NPDES permit to be eligible for use of an AT system in Iowa. In general, these criteria apply to open feedlots which have over 1000 animal unit capacity.

A. Solids Settling: DNR rules require all open feedlots to have solids settling. Therefore, solids settling structures are required to precede any AT system. In addition to meeting normal DNR design requirements for solids settling, feedlots using an AT system must be capable of storing all runoff which occurs from the feedlot during the nongrowing season. Specific requirements which must be met include:

- Containment Volume: Adequate capacity to contain expected runoff from November 1 to April 1 or to hold the 25-year, 24-hour precipitation event, whichever is greater, must be provided. This capacity may either be provided in the solids settling structures or in other system components.
- Control Structure: Controls on the solids settling structure must allow release of runoff to the AT system during the growing season.
- Design Standards: The solids settling structure must be designed and constructed to meet either the NRCS Waste Storage Basin (313) standard or the NRCS Sediment Basin (350) standard.
- Liner Designed Construction: Liner designed construction must comply with 65.110(8) unless utilized for winter feedlot effluent storage, such that frozen soil conditions provide a reduction of nutrient migration and the retention of feedlot effluent within the solids settling facility, which provides added benefit under



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freeze thaw conditions. Soils beneath the liner must meet soil suitability standards as required for liner development in 65.110(8)“a” through “f.”

**B. Vegetative Infiltration Basin followed by Vegetative Treatment Area:**

- **Size:** The required size must be based on such factors as soil permeability and depth to water table, with larger sizes required for less suitable sites (lower permeability soils, high water tables):
  - **VIB:** Minimum size of 30 to 50 percent of total drainage area (feedlot and other) served by the basin.
  - **VTA:** Minimum of 30 to 50 percent of the infiltration basin area.
- **Soils:** Soil permeability must be 0.6 to 2.0 inches/hour to a depth of 5 feet.
- **Depth to Water Table:**
  - **VIB:** Seasonally high water table must be more than 1 foot below soil surface and must be capable of being lowered to a depth of 5 to 6 feet with a perimeter tile system installed outside of the infiltration basin area.
  - **VTA:** Seasonally high water table must be more than 1 foot below soil surface, with depth of 4 to 6 feet recommended; artificial lowering of water table through use of perimeter tile installed outside of the VTA may be allowed.
- **Subsoil/Geology:** The following subsoil/geological restrictions apply to both the VIB and VTA:
  - **Karst:** Not allowed in karst terrain.
  - **Sands/gravels:** Not allowed if depth to sands/gravels or glacial outwash in the VIB is less than 10 feet or depth to sands/gravels or glacial outwash in the VTA is less than 6 feet.
  - **Bedrock:** Not less than 10 feet to fractured or carbonated bedrock.
- **Slope:** The following slope requirements apply to the constructed system components (site grading to achieve these slopes is acceptable, provided the finished site meets soil permeability requirements, etc.):
  - **VIB:** Constructed basin must be level to a maximum of 1 percent slope.
  - **VTA:** Constructed VTA must be level in one dimension and have a slight slope (maximum of 5 percent) in the other dimension.
- **Berming:**
  - **VIB:** The infiltration area must be bermed to prevent inflow of surface water from outside the basin and to prevent outflow of feedlot effluent from the basin area. The bermed area must have adequate capacity to contain the 25-year, 24-hour precipitation event.
  - **VTA:** The VTA must be bermed to prevent inflow of surface water from outside areas.
- **Spreaders:** Spreaders must be engineered and designed to provide uniform surficial spreading throughout the length of the VTA system.
- **Flooding:** Both the VIB and VTA must be constructed in areas which are not subject to flooding more frequently than once in 25 years. NOTE: Areas having soils identified by NRCS as “not subject to flooding” or as “rarely floods” will generally be acceptable for AT systems from a flooding standpoint.
- **Proximity to Waters of the State:**
  - **High Quality (HQ) or High Quality Resource (HQR) Watersheds:** AT systems shall not be used in the watersheds of water bodies designated within Iowa’s water quality standards as HQ or HQR waters.

- **Distance to Water Bodies:** The following minimum distances, measured along the path of water flow, shall exist between the point of discharge from the VTA and the receiving water body:

Classified water bodies or perennial streams: Minimum of 500 feet or one-half foot distance per animal unit capacity of the feedlot area which drains to the AT system, whichever is greater.

Uncrossable intermittent streams: Minimum of 200 feet.

**C. Stand-Alone Vegetative Treatment Area:**

- **Size:** The required size must be based on such factors as soil permeability and depth to water table, with larger sizes required for less suitable sites (lower permeability soils, high water tables). The minimum size of the VTA shall be:
  - 50 to 100 percent of drainage area (feedlot and other) served by the VTA if soil permeability is from 0.6 to 2.0 inches/hour.
  - 200 percent of drainage area (feedlot and other) served by the VTA if soil permeability is from 0.2 to 0.6 inches/hour.
- **Depth to Water Table:** Seasonally high water table must be more than 1 to 3 feet below soil surface, with depth of 4 to 6 feet recommended; artificial lowering of water table through use of perimeter tile installed outside of the VTA may be allowed.
- **Subsoil/Geology:** The following subsoil/geological restrictions apply:
  - **Karst:** Not allowed in karst terrain.
  - **Sands/gravels:** Not allowed if depth to sands/gravels or glacial outwash is less than 6 feet.
  - **Bedrock:** Not less than 10 feet to fractured or carbonated bedrock.
- **Slope:** Constructed VTA must be level in one dimension and have a slight slope (maximum of 5 percent) in the other dimension (grading to achieve these slopes is acceptable, provided it does not impact soil permeability, etc.).
- **Spreaders:** Spreaders must be engineered and designed to provide uniform surficial spreading throughout the length of the VTA system.
- **Berming:** The VTA must be bermed to prevent inflow of surface water from outside areas.
- **Flooding:** The VTA must be constructed in areas which are not subject to flooding more frequently than once in 25 years. NOTE: Areas having soils identified by NRCS as “not subject to flooding” or as “rarely floods” will generally be acceptable for AT systems from a flooding standpoint.
- **Proximity to Waters of the State:**
  - **High Quality (HQ) or High Quality Resource (HQR) Watersheds:** AT systems shall not be used in the watersheds of water bodies designated within Iowa’s water quality standards as HQ or HQR waters.
  - **Distance to Water Bodies:** The following minimum distances, measured along the path of water flow, shall exist between the point of discharge from the VTA and the receiving water body:
    - Classified water bodies or perennial streams: Minimum of 500 feet or one-half foot distance per animal unit capacity of the feedlot area which drains to the VTA system, whichever is greater.
    - Uncrossable intermittent streams: Minimum of 200 feet.

## ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**Modeling and Monitoring Requirements as Measured from Discharge Point of System:**

**1. Six Pilot AT Sites:** The first two years after AT systems are constructed are critical for determining if the AT systems can meet the equivalent performance standard of EPA's CAFO rules. Therefore, intensive monitoring shall be conducted at six pilot AT system sites to provide the data needed to determine compliance with EPA's equivalent performance standard and the NPDES permit issued by DNR. In addition, the data will be used to further calibrate the predictive computer model for these AT systems, as developed by Iowa State University.

A. All pilot sites shall monitor and submit effluent samples taken from multiple sites on the operation.

B. All pilot sites shall have designated effluent collection points. Samples shall be tested for levels of: NO<sub>3</sub>-N, NH<sub>3</sub>-N, P<sub>total</sub>, BOD/CBOD, ortho P and Chloride, temperature, dissolved oxygen, pH, total suspended solids, and fecal coliform.

C. All pilot sites must submit background data from soil, surficial, and groundwater sources. This is imperative in the determination of equivalent performance.

D. Specific monitoring requirements at pilot sites shall include:

1. Basin volume: (grab sample)
  - Volume and nutrient content of effluent into the basin at each runoff event.
  - Volume and nutrient content of effluent out of the basin at each runoff event.
2. Groundwater monitoring and flow direction: Three or more piezometers as needed to establish background and predict groundwater flow (upgradient and downgradient) and nutrient migration and dispersion. Samples shall be analyzed for NH<sub>4</sub>-N, NO<sub>3</sub>-N and Chloride: monthly.
3. Surface water flow at designated discharge points within the system: monthly, event.
4. In case of discharge to receiving stream:
  - Gauge streamflow upstream and downstream of the discharge point.
  - Sample for the parameters listed in 1B above, upstream, downstream and at the discharge point.
  - Monitor discharge volume at the discharge point.
5. Tile lines – monitoring of effluent quality: monthly or as relates to discharge.
6. Photos representative of vegetative cover: seasonally.
7. Forage crop condition and harvest dates: seasonally.
8. Soil sampling: prior to operation and quarterly, for moisture and nutrient loading.

E. The producers at all pilot sites shall keep daily records of climatic conditions including, but not limited to, temperature, precipitation, overflow and release days. Written records are required for activities such as solids removal from basin and regular maintenance and scraping of lot area. Producers must submit these records, along with monitoring results, to DNR on a quarterly basis.

F. The monitoring results, climatic records, and discharge event reports will be used to calibrate the model and determine if these AT systems are meeting the equivalent performance standard established in EPA's CAFO rules.

**2. Non-Pilot AT Sites:** Non-pilot AT sites will be evaluated for equivalent performance based upon a minimum of two years of validation monitoring and compliance by the producer with the system's operation and maintenance requirements. Site-specific requirements will be established in the NPDES permit issued to the operation and will include, but

not necessarily be limited to, the following operation and maintenance and sampling schedule:

A. Monitoring:

1. Discharge monitoring: An effluent collection point must be established at the outlet of the VTA system, and flow volume recorded and an effluent sample collected on each day that a discharge from the VTA system occurs. Discharge samples must be submitted to a certified laboratory and analyzed for: NO<sub>3</sub>-N, NH<sub>3</sub>-N, P<sub>total</sub>, CBOD, total suspended solids, and Chloride.
2. Groundwater monitoring: A minimum of two groundwater piezometers or monitoring wells (one upgradient and one downgradient) must be established at each AT site. Additional piezometers or wells may be required if DNR determines that they are necessary to adequately assess the impacts the AT system is having on groundwater. Collection of water samples from these wells is required on a quarterly basis, and samples must be submitted to a certified laboratory and analyzed for: NH<sub>4</sub>-N, NO<sub>3</sub>-N, and Chloride.

B. Operation and Maintenance Compliance:

1. Daily climatic conditions: See daily climatic conditions in section 1, subsection E above.
2. Basin volumes – water and solids level: See basin volumes in section 1, subsection D, paragraph 1 above.
3. Photos representative of vegetative cover: beginning, middle, and end of crop growth period.
4. Harvest dates and forage crop condition: beginning, middle, and end of crop growth period.
5. Yearly representative soil sampling within the VIB/VTA areas.

C. Reporting: During the first two years of operation of an AT system, the producer will be issued a two-year NPDES permit. Renewal of this permit is contingent upon proper operation and maintenance of the system, submittal of all required records, and demonstration that the AT system is meeting the equivalent performance standard of EPA's CAFO rules. Factors to be considered in determining whether to renew the NPDES permit for an AT system will include, but not be limited to, the following:

- Climatic trends and extremes;
- Establishment and maintenance of system components;
- Timing of installation of system components relative to weather events;
- Compliance with monitoring and reporting requirements;
- Volume and quality of AT system discharges; and
- Existence of documented water quality violation or reports of discharges to either surface waters of the state or indication of significant nutrient migration to groundwater.

If DNR's review of an AT system indicates that the system is not meeting the equivalent performance standard, the feedlot may either be required to make needed system modifications to enable compliance with this standard or be required to install a conventional runoff control system. Feedlots found to be in compliance with the equivalent performance standard will be issued a five-year NPDES permit which allows continued use of the AT system.

**ARC 3879B****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,” and Chapter 76, “Application and Investigation,” Iowa Administrative Code.

These amendments:

- Remove a requirement that a person who submits a faxed application for Medicaid benefits must provide the original application with an original signature before the Department can approve the application.
- Provide that the Department will treat a faxed Medicaid application or review form as an original form.

The requirement for an original signature is unique to the Medicaid rules and causes problems when an application is used for more than one program. Of particular concern is conforming Medicaid requirements to those of the HAWK-I program. HAWK-I applications that appear to indicate Medicaid eligibility are automatically referred to Medicaid, but under current rules must be sent back for an original signature before the application can be approved.

These amendments do not provide for waivers in specified situations because they remove a restriction on Medicaid applicants and recipients.

Any interested person may make written comments on the proposed amendments on or before December 29, 2004. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 249A.3.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee’s review of this rule making.

The following amendments are proposed.

ITEM 1. Amend paragraph 75.52(4)“b” as follows:

b. The recipient shall complete Form 470-2881, Review/Recertification Eligibility Document (RRED), when requested by the ~~county office~~ *department* in accordance with these rules. ~~The department shall supply the form shall be supplied as needed to the recipient by the department. as needed, or upon request, The department and shall pay the cost of postage to return the form.~~

(1) When the form is issued in the department’s regular end-of-month mailing, the recipient shall return the completed form to the ~~county local~~ *office* by the fifth calendar day of the report month.

(2) When the form is not issued in the department’s regular end-of-month mailing, the recipient shall return the completed form to the ~~county local~~ *office* by the seventh day after

the date it is mailed by the department. ~~The county office shall supply the recipient with a RRED upon request.~~

(3) Failure to return a completed form shall result in cancellation of assistance. A completed form is a form with all items answered, signed, dated no earlier than the first day of the budget month, and accompanied by verification as required in paragraphs 75.57(1)“f” and 75.57(2)“1.”

(4) *A copy of a form received by fax shall be given the same effect as the original form.*

ITEM 2. Amend subrule 76.1(2) as follows:

Rescind paragraph “d” and adopt the following new paragraph “d” in lieu thereof:

d. A copy of an application received by fax at one of the places described above shall be given the same effect as the original application.

Amend paragraph “f” as follows:

f. If an authorized representative signed the application on behalf of an applicant, the ~~original~~ signature of the applicant or the responsible person must be on the application before the application can be approved. For FMAP and FMAP-related Medicaid, the ~~original~~ signature of each ~~and every~~ parent or stepparent in the home must be on the application before the application can be approved.

**ARC 3880B****HUMAN SERVICES  
DEPARTMENT[441]****Amended Notice of Intended Action**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services gives notice that a public hearing will be held on Wednesday, December 29, 2004, at 11 a.m. in the Fifth Floor Northeast Conference Room, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa. The purpose of the hearing is to receive oral or written comments on amendments to subrule 79.1(5) regarding changes in Medicaid reimbursement methodology for Iowa state-owned hospitals with more than 500 beds.

Notice of Intended Action concerning these amendments was published in the Iowa Administrative Bulletin on July 7, 2004, as **ARC 3452B**. The Department is still awaiting approval of these amendments by the U.S. Centers for Medicare and Medicaid Services.

**ARC 3847B****INSPECTIONS AND APPEALS  
DEPARTMENT[481]****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 10A.104(5) and 135B.7, the Department of Inspections and

## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

Appeals hereby gives Notice of Intended Action to amend Chapter 51, "Hospitals," Iowa Administrative Code.

The proposed amendments update the Department's rules pertaining to Critical Access Hospitals (CAHs) to include changes made in the federal regulations governing CAHs participating in the Medicare program. Item 1 stipulates that CAHs that provide inpatient psychiatric or rehabilitation services in a distinct part unit shall provide no more than 10 beds in the distinct part unit. The 10 beds in the distinct part unit are not included in the 25-bed limitation imposed on CAHs by federal regulations. Item 2 updates the reference date for the citation of the Medicare conditions of participation for a critical access hospital.

There is no fiscal impact associated with the proposed amendments as they simply conform the Department's administrative rules governing critical access hospitals to the federal definitions and requirements for CAHs.

The proposed amendments were presented to and approved by the Hospital Licensing Board at its October 27, 2004, meeting. The State Board of Health initially reviewed the proposed amendments at its November 10, 2004, meeting.

Any interested person may make written suggestions or comments on the proposed amendments on or before December 28, 2004. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be sent to [david.werning@dia.state.ia.us](mailto:david.werning@dia.state.ia.us).

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135B.7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 51.53(4) as follows:

**51.53(4)** The hospital shall maintain no more than 25 acute care inpatient beds. *However, if the hospital provides inpatient psychiatric services in a distinct part unit or inpatient rehabilitation services in a distinct part unit, no more than 10 beds shall be maintained in the distinct part unit. The beds in the distinct part unit are excluded from the 25 inpatient-bed count limit specified in 42 CFR 485.620(a).*

ITEM 2. Amend subrule 51.53(5) as follows:

**51.53(5)** The hospital shall meet the Medicare conditions of participation as a critical access hospital as described in 42 CFR Part 485, Subpart F, as of October 1, 2003 2004.

## ARC 3848B

### INSPECTIONS AND APPEALS DEPARTMENT[481]

#### 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 10A.104(5) and 135C.14, the Department of Inspections and Appeals hereby gives Notice of Intended Action to rescind

Chapter 54, "Quality Award for Health Care Facilities," and to adopt new Chapter 54, "Governor's Award for Quality Care," Iowa Administrative Code.

The proposed amendment rescinds the current chapter and replaces it with a new chapter that more clearly defines the administration, selection, and process by which long-term care facilities may be nominated for a Governor's Award for Quality Care. The proposed amendment simplifies the process by eliminating definitions for the various facilities eligible for the award, changes the nomination and selection deadlines, and stipulates that the award will be presented annually during the Governor's Conference on Aging. The proposed amendment also adds two new criteria used in the selection of a facility: specifically whether there are any outstanding complaints against the nominated facility and whether an annual fiscal audit indicated any irregularities in the residents' accounts at the nominated facility.

The Department has determined that there is no fiscal impact associated with adoption of the proposed amendment. Also, the proposed amendment contains no waiver provision, as participation in the Governor's Award for Quality Care program is voluntary on the part of long-term care facilities.

The proposed amendment was initially reviewed by the State Board of Health at its November 10, 2004, meeting.

Any interested person may make written suggestions or comments on the proposed amendment on or before December 28, 2004. Such written materials should be directed to the Director, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319-0083; or faxed to (515)242-6863. E-mail should be sent to [david.werning@dia.state.ia.us](mailto:david.werning@dia.state.ia.us).

Also, there will be a public hearing on January 4, 2005, at 10 a.m. in Conference Room 319 of the Lucas State Office Building, 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 proposed amendment. Any persons who intend to attend the public hearing and have special requirements such as hearing or mobility impairments should contact the Department of Inspections and Appeals and advise of specific needs.

This amendment is intended to implement Iowa Code sections 10A.104(5), 135C.14 and 135C.20B.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Rescind 481—Chapter 54 and replace it with the following **new** chapter:

#### CHAPTER 54 GOVERNOR'S AWARD FOR QUALITY CARE

**481—54.1(135C) Purpose.** A governor's award for quality care is established to recognize health care facilities in Iowa that demonstrate provision of the highest quality care to residents. Health care facilities eligible for nomination and selection must be licensed pursuant to Iowa Code chapter 135C.

**481—54.2(135C) Definitions.**

"Community living training services" means those activities provided to assist a person to acquire or sustain the knowledge and skills essential to independent functioning to the person's maximum potential in the physical and social environment.

## INSPECTIONS AND APPEALS DEPARTMENT[481](cont'd)

“Department” means the department of inspections and appeals.

“Director” means the director of the department of inspections and appeals or the director’s designee.

“Health care facility” or “facility” means residential care facilities, nursing facilities, intermediate care facilities for persons with mental illness, and intermediate care facilities for persons with mental retardation licensed pursuant to Iowa Code chapter 135C.

“Nursing care” means those services that can be provided only under the direction of a registered nurse or licensed practical nurse.

“Personal care” means assistance with those activities of daily living that the recipient can perform only with difficulty. Examples are help in getting in and out of bed, assistance with personal hygiene and bathing, help with dressing and feeding, and supervision of medications that can be self-administered.

“Rehabilitative services” means services to encourage and assist restoration of optimum mental and physical capabilities of the individual resident of a health care facility.

“Social services” means services relating to the psychological and social needs of the individual in adjusting to living in a health care facility and minimizing stress arising from that circumstance.

**481—54.3(135C) Nomination.** The department shall make available a nomination application no later than January 1 of each year. The department shall accept nominations until March 1 of each year.

**481—54.4(135C) Applicant eligibility.** Eligible nominations shall be made by a resident, family member of a resident, member of a resident advocacy committee, or another health care facility. A health care facility cannot nominate itself for the award; however, this prohibition shall not apply to facilities with common ownership.

**481—54.5(135C) Nomination information.** Applications for the governor’s quality award shall contain but not be limited to the following information:

**54.5(1)** The reasons that the nominated facility should be considered.

**54.5(2)** Any unique or special care or services provided by the facility to its residents. Care or services include any unique or special nursing care, personal care, rehabilitative services, social services, or community living training services provided by the facility for its residents or involvement with the local community.

**54.5(3)** Activities conducted by the facility to enhance the quality of life for its residents.

**481—54.6(135C) Evaluation.** The department shall review all nominations and select finalists based upon the material(s) provided in the nomination forms. The department shall also consider the following factors in making its selections:

**54.6(1)** The facility report card completed pursuant to Iowa Code section 135C.20A.

**54.6(2)** Any unique services provided by a facility to its residents to improve the quality of care in the facility.

**54.6(3)** Any information submitted by resident advocacy committee members, residents, a resident’s family members, or facility staff with regard to the quality of care provided by the facility to its residents.

**54.6(4)** Whether the facility accepts residents for whom costs are paid under Iowa Code chapter 249A.

**54.6(5)** Whether there are any outstanding complaints against the facility, as well as the resolution of any complaint already investigated by the department.

**54.6(6)** Whether the annual fiscal review conducted by the department indicated any irregularities in the residents’ accounts.

**481—54.7(135C) Selection of finalists.** When reviewing the nominations, the department shall rank all facilities according to the above criteria. The ranked list of facilities shall be provided to the director for further review and consideration. When the final selection is made, no more than two facilities from each congressional district shall be recognized as award winners.

**481—54.8(135C) Certificate of recognition.** Prior to the final selection of facilities, representatives from the department will tour all facilities still in contention to determine the winners. Each winning facility will receive a certificate in recognition of its designation as a quality health care provider. The winning facilities shall be announced and recognized annually at the governor’s conference on aging.

These rules are intended to implement Iowa Code sections 10A.104(5), 135C.14 and 135C.20B.

**ARC 3881B****INSURANCE DIVISION[191]****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 505.8(2) and chapter 508, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 31, “Life Insurance Companies—Variable Annuities Contracts,” Iowa Administrative Code.

The proposed rule is intended to reinstate a rule which was erroneously rescinded in 1999 under **ARC 8848A** published in the March 24, 1999, Iowa Administrative Bulletin. Life insurance producers selling variable annuities which are not registered securities were exempted from obtaining a variable contracts license qualification. The unintentional effect of the rescission may have required life insurance producers to undergo the Iowa securities licensing process to provide variable annuities to employers’ qualified retirement plans when the federal Securities Act of 1933 exempts such variable annuities.

This chapter does not provide for waivers. Persons seeking waivers must petition the Division for a waiver in the manner set forth under 191—Chapter 4.

A public hearing will be held at the offices of the Insurance Division at 2 p.m. on Wednesday, December 29, 2004. The Division is located at 330 Maple, Des Moines, Iowa 50319.

Any interested person may make written comments on the proposed rule on or before December 29, 2004. Written comments may be sent to Angela Burke Boston, Assistant Commissioner, Insurance Division, 330 Maple, Des Moines, Iowa 50319. Comments may also be submitted electronically to [angela.burke.boston@iid.state.ia.us](mailto:angela.burke.boston@iid.state.ia.us).

INSURANCE DIVISION[191](cont'd)

This rule is intended to implement Iowa Code chapter 508.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Adopt **new** rule 191—31.6(508) as follows:

**191—31.6(508) Producers.** No producer shall be eligible to sell or offer for sale a contract on a variable basis unless, prior to making any solicitation or sale of such a contract, the producer is also licensed for the variable products line of authority; however, any producer who participates only in the sale or offering for sale of variable contracts that are not registered under the federal Securities Act of 1933 need not be licensed for the variable products line of authority.

**ARC 3862B**

**NATURAL RESOURCE COMMISSION[571]**

**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 subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 52, "Wildlife Refuges," Iowa Administrative Code.

This amendment adds the Gladys Black Eagle Refuge in Marion County to the list of wildlife refuges.

Any interested person may make written suggestions or comments on the proposed amendment on or before January 4, 2005. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Wildlife Bureau at (515)281-6156 or the Wildlife Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on January 4, 2005, at 10:30 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, Des Moines, Iowa, 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 such as those related to hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

This amendment is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.8 and 481A.39.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is proposed.

Amend subrule **52.1(2)** by adopting the following **new** paragraph "c":

c. It shall be unlawful to trespass in any manner on the following areas or portion of the areas during the time of the year they are posted as refuges, except that department personnel and law enforcement officials may enter the area at any time in performance of their duties, and hunters under the supervision of department staff may enter when specifically authorized by the department of natural resources.

<u>Area</u>	<u>County</u>
Gladys Black Eagle Refuge . . . . .	Marion

**ARC 3861B**

**NATURAL RESOURCE COMMISSION[571]**

**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 subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 94, "Nonresident Deer Hunting," Iowa Administrative Code.

Chapter 94 gives the regulations for hunting deer and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and methods of taking, and transportation tag requirements. These amendments will allow nonresident deer hunters to purchase a preference point for the next year's deer license without going through the drawing and being rejected.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 4, 2005. Such written materials should be directed to the Wildlife Bureau Chief, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)281-6156 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on January 4, 2005, at 10:30 a.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, Des Moines, Iowa, 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 amendments.

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

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39 and 481A.48.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

## NATURAL RESOURCE COMMISSION[571](cont'd)

The following amendments are proposed.

ITEM 1. Amend subrule 94.8(3) as follows:

**94.8(3)** Preference points. Each individual applicant who is unsuccessful in the drawing for an any-sex license will be assigned one preference point for each year that the individual is unsuccessful. Preference points will not accrue in a year in which an applicant fails to apply, but the applicant will retain any preference points previously earned. Preference points will apply only to obtaining any-sex licenses. Once an applicant receives an any-sex nonresident deer hunting license, all preference points will be removed until the applicant is again unsuccessful in a drawing or purchases a preference point as described in subrule 94.8(4). Preference points will apply to any zone or season for which a hunter applies. The first drawing for any-sex licenses each year will be made from the pool of applicants with the most preference points. If licenses are still available after the first drawing, subsequent drawings will be made from pools of applicants with successively fewer preference points and continue until the any-sex license quota is reached or all applicants have received licenses. Applicants who apply as a group will be included in a pool of applicants with the same number of preference points as that of the member of the group with the fewest preference points assigned.

ITEM 2. Adopt new subrule 94.8(4) as follows:

**94.8(4)** Purchasing preference points. A nonresident who does not want to hunt in the current year may purchase one preference point per calendar year. The preference point will apply to the next year's drawing for any-sex deer licenses. The preference point will be treated in the same manner as preference points obtained by hunters who are unsuccessful in the any-sex license drawing. A nonresident may not purchase a preference point and apply for an any-sex license in the same calendar year. Preference points may be purchased only during the application period for any-sex deer licenses. Preference points will cost \$10 to offset administrative costs in addition to the usual writing fee, convenience fee and other fees charged by the ELSI system.

## ARC 3844B

### NATURAL RESOURCES DEPARTMENT[561]

#### 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 558.69, the Department of Natural Resources hereby gives Notice of Intended Action to amend Chapter 9, "Groundwater Hazard Documentation," Iowa Administrative Code.

The proposed amendments have two purposes. The first purpose is to clarify the real estate transactions with which a seller must submit a Groundwater Hazard Statement. Transactions which are intended to be excluded include virtually all transactions which are exempted from the filing of a Declaration of Value. Specific examples of transactions to be excluded are easements and leases which are shorter than five years in duration. The current rules require a statement

to be filed with any voluntary transfer of a possessory interest in real estate.

The second purpose of the proposed amendments is to allow for the electronic submission of Groundwater Hazard Statements. County recorders are currently working to upgrade their systems and procedures to facilitate the electronic submission of real estate documents. The proposed rule changes are designed to make the Department's rules compatible with the proposed county procedures.

A public hearing will be held on December 29, 2004, at 2 p.m. in the Fourth Floor East Conference Room of the Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa.

Any interested person may make written suggestions or comments on the proposed amendments by submitting those comments on or before December 29, 2004. Written comments should be directed to Jon C. Tack, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; E-mail: [jon.tack@dnr.state.ia.us](mailto:jon.tack@dnr.state.ia.us).

These amendments are intended to implement Iowa Code section 558.69.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind subrule 9.1(4) and adopt the following new subrule in lieu thereof:

**9.1(4)** When groundwater hazard statement is required. A groundwater hazard statement shall be presented to the county recorder along with the real estate transaction documents for any real estate transaction in which a declaration of value is required to be submitted pursuant to Iowa Code chapter 428A. Additionally, a groundwater hazard statement shall be presented at the time of the recording of the following real estate transaction documents which are exempt from the filing of a declaration of value:

a. Any recorded lease of land which has a term of five years or more;

b. Any voluntary transfer or receipt of real property by governmental entities if title to that property was voluntarily acquired by the governmental entity. Governmental transactions which are exempted from the filing of a groundwater hazard statement include sheriff's deeds, tax deeds, and any other transaction for which the governmental entity did not voluntarily acquire title. A groundwater hazard statement is not required to accompany a clerk's change of title.

ITEM 2. Amend subrule 9.2(2) as follows:

**9.2(2)** The form shall be submitted to the county recorder, *in the form prescribed by the recorder*, at the time that the ~~declaration of value, deed, real estate contract, vendee's real estate contract assignment, plat, lease or other instrument of real property transfer~~ *a real estate transaction document with which a groundwater hazard statement is required by 9.1(4)* is filed with the county recorder.

ITEM 3. Amend subrule 9.2(3) as follows:

**9.2(3)** ~~If the statement submitted reveals no well, disposal site, underground storage tank, or hazardous waste on the property, In all cases,~~ the county recorder shall return the original of the statement to the transferee when the recorded instrument is returned. If the statement submitted reveals that there is a well, a disposal site, an underground storage tank, or hazardous waste on the property, *a copy of the form*

NATURAL RESOURCES DEPARTMENT[561](cont'd)

shall be filed in duplicate so that the original of the statement can be returned to the transferee when the recorded instrument is returned, and the recorder shall send the photocopy or other duplicate suitable for microfilming of all positive statements filed the preceding month to the department submitted to the department within 15 days after the close of each month. *If a standardized electronic format is established by agreement between the Iowa County Recorders Association and the department, then the department's copy may be submitted electronically in the manner established by the agreement. Forms on which a private burial site is the sole matter disclosed and which do not reveal the existence of a well, disposal site, underground storage tank, or hazardous waste on the property shall not be submitted to the department. Forms shall be retained by the department for a period of five years.*

## ARC 3843B

### PROFESSIONAL LICENSURE DIVISION[645]

#### 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 2004 Iowa Acts, chapter 1175, section 427, the Board of Interpreter for the Hearing Impaired Examiners hereby gives Notice of Intended Action to adopt new Chapter 360, "Administrative and Regulatory Authority for the Board of Interpreter for the Hearing Impaired Examiners," and new Chapter 364, "Fees," Iowa Administrative Code.

These proposed amendments adopt new chapters pursuant to enabling legislation.

Any interested person may make written comments on the proposed amendments no later than January 6, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

A public hearing will be held on January 6, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, 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 proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147 and 272C and 2004 Iowa Acts, chapter 1175, sections 426 to 429.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

Adopt the following **new** chapters:

#### CHAPTER 360 ADMINISTRATIVE AND REGULATORY AUTHORITY FOR THE BOARD OF INTERPRETER FOR THE HEARING IMPAIRED EXAMINERS

##### 645—360.1(17A) Definitions.

"Board" means the board of interpreter for the hearing impaired examiners established in Iowa Code chapter 147.

"Board office" means the office of the administrative staff.

"Consumer" means an individual utilizing interpreting services who uses spoken English, American Sign Language, or a manual form of English.

"Department" means the department of public health.

"Disciplinary proceeding" means any proceeding under the authority of the board pursuant to which licensee discipline may be imposed.

"License" means a license to practice interpreting or transliterating for deaf, hard-of-hearing, and hearing individuals in the state of Iowa.

"Licensee" means any person licensed to practice interpreting or transliterating for deaf, hard-of-hearing, and hearing individuals in the state of Iowa.

"Overpayment" means payment in excess of the required fee. Overpayment of less than \$10 received by the board shall not be refunded.

**645—360.2(17A) Purpose of board.** The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 17A, 147 and 272C and 2004 Iowa Acts, chapter 1175, sections 426 to 429, with regard to the practice of interpreting. The mission of the board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and rules of the licensure board. Responsibilities include but are not limited to:

**360.2(1)** Licensing qualified applicants by examination, renewal, reactivation, endorsement, and reciprocity.

**360.2(2)** Developing and administering a program of continuing education to ensure the continued competency of individuals licensed by the board.

**360.2(3)** Imposing discipline on licensees as provided by statute or rule.

##### 645—360.3(17A,147,272C) Organization of board and proceedings.

**360.3(1)** The board is composed of seven members appointed by the governor and confirmed by the senate.

**360.3(2)** The members of the board shall include:

a. Four licensed interpreters, three of whom are practicing, with at least one of the four employed in an educational setting;

b. Three consumers of interpreter services who are deaf.

**360.3(3)** The board shall elect a chairperson, vice chairperson, and secretary from its membership at the first meeting after April 30 of each year.

**360.3(4)** The board shall hold at least one meeting annually.

**360.3(5)** A majority of the members of the board shall constitute a quorum.

**360.3(6)** Board meetings shall be governed in accordance with Iowa Code chapter 21, and the board's proceedings shall be conducted in accordance with Robert's Rules of Order, Revised.

**360.3(7)** The professional licensure division shall furnish the board with the necessary facilities and employees to perform the duties required by this chapter, but shall be reim-



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

bursed for all costs incurred from funds appropriated to the board.

**360.3(8)** The board has the authority to:

a. Develop and implement a program of continuing education to ensure the continued competency of individuals licensed by the board.

b. Establish fees.

c. Establish committees of the board, the members of which shall be appointed by the board chairperson and shall not constitute a quorum of the board. The board chairperson shall appoint committee chairpersons.

d. Hold a closed session if the board votes to do so in a public roll-call vote with an affirmative vote of at least two-thirds if the total board is present or a unanimous vote if fewer are present. The board will recognize the appropriate statute allowing for a closed session when voting to go into closed session. The board shall keep minutes of all discussion, persons present, and action occurring at a closed session and shall tape-record the proceedings. The records shall be stored securely in the board office and shall not be made available for public inspection.

e. Investigate alleged violations of statutes or rules that relate to the practice of interpreting upon receipt of a complaint or upon the board's own initiation. The investigation will be based on information or evidence received by the board.

f. Initiate and impose licensee discipline.

g. Monitor licenses that are restricted by a board order.

h. Perform any other function authorized by a provision of law.

**645—360.4(17A) Official communications.**

**360.4(1)** All official communications, including submissions and requests, may be addressed to the Board of Interpreter for the Hearing Impaired Examiners, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**360.4(2)** Notice of change of address. Each licensee shall notify the board of a change of the licensee's current mailing address within 30 days after the change of address occurs.

**360.4(3)** Notice of change of name. Each licensee shall notify the board in writing of a change of name within 30 days after changing the name.

**645—360.5(17A) Office hours.** The board office is open for public business from 8 a.m. to 4:30 p.m., Monday through Friday of each week, except holidays.

**645—360.6(21) Public meetings.** Members of the public may be present during board meetings unless the board votes to hold a closed session. Dates and locations of board meetings may be obtained from the board's Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office.

**360.6(1)** At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person later in the meeting when a particular topic comes before the board should be made at the time of the public comment period and will be granted at the discretion of the chairperson. No more than ten minutes will be allotted for public comment at any one time unless the chairperson indicates otherwise.

**360.6(2)** Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.

**360.6(3)** The person presiding at a meeting of the board may exclude a person from an open meeting for behavior that

obstructs the meeting.

**360.6(4)** Cameras and recording devices may be used at open meetings, provided the cameras or recording devices do not obstruct the meeting. If the user of a camera or recording device obstructs the meeting by the use of such device, the person presiding at the meeting may request the user to discontinue use of the camera or device.

These rules are intended to implement Iowa Code chapters 17A, 21, 147 and 272C and 2004 Iowa Acts, chapter 1175, sections 426 to 429.

#### CHAPTER 364 FEES

**645—364.1(147,80GA,ch1175) License fees.** All fees are nonrefundable.

**364.1(1)** Licensure fee for license to practice interpreting for the hearing impaired is \$100.

**364.1(2)** Licensure fee for temporary license to practice interpreting for the hearing impaired is \$100.

**364.1(3)** Biennial license renewal fee for each biennium is \$100.

**364.1(4)** Late fee for failure to renew before expiration is \$50.

**364.1(5)** Reinstatement fee for a lapsed license or an inactive license is \$50.

**364.1(6)** Duplicate license fee is \$10.

**364.1(7)** Verification of license fee is \$10.

**364.1(8)** Returned check fee is \$15.

**364.1(9)** Disciplinary hearing fee is a maximum of \$75.

**364.1(10)** Reactivation fee is \$100.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C and 2004 Iowa Acts, chapter 1175, sections 426 to 429.

## ARC 3850B

### PUBLIC HEALTH DEPARTMENT[641]

#### 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 147A.4 and 2004 Iowa Acts, chapter 1034, the Department of Public Health hereby gives Notice of Intended Action to adopt a new Chapter 143, "Automated External Defibrillator Grant Program," Iowa Administrative Code.

Proposed Chapter 143 implements 2004 Iowa Acts, chapter 1034, which establishes an automated external defibrillator grant program to provide matching funds to local boards of health, community organizations, or cities.

Consideration will be given to all written suggestions or comments on the proposed chapter on or before December 28, 2004. Such written materials should be sent to Ray Jones, Department of Public Health, Bureau of EMS, Lucas State Office Building, Des Moines, Iowa 50319.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 3849B**. The content of that submission is incorporated by reference.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

These rules are intended to implement 2004 Iowa Acts, chapter 1034.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

**ARC 3842B****PUBLIC HEALTH  
DEPARTMENT[641]****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 135.11(13) and 135.72, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 202, “Certificate of Need Program,” Iowa Administrative Code.

The proposed amendments recognize long-term care hospitals and rehabilitation hospitals as defined by federal regulations. The amendments also provide clarification that the conversion of a long-term care hospital or a rehabilitation hospital to a general acute care hospital or to a different type of specialty hospital is a permanent change in bed capacity and requires a Certificate of Need.

Any interested person may make written comments or suggestions on the proposed amendments on or before December 28, 2004. Such written comments should be directed to Barb Nervig, Certificate of Need Program, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. E-mail may be sent to [bnervig@idph.state.ia.us](mailto:bnervig@idph.state.ia.us).

The State Health Facilities Council reviewed the petition for rule making requesting these amendments at the scheduled meeting on September 23, 2004. The Council directed the Department to proceed with the rule making.

These amendments are intended to implement Iowa Code sections 135.61 to 135.83.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 202.1(9) as follows:

**202.1(9)** “Permanent change in bed capacity” of an institutional health facility means a change which is intended to be effective for one year or more and which redistributes the beds among the categories listed in the definition of “Bed capacity.” *A conversion of a long-term (acute) care hospital or a rehabilitation hospital as defined by federal regulations to a general acute care hospital or to a different type of specialty hospital is a permanent change in bed capacity and requires a Certificate of Need.*

ITEM 2. Amend 641—202.1(135) by adding the following **new** subrules:

**202.1(13)** “Long-term (acute) care hospital,” for purposes of these rules, means a hospital that has been approved to par-

ticipate in the Title XVIII (Medicare) program as a long-term care hospital-prospective payment system hospital (LTCH-PPS) in accordance with 42 CFR Part 412.

**202.1(14)** “Rehabilitation hospital,” for the purposes of these rules, means a hospital that has been approved to participate in the Title XVIII (Medicare) program as an inpatient rehabilitation facility-prospective payment system hospital (IRF-PPS) in accordance with 42 CFR Part 412.23(b), 412.25 or 412.29.

**PUBLIC SAFETY DEPARTMENT****Public Notice**

Pursuant to the authority of Iowa Code sections 123.46 and 321J.5, and in accordance with 661 Iowa Administrative Code 7.5(1), the following devices are approved for use in the State of Iowa in conducting chemical tests for the purpose of establishing whether a person is publicly intoxicated and preliminary screening tests conducted pursuant to Iowa Code chapter 321J.

Device	Company	Company Location
Alco Sensor	Intoximeters, Inc.	St. Louis, Missouri
Alco Sensor II	Intoximeters, Inc.	St. Louis, Missouri
Alco Sensor III	Intoximeters, Inc.	St. Louis, Missouri
Alco Sensor IV	Intoximeters, Inc.	St. Louis, Missouri
Alco-Sensor FST	Intoximeters, Inc.	St. Louis, Missouri
Alcohol Analyzer S-D2	National Patent Analytical Systems	Mansfield, Ohio
Intoxilyzer 300	CMI, Inc.	Owensboro, Kentucky
Intoxilyzer 400	CMI, Inc.	Owensboro, Kentucky
Intoxilyzer S-D5	CMI, Inc.	Owensboro, Kentucky
Intoxilyzer S-D2	CMI, Inc.	Owensboro, Kentucky
Lifeloc FC10/FC10 Plus	Lifeloc Technologies, Inc.	Denver, Colorado

The listed devices are approved for use in Iowa effective December 1, 2004. This list supersedes any previous list of approved devices.

This list represents devices that have been approved by the Commissioner of Public Safety as of the effective date of this notice. This list is published for the convenience of the public. The Commissioner may approve other devices in the future. This list will be updated periodically to show any additional devices that have been approved. You may contact the Iowa Division of Criminal Investigation Criminalistics Laboratory to inquire whether the Commissioner has approved any additional devices.

Any manufacturer of a preliminary breath testing device may apply to have the device approved for use in the State of Iowa. Contact the Iowa Division of Criminal Investigation Criminalistics Laboratory at the following address for instructions:

Iowa Department of Public Safety  
DCI Criminalistics Laboratory  
Wallace State Office Building  
Des Moines, Iowa 50319-0041

## PUBLIC SAFETY DEPARTMENT

### Public Notice

Pursuant to the authority of Iowa Code sections 321J.4, 321J.4B, 321J.9, 321J.17 and 321J.20, and in accordance with 661 Iowa Administrative Code subrules 7.5(1) and 7.8(2), the following devices are approved for use in the State of Iowa as ignition interlock devices.

Device	Company	Company Location
CST Intoxalock	Consumer Safety Technology, Inc.	Clive, Iowa
IMT Lifesafer Interlock	Lifesafer Interlock, Inc.	Cincinnati, Ohio
Autosense Interlock	Autosense International	San Jose, California
Guardian Interlock, Model 4.4	Guardian Interlock Systems	Marietta, Georgia
Draeger 920 Interlock	Draeger Safety Diagnostics, Inc.	Durango, Colorado
Draeger XT Interlock	Draeger Safety Diagnostics, Inc.	Durango, Colorado

The listed devices are approved for use in Iowa effective December 1, 2004. This list supersedes any previous list of approved devices.

This list represents devices that have been approved by the Commissioner of Public Safety as of the effective date of this notice. This list is published for the convenience of the public. The Commissioner may approve other devices in the future. This list will be updated periodically to show any additional devices that have been approved. You may contact the Iowa Division of Criminal Investigation Criminalistics Laboratory to inquire whether the Commissioner has approved any additional devices.

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Iowa Department of Public Safety  
DCI Criminalistics Laboratory  
Wallace State Office Building  
Des Moines, Iowa 50319-0041

## REVENUE DEPARTMENT

### Notice of Electric and Natural Gas Delivery Tax Rates and Municipal Electric and Natural Gas Transfer Replacement Tax Rates for Each Competitive Service Area

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the electric delivery tax rate, the municipal electric transfer replacement tax rate, the natural gas delivery tax rate, and the municipal natural gas transfer replacement tax rate for each competitive service area in the state. These rates will be used in conjunction with the number of kilowatt-hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2004 by each taxpayer to determine the tax due for each taxpayer in the 2005-2006 fiscal year.

### 2004 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3226	Akron Municipal Utilities	0.00006592
3201	Algona Municipal Utilities	0.00027701
3205	Alta Municipal Power Plant	0.00009747
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00000000
3207	Ames Municipal Electric System	0.00000094
3071	Anita Municipal Utilities	0.00000000
3227	Anthon Municipal Electric Utility	0.00013586
3209	Atlantic Municipal Utilities	0.00024840
3073	Auburn Municipal Utility	0.00000000
3074	Aurelia Mun. Electric Utility	0.00010262
3211	Bancroft Municipal Utilities	0.00089101
3213	Bellevue Municipal Utilities	0.00009854
3228	Bigelow Municipal Electric Utility	0.00220760
3229	Bloomfield Municipal Electric Utility	0.00003352
3075	Breda Mun. Electric System	0.00000000
3076	Brooklyn Municipal Utilities	0.00165903
3216	Buffalo Municipal Electric System	0.00000306
3217	Burt Municipal Electric Utility	0.00000190
3077	Callendar Electric	0.00000000
3078	Carlisle Municipal Utilities	0.00000000
3079	Cascade Municipal Utilities	0.00139652
3221	Cedar Falls Municipal Elec. Utility	0.00033402
3068	City of Afton	0.00000000
3072	City of Aplington	0.00000000
3082	City of Dike	0.00000000
3088	City of Estherville	0.00000000
3089	City of Fairbank	0.00000000
3090	City of Farnhamville	0.00000000
3230	City of Fredericksburg	0.00000541
3106	City of Larchwood	0.00000000
3107	City of Lawler	0.00000000
3108	City of Lehigh	0.00000000
3113	City of Marathon	0.00000000
3311	City of Pella	0.00007160
3125	City of Renwick	0.00000000
3129	City of Sergeant Bluff	0.00000000
3139	City of Westfield	0.00000000
3143	City of Woolstock	0.00000000
3236	Coggon Municipal Light Plant	0.00005311
3237	Coon Rapids Municipal Utilities	0.00042603
3242	Corning Municipal Utilities	0.00033130
3080	Corwith Municipal Utilities	0.00000000
3243	Danville Municipal Electric Utility	0.00000384
3081	Dayton Light & Power	0.00000000
3244	Denison Municipal Utilities	0.00001109
3245	Denver Municipal Electric Utility	0.00006156
3083	Durant Municipal Electric Plant	0.00000000
3084	Dysart Municipal Utilities	0.00000000
3085	Earlville Municipal Utilities	0.00123246
3087	Ellsworth Municipal Utilities	0.00000000
3091	Fonda Municipal Electric	0.00000000
3252	Fontanelle Municipal Utilities	0.00036448

## REVENUE DEPARTMENT(cont'd)

3092	Forest City Municipal Utilities	0.00000000	3131	Sibley Municipal Utilities	0.00000000
3231	Glidden Municipal Electric Utility	0.00000204	3321	Sioux Center Municipal Utilities	0.00000105
3093	Gowrie Municipal Utilities	0.00161035	3323	Southern Minnesota Mun. Power	0.00000000
3256	Graettinger Municipal Light Plant	0.00028571	3324	Spencer Municipal Utilities	0.00010190
3094	Grafton Municipal Utilities	0.00000000	3132	Stanhope Municipal Utilities	0.00000000
3258	Grand Junction Municipal Utilities	0.00000477	3360	Stanton Municipal Utilities	0.00000000
3095	Greenfield Municipal Utilities	0.00117804	3326	State Center Municipal Light Plant	0.00034380
3096	Grundy Center Light & Power	0.00022173	3327	Story City Municipal Electric Utility	0.00011463
3232	Guttenberg Municipal Electric	0.00002873	3134	Stratford Municipal Utilities	0.00000000
3263	Harlan Municipal Utilities	0.00137185	3135	Strawberry Point Electric Utility	0.00000000
3097	Hartley Municipal Utilities	0.00000000	3136	Stuart Municipal Utilities	0.00128625
3098	Hawarden Municipal Utility	0.00000000	3328	Sumner Municipal Light Plant	0.00021044
3099	Hinton Municipal Electric/Water	0.00010345	3330	Tipton Municipal Utilities	0.00149179
3267	Hopkinton Municipal Utilities	0.00000826	3332	Traer Municipal Utilities	0.00053159
3100	Hudson Municipal Utilities	0.00000000	3337	Villisca Municipal Power Plant	0.00024841
3101	Independence Light & Power	0.00000000	3137	Vinton Municipal Utilities	0.00000000
3271	Indianola Municipal Utilities	0.00000787	3138	Wall Lake Municipal Utilities	0.00000000
3102	Keosauqua Light & Power	0.00000000	3338	Waverly Light & Power	0.00077560
3103	Kimballton Municipal Utilities	0.00000000	3342	Webster City Municipal Utilities	0.00033602
3104	Lake Mills Municipal Utilities	0.00000000	3345	West Bend Municipal Power Plant	0.00088027
3105	Lake Park Municipal Utilities	0.00000000	3346	West Liberty Municipal Electric Util.	0.00000641
3233	Lake View Municipal Utilities	0.00016566	3347	West Point Municipal Utility System	0.00009639
3274	Lamoni Municipal Utilities	0.00147144	3140	Whittemore Municipal Utilities	0.00000000
3276	LaPorte City Utilities	0.00000913	3141	Wilton Municipal Light & Power	0.00000000
3277	Laurens Municipal Utilities	0.00034020	3351	Winterset Municipal Utilities	0.00147298
3109	Lenox Mun. Light & Power	0.00044973	3142	Woodbine Municipal Utilities	0.00000000
3110	Livermore Municipal Utilities	0.00000000			
3111	Long Grove Mun. Elec./Water	0.00000000			
3282	Manilla Municipal Elec. Utilities	0.00010234	CO. #	IOU's - ELECTRIC	DELIVERY TAX RATE
3112	Manning Municipal Electric	0.00026914	7206	Amana Society Service Co.	0.00049316
3284	Mapleton Municipal Utilities	0.00009672	7248	Eldridge Electric & Water Utilities	0.00065666
3285	Maquoketa Municipal Electric	0.00004654	7354	Geneseo Municipal Utilities	0.00000000
3288	McGregor Municipal Utilities	0.00000795	7270	IES Utilities	0.00237888
3291	Milford Municipal Utilities	0.00016595	7272	Interstate Power	0.00103630
3114	Montezuma Municipal Light & Power	0.00000000	7289	MidAmerican Energy	0.00264702
3115	Mount Pleasant Municipal Utilities	0.00000000	7296	Nebraska Public Power District	0.00000000
3293	Muscatine Municipal Utilities	0.00009555	7302	Northwestern Public Energy	0.00000000
3116	Neola Light & Water System	0.00000000	7305	Omaha Public Power District	0.00135591
3297	New Hampton Municipal Light Plant	0.00009907	7334	Union Electric	0.00000000
3298	New London Municipal Utility	0.00052973			
3304	Ogden Municipal Utilities	0.00006342			
3234	Onawa Municipal Utilities	0.00010932	CO. #	REC's	DELIVERY TAX RATE
3117	Orange City Municipal Utilities	0.00000000	4319	Access Energy Coop	0.00082171
3118	Orient Municipal Utilities	0.00000000	4203	Allamakee Clayton Electric Coop	0.00093586
3307	Osage Municipal Utilities	0.00005051	4208	Atchison-Holt Electric Coop	0.00093207
3309	Panora Municipal Electric Utility	0.00008582	4214	Boone Valley Electric Coop	0.00090381
3119	Paton Municipal Utilities	0.00000000	4218	Butler County REC	0.00136469
3120	Paullina Municipal Utilities	0.00000000	4219	Calhoun County Electric Coop	0.00144773
3121	Pocahontas Municipal Utilities	0.00000000	4220	Cass Electric Coop	0.00004637
3122	Preston Municipal Utilities	0.00000000	4224	Central Iowa Power Coop	0.00000000
3315	Primghar Municipal Light Plant	0.00001803	4225	Chariton Valley Electric Coop	0.00116694
3123	Readlyn Municipal Utilities	0.00000000	4235	Clarke Electric Coop	0.00295748
3124	Remsen Municipal Utilities	0.00000000	4287	Consumers Energy	0.00221501
3318	Rock Rapids Municipal Utilities	0.00000479	4240	Corn Belt Power Coop	0.00000000
3126	Rockford Municipal Light Plant	0.00000000	4246	East-Central Iowa REC	0.00234065
3127	Sabula Municipal Utilities	0.00000000	4247	Eastern Iowa Light & Power	0.00073432
3128	Sanborn Municipal Light & Plant	0.00000000	4250	Farmers Electric Coop - Greenfield	0.00237767
3130	Shelby Municipal Utilities	0.00000000	4249	Farmers Electric Coop - Kalona	0.00043783

REVENUE DEPARTMENT(cont'd)

4251	Federated Rural Electric Association	0.00051646
4253	Franklin Rural Electric Coop	0.00079714
4254	Freeborn-Mower Cooperative	0.00099628
4255	Glidden Rural Electric Coop	0.00067022
4259	Grundy County REC	0.00061655
4260	Grundy Electric Cooperative	0.00055899
4261	Guthrie County REC	0.00240245
4262	Hancock Co. REC	0.00128724
4265	Harrison County REC	0.00136127
4266	Hawkeye Tri-County Electric Coop	0.00076862
4223	Heartland Power Coop	0.00071699
4268	Humboldt County REC	0.00099957
4273	Iowa Lakes Electric Coop	0.00089999
4279	Linn County REC	0.00173741
4280	Lyon Rural Electric Coop	0.00073253
4286	Maquoketa Valley Electric Coop	0.00221262
4290	Midland Power Cooperative	0.00199265
4299	Nishnabotna Valley REC	0.00084071
4300	North West Rural Electric Coop	0.00056697
4301	Northwest Iowa Power Coop	0.00000000
4308	Osceola Electric Coop	0.00048796
4310	Pella Cooperative Electric	0.00194961
4313	Pleasant Hill Community Line	0.00028048
4316	Rideta Electric Coop	0.00292371
4320	Sac County Rural Electric Coop	0.00110413
4322	Southern Iowa Electric Coop	0.00151197
4200	Southwest Iowa Service Coop	0.00289110
4329	T.I.P. Rural Electric Coop	0.00220635
4333	Tri County Electric Coop	0.00129073
4336	United Electric Coop	0.00112324
4348	Western Iowa Power Coop	0.00098068
4352	Woodbury County REC	0.00122711
4353	Wright Co. REC	0.00058686

5275	Lamoni Municipal Gas	0.00091201
5037	Lenox Municipal Gas	0.00000000
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.00000000
5281	Manilla Municipal Gas	0.00326276
5283	Manning Municipal Gas	0.00021153
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.00000000
5306	Osage Municipal Gas	0.00003376
5043	Prescott Municipal Gas	0.00000000
5044	Preston Municipal Gas	0.00000000
5055	Remsen Municipal Gas	0.00000000
5317	Rock Rapids Municipal Gas	0.00007706
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.00000000
5058	Sac City Municipal Gas	0.00000000
5059	Sanborn Municipal Gas	0.00000000
5060	Sioux Center Municipal Gas	0.00000000
5061	Tipton Municipal Gas	0.00000000
5063	Waukee Municipal Gas	0.00000000
5340	Wayland Municipal Gas	0.00307740
5064	Wellman Municipal Gas	0.00000000
5344	West Bend Municipal Gas	0.00002165
5065	Whittemore Municipal Gas	0.00000000
5349	Winfield Municipal Gas	0.00046157
5066	Woodbine Gas	0.00000000

			DELIVERY TAX RATE
CO. #	IOU's - GAS		
5204	Allerton Gas		0.01588131
5270	IES Utilities		0.01204344
5272	Interstate Power		0.01366366
5289	MidAmerican Energy		0.01103529
5312	Peoples Natural Gas		0.00927983
5335	United Cities Gas		0.00647805

2004 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5021	Bedford Municipal Gas	0.00000000
5215	Brighton Gas	0.06591442
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00000000
5022	City of Bloomfield	0.00000000
5026	City of Clearfield	0.00000000
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00002413
5241	Corning Municipal Gas	0.00000108
5027	Emmetsburg Municipal Gas	0.00000000
5030	Gilmore City Municipal Gas	0.00000000
5031	Graettinger Municipal Gas	0.00000000
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.00000000
5034	Hartley Municipal Gas	0.00000000
5035	Hawarden Municipal Gas	0.00000000
5036	Lake Park Municipal Gas	0.00000000

2004 MUNICIPAL ELECTRIC TRANSFER REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACE-MENT TAX RATE
3226	Akron Municipal Utilities	0.00566563
3201	Algona Municipal Utilities	0.00182342
3205	Alta Municipal Power Plant	0.00186480
3069	Alta Vista Municipal Utilities	0.00000000
3070	Alton Municipal Light & Power	0.00128664
3207	Ames Municipal Electric System	0.00211879
3071	Anita Municipal Utilities	0.00157381
3227	Anthon Municipal Electric Utility	0.00403974
3209	Atlantic Municipal Utilities	0.00222736
3073	Auburn Municipal Utility	0.01590741
3074	Aurelia Municipal Electric Utility	0.00136669
3211	Bancroft Municipal Utilities	0.00682867
3213	Bellevue Municipal Utilities	*
3229	Bloomfield Municipal Electric Utility	*
3075	Breda Municipal Electric System	0.00000000

## REVENUE DEPARTMENT(cont'd)

3076	Brooklyn Municipal Utilities	0.00000000	3105	Lake Park Municipal Utilities	0.00161313
3216	Buffalo Municipal Electric System	0.00000000	3233	Lake View Municipal Utilities	0.00811800
3217	Burt Municipal Electric Utility	0.00220079	3274	Lamoni Municipal Utilities	0.00210737
3077	Callender Electric	*	3276	LaPorte City Utilities	0.00128610
3078	Carlisle Municipal Utilities	0.00044202	3277	Laurens Municipal Utilities	0.00441671
3079	Cascade Municipal Utilities	0.00000000	3109	Lenox Municipal Light & Power	0.00025786
3221	Cedar Falls Mun. Electric Utility	0.00304200	3110	Livermore Municipal Utilities	0.00887846
3068	City of Afton	0.00683846	3111	Long Grove Mun. Elec./Water	0.00000000
3072	City of Aplington	0.00987828	3282	Manilla Municipal Elec. Utilities	0.00199485
3082	City of Dike	0.01269772	3112	Manning Municipal Electric	0.00082839
3088	City of Estherville	0.01368438	3284	Mapleton Municipal Utilities	0.00306288
3089	City of Fairbank	0.00752956	3285	Maquoketa Municipal Electric	0.00128522
3090	City of Farnhamville	0.00000000	3288	McGregor Municipal Utilities	0.00201207
3230	City of Fredericksburg	0.01093999	3291	Milford Municipal Utilities	0.00000000
3106	City of Larchwood	0.00000000	3114	Montezuma Municipal Light & Power	0.00169701
3107	City of Lawler	0.00827412	3115	Mount Pleasant Municipal Utilities	0.00039714
3108	City of Lehigh	0.00195256	3293	Muscatine Municipal Utilities	0.00000000
3113	City of Marathon	*	3116	Neola Light & Water System	0.00000000
3311	City of Pella	0.00319208	3297	New Hampton Municipal Light Plant	0.00205982
3125	City of Renwick	0.00000000	3298	New London Municipal Utility	0.00279741
3129	City of Sergeant Bluff	*	3304	Ogden Municipal Utilities	0.00191340
3139	City of Westfield	0.00851102	3234	Onawa Municipal Utilities	0.00183795
3143	City of Woolstock	0.00000000	3117	Orange City Municipal Utilities	0.00153887
3236	Coggon Municipal Light Plant	0.00000000	3118	Orient Municipal Utilities	*
3237	Coon Rapids Municipal Utilities	0.00257929	3307	Osage Municipal Utilities	0.00031823
3242	Corning Municipal Utilities	0.00000000	3309	Panora Municipal Electric Utility	0.00060276
3080	Corwith Municipal Utilities	0.00000000	3119	Paton Municipal Utilities	0.00199708
3243	Danville Municipal Electric Utility	0.00000000	3120	Paullina Municipal Utilities	0.00928253
3081	Dayton Light & Power	0.00164376	3121	Pocahontas Municipal Utilities	0.00790559
3244	Denison Municipal Utilities	0.00159002	3122	Preston Municipal Utilities	0.04909769
3245	Denver Municipal Electric Utility	0.00628071	3315	Primghar Municipal Light Plant	0.00337281
3083	Durant Municipal Electric Plant	0.00000000	3123	Readlyn Municipal Utilities	0.00000000
3084	Dysart Municipal Utilities	0.00499732	3124	Remsen Municipal Utilities	*
3085	Earlville Municipal Utilities	*	3318	Rock Rapids Municipal Utilities	0.00389054
3086	Eldridge Electric & Water Utility	*	3126	Rockford Municipal Light Plant	0.00000000
3087	Ellsworth Municipal Utilities	0.00554590	3127	Sabula Municipal Utilities	0.00082083
3091	Fonda Municipal Electric	0.01128711	3128	Sanborn Municipal Light & Plant	0.00445377
3252	Fontanelle Municipal Utilities	0.00171707	3130	Shelby Municipal Utilities	*
3092	Forest City Municipal Utilities	0.00222753	3131	Sibley Municipal Utilities	0.00792454
3231	Glidden Municipal Electric Utility	0.00725419	3321	Sioux Center Municipal Utilities	0.00229977
3093	Gowrie Municipal Utilities	0.00000000	3324	Spencer Municipal Utilities	0.00279666
3256	Graettinger Municipal Light Plant	0.00129835	3132	Stanhope Municipal Utilities	0.01658634
3094	Grafton Municipal Utilities	0.02360275	3133	Stanton Municipal Utilities	0.00121154
3258	Grand Junction Municipal Utilities	*	3326	State Center Municipal Light Plant	*
3095	Greenfield Municipal Utilities	0.00276102	3327	Story City Municipal Electric Utility	0.00000000
3096	Grundy Center Light & Power	0.00116843	3134	Stratford Municipal Utilities	0.00497570
3232	Guttenberg Municipal Electric	0.00621147	3135	Strawberry Point Electric Utility	0.00129828
3263	Harlan Municipal Utilities	0.00264677	3136	Stuart Municipal Utilities	0.00222686
3097	Hartley Municipal Utilities	0.00032580	3328	Sumner Municipal Light Plant	0.00101880
3098	Hawarden Municipal Utility	0.01066762	3330	Tipton Municipal Utilities	*
3099	Hinton Municipal Electric/Water	0.00091236	3332	Traer Municipal Utilities	0.00247156
3267	Hopkinton Municipal Utilities	0.00000000	3337	Villisca Municipal Power Plant	0.00000000
3100	Hudson Municipal Utilities	0.01673563	3137	Vinton Municipal Utilities	0.00493684
3101	Independence Light & Power	0.00191012	3138	Wall Lake Municipal Utilities	0.00922598
3271	Indianola Municipal Utilities	0.00187966	3338	Waverly Light & Power	0.00497871
3102	Keosauqua Light & Power	0.00000000	3342	Webster City Municipal Utilities	0.00165810
3103	Kimballton Municipal Utilities	*	3345	West Bend Municipal Power Plant	0.00217232
3104	Lake Mills Municipal Utilities	0.00345873	3346	West Liberty Municipal Electric Util.	*

## REVENUE DEPARTMENT(cont'd)

3347	West Point Municipal Utility System	0.00000000
3140	Whittemore Municipal Utilities	*
3141	Wilton Municipal Light & Power	0.00000000
3351	Winterset Municipal Utilities	0.00045761
3142	Woodbine Municipal Utilities	0.00065837

\* No rate provided to the Department by the Municipal

5349	Winfield Municipal Gas	*
5066	Woodbine Gas	0.05827950

\* No rate provided to the Department by the Municipal

**ARC 3882B**2004 MUNICIPAL NATURAL GAS TRANSFER  
REPLACEMENT TAX RATES

CO. #	COMPANY	REPLACE- MENT TAX RATE
5021	Bedford Municipal Gas	0.10055119
5215	Brighton Gas	0.00000000
5023	Brooklyn Municipal Gas	0.00000000
5024	Cascade Municipal Gas	0.00000000
5025	Cedar Falls Municipal Gas	0.00694370
5022	City of Bloomfield	*
5026	City of Clearfield	0.00000000
5028	City of Everly	0.00000000
5029	City of Fairbank	0.00000000
5238	Coon Rapids Municipal Gas	0.00199893
5241	Corning Municipal Gas	0.00000000
5027	Emmetsburg Municipal Gas	0.03329775
5030	Gilmore City Municipal Gas	0.00000000
5031	Graettinger Municipal Gas	0.03055474
5032	Guthrie Center Municipal Gas	0.00000000
5033	Harlan Municipal Gas	0.08336623
5034	Hartley Municipal Gas	0.00495776
5035	Hawarden Municipal Gas	0.01353200
5036	Lake Park Municipal Gas	0.00613523
5275	Lamoni Municipal Gas	0.00620030
5037	Lenox Municipal Gas	0.35491763
5038	Lineville City Natural Gas	0.00000000
5039	Lorimor Municipal Gas	0.01185116
5281	Manilla Municipal Gas	0.01839931
5283	Manning Municipal Gas	0.02771733
5040	Montezuma Natural Gas	0.00000000
5041	Morning Sun Municipal Gas	0.00000000
5042	Moulton Municipal Gas	0.09462373
5306	Osage Municipal Gas	0.01673617
5043	Prescott Municipal Gas	*
5044	Preston Municipal Gas	0.17700201
5055	Remsen Municipal Gas	*
5317	Rock Rapids Municipal Gas	0.01186482
5056	Rolfe Municipal Gas	0.00000000
5057	Sabula Municipal Gas	0.00934816
5058	Sac City Municipal Gas	0.05150377
5059	Sanborn Municipal Gas	0.03085579
5060	Sioux Center Municipal Gas	0.01031250
5061	Tipton Municipal Gas	*
5067	Wall Lake Municipal Gas	0.00000000
5063	Waukee Municipal Gas	*
5340	Wayland Municipal Gas	0.00000000
5064	Wellman Municipal Gas	0.02087462
5344	West Bend Municipal Gas	0.02675661
5065	Whittemore Municipal Gas	*

**REVENUE DEPARTMENT[701]****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 421.14 and 422.68, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 42, “Adjustments to Computed Tax,” Chapter 52, “Filing Returns, Payment of Tax and Penalty and Interest,” and Chapter 58, “Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues,” Iowa Administrative Code.

These amendments are proposed as a result of 2004 Iowa Acts, Senate File 2290.

Item 1 rescinds subrule 42.2(10) and replaces it with a new subrule. The proposed new subrule reorganizes the information contained in the current subrule regarding the investment tax credit for individual income tax, and also provides that certain lease payments are now eligible in the computation of the investment tax credit. In addition, this subrule provides that all incentives provided under the enterprise zone program and new jobs and income program may be subject to repayment if the taxpayer does not meet the requirements of these programs.

Item 2 amends the implementation clause for rule 701—42.2(422).

Item 3 amends rule 701—42.17(15E) to provide, for individual income tax, that the eligible development business must be approved by the Iowa Department of Economic Development before March 17, 2004, since the eligible development business program was repealed as of March 17, 2004.

Item 4 amends subrule 42.19(2) and the implementation clause for rule 701—42.19(15) to provide that certain lease payments are eligible for the investment tax credit under the new capital investment program for individual income tax.

Item 5 amends subrule 52.10(2) to provide that certain lease payments are eligible in the computation of the investment tax credit. In addition, this subrule provides, for corporation income tax, that all incentives provided under the new jobs and income program may be subject to repayment if the taxpayer does not meet the requirements of the program.

Item 6 adopts new subrule 52.10(5) and amends the implementation clause for rule 701—52.10(15) to provide for a corporate tax credit for eligible businesses approved under the new jobs and income program for certain sales taxes paid by a third-party developer.

Item 7 amends rule 701—52.14(422) to provide that the corporate tax credit for certain sales taxes paid by a third-party developer does not apply to the enterprise zone program.

Item 8 amends rule 701—52.20(15E) to provide, for corporation income tax, that the eligible development business must be approved by the Iowa Department of Economic De-

## REVENUE DEPARTMENT[701](cont'd)

velopment before March 17, 2004, since the eligible development business program was repealed as of March 17, 2004. This is similar to the change in Item 3.

Item 9 amends subrule 52.22(2) to provide that certain lease payments are eligible for the investment tax credit under the new capital investment program for corporation income tax. This is similar to the change in Item 4.

Item 10 adopts new subrule 52.22(3) and amends the implementation clause for rule 701—52.22(15) to provide for a corporate tax credit for eligible businesses approved under the new capital investment program for certain sales taxes paid by a third-party developer.

Item 11 amends rule 701—58.9(15E) to provide, for franchise tax, that the eligible development business must be approved by the Iowa Department of Economic Development before March 17, 2004, since the eligible development business program was repealed as of March 17, 2004. This is similar to the change in Items 3 and 8.

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than January 10, 2005, to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 28, 2004. Such written comments should be directed to the Policy Section, Compliance Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Compliance Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 31, 2004.

These amendments are intended to implement Iowa Code chapters 15 and 15E as amended by 2004 Iowa Acts, Senate File 2290.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind subrule 42.2(10) and adopt the following **new** subrule in lieu thereof:

**42.2(10) Investment tax credit.**

a. General rule. An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible busi-

ness is available for businesses approved by the Iowa department of economic development under the new jobs and income program and the enterprise zone program. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received by the Iowa department of economic development on or after July 1, 1999, purchases of real property made in conjunction with the location or expansion of an eligible business, the cost of land and any buildings and structures located on the land will be considered to be new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken.

For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of ten years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by the individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

b. Investment tax credit—value-added agricultural products. For tax years beginning on or after July 1, 2001, an eligible business whose project primarily involves the production of value-added agricultural products may elect to receive a refund for all or a portion of an unused investment tax credit. For tax years beginning on or after July 1, 2001, but before July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol. For tax years beginning on or after July 1, 2003, an eligible business includes a cooperative described in Section 521 of the Internal Revenue Code which is not required to file an Iowa corporation income tax return.

Eligible businesses shall apply to the Iowa department of economic development for tax credit certificates between May 1 and May 15 of each fiscal year. Only those businesses that have completed projects before the May 1 filing date may apply for a tax credit certificate. The Iowa department of economic development will not issue tax credit certificates for more than \$4 million during a fiscal year. If applications are received for more than \$4 million, the applicants shall receive certificates for a prorated amount.

The Iowa department of economic development will issue tax credit certificates within a reasonable period of time. Tax credit certificates are valid for the tax year following project completion. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is



## REVENUE DEPARTMENT[701](cont'd)

claimed. The tax credit certificate shall not be transferred, except for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol for tax years beginning on or after January 1, 2002, or for a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return for tax years beginning on or after July 1, 2003.

For value-added agricultural projects, for a cooperative that is not required to file an Iowa income tax return because it is exempt from federal income tax, the cooperative must submit a list of its members and the share of each member's interest in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member on the list.

See subrule 52.10(4) for examples illustrating how this subrule is applied.

For tax years beginning on or after January 1, 2002, but before July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return and whose project primarily involves the production of ethanol may elect to transfer all or a portion of its tax credit to its members. For tax years beginning on or after July 1, 2003, a cooperative described in Section 521 of the Internal Revenue Code which is required to file an Iowa corporation income tax return may elect to transfer all or a portion of its tax credit to its members. The amount of tax credit transferred and claimed by a member shall be based upon the pro-rata share of the member's earnings in the cooperative. The Iowa department of economic development will issue a tax credit certificate to each member of the cooperative to whom the credit was transferred provided that tax credit certificates which total no more than \$4 million are issued during a fiscal year. The tax credit certificate must be attached to the tax return for the tax year during which the tax credit is claimed.

c. Repayment of credits. If an eligible business fails to maintain the requirements of the new jobs and income program or the enterprise zone program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new jobs and income program or the enterprise zone program because this is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this rule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

(1) One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

(2) Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

(3) Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

(4) Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

(5) Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

ITEM 2. Amend the implementation clause for rule **701—42.2(422)** as follows:

This rule is intended to implement Iowa Code Supplement section 15.333 *as amended by 2004 Iowa Acts, Senate File 2290*, Iowa Code section 422.10 as amended by 2004 Iowa Acts, Senate File 2296, and Iowa Code sections 422.11A, 422.12 and 422.12B.

ITEM 3. Amend rule **701—42.17(15E)**, first unnumbered paragraph, as follows:

An eligible development business must be approved by the Iowa department of economic development *prior to March 17, 2004*, and meet the qualifications of Iowa Code Supplement section 15E.193C. *Effective March 17, 2004, the eligible development business program is repealed.*

ITEM 4. Amend subrule **42.19(2)**, paragraph "a," and the implementation clause for rule **701—42.19(15)** as follows:

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or expansion of an eligible business. The percentage is equal to the amount provided in paragraph "b." New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs "e" and "j," purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

*For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.*

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability

## REVENUE DEPARTMENT[701](cont'd)

company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

This rule is intended to implement ~~2003 Iowa Acts, House File 677, sections 1 to 7, Iowa Code Supplement sections 15.381 to 15.384, 15.386 and 15.387 and Iowa Code section Supplement sections 15.333 as amended by 2003 Iowa Acts, House File 677, section 8 and 15.385 as amended by 2004 Iowa Acts, Senate File 2290.~~

ITEM 5. Amend subrule 52.10(2) as follows:

**52.10(2)** Investment tax credit. An investment tax credit of up to 10 percent of the new investment which is directly related to new jobs created by the location or expansion of an eligible business is available. The credit is available for machinery and equipment or improvements to real property placed in service after May 1, 1994. The credit is to be taken in the year the qualifying asset is placed in service. For business applications received on or after July 1, 1999, for purposes of the investment tax credit claimed under Iowa Code section 15.333, the cost of land and any buildings and structures located on the land will be considered to be a new investment which is directly related to new jobs for purposes of determining the amount of new investment upon which an investment tax credit may be taken.

*For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of ten years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.*

*If an eligible business fails to maintain the requirements of the new jobs and income program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the new jobs and income program because this is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.*

If the eligible business, within five years of purchase, sells, disposes of, razes, or otherwise renders unusable all or a part of the land, buildings, or other existing structures for which tax credit was claimed under this subrule, the income tax liability of the eligible business for the year in which all or part of the property is sold, disposed of, razed, or otherwise rendered unusable shall be increased by one of the following amounts:

a. One hundred percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within one full year after being placed in service.

b. Eighty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within two full years after being placed in service.

c. Sixty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within three full years after being placed in service.

d. Forty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within four full years after being placed in service.

e. Twenty percent of the investment tax credit claimed if the property ceases to be eligible for the tax credit within five full years after being placed in service.

Any credit in excess of the tax liability for the tax year may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, or an estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, or estate or trust.

ITEM 6. Amend rule **701—52.10(15)** by adopting the following new subrule and amending the implementation clause as follows:

**52.10(5)** Corporate tax credit—certain sales taxes paid by developer. For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, the eligible business may claim a corporate tax credit for certain sales taxes paid by a third-party developer.

a. Sales taxes eligible for the credit. The sales taxes paid by the third-party developer which are eligible for this credit include the following:

(1) Iowa sales and use tax for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

(2) Iowa sales and use tax paid for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center within the economic development area.

Any Iowa sales and use tax paid relating to intangible property, furniture and other furnishings is not eligible for the corporate tax credit.

b. How to claim the credit. The third-party developer must provide to the Iowa department of economic development the amount of Iowa sales and use tax paid as described in paragraph "a." The amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The Iowa department of economic development will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the Iowa department of economic development will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be attached to the taxpayer's income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment

## REVENUE DEPARTMENT[701](cont'd)

credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, enterprise zone program and new capital investment program cannot exceed \$500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the \$500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

This rule is intended to implement 2004 Iowa Acts, Senate File 2290, section 3; Iowa Code section 15.333 as amended by 2003 Iowa Acts, House File 684; 2004 Iowa Acts, Senate File 2290, ; and Iowa Code section 15.335.

ITEM 7. Amend rule 701—52.14(422) as follows:

**701—52.14(422) Enterprise zone tax credits.** An eligible business in an enterprise zone may take the following tax credits:

1. New jobs credit from withholding as provided in Iowa Code section 15.331 (see rule 701—52.8(422)).

2. Investment tax credit as provided in Iowa Code section 15.333 (see rule 701—52.10(15)). *However, the corporate tax credit for certain sales taxes paid by a developer, described in subrule 52.10(5), does not apply for the enterprise zone program.*

3. Research activities credit as provided in Iowa Code section 15.335 (see rule 701—52.10(15) for tax years ending after May 1, 1994, but prior to tax years beginning on or after January 1, 2000) and subrule 52.7(5) for the research credit for increasing research activities within a quality jobs enterprise zone for tax years beginning on or after January 1, 2000.

If an eligible business in an enterprise zone fails to maintain the requirements of the enterprise zone program, the taxpayer may be required to repay all or a portion of the tax incentives taken on Iowa returns. Irrespective of the fact that the statute of limitations to assess the taxpayer for repayment of the tax credits may have expired, the department may proceed to collect the tax incentives forfeited by failure to maintain the requirements of the enterprise zone program. This is because it is a recovery of an incentive, rather than an adjustment to the taxpayer's tax liability.

Effective July 1, 2003, eligible businesses in an enterprise zone may also be required to repay all or a portion of the tax incentives received on Iowa returns if the eligible business experiences a layoff of employees in Iowa or closes any of its facilities in Iowa.

ITEM 8. Amend rule **701—52.20(15E)**, first unnumbered paragraph, as follows:

An eligible development business must be approved by the Iowa department of economic development *prior to March 17, 2004*, and meet the qualifications of Iowa Code Supplement section 15E.193C. *Effective March 17, 2004, the eligible development business program is repealed.*

ITEM 9. Amend subrule **52.22(2)**, paragraph “a,” as follows:

a. General rule. An eligible business can claim an investment tax credit equal to a percentage of the new investment directly related to new jobs created by the location or

expansion of an eligible business. The percentage is equal to the amount provided in paragraph “b.” New investment directly related to new jobs created by the location or expansion of an eligible business includes the following:

(1) The cost of machinery and equipment, as defined in Iowa Code section 427A.1(1), paragraphs “e” and “j,” purchased for use in the operation of the eligible business. The purchase price shall be depreciated in accordance with generally accepted accounting principles.

(2) The purchase price of real property and any buildings and structures located on the real property.

(3) The cost of improvements made to real property which is used in the operation of the eligible business.

*For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, certain lease payments made by eligible businesses to a third-party developer will be considered to be new investment for purposes of computing the investment tax credit. The eligible business shall enter into a lease agreement with the third-party developer for a minimum of five years. The investment tax credit is based on the annual base rent paid to a third-party developer by the eligible business for a period not to exceed ten years. The total costs of the annual base rent payments for the ten-year period cannot exceed the cost of the land and the third-party developer's cost to build or renovate the building used by the eligible business. The annual base rent is defined as the total lease payment less taxes, insurance and operating and maintenance expenses.*

Any credit in excess of the tax liability for the tax period may be carried forward seven years or until used, whichever is the earlier.

If the business is a partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust electing to have the income taxed directly to an individual, an individual may claim the credit. The amount of the credit claimed by an individual must be based on the individual's pro-rata share of the individual's earnings of the partnership, S corporation, limited liability company, cooperative organized under Iowa Code chapter 501 and filing as a partnership for federal tax purposes, or estate or trust.

ITEM 10. Amend rule **701—52.22(15)** by adopting the following **new** subrule and amending the implementation clause as follows:

**52.22(3)** Corporate tax credit—certain sales taxes paid by developer. For eligible businesses approved by the Iowa department of economic development on or after March 17, 2004, the eligible business may claim a corporate tax credit for certain sales taxes paid by a third-party developer.

a. Sales taxes eligible for the credit. The sales taxes paid by the third-party developer which are eligible for this credit include the following:

(1) Iowa sales and use tax for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility within the economic development area.

(2) Iowa sales and use tax paid for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center within the economic development area.

Any Iowa sales and use tax paid relating to intangible property, furniture and other furnishings is not eligible for the corporate tax credit.

REVENUE DEPARTMENT[701](cont'd)

b. How to claim the credit. The third-party developer must provide to the Iowa department of economic development the amount of Iowa sales and use tax paid as described in paragraph "a." The amount of Iowa sales and use tax attributable to racks, shelving, and conveyor equipment must be identified separately.

The Iowa department of economic development will issue a tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for gas, electricity, water, or sewer utility services, goods, wares, or merchandise, or on services rendered to, furnished to or performed for a contractor or subcontractor and used in the fulfillment of a written contract relating to the construction or equipping of a facility. In addition, the Iowa department of economic development will also issue a separate tax credit certificate to the eligible business equal to the Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment to be used in a warehouse or distribution center.

The tax credit certificate shall contain the name, address, and tax identification number of the eligible business, along with the amount of the tax credit and the year in which the tax credit can be claimed. The tax credit certificate must be attached to the taxpayer's income tax return for the tax year for which the tax credit is claimed. Any tax credit in excess of the taxpayer's tax liability is refundable. In lieu of claiming the refund, the taxpayer may elect to have the overpayment credited to the tax liability for the following seven years or until it is used, whichever is the earlier.

For the tax credit certificate relating to Iowa sales and use tax paid by the third-party developer for racks, shelving, and conveyor equipment, the aggregate amount of tax credit certificates and tax refunds for Iowa sales and use tax paid for racks, shelving, and conveyor equipment to eligible businesses under the new jobs and income program, enterprise zone program and new capital investment program cannot exceed \$500,000 in a fiscal year. The requests for tax credit certificates or refunds will be processed in the order they are received on a first-come, first-served basis until the amount of credits authorized for issuance has been exhausted. If applications for tax credit certificates or refunds exceed the \$500,000 limitation for any fiscal year, the applications shall be considered in succeeding fiscal years.

This rule is intended to implement ~~2003 Iowa Acts, House File 677, sections 1 to 7, Iowa Code Supplement sections 15.381 to 15.384, 15.386 and 15.387; 2004 Iowa Acts, Senate File 2290, section 3; and Iowa Code section Supplement sections 15.333 as amended by 2003 Iowa Acts, House File 677, section 8 and 15.385 as amended by 2004 Iowa Acts, Senate File 2290.~~

ITEM 11. Amend rule **701—58.9(15E)**, first unnumbered paragraph, as follows:

An eligible development business must be approved by the Iowa department of economic development prior to March 17, 2004, and meet the qualifications of Iowa Code Supplement section 15E.193C. *Effective March 17, 2004, the eligible development business program is repealed.*

**ARC 3846B**

## 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, 307.12 and 321.180B, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 635, "Motorcycle Rider Education," Iowa Administrative Code.

The purpose of this proposed rule making is to allow equitable distribution of available funds for motorcycle rider education providers. The following changes are proposed:

- The per pupil reimbursement will be based on the amount of money available in the Motorcycle Rider Education Fund, less the administrative and instructor training costs, and will be distributed to sponsors based on the total number of students who complete the approved course.
- Claims for course development will be paid after the per pupil reimbursement claims are paid.
- The Department shall sponsor and fund instructor updates that are held in Iowa.
- The Department may approve funding assistance for additional motorcycle rider education trainers if the Department determines there is a need for additional trainers.
- Sponsors will no longer be able to apply for 50 percent matching funds to replace motorcycles used for training that are no longer fit for service.
- Instructors will no longer be able to apply for reimbursement for attending professional development seminars sponsored by other groups.
- Sponsors will no longer need to furnish the Department an audited statement, including supporting documentation, of eligible expenses incurred in providing the approved motorcycle rider education course.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

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 [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).
5. Be received by the Director's Staff Division no later than December 28, 2004.

A meeting to hear requested oral presentations is scheduled for Wednesday, January 5, 2005, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

## TRANSPORTATION DEPARTMENT[761](cont'd)

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 submitted to the Director's Staff Division at the address listed in this Notice no later than January 10, 2005.

These amendments are intended to implement Iowa Code chapter 321.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

Proposed rule-making actions:

ITEM 1. Amend paragraph **635.3(2)"f"** as follows:

f. After the year in which a license is granted, complete at least one state-sponsored or state-approved instructor refresher or update each calendar year. The refresher or update must be completed in Iowa every other year.

ITEM 2. Amend paragraph **635.3(3)"c,"** introductory paragraph, as follows:

c. Each January, the department shall review each MRE instructor's teaching activity and update/refresher completion. The department shall suspend the MRE license of an MRE instructor who fails to meet those licensing provisions. The suspension shall remain in effect until the individual has done one of the following:

ITEM 3. Amend paragraph **635.4(1)"e"** as follows:

e. Maintain a record of costs incurred in providing the approved course, including justification for these costs, and furnish an audited statement of this information to the department on forms provided by the department.

ITEM 4. Amend rule 761—635.5(321) as follows:

**761—635.5(321) Use of motorcycle rider education fund.** The motorcycle rider education fund may be used for the following purposes:

**635.5(1) Course development.** New or current sponsors may apply to the department for funds to establish delivery of the approved course at an unserved site. Current sponsors may apply for funds to expand delivery at an existing site.

a. and b. No change.

c. Payment to the sponsor for course development expenditures shall be on a cost-reimbursement basis and shall be made after claims under subrule 635.5(5) are paid.

~~**635.5(2) Motorcycle replacement.** Sponsors may apply to the department for up to 50 percent matching funds to replace training motorcycles no longer fit for service. Application for funds shall be on forms provided by the department. Departmental approval shall be based on the documented unavailability of loaner motorcycles in the geographical area, the number of students to be served, and the availability of moneys in the motorcycle rider education fund. Payment to a sponsor for the purchase of replacement motorcycles shall be on a cost-reimbursement basis.~~

**635.5(3) 635.5(2) Instructor preparation.** The department shall sponsor beginning instructor preparation courses.

a. An instructor preparation course is open to any individual who:

(1) No change.

(2) Submits documentation showing successful completion of the approved MRE course.

(3) (2) Submits verification from an approved sponsor of employment as an instructor of the approved course to be offered within the next 12 months.

b. No change.

c. Applications for enrollment and claims for tuition reimbursement shall be made on forms provided by the department.

~~**635.5(4) 635.5(3) Instructor refreshers and updates.** The department shall sponsor and fund instructor refreshers or updates held in Iowa. Instructor refreshers or updates shall be open to all state-licensed MRE instructors and instructor trainers. Instructor participation in department-approved professional development seminars sponsored by other groups may be funded based on the availability of moneys in the motorcycle rider education fund.~~

~~**635.5(5) 635.5(4) Instructor trainer preparation.**~~

a. An experienced, state-licensed MRE instructor may apply to the department for funding assistance on forms provided by the department if both the following occur:

(1) The instructor is accepted for enrollment in a nationally recognized instructor trainer preparation course approved by the department.

(2) The instructor who agrees to be an instructor trainer in a department-sponsored instructor preparation course within 12 months following successful completion of the instructor trainer preparation course may apply to the department for funding assistance on forms provided by the department.

b. The department may approve the application if the department determines there is a need for additional instructor trainers.

c. If the department approves the application, then all the following shall apply:

a. (1) Funding assistance is shall be limited to course tuition, travel, and subsistence (meals and lodging).

b. (2) Upon approval of the application, the department shall pay for course tuition and travel to the training site.

e. (3) Upon receipt by the department of evidence of successful completion accompanied by documentation of subsistence expenses incurred, the department shall reimburse the instructor for food and lodging based on the in-state reimbursement limits established for state employees by the department of revenue and finance administrative services.

d. (4) If the instructor fails to attend the training, the instructor must repay the department both the course tuition and the travel purchased.

e. (5) If the instructor fails to successfully complete the course, the instructor must repay the department one-half the course tuition and one-half the travel purchased. Meal and lodging expenses shall not be reimbursed.

~~**635.5(6) 635.5(5) Reimbursement of per pupil costs.** The department shall reimburse a sponsor for each student who completes its the approved course. Reimbursement shall be based on the sponsor's per pupil cost and contingent upon the availability of moneys in the motorcycle rider education fund.~~

a. No change.

b. A sponsor's per pupil cost is based on the sum of the sponsor's eligible expenses in providing the approved course, minus the total tuition received for the course, divided by the number of students who completed the course. The reimbursement will be based on a per pupil rate determined semiannually by the department. The rate will be based on the amount of moneys available in the motorcycle rider education fund, less the administrative and instructor training costs, and will be distributed to sponsors based on the total number of students who complete the approved course.

## TRANSPORTATION DEPARTMENT[761](cont'd)

~~c. Eligible expenses are limited to:~~

- ~~(1) Instructor and coordinator salaries and travel.~~
- ~~(2) Consumable instructional materials and supplies including helmets, eye protective devices and gloves.~~
- ~~(3) Range maintenance, which is limited to paint, crack filler, and minor surface repairs.~~
- ~~(4) Motorcycle operation, maintenance and storage costs.~~
- ~~(5) Documented program liability insurance expenditures.~~
- ~~(6) Program promotion costs.~~

~~d c. Claims for reimbursement shall include an audited statement, including supporting documentation, of eligible~~

~~expenses incurred and tuition received, a summary of courses taught with site, date, and instructor information, and a report for each class taught providing that provides the name, age, social security driver's license number and gender of each student. Claims for reimbursement shall be made submitted on forms provided by the department.~~

~~e d. Failure to provide complete cost, course, instructor and student information, failure to meet instructor certification and licensure requirements, or failure to meet prescribed instructor-student ratios shall result in the forfeiture of reimbursement for those courses and students involved.~~

**ARC 3849B****PUBLIC HEALTH  
DEPARTMENT[641]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 147A.4 and 2004 Iowa Acts, chapter 1034, the Department of Public Health adopts new Chapter 143, "Automated External Defibrillator Grant Program," Iowa Administrative Code.

The adoption of Chapter 143 implements 2004 Iowa Acts, chapter 1034, which establishes an automated external defibrillator grant program to provide matching funds to local boards of health, community organizations, or cities.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are contrary to the public interest because the funding for the grants is available for a limited time.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this chapter should be waived and this chapter should be made effective upon filing with the Administrative Rules Coordinator on November 10, 2004, as it confers a benefit upon those eligible organizations that are seeking to implement an early defibrillation program.

The State Board of Health adopted this chapter on November 10, 2004.

These rules are also published herein under Notice of Intended Action as **ARC 3850B** to allow public comment. This emergency filing permits the Department to implement the new provisions of the law.

These rules are intended to implement 2004 Iowa Acts, chapter 1034.

These rules became effective November 10, 2004.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following **new** chapter is adopted.

**CHAPTER 143****AUTOMATED EXTERNAL DEFIBRILLATOR  
GRANT PROGRAM**

**641—143.1(80GA,ch1034) Purpose.** An automated external defibrillator grant program is established to provide matching funds to eligible organizations that are seeking to implement an early defibrillation program. The objective of the grant program is to enhance and supplement the emergency response system in rural areas of the state by providing increased access to automated external defibrillator equipment by rural emergency and community personnel.

**641—143.2(80GA,ch1034) Definitions.** For the purposes of these rules, the following definitions shall apply:

"Automated external defibrillator" or "AED" means an external semiautomatic device that determines whether defibrillation is required.

"Community organization" means an educational institution, nonprofit organization, social service agency, philanthropic organization, or business, trade, or professional association.

"CPR" means cardiopulmonary resuscitation.

"Department" means the Iowa department of public health.

"Early defibrillation program" means a program established by the applicant to enhance and supplement the local EMS system.

"EMS" means emergency medical services.

"Local board of health" means a county, city, or district board of health.

"Rural" means a geographic area outside an urban or suburban setting with a population of less than 15,000 persons.

**641—143.3(80GA,ch1034) Application process.** To be eligible for an automated external defibrillator program grant, a local board of health, community organization or city shall:

**143.3(1)** Properly complete and submit the department's AED grant program application, which shall require an applicant to:

a. Demonstrate the ability to provide matching funds of 50 percent of the cost of the program;

b. Designate an individual who shall be responsible for the overall supervision of the early defibrillation program; and

c. Include a plan for increasing rural emergency or community personnel access to automated external defibrillator equipment; and

**143.3(2)** Notify local EMS service programs of the intent to establish an early defibrillation program.

**641—143.4(80GA,ch1034) Early defibrillation program.** A local board of health, community organization or city that receives an automated external defibrillator program grant shall:

**143.4(1)** Adopt and implement a policy that ensures establishment of an emergency plan of action; AED maintenance; personnel competency in the use of an AED and CPR; and a method for postevent analysis and staff debriefing.

**143.4(2)** Designate an individual who shall be responsible for the overall supervision of the early defibrillation program.

**143.4(3)** Submit an annual report to the department indicating the number of AED uses, patient outcomes and number of individuals trained.

**143.4(4)** Comply with the terms and conditions of the contract with the department for implementation of the program.

**641—143.5(80GA,ch1034) Review process.** The department shall establish a request for proposal and application process for eligible organizations to apply for an automated external defibrillator program grant. The department shall establish a process to review applications, which shall include receiving input from a review committee. The review process and review criteria shall be described in the request for proposals.

**641—143.6(80GA,ch1034) Appeals.** An applicant may appeal the denial of a properly submitted grant application. Appeals shall be governed by 641—176.8(135,17A).

These rules are intended to implement 2004 Iowa Acts, chapter 1034.

[Filed Emergency 11/10/04, effective 11/10/04]

[Published 12/8/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/8/04.

**ARC 3853B****ADMINISTRATIVE SERVICES  
DEPARTMENT[11]****Adopted and Filed**

Pursuant to the authority of Iowa Code Supplement section 8A.104, the Department of Administrative Services hereby adopts Chapter 111, "Disposal of State Personal Property," Iowa Administrative Code.

This new chapter establishes procedures for the disposal of state vehicles and other items of personal property under the control of the Director.

Notice of Intended Action was published in the April 28, 2004, Iowa Administrative Bulletin as **ARC 3315B**. A public hearing was held on May 18, 2004. No one attended the hearing, but written and oral comments were received concerning the scope and substance of the proposed rules.

Comments received on the Notice addressed proposed rule 111.2(8A) regarding disposal of surplus state personal property, notably seeking a process that would address the different customer needs regarding disposal of personal property located outside the Des Moines area.

Due to recently initiated discussions concerning procedures for the disposal of surplus property, rule 111.2(8A) and related definitions have not been adopted. In addition, while no comments were received on rule 111.3(8A), auction standards, or 111.4(8A), state vehicle auctions, these two rules have been combined in the adopted chapter.

This new chapter was adopted on November 12, 2004.

These rules will become effective on January 12, 2005.

These rules are intended to implement Iowa Code Supplement sections 8A.362(6) and 8A.365.

The following **new** chapter is adopted.

**CHAPTER 111****DISPOSAL OF STATE PERSONAL PROPERTY****11—111.1(8A) Definitions.**

"Agency" or "state agency" means a unit of state government, which is an authority, board, commission, committee, council, department, examining board, or independent agency as defined in Iowa Code section 7E.4, including but not limited to each principal central department enumerated in Iowa Code section 7E.5. However, "agency" or "state agency" does not mean any of the following:

1. The office of the governor or the office of an elective constitutional or statutory officer.

2. The general assembly or any office or unit under its administrative authority.

3. The judicial branch, as provided in Iowa Code section 602.1102.

4. A political subdivision of the state or its offices or units, including but not limited to a county, city, or community college.

"Auction" means a sale of property to the highest bidder. Auctions may be conducted electronically.

"Bid" means to offer a price to purchase an item.

"Bidder" means an individual who offers a price to purchase an item.

"Department" means the Iowa department of administrative services.

"Director" means the director of the Iowa department of administrative services or the director's designee.

"Highest bidder" means an individual who offers the highest price to purchase an item.

"State vehicle" means any vehicle registered to the state of Iowa, department of administrative services.

"Successful bidder" means an individual who was awarded the sale of an item as the highest bidder.

**11—111.2 Reserved.**

**11—111.3(8A) State vehicle auctions.** Public auctions of state vehicles under the control of the director shall be held in accordance with the standards set forth in this rule. Auctions may be conducted electronically.

**111.3(1) Eligibility to bid.** All bidders must register before making a bid. Bid numbers shall be available prior to and during the sale. All bidders must be 18 years of age or older to bid or purchase items at the auction.

**111.3(2) Settlement of purchases.** All sales are final. Final settlement may be made on the date of the sale, but must be completed by the date specified at the time of the sale. Removal of purchased items is at the expense of the successful bidder.

**111.3(3) Guarantees and warranties.** All items are sold to the highest bidder as is, with no guarantees or warranties.

**111.3(4) Sales tax.** Iowa sales tax and any applicable local option tax shall be collected at the auction, unless the item sold is a vehicle subject to registration.

**111.3(5) Public property.** Individuals tampering with or pilfering public property shall be subject to prosecution.

**111.3(6) Office hours.** Office hours for completing final settlement in person and taking possession of the purchased item are as specified in the terms and conditions of the sale.

**111.3(7) Announcements.** Any announcements, corrections or revisions of sale item descriptions or bid reservation policy announced by auction officials during the course of the sale shall take precedence over sale item descriptions and bid reservation policy in printed materials.

**111.3(8) Liability.** The state does not accept any responsibility or liability for damages done to person or property once the successful bidder takes possession of the purchased item. If the item is damaged while still in the possession of the state, upon the request of the successful bidder the state shall return the bidder's payment and void the transaction. The state of Iowa, department of administrative services, the auctioneers and their employees are not responsible for any accidents.

**111.3(9) State vehicle auctions—exceptions.** All used motor vehicles turned in to the director shall be disposed of by public auction, with the following exceptions:

a. In the case of a used motor vehicle of special design, the director may, instead of selling the vehicle at public auction, authorize the trade of the vehicle for another vehicle of similar design.

b. If a motor vehicle sustains damage and the cost of repair exceeds the wholesale value of the vehicle, the director may dispose of the vehicle by obtaining two or more written salvage bids and selling the vehicle to the highest responsible bidder.

**111.3(10) Advertisement of sales.** A public auction of state vehicles under the control of the director shall be advertised in a newspaper of general circulation as defined in Iowa Code section 618.3, subsection 1, in the area of the sale one week in advance of the sale. Public auctions will also be advertised on the department's Web site.

**111.3(11) Dates and times to examine vehicles.** Prospective buyers may examine a vehicle, start the engine and operate accessories on an auction vehicle during times and dates



## ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

specified in the terms and conditions of the sale, but are prohibited from over-revving the engine. Only those individuals aged 18 or older in possession of a valid operator's, chauffeur's, or commercial driver's license will be permitted to start engines and operate accessories of the auction vehicles. Under no condition will an individual other than personnel authorized by the department move a vehicle from its sale position.

**111.3(12)** Bid deposit. A successful bidder must make a \$200 deposit to hold an item for final payment. The deposit must be in the form of cash, traveler's check, postal money order, cashier's check, or a certified check from a savings and loan, credit union, or bank for each vehicle or other item purchased, made payable or endorsable to the State of Iowa. Political subdivisions are the exception to this rule and may use either a requisition or purchase order in lieu of the deposit.

**111.3(13)** Personal checks. No personal or company checks will be accepted for any \$200 deposit or final settlement for the purchase of a vehicle, unless accompanied by a letter from the issuing financial institution guaranteeing the amount of the check.

**111.3(14)** Bid default. Bidders are cautioned to bid only on those items the bidder is prepared to pay for and remove in accordance with the terms and conditions of the sale. All items awarded the highest bidder contractually belong to the highest bidder and must be paid for and removed within the time period allowed by the terms and conditions of the sale. The successful bidder agrees that, in the event the property is not paid for or removed within the prescribed period of time, the state of Iowa, at its election and upon notice of default, shall be entitled to retain or collect as liquidated damages a sum equal to the greater of either 20 percent of the total purchase price of the item on which the default has occurred or \$200 if the successful purchase price is less than \$1,000.

**111.3(15)** Settlement of vehicle purchases. Deposits may be forfeited if the balance due is not paid by the date specified at the time of the sale. A penalty of \$25 per workday per item will be assessed beginning at the close of business on the date specified at the time of the sale for any final settlement still owed to the state of Iowa. Payments must be received timely and in the terms specified in subrule 111.3(2). In the event that a final settlement is not concluded by the date specified at the time of the sale, deposits held against items sold will be forfeited to the state of Iowa.

**111.3(16)** Vehicle storage. Vehicles purchased at state auction may be stored on state of Iowa premises at no charge until the close of business on the date specified in the terms and conditions of the sale. Vehicles remaining after that time and date will be assessed a \$25 per calendar day storage fee, which must be paid in full prior to release of vehicles and title documents.

**111.3(17)** Title transfer. Title transfer is made at the time of final settlement. Use tax for vehicles subject to registration will be paid by the successful bidder to the county treasurer at the time of application for a vehicle license. The director or designee shall furnish an in-transit paper license plate to the successful bidder. Requests for duplicate titles will be processed for a fee of \$25 per title.

**111.3(18)** Window notations. Any mechanical defects or disrepair conditions that are determined by the director, or of which the director is made aware, are noted on the windshield of each vehicle. Obvious damage such as, but not limited to, body dents or rust perforation, tire wear, cracked windshields, or exhaust system deterioration may or may not be noted. Accident damage will be noted on the windshield if

any single accident caused repairs in excess of \$1,500 while the vehicle was owned and operated by the state of Iowa.

**111.3(19)** Vehicle proceeds. Proceeds from the sale of state vehicles sold by the director shall be deposited in the depreciation fund to the credit of the state agency that purchased the vehicle.

These rules are intended to implement Iowa Code Supplement sections 8A.362(6) and 8A.365.

[Filed 11/12/04, effective 1/12/05]

[Published 12/8/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/8/04.

**ARC 3860B****CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby adopts amendments to Chapter 38, "Sex Offender Management and Treatment," Iowa Administrative Code.

These amendments ensure that the administrative rules are consistent with recent statutory changes made to the Iowa sex offender registry process, 2004 Iowa Acts, chapter 1175, division XXV. For purposes of the Sex Offender Registry, state agencies will no longer assess the risk that any particular offender will reoffend. While Sex Offender Registry risk assessments may have provided potentially valuable information, tying the nature of public information to the outcome of such a risk assessment has denied the general public access to a comprehensive list of offenders, all of whom have publicly been convicted of offenses triggering the registration process and all of whom have been afforded the opportunity to challenge the determination that they were required to register. The Department of Corrections assists with the processing of offenders required to register information with the Department of Public Safety, pursuant to Iowa Code chapter 692A, commonly referred to as the Iowa Sex Offender Registry.

Prior to May 17, 2004, legislation limited the Department of Public Safety to providing public notification via the Iowa sex offender Web site solely for offenders deemed to be "at risk" to the community. This risk determination was made through the use of a sex offender risk assessment process mutually agreed upon by the Department of Corrections, Department of Public Safety, and the Department of Human Services. Under the new Act, all sex offenders, with one exception for an offender who at the time of the offense was under 20 years of age and who violated Iowa Code section 709.4, subsection 2, paragraph "c," subparagraph (4), can be placed on the Iowa sex offender Web site, and therefore an assessment process is no longer required to be conducted. These amendments remove the reference in the administrative rules to the definitions, processes, appeals, and records maintenance related to the sex offender risk assessments. These amendments do not provide for waivers in specified situations because of the need for consistency with the existing law.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 15, 2004, as **ARC 3651B**. A public hearing was held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections. No one attended the public

## CORRECTIONS DEPARTMENT[201](cont'd)

hearing and no oral or written testimony was received. These amendments are identical to those published under Notice.

These amendments were approved during the November 5, 2004, meeting of the Board of Corrections.

These amendments will become effective on January 12, 2005.

These amendments are intended to implement Iowa Code chapter 692A as amended by 2004 Iowa Acts, chapter 1175, division XXV.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [38.2, 38.3] is being omitted. These amendments are identical to those published under Notice as **ARC 3651B**, IAB 9/15/04.

[Filed 11/17/04, effective 1/12/05]  
[Published 12/8/04]

[For replacement pages for IAC, see IAC Supplement 12/8/04.]

**ARC 3859B****CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby adopts amendments to Chapter 42, "Probation Services," Iowa Administrative Code.

These amendments update language on the auditing system used for judicial district departments of correctional services. Language regarding supervision fees was stricken in compliance with Iowa Code section 905.14(3).

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 15, 2004, as **ARC 3652B**. A public hearing was held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections. No one attended the public hearing and no oral or written testimony was received. The Board members requested a nonsubstantive change in the use of the term "LSI-R." The first use of the term in subrule 42.1(4) is now explained as "Level of Service Inventory-Revised."

These amendments were approved during the November 5, 2004, meeting of the Board of Corrections.

These amendments will become effective on January 12, 2005.

These amendments are intended to implement Iowa Code chapters 905 and 907 and sections 908.11 and 910.5.

The following amendments are adopted.

ITEM 1. Rescind subrule 42.1(4) and adopt the following **new** subrule:

**42.1(4)** The district department shall have written policies and procedures which ensure that a case auditing system is developed and utilized according to established auditing standards which shall include a Level of Service Inventory-Revised (LSI-R), CMC/Jesness and Case File Audit System. The district department shall use the statewide case management system to ensure that offender risk and criminogenic needs are identified and addressed in an effort to lower risk and reduce victimization. The system should be designed to focus the majority of resources on moderate- and high-risk

offenders and shall include the following elements: ongoing risk and need assessment, responsivity, case planning, case plan follow-up and documentation, transfer of records, staff training, and quality assurance. Districts shall ensure that all case management staff, i.e., staff whose job duties include administering the LSI-R or using the LSI-R to develop case plans, become certified to administer and score the LSI-R.

ITEM 2. Amend subrule 42.1(16) as follows:

**42.1(16)** The district department shall have written policies and procedures governing the collection of supervision enrollment fees for persons who receive additional supervisions. ~~Fees shall be based on the offense class of the most serious offense for which the person is supervised. Fees shall not be based on an accumulation of additional supervisions.~~

[Filed 11/17/04, effective 1/12/05]  
[Published 12/8/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/8/04.

**ARC 3858B****CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby adopts amendments to Chapter 43, "Residential Facilities," Iowa Administrative Code.

These amendments update language on the auditing system used for judicial district departments of correctional services.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 15, 2004, as **ARC 3653B**. A public hearing was held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections. No one attended the public hearing and no oral or written testimony was received. The Board members requested a nonsubstantive change in the use of the term "LSI-R." The first use of the term in subrule 43.1(19) is now explained as "Level of Service Inventory-Revised."

These amendments were approved during the November 5, 2004, meeting of the Board of Corrections.

These amendments will become effective on January 12, 2005.

These amendments are intended to implement Iowa Code chapters 905 and 907 and sections 908.11 and 910.5.

The following amendments are adopted.

Rescind subrules **43.1(19)** and **43.1(20)** and adopt the following **new** subrule:

**43.1(19)** The district department shall have written policies and procedures which ensure that a case auditing system is developed and utilized according to established auditing standards which shall include a Level of Service Inventory-Revised (LSI-R), CMC/Jesness and Case File Audit System. The district department shall use the statewide case management system to ensure that offender risk and criminogenic needs are identified and addressed in an effort to lower risk and reduce victimization. The system should be designed to focus the majority of resources on moderate- and high-risk offenders and shall include the following elements: ongoing risk and need assessment, responsivity, case planning, case

## CORRECTIONS DEPARTMENT[201](cont'd)

plan follow-up and documentation, transfer of records, staff training, and quality assurance. Districts shall ensure that all case management staff, i.e., staff whose job duties include administering the LSI-R or using the LSI-R to develop case plans, become certified to administer and score the LSI-R.

[Filed 11/17/04, effective 1/12/05]  
[Published 12/8/04]

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**ARC 3857B****CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby adopts amendments to Chapter 44, "Work Release," Iowa Administrative Code.

These amendments update language on the auditing system used for judicial district departments of correctional services.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 15, 2004, as **ARC 3654B**. A public hearing was held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections. No one attended the public hearing and no oral or written testimony was received. The Board members requested a nonsubstantive change in the use of the term "LSI-R." The first use of the term in paragraph 44.1(5)"c" is now explained as "Level of Service Inventory-Revised."

These amendments were approved during the November 5, 2004, meeting of the Board of Corrections.

These amendments will become effective on January 12, 2005.

These amendments are intended to implement Iowa Code chapters 905 and 907 and sections 908.11 and 910.5.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [44.1, 44.6, 44.9] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3654B**, IAB 9/15/04.

[Filed 11/17/04, effective 1/12/05]  
[Published 12/8/04]

[For replacement pages for IAC, see IAC Supplement 12/8/04.]

**ARC 3856B****CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby adopts amendments to Chapter 45, "Parole," Iowa Administrative Code.

These amendments update language on the auditing system used for judicial district departments of correctional services and other nontechnical updates. Language regarding supervision fees was stricken in compliance with Iowa Code section 905.14(3).

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 15, 2004, as **ARC 3655B**. A public hearing was held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections. No one attended the public hearing and no oral or written testimony was received. The Board members requested a nonsubstantive change in the use of the term "LSI-R." The first use of the term in paragraph 45.1(2)"b" is now explained as "Level of Service Inventory-Revised."

These amendments were approved during the November 5, 2004, meeting of the Board of Corrections.

These amendments will become effective on January 12, 2005.

These amendments are intended to implement Iowa Code chapters 905 and 907 and sections 908.11 and 910.5.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [45.1, 45.7, Ch 45 impl. clause] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3655B**, IAB 9/15/04.

[Filed 11/17/04, effective 1/12/05]  
[Published 12/8/04]

[For replacement pages for IAC, see IAC Supplement 12/8/04.]

**ARC 3855B****CORRECTIONS DEPARTMENT[201]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 904.108, the Department of Corrections hereby adopts amendments to Chapter 47, "OWI Programs," Iowa Administrative Code.

These amendments provide for nontechnical updates. Language regarding supervision fees was stricken in compliance with Iowa Code section 905.14(3).

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 15, 2004, as **ARC 3656B**. A public hearing was held on October 5, 2004, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections. No one attended the public hearing and no oral or written testimony was received. These amendments are identical to those published under Notice.

These amendments were approved during the November 5, 2004, meeting of the Board of Corrections.

These amendments will become effective on January 12, 2005.

These amendments are intended to implement Iowa Code chapters 905 and 907 and sections 908.11 and 910.5.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [47.1 to 47.4] is being omitted. These

CORRECTIONS DEPARTMENT[201](cont'd)

amendments are identical to those published under Notice as **ARC 3656B**, IAB 9/15/04.

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[For replacement pages for IAC, see IAC Supplement 12/8/04.]

## ARC 3877B

### EDUCATION DEPARTMENT[281]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby adopts amendments to Chapter 43, "School Transportation," Iowa Administrative Code.

The amendments update the rules governing the school bus driver's authorization in accordance with statutory language in Iowa Code sections 285.3, 285.8 and 321.376.

A public hearing was held on November 2, 2004, and no written, oral or electronic comments were received. These amendments are identical to those published on October 13, 2004, in the Iowa Administrative Bulletin as **ARC 3711B**.

These amendments are intended to implement Iowa Code sections 285.3, 285.8 and 321.376.

These amendments will become effective January 12, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 43] is being omitted. These amendments are identical to those published under Notice as **ARC 3711B**, IAB 10/13/04.

[Filed 11/17/04, effective 1/12/05]  
[Published 12/8/04]

[For replacement pages for IAC, see IAC Supplement 12/8/04.]

## ARC 3870B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Adopted and Filed Without Notice

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 60, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 62, "Effluent and Pretreatment Standards: Other Effluent Limits or Prohibitions," and Chapter 63, "Monitoring, Analytical and Reporting Requirements," Iowa Administrative Code.

The purpose of these amendments is to update references to federal effluent and pretreatment standards and associated analytical methods. References to federal effluent and pretreatment standards found in rules 62.4(455B) and 62.5(455B) are amended to reflect updates to 40 Code of Federal Regulations (CFR). The change to rule 60.2(455B)

updates the definition of "Act" to include amendments to the Water Pollution Control Act through July 1, 2004. The change to subrule 63.1(1) updates the reference to the latest federally approved methods for the analysis of wastewater samples.

There have been no amendments to the Clean Water Act or to federal toxic effluent standards, rule 62.5(455B), since these rules were last updated in 2003. EPA approved a new analytical method for measuring certain bacteria in lakes, rivers and streams in July 2003. Effluent and pretreatment standards applicable to centralized waste treatment facilities originally adopted in 2000 were amended in December 2003. These amendments deleted standards for several pollutants in several different subcategories and increased the standard for one pollutant (BOD<sub>5</sub>) for facilities subject to the multiple wastestreams subcategory. EPA also amended standards applicable to pharmaceutical manufacturing facilities to correct printing errors in the July 1, 2003, CFR.

In accordance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary. Under rule 62.2(455B), the Commission has determined previously that good cause exists for exempting from the notice and public participation requirements of Iowa Code section 17A.4(1) the adoption by reference of certain federal effluent and pretreatment standards. The Commission found that public participation is unnecessary since the Commission must adopt effluent and pretreatment standards at least as stringent as the enumerated promulgated federal standards in order to have continued approval of the Environmental Protection Agency (EPA) of the Department's NPDES program. Iowa Code section 455B.173(3) requires that the effluent and pretreatment standards adopted by the Commission not be more stringent than the enumerated promulgated federal standards. The Commission also found that public participation is unnecessary when updating the reference to approved methods for analysis because these methods are required by EPA to be used to implement federal effluent and pretreatment standards.

The Commission adopted these amendments on November 15, 2004.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

These amendments may have an impact upon small businesses.

These amendments will become effective January 12, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code Supplement § 17A.4(3) will be available at <http://www.legis.state.ia.us/IAC.html> or at (515)281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are adopted.

ITEM 1. Amend rule **567—60.2(455B)**, definition of "Act," to read as follows:

"Act" means the Federal Water Pollution Control Act as amended through July 1, 2003 2004, 33 U.S.C. §1251 et seq.

ITEM 2. Amend rule 567—62.4(455B), introductory paragraph, to read as follows:

**567—62.4(455B) Federal effluent and pretreatment standards.** The federal standards, 40 Code of Federal Regulations (CFR), revised as of July 1, 2003 2004, are applicable to the following categories:

ITEM 3. Amend rule 567—62.5(455B) to read as follows:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

**567—62.5(455B) Federal toxic effluent standards.** The following is adopted by reference: 40 CFR Part 129, revised as of July 1, 2003 2004.

ITEM 4. Amend subrule **63.1(1)**, paragraph “a,” to read as follows:

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, revised as of July 1, 2003 2004.

[Filed Without Notice 11/17/04, effective 1/12/05]  
[Published 12/8/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/8/04.

## ARC 3867B

### NATURAL RESOURCE COMMISSION[571]

#### Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 27, “Lands and Waters Conservation Fund Program,” Iowa Administrative Code.

The amendments accomplish the following:

1. Update the acronym reference to LWCF (Land and Waters Conservation Fund) throughout the chapter.
2. Clarify language for the LWCF assistance ceiling and establish SCORP as the acronym for the state comprehensive outdoor recreation plan.
3. Clarify language as to when the applications are due each year.
4. Change the make-up of the review committee to include a representative from county conservation boards and a representative from cities.
5. Add a new bonus point category for recycled content materials for local and state project applications.
6. Rescind subrule 27.6(5), which states that state grant applications will be returned if not selected.
7. Change the reference to “League of Municipalities” to “League of Cities.”
8. Insert language in rule 27.11(456A) specifying time periods for initiating projects which are approved by an administering federal agency.
9. Rescind the existing subrule regarding project billing frequency and insert a new subrule allowing for no more than two project billings plus a final project billing.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 29, 2004, as **ARC 3706B**. No public comments were received, and no changes have been made to the Notice.

The amendments are intended to implement Iowa Code sections 456A.27, 456A.28, 456A.29, 456A.30, 456A.31, 456A.32, 456A.33, 456A.34 and 456A.35.

These amendments will become effective January 12, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [amendments to Ch 27] is being omitted. These amendments are identical to those published under Notice as **ARC 3706B**, IAB 9/29/04.

[Filed 11/17/04, effective 1/12/05]  
[Published 12/8/04]

[For replacement pages for IAC, see IAC Supplement 12/8/04.]

## ARC 3866B

### NATURAL RESOURCE COMMISSION[571]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 51, “Game Management Areas,” Iowa Administrative Code.

These rules establish regulations for management and public use of game management areas. The amendment establishes time limits for camping on game management areas and gives the Department the authority to post more restrictive regulations where conditions warrant.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 1, 2004, as **ARC 3623B**. A public hearing was held on September 21, 2004. No one attended the hearing, and no comments were received on the proposed amendment. The only change from the Notice of Intended Action was that the period of time that camping is allowed was changed from 2 to 14 days of consecutive use unless otherwise posted.

This amendment is intended to implement Iowa Code sections 481A.5, 481A.6, 481A.8 and 481A.39.

This amendment shall become effective January 12, 2005. The following amendment is adopted.

Amend 571—Chapter 51 by adopting the following **new** rule:

**571—51.11(481A) Camping restrictions.** Primitive camping is allowed on all game management areas for a period not to exceed 14 days of consecutive use, unless specific restrictions are posted on site. The department may prohibit or restrict camping at any game management area by the posting of signs stating the applicable restrictions. Where posted, camping shall be prohibited within 100 yards of public parking lots, boat ramps, fishing jetties and other public use facilities.

[Filed 11/17/04, effective 1/12/05]  
[Published 12/8/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/8/04.

**ARC 3868B****NATURAL RESOURCE  
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

The amendments accomplish the following:

1. Add the newest state park, Banner Lakes at Summer-set State Park, to the list of state parks in rule 571—61.2(461A).

2. Change the language in 61.3(5) to clarify that campers must vacate the "park" rather than the "area" for three days before returning. There are a few parks that have more than one campground within close proximity to each other which created confusion for the public.

3. Increase the cabin rental fees at Pine Lake State Park to be consistent with the rental fees for similar cabins at other state parks.

4. Establish new fees for the new camping cabins at Brushy Creek State Recreation Area and Honey Creek State Park.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 29, 2004, as **ARC 3708B**. One public comment was received. One minor change to the Notice of Intended Action resulted from the public comment. In paragraph 61.3(5)"g," a change was made to include the words "recreation area" in addition to the word "park" because there are two different "park" designations within the state's park system, and both designations have campgrounds. The intent was to cover all campgrounds. The paragraph now reads as follows:

"g. Campers shall vacate the campground or register for the night prior to 4 p.m. daily. Registration can be for more than 1 night at a time but not for more than 14 consecutive nights. All members of the camping party must vacate the state park campground after the fourteenth night and may not return to the state park or recreation area until a minimum of 3 nights has passed. All equipment must be removed from the site at the end of each stay. The 14-night limitation shall not apply to volunteers working under a department of natural resources program."

The amendments are intended to implement Iowa Code sections 461A.3, 461A.47, 461A.49 and 461A.57.

These amendments will become effective January 12, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [61.2, 61.3(5)"g," 61.4(1)"a"] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3708B**, IAB 9/29/04.

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[Published 12/8/04]

[For replacement pages for IAC, see IAC Supplement 12/8/04.]

**ARC 3869B****NATURAL RESOURCE  
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby adopts amendments to Chapter 64, "Metal Detectors Use in State Areas," Iowa Administrative Code.

The amendments accomplish the following:

1. Clarify the definition of a beach or beach area.

2. Change the areas where metal detector use is allowed to include only designated beaches and drained lakes.

3. Increase the number of hours metal detectors may be used on beach areas during the main recreation season.

4. Change when a metal detector may be used on a drained lake to take into account archaeological resources.

5. Add a provision to allow metal detector use for archaeological and scientific studies.

6. Change the Iowa Code reference for found items to reflect the current number.

7. Clarify language to require written approval for an owner to use a metal detector to search for lost items.

8. Clarify language regarding digging limitations and restoration to reflect the type of tool being used.

9. Clarify existing language regarding disposal of litter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 29, 2004, as **ARC 3707B**. Three public comments were received. A testimonial was received in support of the proposed amendments. Other comments regarding the Notice of Intended Action included wanting a permit system in place for nonresidents, having a permit system for all metal detector users, allowing more time on designated beach areas from May 22 to September 7, clarifying what is meant by a drained lake, addressing signage, and allowing metal detectors to be used in mowed areas including playgrounds.

The following changes from the Notice are being made based on staff review and public comments:

1. Use of metal detectors will be allowed on designated beach areas until 11 a.m. (instead of 10 a.m.) from May 22 to September 7.

2. Subrule 64.2(2) is changed to clarify that "drained" in reference to artificial lakes also includes when the water level is lowered for any other reason (i.e., temporary drawdown, drought, dam failure, etc.).

These amendments are intended to implement Iowa Code sections 461A.3 and 461A.35.

These amendments will become effective January 12, 2005.

The following amendments are adopted.

ITEM 1. Amend the parenthetical implementation statutes in each rule number in **571—Chapter 64** by striking "111" and inserting "461A."

ITEM 2. Amend rule **571—64.1(461A)**, definition of "beach" or "beach area," as follows:

"Beach" or "beach area" means that portion of state parks or recreation areas designated for swimming activity including the sand, a 200-foot buffer of land surrounding the sand or a designated area which is fenced in, and the water area contiguous to the beach as marked by swim buoys or swim lines.

## NATURAL RESOURCE COMMISSION[571](cont'd)

ITEM 3. Rescind rule 571—64.2(461A) and adopt the following **new** rule:

**571—64.2(461A) Use areas.** Metal detector use in state parks and recreation areas is prohibited except in the following areas:

**64.2(1) Designated beach areas.** From May 22 to September 7 each year, metal detectors may be used on designated beach areas from 4 a.m. to 11 a.m. each day. From September 8 to May 21 each year, metal detectors may be used on designated beach areas during the hours established in 571—61.1(461A).

**64.2(2) Drained lakes.** When an artificial lake has been drained or the water level lowered for any reason, metal detector use may be allowed during the hours established in 571—61.1(461A) only after the lake bed has been thoroughly surveyed for archaeological resources and a survey report has been completed and approved by the state historic preservation office.

ITEM 4. Rescind rule 571—64.3(461A) and adopt the following **new** rule:

**571—64.3(461A) Archaeological/scientific studies.** When the use of a metal detector may support an archaeological or scientific study, a permit may be issued by the manager in charge of the property. Review of all permit applications shall be coordinated with the state historic preservation officer and the state archaeologist. The DNR shall take the state historic preservation officer's and the state archaeologist's views into account before acting upon the issuance of a permit.

ITEM 5. Rescind rule **571—64.4(461A)** and renumber rules **571—64.5(461A)** to **571—64.9(461A)** as **571—64.4(461A)** to **571—64.8(461A)**.

ITEM 6. Amend renumbered rule 571—64.4(461A) as follows:

**571—64.4(461A) Found items.** All items found are subject to the provisions of Iowa Code chapter 644 556F.

ITEM 7. Amend renumbered rule 571—64.5(461A), introductory paragraph, as follows:

**571—64.5(461A) Lost item search by owner.** An owner of lost property may use a metal detector to search for that item in an area where such use is prohibited by ~~64.3(461A)~~ under the following conditions.

ITEM 8. Amend renumbered subrule 64.5(1) as follows:

**64.5(1) Approval** *Written approval* has been granted by the director of the department of natural resources or designee.

ITEM 9. Amend renumbered subrule 64.7(1) as follows:

**64.7(1)** ~~In recovering items located below the ground, the earth is not to be unduly disturbed with a person shall not unduly disturb the earth and shall limit all excavations limited to less than three inches square when using probes and ten inches in diameter when using sand scoops or sieves.~~

ITEM 10. Amend renumbered rule 571—64.8(461A) as follows:

**571—64.8(461A) Disposal of litter.** Persons using metal detectors shall wear or carry a litter apron or bag, and all litter *that is recovered shall* be disposed of in approved trash receptacles.

[Filed 11/17/04, effective 1/12/05]

[Published 12/8/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/8/04.

**ARC 3865B****NATURAL RESOURCE  
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby adopts new Chapter 79, "Fish Stocking Procedures and Fees for Private Waters," Iowa Administrative Code.

Iowa Code section 481A.78 authorizes the Commission, after investigation of waters to determine their suitability as to size, depth, living conditions for fish, and management, to provide a breeding stock of fish at the request of the owner of a privately owned farm pond. The new chapter defines procedures and fees for the stocking of private waters to assist landowners in their efforts to provide quality angling to fellow Iowans.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 29, 2004, as **ARC 3709B**. A public hearing was held on October 22, 2004. No comments were received at the public hearing or in writing. There are no changes from the Notice.

These rules are intended to implement Iowa Code sections 456A.24 and 481A.78.

These rules will become effective on January 12, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 79] is being omitted. These rules are identical to those published under Notice as **ARC 3709B**, IAB 9/29/04.

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[For replacement pages for IAC, see IAC Supplement 12/8/04.]

**ARC 3864B****NATURAL RESOURCE  
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby adopts new Chapter 90, "Aquatic Invasive Species," Iowa Administrative Code.

## NATURAL RESOURCE COMMISSION[571](cont'd)

The 2004 General Assembly amended the Eurasian Watermilfoil statute to prevent the introduction and spread of all aquatic invasive plants and animals into and within the state. The proposed chapter establishes a list of prohibited aquatic invasive species, restricts the introduction, sale, possession, and transportation of these species, and establishes methods for prohibiting activities in and identifying waterbodies infested with these species.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 1, 2004, as **ARC 3627B**. A public hearing was held on September 22, 2004. No public comments were received. The only change from the Notice of Intended Action is the addition of new paragraph "g" in 90.3(1) to clarify that anglers may possess aquatic invasive species that were caught and immediately killed. Paragraph "g" reads as follows:

"g. When an individual angler possesses a species that has been caught and immediately killed."

These rules are intended to implement Iowa Code section 456A.37 as amended by 2004 Iowa Acts, House File 2357.

These rules shall become effective January 12, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 90] is being omitted. With the exception of the change noted above, these rules are identical to those published under Notice as **ARC 3627B**, IAB 9/1/04.

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[Published 12/8/04]

[For replacement pages for IAC, see IAC Supplement 12/8/04.]

**ARC 3863B****NATURAL RESOURCE  
COMMISSION[571]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 455A.5(6), the Natural Resource Commission hereby amends Chapter 98, "Wild Turkey Spring Hunting," Iowa Administrative Code.

Chapter 98 sets forth rules for hunting wild turkeys during the spring and includes season dates, bag limits, possession limits, shooting hours, areas open to hunting, licensing procedures, means and method of take, and transportation tag requirements. These amendments establish a youth hunting season for residents and clarify tagging requirements.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 1, 2004, as **ARC 3621B**. No one attended the public hearing held on September 21, 2004. Five written comments were received: One commenter supported the season as proposed, two commenters wanted the season to be longer, and two commenters wanted to allow hunters younger than 12 years old to participate. The only change from the Notice of Intended Action was to change subrule 98.7(2) to lengthen the season to three days. This subrule now reads as follows:

"**98.7(2)** Youth season dates. The youth turkey hunting license shall be valid during the Friday, Saturday and Sunday immediately before the first turkey hunting period."

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48 and 483A.7.

These amendments shall become effective January 12, 2005.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [98.4, 98.7, 98.15] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 3621B**, IAB 9/1/04.

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[For replacement pages for IAC, see IAC Supplement 12/8/04.]

**ARC 3852B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology Examiners hereby amends Chapter 240, "Licensure of Psychologists," Iowa Administrative Code.

This amendment amends the requirements for the accreditation of educational programs for licensure.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 1, 2004, as **ARC 3615B**. A public hearing was held on September 22, 2004, from 10 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Comments were received relating to the need to recognize other credentialing services that provide appropriate investigative resources to verify programs similar to the American Psychological Association (APA) and the Canadian Psychological Association (CPA). In addition, comments were received regarding the need to include some provision for grandfathering for those persons who have already begun their training in nonaccredited programs.

The Board modified the amendment in response to public comment. The Board added an accrediting body that includes the groups of programs not receiving APA or CPA accreditation. The Board also added a time frame that the Board felt would allow those currently enrolled in a nonaccredited program to either complete degree requirements or make alternative arrangements to comply with rule 645—240.3(154B).

This amendment was adopted by the Board of Psychology Examiners on November 12, 2004.

This amendment will become effective January 12, 2005.

This amendment is intended to implement Iowa Code chapters 147, 154B and 272C.

The following amendment is adopted.

Re-number subrule **240.3(3)** as **240.3(4)** and adopt the following new subrule 240.3(3):

**240.3(3)** As of January 1, 2006, at the time of an applicant's graduation:

a. The program from which the doctoral degree in psychology is granted must be:

(1) Accredited by the American Psychological Association; or

(2) Accredited by the Canadian Psychological Association; or



## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(3) Designated by the Association of State and Provincial Psychology Boards (ASPPB)/National Register Designation Project as a doctoral program in psychology; or

b. The applicant must hold a specialty diploma by examination from the American Board of Professional Psychology.

[Filed 11/12/04, effective 1/12/05]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/8/04.

**ARC 3851B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Psychology Examiners hereby amends Chapter 240, "Licensure of Psychologists," Iowa Administrative Code.

This amendment amends licensure endorsement rules relating to required certification. The amendment removes a date that is no longer applicable to licensure by endorsement of doctoral level practitioners.

Notice of Intended Action was published in the Iowa Administrative Bulletin on July 21, 2004, as **ARC 3536B**. A public hearing was held on August 10, 2004, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. No changes were made to the amendment published under Notice.

This amendment was adopted by the Board of Psychology Examiners on November 12, 2004.

This amendment will become effective January 12, 2005.

This amendment is intended to implement Iowa Code chapters 147, 154B and 272C.

The following amendment is adopted.

Amend subrule **240.10(5)**, paragraph "b," subparagraph (2), as follows:

(2) Current credentialing at the doctoral level as a Health Service Provider in Psychology by the National Register of Health Service Providers in Psychology ~~that was granted after December 31, 1981.~~

[Filed 11/12/04, effective 1/12/05]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/8/04.

**ARC 3845B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Social Work Examiners amends Chapter 280, "Licensure of Social Workers," Iowa Administrative Code.

The amendment requires licensees to make supervisor termination evaluations available to the Board upon request instead of automatically submitting the evaluations to the Board.

Notice of Intended Action was published in the Iowa Administrative Bulletin on September 1, 2004, as **ARC 3618B**. A public hearing was held on September 22, 2004, from 1 to 2 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. No changes were made to the amendment published under Notice.

This amendment was adopted by the Board of Social Work Examiners on November 8, 2004.

This amendment will become effective January 12, 2005.

This amendment is intended to implement Iowa Code chapters 147, 154C and 272C.

The following amendment is adopted.

Amend subrule **280.6(4)**, paragraph "b," subparagraph (1), as follows:

(1) The plan for supervision that was created at the beginning of the period of supervision and that was maintained by the supervisor. If there has been a change of supervisors, the LISW candidate has the responsibility to have a termination evaluation completed by that supervisor and to have the copy submitted to the next supervisor. All termination evaluations shall be ~~submitted available~~ to the board *upon request with the final supervision report sheet*. The supervision provided by all qualified supervisors ~~that~~ *who* have a plan of supervision with the applicant can be counted toward meeting the criteria for supervision.

[Filed 11/8/04, effective 1/12/05]

[Published 12/8/04]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/8/04.

**ARC 3841B****PUBLIC HEALTH  
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 135.11(13) and 135.72, the Department of Public Health hereby amends Chapter 202, "Certificate of Need Program," Iowa Administrative Code.

These amendments clarify some of the procedures followed by the Health Facilities Council. Item 1 amends the listing of specific facilities that are included in the definition of "organized outpatient health facility." Item 2 provides clarity to the term "relocation" by incorporating existing practice into the rules. Item 3 adds one new subrule to clarify how preliminary review determinations are to be made.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 4, 2004, as **ARC 3573B**.

Written comments were received from the Iowa Hospital Association; the Iowa Medical Society; Dallas County Hospital; Doug Gross of Brown, Winick, Graves, Gross, Baskerville and Schoenebaum, P.L.C.; and Robert J. Baudino, Jr. of Baudino Law Group, representing Wolfe Clinic. One comment regarding Item 1 correctly indicated that the "C" in CORF stands for "Comprehensive" not "Certified." This change has been made. One comment regarding Item 2 was

PUBLIC HEALTH DEPARTMENT[641](cont'd)

received, which suggested that Metropolitan Statistical Areas be used instead of county lines. Upon hearing the rationale for using county lines, the commenter agreed with the original language. Finally, four comments were received regarding the portion of Item 3 that attempted to clarify Iowa Code section 135.63(2)“o.” Each commenter felt the proposed change exceeded the authority granted in the Iowa Code. However, each commenter had a different viewpoint on how or why the change was beyond the scope of the administrative rules process. Staff therefore recommended that an amendment to the Iowa Code to provide clarification to section 135.63(2)“o” should be pursued. Item 3 was changed by omitting proposed subrule 202.3(2) regarding Iowa Code section 135.63(2)“o” and renumbering proposed subrule 202.3(3) as 202.3(2).

The State Health Facilities Council reviewed the comments and approved the changes to the Noticed amendments at the scheduled meeting on September 23, 2004.

The State Board of Health adopted these amendments on November 10, 2004.

These amendments shall become effective January 12, 2005.

These amendments are intended to implement Iowa Code sections 135.61 to 135.83.

The following amendments are adopted.

ITEM 1. Amend subrule 202.1(7) as follows:

**202.1(7)** “Organized outpatient health facility” as defined in Iowa Code section 135.61(20) shall include, but not be limited to, the following types of facilities:

- a. ~~Family planning clinics;~~
- b. ~~Neighborhood health centers;~~
- c. Community mental health centers;
- d. ~~Drug abuse or alcoholism treatment centers;~~
- e. ~~Rehabilitation facilities.~~ *Comprehensive outpatient rehabilitation facilities (CORFs), certified by Medicare.*

ITEM 2. Renumber subrule **202.1(11)** as **202.1(12)** and add the following **new** subrule:

**202.1(11)** “Relocation of an institutional health facility,” as the term applies to new or changed institutional health service in Iowa Code section 135.61(18)“b,” means the replacement of a facility located in one county with a facility located in another county.

ITEM 3. Renumber subrule **202.3(2)** as **202.3(3)** and add the following **new** subrule:

**202.3(2)** The health services listed in Iowa Code section 135.61(18)“m” shall be deemed to require a certificate of need for the initiation or expansion of these services.

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