



# IOWA ADMINISTRATIVE BULLETIN

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Pages 337 to 492

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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)

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

## 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>
8	Friday, September 23, 2005	October 12, 2005
9	Friday, October 7, 2005	October 26, 2005
10	Friday, October 21, 2005	November 9, 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

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>CORRECTIONS DEPARTMENT[201]</b>		
Jail facilities, amendments to ch 50 IAB 9/14/05 <b>ARC 4516B</b>	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 4, 2005 11 a.m. to 1 p.m.
Temporary holding facilities, amendments to ch 51 IAB 9/14/05 <b>ARC 4517B</b>	Second Floor Conference Room 420 Watson Powell Jr. Way Des Moines, Iowa	October 4, 2005 11 a.m. to 1 p.m.
<b>EDUCATION DEPARTMENT[281]</b>		
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Teacher intern preparation program standards, 77.2, 77.8, 77.11 to 77.14 IAB 8/31/05 <b>ARC 4471B</b>	Room 2 South, Second Floor Grimes State Office Bldg. Des Moines, Iowa	September 23, 2005 9 a.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
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Water quality standards, 61.2(5), 61.3 IAB 9/14/05 <b>ARC 4504B</b>	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	October 4, 2005 11 a.m.
	Community Center 530 W. Bluff St. Cherokee, Iowa	October 4, 2005 7 p.m.
	Community Meeting Room 15 N. Sixth St. Clear Lake, Iowa	October 10, 2005 7 p.m.
	Farmers and Merchants Savings and Trust 101 E. Main St. Manchester, Iowa	October 12, 2005 11 a.m.
	Community Y 121 E. Main St. Washington, Iowa	October 12, 2005 7 p.m.
Water quality standards—warm water designations, 61.3 IAB 9/14/05 <b>ARC 4505B</b>	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	October 14, 2005 1 p.m.
	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa	October 4, 2005 11 a.m.
	Community Center 530 W. Bluff St. Cherokee, Iowa	October 4, 2005 7 p.m.

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

	Community Meeting Room 15 N. Sixth St. Clear Lake, Iowa	October 10, 2005 7 p.m.
	Farmers and Merchants Savings and Trust 101 E. Main St. Manchester, Iowa	October 12, 2005 11 a.m.
	Community Y 121 E. Main St. Washington, Iowa	October 12, 2005 7 p.m.
	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	October 14, 2005 1 p.m.
Animal feeding operations—open feedlot operation requirements, amendments to ch 65 IAB 9/14/05 <b>ARC 4506B</b> (See also <b>ARC 4507B</b> herein)	Fire Station 1904 N. Broadway St. Red Oak, Iowa	October 4, 2005 10 a.m.
	Rooms 142–146, Main Bldg. DMACC Carroll Campus 906 N. Grant Rd. Carroll, Iowa	October 4, 2005 6:30 p.m.
	Clay County Regional Events Center 800 W. 18th St. Spencer, Iowa	October 5, 2005 10 a.m.
	Lime Creek Nature Center 3501 Lime Creek Rd. Mason City, Iowa	October 5, 2005 6:30 p.m.
	Fourth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 6, 2005 9 a.m.
	Room Iowa A/B, 3rd Floor, Iowa Hall Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	October 7, 2005 3 p.m.

**HUMAN SERVICES DEPARTMENT[441]**

Child care quality rating system, 7.1, ch 118 IAB 9/14/05 <b>ARC 4511B</b>	Child Care Resource and Referral of Central Iowa Orchard Place Child Guidance Center 808 Fifth Ave. Des Moines, Iowa	October 5, 2005 4:30 to 6 p.m.
	Child Care Resource and Referral of Southeast Iowa Iowa East Central T.R.A.I.N. 500 E. 59th St. Davenport, Iowa	October 5, 2005 5 to 6:30 p.m.

**HUMAN SERVICES DEPARTMENT[441] (Cont'd)**

Child Care Resource and Referral of Northeast Iowa Exceptional Persons, Inc. Board Room, 760 Ansborough Waterloo, Iowa	October 6, 2005 5 to 6:30 p.m.
Child Care Resource and Referral of Northwest Iowa Mid-Sioux Opportunity, Inc. 418 S. Marion St. Remsen, Iowa	October 6, 2005 5 to 6:30 p.m.
Child Care Resource and Referral of Southwest and South Central Iowa West Central Development Corp. 701 Tenth St. Harlan, Iowa	October 6, 2005 5 to 6:30 p.m.

**IOWA FINANCE AUTHORITY[265]**

Entrepreneurs with disabilities program, adopt ch 25 IAB 8/31/05 <b>ARC 4473B</b>	Suite 250 100 E. Grand Des Moines, Iowa	September 20, 2005 9 to 10 a.m.
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**MEDICAL EXAMINERS BOARD[653]**

Supervision of pharmacists engaged in collaborative drug therapy management, 13.4, 13.5 IAB 8/31/05 <b>ARC 4447B</b>	Suite C 400 SW Eighth Street Des Moines, Iowa	September 20, 2005 3 p.m.
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**NATURAL RESOURCE COMMISSION[571]**

State parks and recreation areas; state forest camping, chs 61, 62 IAB 8/31/05 <b>ARC 4462B</b> (ICN Network)	Room 117 & 118 DMACC Boone Campus 1125 Hancock Drive Boone, Iowa	September 27, 2005 6:30 p.m.
	Cedar Falls AEA 3712 Cedar Heights Drive Cedar Falls, Iowa	September 27, 2005 6:30 p.m.
	Bldg. 32A, Kirkwood Farm Kirkwood Community College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	September 27, 2005 6:30 p.m.
	Room 116 Chariton High School 501 N. Grand Chariton, Iowa	September 27, 2005 6:30 p.m.
	State Room Clear Lake AEA 9184B 265th Street Clear Lake, Iowa	September 27, 2005 6:30 p.m.



**NATURAL RESOURCE COMMISSION[571] (Cont'd)**  
**(ICN Network)**

Education Services Center Adm. 12 Scott Street Council Bluffs, Iowa	September 27, 2005 6:30 p.m.
Turner Room Green Valley AEA 1405 N. Lincoln Creston, Iowa	September 27, 2005 6:30 p.m.
Room 300 Saydel High School 5601 NE Seventh Street Des Moines, Iowa	September 27, 2005 6:30 p.m.
Room 4 Elk Horn-Kimballton High School 4114 Madison Street Elk Horn, Iowa	September 27, 2005 6:30 p.m.
Room 12 Fort Dodge High School 819 N. 25th Street Fort Dodge, Iowa	September 27, 2005 6:30 p.m.
Fayette Community Library 104 W. State Street Fayette, Iowa	September 27, 2005 6:30 p.m.
Room 101 Western Dubuque High School Fifth Avenue West Epworth, Iowa	September 27, 2005 6:30 p.m.
Northeast High School 3690 Highway 136 Goose Lake, Iowa	September 27, 2005 6:30 p.m.
Room 107, North Hall University of Iowa End of N. Madison Street Iowa City, Iowa	September 27, 2005 6:30 p.m.
Van Buren High School 405 Fourth Street Keosauqua, Iowa	September 27, 2005 6:30 p.m.
Room 125 Knoxville High School 1811 W. Madison Knoxville, Iowa	September 27, 2005 6:30 p.m.
Room 304 Red Oak High School 2011 N. Eighth Street Red Oak, Iowa	September 27, 2005 6:30 p.m.
Room 60, Larson Hall Muscatine Community College 152 Colorado Street Muscatine, Iowa	September 27, 2005 6:30 p.m.

**NATURAL RESOURCE COMMISSION[571] (Cont'd)**  
**(ICN Network)**

	Distance Learning Center Spirit Lake High School 2701 Hill Avenue Spirit Lake, Iowa	September 27, 2005 6:30 p.m.
	WACO High School 611 N. Pearl Wayland, Iowa	September 27, 2005 6:30 p.m.
	Central Campus Ind. Learning Center 1121 Jackson Street Sioux City, Iowa	September 27, 2005 6:30 p.m.
Prohibitions on fish snagging, 81.2(11) IAB 8/31/05 <b>ARC 4464B</b>	Bob Huen Shelter House Kennedy Park 1415 Nelson Avenue Fort Dodge, Iowa	September 21, 2005 7 p.m.
	City Hall 15 N. Sixth Street Clear Lake, Iowa	September 22, 2005 7 p.m.
Turtles, 86.1(1), 86.1(2) IAB 8/31/05 <b>ARC 4465B</b>	Pioneer Ridge Nature Center 1339 Highway 63 Bloomfield, Iowa	September 20, 2005 7 p.m.
	City Hall 15 N. Sixth Street Clear Lake, Iowa	September 22, 2005 7 p.m.
	Municipal Building 502 S. First Street Guttenberg, Iowa	September 28, 2005 7 p.m.
	Musser Public Library 304 Iowa Avenue Muscatine, Iowa	September 29, 2005 7 p.m.
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	Musser Public Library 304 Iowa Avenue Muscatine, Iowa	September 29, 2005 7 p.m.

**PROFESSIONAL LICENSURE DIVISION[645]**

Cosmetology arts and sciences— intense pulsed light devices; attestation of high school graduation, 60.1, 60.2(1), 60.4 to 60.6 IAB 9/14/05 <b>ARC 4519B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 4, 2005 8:30 to 9 a.m.
Cosmetology arts and sciences— examination for licensure, 60.2(1) IAB 9/14/05 <b>ARC 4509B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 4, 2005 8:30 to 9 a.m.
Cosmetology arts and sciences— fee increases, 62.1 IAB 8/31/05 <b>ARC 4457B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	September 21, 2005 9:30 to 10 a.m.

**PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)**

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Physical therapists—fee increases, 204.1 IAB 9/14/05 <b>ARC 4495B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 4, 2005 10:30 to 11 a.m.
Occupational therapists—fee increases, 210.1 IAB 9/14/05 <b>ARC 4489B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 4, 2005 10:30 to 11 a.m.
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Respiratory care practitioners, 261.5 IAB 9/14/05 <b>ARC 4499B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 4, 2005 9 to 9:30 a.m.
Respiratory care practitioners— fee increases, 264.1 IAB 9/14/05 <b>ARC 4498B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 4, 2005 9 to 9:30 a.m.
Social workers—fee increases, 284.1 IAB 8/31/05 <b>ARC 4450B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	September 21, 2005 10:30 to 11 a.m.
Speech pathologists and audiologists— fee increases, 305.1 IAB 9/14/05 <b>ARC 4497B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 4, 2005 9 to 9:30 a.m.
Interpreters for the hearing impaired— fee increases, 364.1 IAB 9/14/05 <b>ARC 4494B</b>	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	October 4, 2005 10 to 10:30 a.m.

**PUBLIC SAFETY DEPARTMENT[661]**

State building code, rescind 16.1 to 16.500, 16.700 to 16.802; adopt chs 300 to 303 IAB 9/14/05 <b>ARC 4514B</b>	Fire Marshal Division Conference Rm. Suite N 401 SW Seventh St. Des Moines, Iowa	October 18, 2005 10 a.m.
<b>(ICN Network)</b>	Third Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	October 13, 2005 1 to 3 p.m.
	Room 203B, Linn Hall Kirkwood Community College 6301 Kirkwood Blvd. Cedar Rapids, Iowa	October 13, 2005 1 to 3 p.m.
	Educational Services Center Admin. 12 Scott St. Council Bluffs, Iowa	October 13, 2005 1 to 3 p.m.
	Turner Room Green Valley AEA 1405 N. Lincoln Creston, Iowa	October 13, 2005 1 to 3 p.m.

**PUBLIC SAFETY DEPARTMENT[661] (Cont'd)**  
**(ICN Network)**

Forum Building 2300 Chaney Dubuque, Iowa	October 13, 2005 1 to 3 p.m.
Room 818, Smith Wellness Center Iowa Lakes Community College 3200 College Dr. Emmetsburg, Iowa	October 13, 2005 1 to 3 p.m.
Room 128, Careers Bldg. North Iowa Area Community College 500 College Dr. Mason City, Iowa	October 13, 2005 1 to 3 p.m.
High School 2104 S. Grand Mount Pleasant, Iowa	October 13, 2005 1 to 3 p.m.
Room 925, Bldg. A Western Iowa Tech Community College 4647 Stone Ave. Sioux City, Iowa	October 13, 2005 1 to 3 p.m.
Room 8, Bldg. 6, Ankeny Campus Des Moines Area Community College 2006 S. Ankeny Blvd. Ankeny, Iowa	October 13, 2005 6 to 8 p.m.
Revere Room, Grant Wood AEA 4401 Sixth St. SW Cedar Rapids, Iowa	October 13, 2005 6 to 8 p.m.
Educational Services Center Admin. 12 Scott St. Council Bluffs, Iowa	October 13, 2005 6 to 8 p.m.
Turner Room Green Valley AEA 1405 N. Lincoln Creston, Iowa	October 13, 2005 6 to 8 p.m.
Prairie Lakes AEA Hwy 18 & Second St. Cylinder, Iowa	October 13, 2005 6 to 8 p.m.
Forum Building 2300 Chaney Dubuque, Iowa	October 13, 2005 6 to 8 p.m.
CB 118 North Iowa Area Community College 500 College Dr. Mason City, Iowa	October 13, 2005 6 to 8 p.m.
High School 2104 S. Grand Mount Pleasant, Iowa	October 13, 2005 6 to 8 p.m.



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]  
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     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]  
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   City Development Board[263]  
   Grow Iowa Values Board[264]  
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   Educational Examiners Board[282]  
   College Student Aid Commission[283]  
   Higher Education Loan Authority[284]  
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   Libraries and Information Services Division[286]  
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    State Public Defender[493]  
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TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
    Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
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    Labor Services Division[875]  
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    Workforce Development Center Administration Division[877]

## ARC 4508B

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

### 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 159.5, 203.2, 203C.5 and 203D.4, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to rescind Chapter 90, “State Licensed Warehouses and Warehouse Operators,” and adopt new Chapter 90 with the same title; rescind Chapter 91, “Licensed Grain Dealers and Bargaining Agents,” and adopt new Chapter 91, “Licensed Grain Dealers”; rescind Chapter 92, “Participation in Grain Indemnity Fund,” and adopt new Chapter 92 with the same title; rescind Chapter 93, “Grain Indemnity Fund Board—Organization and Operations,” and adopt new Chapter 93 with the same title; and rescind Chapter 94, “Claims Against the Grain Depositors and Sellers Indemnity Fund,” and adopt new Chapter 94 with the same title, Iowa Administrative Code.

The proposed new chapters are intended to bring the rules concerning warehouse operators, grain dealers and indemnity fund board operations into conformity with changes in Iowa Code chapters 203, 203A, 203C, and 203D (2005 Code of Iowa). The proposed new chapters are also intended to bring the rules into conformity with current Department enforcement practices and to eliminate unnecessary restrictions on grain storage structures. Existing Chapters 90 and 91 have not had any substantial revisions since 1992. Existing Chapters 92, 93 and 94 have not had any substantial revisions since 1988 and are in conflict with the changes to Iowa Code chapter 203D.

Any interested persons may make written suggestions or comments on these proposed rules until 4:30 p.m. on October 4, 2005. Written comments should be addressed to Richard Wahl, Bureau Chief, Grain Warehouse Bureau, Department of Agriculture and Land Stewardship, Henry A. Wallace Building, 502 East Ninth Street, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515)281-6800 or by E-mail to [Richard.Wahl@idals.state.ia.us](mailto:Richard.Wahl@idals.state.ia.us).

These rules are intended to implement Iowa Code chapters 203, 203C and 203D (2005).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 21—Chapter 90 and adopt in lieu thereof the following **new** chapter:

CHAPTER 90  
STATE LICENSED WAREHOUSES  
AND WAREHOUSE OPERATORS

**21—90.1(203C) Application of rules.** These rules are subject to such changes and modifications as the department of agriculture and land stewardship may from time to time deem

advisable. These rules are subject to such waivers or variances as may be considered just and reasonable in individual cases, subject to the provisions of 21—Chapter 8.

This rule is intended to implement Iowa Code section 203C.5.

**21—90.2(203C) Definitions.** For this chapter, the following definitions apply:

“Bureau” means the grain warehouse bureau of the department of agriculture and land stewardship.

“Department” means the Iowa department of agriculture and land stewardship.

“Licensee” means a licensed warehouse operator.

“Received” means the earliest of the following:

1. The date a state warehouse examiner acknowledges receipt.

2. The date stamped “received” in the grain warehouse bureau.

3. The date postmarked, if the item is properly addressed to the Grain Warehouse Bureau, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319.

**21—90.3(203C) Types of products to be warehoused.** Products to be warehoused shall be divided into two general types or classes as follows:

**90.3(1)** Bulk grain, which is grain that is not contained in sacks.

**90.3(2)** Agricultural and farm consumable products other than bulk grain. Such products include those suitable for storage in quantity, canned agricultural products and products used in producing other agricultural products.

This rule is intended to implement Iowa Code section 203C.1.

**21—90.4(203C) Application for a warehouse operator license.** Application to operate a licensed warehouse (Iowa Code chapter 203C) shall be made to the bureau on forms prescribed for that purpose by the bureau. Forms are available from the bureau upon request. All information required by Iowa Code section 203C.7 shall be furnished. The bureau may require the applicant to file updated information if the information on the application is no longer current. The insurance certificate, financial statement, and background information on a person applying for the license and on the managers shall be on file before a license is issued. The bureau chief may require an inspection of the proposed facilities prior to the issuance of a warehouse license.

This rule is intended to implement Iowa Code sections 203C.6 and 203C.7.

**21—90.5(203C) Warehouse operator license.** A warehouse operator license shall specify the type and quantity of products which may be stored in a licensed warehouse. Separate class licenses bearing the same number may be issued to the same business entity authorizing the storage of bulk grain under one license and the storage of products other than bulk grain under the other license (Class 2 warehouse). The separate licenses may be for the same facilities provided the warehouse or warehouses described in the application are suitable for the safe storage of the products intended to be stored.

**90.5(1)** Warehouse operator license—nontransferable. Warehouse operator licenses are not transferable between different legal entities. Warehouse operator licenses may be amended to cover a name change of the same legal entity. The licensee shall give the bureau notice of a proposed name change. The bureau shall confirm the name change with the



## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

secretary of state or other governmental agency prior to amending the license.

**90.5(2) Surrender of license.** The license shall be surrendered to the bureau immediately upon termination, cancellation or revocation of such license.

This rule is intended to implement Iowa Code sections 203C.2, 203C.7, 203C.9 and 203C.16.

**21—90.6(203C) Posting of license and fee receipt.** The warehouse operator license certificate, including the warehouse diagram and the fee receipt for the current license period, shall be posted at all times in a conspicuous location in the place of business. A license certificate shall be posted in each location where grain is delivered or weighed. Upon receipt of an amended license, the warehouse operator shall immediately post the amended license and remove the old license.

This rule is intended to implement Iowa Code section 203C.34.

**21—90.7(203C) Renewal, termination and reinstatement of license—payment of license fee.**

**90.7(1) Renewals.** The bureau shall send to each licensed warehouse operator written notice that the application and the license fee for annual renewal of the warehouse license shall be received in accordance with Iowa Code section 203C.37. If the bureau does not receive the application and fee by the due date, the license shall be terminated. A license that has been terminated may be reinstated within 30 days of the date of termination conditioned on the applicant's meeting all statutory requirements and the bureau's receipt of the following within 30 days of the termination:

- a. Completed application;
- b. License fee; and
- c. The reinstatement fee prescribed in Iowa Code section 203C.33.

**90.7(2) Proration of fees.** Fees for license periods of less than one year shall be prorated on a month-to-month basis. Fees for license periods of less than one year shall be applicable only under the following circumstances:

- a. When an application for a new license is filed; or
- b. When the fiscal year of a license holder is changed.

This rule is intended to implement Iowa Code sections 203C.33 and 203C.37.

**21—90.8(203C) Financial statements.**

**90.8(1) New license applicants.** To obtain a warehouse license, an applicant shall submit a financial statement that shall:

a. Be prepared within three months from the date of filing and comply with 90.8(2), paragraph "a" or "b"; or

b. Be prepared as of the applicant's usual fiscal year end and comply with 90.8(2), paragraph "a" or "b," and the applicant has continuously been in business for one year or more, and the applicant has submitted any additional financial information required by the bureau; or

c. Be a forecasted financial statement prepared by a certified public accountant licensed in this state, and the applicant is a new business entity that is in the process of transferring funds into the business entity. An applicant who files a forecasted financial statement pursuant to this paragraph shall file a financial statement which complies with 90.8(2), paragraph "a" or "b," within one month after the date the license is issued by the bureau.

**90.8(2) Financial statement requirements.** Financial statements filed pursuant to subrules 90.8(1), 90.8(3), 90.8(4) and 90.8(11) shall be prepared in accordance with accounting principles generally accepted in the United States and shall comply with either of the following:

a. Be accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. The bureau may accept a qualification in an opinion that is unavoidable by any audit procedure. Opinions that are qualified because of the limited audit procedure or because the scope of an audit is limited shall not be accepted by the bureau; or

b. Be accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant.

**90.8(3) Sole proprietorship financial statements.** An individual licensed as a sole proprietorship shall file a financial statement which conforms with the provisions of subrules 90.8(2) and 90.8(4) on the proprietorship business. The individual shall also file a personal statement of financial condition which conforms with the provisions of subrules 90.8(2) and 90.8(4). The personal statement of financial condition shall also disclose the historical cost basis for assets as provided in Iowa Code section 203C.6.

**90.8(4) Filing date of annual statements.** Every licensee shall prepare financial statements at the close of the licensee's designated fiscal year and shall file the statements and the bureau's financial information form with the bureau not later than three months thereafter. These financial statements shall be prepared in accordance with generally accepted accounting principles and shall consist, at a minimum, of a balance sheet, statement of income, statement of cash flow, and accompanying notes to the financial statements. The bureau shall notify every licensee during the month after the close of the licensee's fiscal year that the licensee's financial statement is due three months after the close of the licensee's fiscal year.

**90.8(5) Additional disclosures required in the financial statement.** Unless the following information is disclosed in the fiscal year end financial statements, the licensee's certified public accountant shall file with the financial statements a separate letter disclosing the information:

a. A reconciliation of differences in the grain obligations as shown in the financial statement and the daily position record.

b. Amount and kind of grain on collateral warehouse receipts.

c. Amount and kind of company-owned grain which is being stored in unlicensed facilities or which has been transferred to another warehouse.

d. Bushel and dollar amounts of all outstanding grain payables, including a breakdown of the bushels and dollars of each type of credit-sale contract.

e. Gross grain sales for the fiscal year.

f. Gross nongrain sales for the fiscal year.

g. Cost of all goods sold for the fiscal year.

h. Depreciation expense for the fiscal year.

i. Interest expense for the fiscal year.

j. Number of bushels of grain purchased under each grain dealer's license. For purposes of this paragraph, "purchases" shall mean all grain to which the grain dealer has obtained title during the grain dealer's fiscal year.

**90.8(6) Filing extension.**

a. The bureau chief may grant an extension of one month for the filing of financial statements upon receipt of the following:

(1) A letter from the warehouse operator's certified public accountant stating the reason for filing the extension request and that work has been done on preparing the financial statements.

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

(2) An affidavit from the warehouse operator stating that the warehouse operator meets the financial responsibility requirements of Iowa Code section 203C.6, or that the licensee shall file additional bond in an amount to cover any net worth deficiency as provided in Iowa Code section 203C.6, based upon the licensed certified public accountant's best estimate of the licensee's financial position.

b. Warehouse operators who file false affidavits under this rule may be prosecuted under Iowa Code section 203C.36. Subrule 90.8(6) does not apply to the filing of financial statements required under the provisions of subrules 90.8(10), 90.8(11) and 90.8(12).

**90.8(7)** Asset valuation. The licensee may submit to the bureau a written request for asset valuation. The written request shall be accompanied by the appraisal and shall have been prepared by a licensed appraiser in this state and shall list the appraiser's credentials. Before an appraisal will be accepted by the bureau, the licensee shall show a positive net worth. All appraisals are subject to approval by the bureau chief. The bureau chief shall notify the licensee within five working days if the appraisal is unacceptable. Any approved asset valuation may be used in any financial statements prepared by or for the licensee in accordance with 90.8(2).

**90.8(8)** Appraisals. Competent appraisals on file with the bureau shall be valid for use in determining asset value for a maximum period of three years. Thereafter, a new appraisal for asset valuation shall be required and shall be used for a like period of time. In the event the certified public accountant expresses doubt as to the licensee's ability to continue as a going concern, the bureau shall not allow an appraisal to be used to meet net worth requirements. All assets included in the appraisal shall be depreciated by the bureau using the following schedule:

- a. Buildings and attached equipment—15 years.
- b. Rolling stock (trucks)—5 years.
- c. Equipment—5 years.

**90.8(9)** Assets allowed in meeting financial requirements.

a. Corporations, limited liability companies and partnerships. When the bureau determines the net worth for corporations, limited liability companies and partnerships, related party assets that require financial disclosure per financial accounting standards shall be disallowed. These assets shall be excluded unless the licensee can show the department sufficient documentation to explain why these assets should be allowed.

b. Sole proprietors. When determining the net worth for sole proprietors, related party assets shall be excluded unless the licensee can show the department sufficient documentation to explain why these assets should be included. Only that part of the value of an asset which is subject to execution shall be allowed by the bureau in determining net worth. When a liability associated with an exempt asset (whether the asset is included or not) exceeds the original cost (or fair market value after an appraisal approved by the bureau), such excess shall be shown as a liability with appropriate footnotes to the financial statement. An applicant or a licensed warehouse operator shall complete the bureau's financial information form regarding this matter and submit the form with the financial statements.

**90.8(10)** Net worth deficiency monthly financial statements. Every licensee who has a net worth deficiency and who has filed additional bond shall file monthly financial statements with the bureau by the end of the next month until the net worth meets the requirements of Iowa Code section 203C.6 for a minimum of three consecutive months. These financial statements shall contain a minimum of a balance

sheet and statement of income and shall be prepared in accordance with generally accepted accounting principles.

**90.8(11)** Good cause financial statement. The bureau chief may require a licensee to file a financial statement which complies with 90.8(2)“b” within 45 days of notification by the bureau if one of the following conditions exists:

- a. Quantity shortage;
- b. Quality shortage;
- c. Payment is made by use of a check or electronic funds transfer and a financial institution refuses payment because of insufficient moneys in the licensee's account;
- d. Record-keeping violations;
- e. Other documented evidence which indicates that the licensee's financial condition has deteriorated since the filing of the licensee's last financial statement; or
- f. A high risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the warehouse operator based on a statistical model provided in Iowa Code section 203C.40.

**90.8(12)** Additional information. The bureau chief may require an applicant or licensee to provide the bureau with any other information reasonably related to the business of a warehouse operator and work papers supporting the financial statements.

**90.8(13)** Penalty for failure to timely supply financial statements. The department may suspend the license of any warehouse operator who fails to provide the required financial statements within the time limits prescribed by these rules.

This rule is intended to implement Iowa Code sections 203C.1, 203C.5, 203C.6 and 203C.7.

**21—90.9(203C) Bonds and irrevocable letters of credit.**

Bonds filed with the bureau shall be on forms prescribed by the bureau. Irrevocable letters of credit filed with the bureau shall be on the form prescribed by the bureau. Bonds and irrevocable letters of credit shall be written so as to provide funds to protect depositors having storage in the warehouse as described in the particular license issued to a warehouse operator.

**90.9(1)** Agricultural products other than bulk grain. The amount of bond or irrevocable letter of credit to be filed in connection with the storage of agricultural and farm consumable products other than bulk grain shall be determined in accordance with the provisions of Iowa Code section 203C.13. When the net worth of a licensee is less than that required by Iowa Code section 203C.13, the licensee may increase the bond or file an irrevocable letter of credit with the bureau to cover the net worth deficiency as provided by Iowa Code section 203C.13.

**90.9(2)** Inadequate net worth—storage of bulk grain. When the net worth of a licensee authorized to store bulk grain is less than that required by Iowa Code section 203C.6, the licensee may file a bond or an irrevocable letter of credit with the bureau to cover the net worth deficiency as provided by Iowa Code section 203C.6.

**90.9(3)** Bond or irrevocable letters of credit as department may require. In addition to the minimum amount as provided by Iowa Code section 203C.13 and in addition to an amount to cover the net worth deficiency as provided by Iowa Code section 203C.6, the bureau chief may require a bond or an irrevocable letter of credit to be filed in an amount determined by the department for any of the following reasons:

- a. Quality deficiency in stored grain;
- b. Quantity deficiency in stored grain;
- c. Use of temporary storage facilities or emergency storage by licensee; or

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

d. Documented evidence of the excessive use of lost warehouse receipt release forms by the licensee.

**90.9(4)** Minimum amount of indemnification. The amount of bond, additional bond, or irrevocable letter of credit prescribed under subrule 90.9(1), 90.9(2) or 90.9(3) is the minimum amount that shall be accepted by the bureau. A bond or irrevocable letter of credit in a higher amount may be filed if the warehouse operator deems it advisable in the operation of the warehouse business.

**90.9(5)** Quality and quantity deficiency bonds. Quality and quantity deficiency bonds shall be for a minimum of 45 days.

**90.9(6)** Replacement bond or irrevocable letter of credit. The bureau shall send a written notice and information and forms for filing the required replacement bond or irrevocable letter of credit, unless the bond or irrevocable letter of credit is no longer necessary. If the licensee has not filed a replacement bond or irrevocable letter of credit with the bureau within 60 days of receipt of the notice of cancellation, the department shall automatically suspend the warehouse license and cause the licensed warehouse to be inspected by the bureau. If the department does not receive a replacement bond or irrevocable letter of credit from the licensee within 30 days of the suspension of the license, the department shall automatically revoke the warehouse license and commence an examination of the licensee. When the licensee's failure to file a replacement bond or irrevocable letter of credit causes revocation of the warehouse license, the bureau chief shall give notice of such revocation to each holder of an outstanding warehouse receipt and all persons known to have grain retained in open storage.

**90.9(7)** Cancellation of bond or irrevocable letter of credit. The issuer shall send the cancellation notice to the bureau by certified mail. The notice shall be in accordance with the provisions of the bond or irrevocable letter of credit. The time period for notice of cancellation stated in the bond or irrevocable letter of credit commences on the date when the bureau receives the notice. The bureau shall send written acknowledgment of the cancellation of the bond or irrevocable letter of credit to the issuer and the principal.

This rule is intended to implement Iowa Code sections 203C.6, 203C.11, 203C.12 and 203C.13.

**21—90.10(203C) Insurance.** Each warehouse operator licensed by the department shall keep fully insured, for the current market value, against loss by fire, inherent explosion or windstorm, all agricultural products in storage in the warehouse and all agricultural products which have been deposited temporarily in the warehouse pending storage or for purposes other than storage. This insurance shall be carried in an insurance company or companies authorized to do business in this state and shall be provided by and carried in the name of the warehouse operator. Each policy providing such coverage must have attached thereto an Iowa warehouse endorsement form as prescribed by the department. An insurance policy may include more than one location, and a location may be insured by more than one policy.

**90.10(1)** Certificate of insurance. As evidence that insurance coverage has been provided, the licensee shall file with the department a certificate of insurance form as prescribed by the department.

a. Not more than one policy shall be included on one certificate of insurance.

b. Where one policy provides coverage for two or more licenses or locations and coverage is provided separately at each location, a separate certificate of insurance shall be executed for each license or location shown on the policy. Each

certificate shall show the total amount of insurance provided by the policy for the license or locations for which the certificate is provided.

c. Where one policy provides coverage for two or more licenses or locations and coverage is provided on a blanket basis at all locations, one certificate of insurance shall be executed for the policy. The certificate shall show the amount of insurance provided by the policy.

**90.10(2)** Cancellation of insurance. When the department receives notice from an insurance company that the company has canceled the insurance of a licensed warehouse, the department shall automatically suspend the warehouse license if the department does not receive replacement insurance within 75 days of receipt of the notice of cancellation. The department shall cause an inspection of the licensed warehouse immediately at the end of the 75-day period. If replacement insurance is not filed within 10 days following suspension, the department shall automatically revoke the warehouse license. When the department revokes a license, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage of the revocation. The department shall further notify each receipt holder and all known persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last-known address of each person having grain in storage.

**90.10(3)** Expiration of insurance. The department shall send the warehouse operator a reminder letter 30 days prior to the effective date of the expiration of the insurance of a licensed warehouse. The department shall automatically suspend the warehouse license if replacement insurance is not received by the department within 15 days before the expiration date. The department shall immediately cause an inspection of the licensed warehouse at the end of the 15-day period. If the licensee does not file replacement insurance within 10 days following suspension, the department shall automatically revoke the warehouse license. When the department revokes a license, the department shall notify each holder of an outstanding warehouse receipt and all known persons who have grain retained in open storage that the license has been revoked. The department shall further notify each receipt holder and all persons who have grain retained in open storage that the grain must be removed from the warehouse not later than the thirtieth day following the revocation. The notice shall be sent by ordinary mail to the last-known address of each person having grain in storage.

This rule is intended to implement Iowa Code section 203C.15.

**21—90.11(203C) Notice to the warehouse bureau.**

**90.11(1)** The licensee shall notify the bureau prior to:

- a. Change of ownership of a warehouse.
- b. Change in name or business address of a warehouse.
- c. The use of additional storage facilities which are not covered under the warehouse license.
- d. The use of any facility under warehouse license for storage of a product other than that for which it is licensed.
- e. The changing of the licensee's fiscal year.
- f. Using any bin or facility which has had a structural change.
- g. The ceasing of operations.

**90.11(2)** The licensee shall notify the bureau within 24 hours after the licensee knows or should have known any of the following:

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

a. Loss or damage to stored products or to licensed storage facilities;

b. Licensee's net worth falling below the amount required by Iowa Code section 203C.6 and if the amount of the deficiency is not covered by a net worth deficiency bond as required by Iowa Code section 203C.6; or

c. Any quality or quantity deficiency of grain.

**90.11(3)** The licensee shall notify the bureau within ten days after the licensee knows or should have known any of the following:

a. Termination of a lease on storage facilities, or the leasing of a facility under license to any other person;

b. The death of an individual or any member of a partnership operating a warehouse; or

c. Any change in management.

This rule is intended to implement Iowa Code sections 203C.2, 203C.6, 203C.8 and 203C.9.

**21—90.12(203C) Issuance of warehouse receipts.** A warehouse receipt shall be issued no later than the close of the next business day following demand by the depositor or depositor's agent or, in absence of such demand, the warehouse receipt shall be issued within 12 months from date of deposit in the warehouse, unless the warehouse operator is in possession of a signed and dated statement from the depositor that the depositor does not want a warehouse receipt to be issued. Such waiver shall apply only to grain deposited in the warehouse prior to the date of the waiver.

**90.12(1) Waiver.** The waiver shall contain a minimum of the following information:

- a. Depositor's name.
- b. Depositor's signature.
- c. Date of deposit.
- d. Date of depositor's signature.
- e. Number of bushels.
- f. Type of commodity.

The waiver must be signed within 12 months of the first delivery of the grain under waiver. If a depositor signs a statement that no warehouse receipt need be issued, such grain shall then be deemed as open storage and shall remain a warehouse obligation. A copy of this statement shall be maintained in the warehouse operator's records. The original (white) warehouse receipt shall be given to the depositor upon demand. The depositor's copy (green) shall be given to the depositor upon issuance of the warehouse receipt. The warehouse operator's copy (yellow) shall be maintained by the warehouse operator in a separate file in numerical order while the warehouse receipt is outstanding.

**90.12(2) Unpriced grain deemed held for storage after 30 days.** Any grain received at any warehouse for which the actual sale price is not fixed and documented on the warehouse operator's records or for which payment is not made on the thirtieth day shall be construed to be grain held for storage within the meaning of Iowa Code chapter 203C. The 30-day provision is applicable only when there has been no commitment for storage by the depositor or the warehouse operator fails to have a policy posted in a conspicuous location in the place of business. Grain shall be considered as storage in less than 30 days if the receiving warehouse operator has a policy specifying when such grain shall be considered as storage. Such policy shall be posted at all times in a conspicuous location in the place of business. Warehouse receipts shall be issued in accordance with the provisions of Iowa Code section 203C.18. Grain held in storage after the thirtieth day or after the time period less than 30 days in accordance with the warehouse operator's posted policy for which warehouse receipts have not been issued shall be considered as open stor-

age. The warehouse operator's tariff charges shall apply to open storage from date of deposit. Open storage shall be considered as a storage obligation.

**90.12(3) Information on warehouse receipts.** Not more than one product, or grade, or value of product shall be shown on a warehouse receipt. All grade factors pertinent to determining grade shall be shown on warehouse receipts issued for bulk grain, and any other information pertinent to the product, stored under warehouse receipt, should clearly be stated under the heading "Remarks." The warehouse operator, in the inspection of the grain upon delivery, shall perform a sufficient amount of sampling of the grain to ensure a representative application of the grade factors to the grain. All warehouse receipts issued shall designate the person to whom the receipt is issued and whether it is issued negotiable or nonnegotiable.

a. All warehouse receipts shall be issued on an accurate and complete basis. All applicable areas shall be filled in. Any of the following errors shall be cause to cancel and reissue the warehouse receipt:

(1) Illegible changes or appearance of change in overall amount;

(2) Change in the type of grain; or

(3) Changing the warehouse receipt from negotiable to nonnegotiable or vice versa.

b. Any alterations not directly prohibited shall be made by strike-through and replacement. No correction material shall be used. The person making the change shall initial and date the change. All copies shall be altered identically.

**90.12(4) Restrictions on the issuance of collateral warehouse receipts.** Collateral receipts cannot be issued for grain represented by credit-sale contract except for the percentage of bushels paid for through advances to sellers on grain purchased by credit-sale contract. The amount and percentage of advances shall be shown on the face of the credit-sale contract or on a listing which identifies the contracts and the amount of the advances.

This rule is intended to implement Iowa Code sections 203C.17 and 203C.18.

**21—90.13(203C) Cancellation of warehouse receipts.** Upon delivery of the product represented by a warehouse receipt, the original receipt shall be marked "canceled," signed or initialed, and dated upon the face thereof by the warehouse operator or an authorized agent. The warehouse operator shall then retain possession of the warehouse receipt in a separate numerical order of receipts canceled by the licensee but not yet marked with the warehouse bureau's stamp and shall present the receipt to be canceled with the department's stamp at the time of any inspection or examination of the warehouse records. Cancellation shall mean that the obligation is removed from the bureau's records. The warehouse operator shall, upon request of the bureau, forward any such warehouse receipts to the bureau's office to be canceled with the department's stamp. Before the bureau stamps the receipt "canceled" with the department's stamp, any negotiable receipts which have been used as collateral by the licensee shall have the lender's release date and signature on the reverse side indicating when the receipt was released.

**90.13(1) Partial delivery of negotiable warehouse receipted commodity.** If only a portion of the product represented by a negotiable warehouse receipt is delivered, such warehouse receipt shall be signed or initialed, dated and marked "canceled" by the warehouse operator or an authorized agent upon the face thereof. A new (or replacement) warehouse receipt shall be issued covering the balance of the product remaining in storage the same day as the original

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warehouse receipt is canceled. This replacement warehouse receipt, in the space provided under "Remarks," shall be marked "Balance of warehouse receipt No. \_\_\_\_\_," and the canceled warehouse receipt number shall be inserted in that space.

**90.13(2)** Voided warehouse receipts. Original warehouse receipts voided on the day of issuance by the warehouse operator for any reason shall be so marked, signed or initialed, and dated and held to be stamped with the department's cancellation stamp in the same manner as any other warehouse receipt.

**90.13(3)** Warehouse receipt cancellation procedure.

a. The warehouse operator shall have the original warehouse receipt in possession.

b. The warehouse operator shall mark the face of the warehouse receipt "canceled," sign or initial and date it.

c. The purchase of grain from a warehouse receipt shall be recorded on a document that is numbered at the time of printing and that contains the following information:

- (1) Seller's name;
- (2) Warehouse receipt number;
- (3) Number of bushels;
- (4) Price;
- (5) Items deducted from gross proceeds;
- (6) Net value; and
- (7) Check number, invoice reference, or credit-sale contract reference number.

One copy of the document shall be maintained by the licensee for inspection, and one copy shall be given to the seller.

**90.13(4)** Surrender of warehouse receipts on cancellation, termination, suspension, or revocation of license. When a warehouse license is canceled, terminated, suspended or revoked, all unused warehouse receipts under such license shall be surrendered to the bureau.

The bureau shall notify the warehouse operator that all outstanding warehouse receipts shall be returned to the bureau's office no later than 120 days from the date of cancellation, termination, or revocation of the license.

**90.13(5)** Purchase or return of grain, replacement receipt issued, or cancellation of outstanding receipts, upon cancellation, termination, or revocation of warehouse license. When a warehouse license is canceled, terminated, or revoked, all stored grain shall be either purchased and payment made, or returned within 30 days to the holders of warehouse receipts or unpriced scale tickets, except when the warehouse is continuing operation under new ownership or when storage obligations are assumed by another licensee. Upon completion of delivery to the receipt holder or the reissuance of the receipt under a new license, the warehouse operator shall immediately mark "canceled," sign or initial and date such receipt on the face of the original copy, and forward such receipt to the bureau's office to be stamped with the department's cancellation stamp. When the storage obligations are assumed by a new licensee from a warehouse whose license has been canceled, terminated, or revoked, replacement warehouse receipts shall be issued.

**90.13(6)** Delivery conditioned upon return of outstanding warehouse receipt. No product represented by an outstanding warehouse receipt shall be delivered until the original outstanding warehouse receipt is returned to the warehouse operator. The receipt shall be held by the warehouse operator as an open warehouse receipt until the delivery is completed. If periodic partial delivery is made against a nonnegotiable warehouse receipt, the delivery shall be documented on the back of the original warehouse receipt or other method of

documentation approved by the bureau showing the net balance in store. Original nonnegotiable warehouse receipts may be maintained in alphabetical or numerical order. If partial delivery is made against a negotiable warehouse receipt, the warehouse receipt shall be canceled and a replacement warehouse receipt issued for the balance in store.

**90.13(7)** Cancellation of warehouse receipt conditioned on removal from storage, purchase and payment, reissuance of receipt, or execution of a credit-sale contract. No warehouse receipt shall be canceled by the warehouse operator unless:

a. The product represented by the receipt has been removed from storage;

b. The product has been purchased and payment made;

c. A replacement receipt is issued at the time the receipt is canceled; or

d. The product represented by the receipt is purchased and a credit-sale contract is properly executed.

This rule is intended to implement Iowa Code sections 203C.16, 203C.17, 203C.18, 203C.34 and 203C.35.

**21—90.14(203C) Lost or destroyed receipt.** If a warehouse receipt is lost or destroyed, three methods shall be used in canceling the receipt. The following procedures shall be adhered to:

**90.14(1)** Depositor's lost warehouse receipt release. If the depositor or warehouse receipt holder has lost the receipt and is either selling all of the grain to the warehouse operator or removing all of the grain from storage, a Lost Warehouse Receipt Release shall be used. The release shall be completed in duplicate and signed by the receipt holder and shall be notarized. Both copies shall be retained in the warehouse records in lieu of the original copy of the receipt, which shall be given to the bureau at the time of an examination.

**90.14(2)** Bond for issuance of duplicate receipts. If the depositor has lost a warehouse receipt and needs a duplicate warehouse receipt, the depositor shall obtain a bond made in favor of the warehouse operator in accordance with the provisions of Iowa Code section 554.7601 (Uniform Commercial Code). This bond shall be in the amount of at least double the market value of the commodity at the time of posting the bond. A copy of the bond shall also be filed with the bureau. Upon issuance of a duplicate receipt, it shall be marked "Duplicate of lost warehouse receipt No. \_\_\_\_\_," in the space provided under "Remarks," and the lost receipt number shall be inserted in that space. The bond shall be in the warehouse operator's possession prior to the issuance of a duplicate receipt.

**90.14(3)** Licensee's lost warehouse receipt affidavit. If a warehouse receipt has been lost or destroyed by the warehouse operator, the warehouse operator shall prepare an affidavit in duplicate, signed before a notary public, stating that the warehouse receipt was lost or destroyed on or about (date). The affidavit shall also state that after a diligent search was made, the warehouse receipt cannot be found and that no obligation is due any person under that warehouse receipt. The affidavit shall further state that if the lost receipt is found, it shall be forwarded immediately to the bureau for cancellation. If a depositor's name is on record under the warehouse receipt, the bureau may require that the warehouse operator also obtain a written statement from the depositor that confirms that the depositor has been paid for the grain or the depositor has received the grain back and that the depositor has no further claim against said receipt. The affidavits shall be held in lieu of the original copy of the warehouse receipt. The original copy shall be given to the bureau at the time of an examination.

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This rule is intended to implement Iowa Code section 203C.19.

**21—90.15(203C) Form of warehouse receipt.** Warehouse receipt forms shall be 8.25 inches wide by 7 inches long and shall be printed in not less than triplicate. The original receipt shall be white, and the weight of the paper shall not be less than 20-pound base; the warehouse operator's copy shall be yellow and the weight of the paper shall not be less than 16-pound base; and the owner's copy shall be green and the weight of the paper shall not be less than 16-pound base. Receipts issued for bulk grain and receipts issued for agricultural products other than bulk grain shall be in a form prescribed by the department. The bureau shall have control over the printing of warehouse receipts.

This rule is intended to implement Iowa Code sections 203C.2 and 203C.18.

**21—90.16(203C) Tariffs.** Each warehouse operator, at the time of making application for a warehouse operator license, shall file a tariff with the bureau. The tariff shall be on a form prescribed by the bureau and furnished to the applicant upon request. The tariff shall contain rates to be charged for storage, receiving, and loadout of stored products. After being properly numbered and dated by the bureau, the tariff shall be returned to the licensee for posting in a conspicuous location. A copy of the tariff shall be posted in each location where grain is weighed and delivered.

**90.16(1) Application of tariff.** The tariff rates applicable to stored products shall be those as contained in the tariff on file with the bureau at the time the product is received for storage. The tariff rates shall be applicable on an annual basis from date of deposit. If a tariff is amended, the charges shall be applied in accordance with subrule 90.16(3). Tariff charges shall cease upon cancellation, termination, or revocation of a warehouse license. Tariff charges shall continue in accordance with the rates as filed by the successor warehouse operator. In the determination of the applicable rates to be applied under the successor warehouse operator's tariff, the date of deposit under the new tariff shall be the actual date of deposit. No charges shall apply to grain held for less than 30 days and for which no warehouse receipt has been issued unless the warehouse operator has a posted policy which provides for a shorter time period.

**90.16(2) Supplemental tariff.** The warehouse operator may file with the bureau a supplemental tariff that sets tariff rates for grain meeting special descriptive standards or characteristics. The supplemental tariff shall include the special descriptive standards or characteristics and the rates that will apply to grain meeting those standards or characteristics. The supplemental tariff shall be posted next to the regular warehouse tariff.

**90.16(3) Amending tariff.** The warehouse operator may amend a tariff by filing a new tariff with the bureau, including all supplemental tariffs. The amended tariff shall contain rates as specified by the warehouse operator. The previous tariff shall be posted and continue to apply on all products that are received prior to the effective date of the amended tariff until the anniversary date of deposit unless the new tariff is lower, in which case the amended tariff shall become effective immediately. The amended tariff shall apply to any products received after the effective date of the amendment. The amended tariff shall apply to any products stored under the previous tariff on the anniversary date of the storage period. The effective date of the amended tariff will be the date on which the tariff is received by the bureau or a specified later date.

**90.16(4) Documentation of tariff charges.** Documents on which storage is billed, including bushels and type of commodity, must contain a reference to each warehouse receipt or storage document.

This rule is intended to implement Iowa Code sections 203C.2, 203C.7, 203C.27 and 203C.28.

**21—90.17(203C) Records.** A warehouse operator shall maintain complete and sufficient records to show all deposits, purchases, sales, storage obligations and loadouts of the warehouse.

**90.17(1) Maintaining warehouse receipts.** Unused warehouse receipts shall be maintained in numerical order. The warehouse operator's copy (yellow) of outstanding warehouse receipts and the original copy (white) of warehouse receipts canceled since the previous examination shall be maintained in separate numerical sequences.

**90.17(2) Daily position record.** The daily position record shall summarize one month's activity in a format approved by the bureau. The daily position record shall indicate at least the increases and decreases and ending balances on a daily basis for total stocks, open storage, warehouse-receipted, unpaid company-owned, and paid company-owned, and shall indicate the ending balance of total company-owned. The daily position record shall reflect the obligations in the appropriate columns. A separate daily position record shall be maintained:

- a. For each kind and class of grain; and
- b. For each type of commodity that is identity preserved in licensed facilities.

All daily entries to the daily position record shall reflect transactions made through that day's close of business unless another time of day is elected by the licensee and applied by the licensee on a consistent basis.

**90.17(3) Scale tickets.** Unless the warehouse operator utilizes a computer system which sequentially numbers and prints scale weight tickets, every warehouse operator shall have prenumbered scale tickets.

Every scale ticket shall show, at a minimum, the following:

- a. The warehouse operator's name and location where the grain was delivered;
- b. Date;
- c. Depositor's name;
- d. Gross weight, tare weight, and delivered weight;
- e. Type of product or commodity; and
- f. An indication of whether product or commodity is being received or loaded out.

A copy of each ticket shall be maintained in numerical order by the warehouse operator as part of the records, unless the warehouse operator uses a computer system which sequentially numbers and prints scale tickets and the scale ticket information can be retrieved and reprinted by the computer system. Such systems must be approved in writing by the warehouse bureau. A scale ticket printed at the time of weighing shall be the document of record. All copies of reprinted scale tickets shall be marked "duplicate." All scale ticket forms in the possession of a warehouse operator shall have been permanently and consecutively numbered at the time of printing. The licensee shall be responsible for providing a list of all scale tickets used at each location.

**90.17(4) Settlement sheets.** Unless the warehouse operator utilizes a computer system which sequentially numbers and prints settlement sheets as generated, every warehouse operator shall have prenumbered settlement sheets. All settlement sheets shall show, at a minimum, the following:

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- a. The warehouse operator's name and location;
- b. The seller's name and address;
- c. Date(s) of deliveries;
- d. Scale ticket numbers;
- e. Amount, kind and grade factors of the grain; and
- f. Method of settlement:

(1) If priced, the price per bushel, the quantity of grain priced and the date of pricing.

(2) If paid for, the date, price per bushel, the quantity of grain paid for, the amount of payment and check number or electronic funds transfer number.

(3) If credit-sale contract, the contract type, date and number and the quantity of grain transferred to the contract.

(4) If warehouse receipt, the receipt number, date of issuance and quantity of grain transferred to the receipt.

(5) If removed from the warehouse, the delivery document numbers, dates and amounts of the shipments.

Copies of all settlement sheets shall be maintained in numerical or alphabetical order by the warehouse operator as part of the records, unless the warehouse operator uses a computer system approved in writing by the bureau which sequentially numbers and prints settlement sheets and the settlement sheets can be retrieved on and reprinted by the computer system. A copy of the settlement sheet shall be given to the depositor upon demand, upon the issuance of a credit-sale contract, upon the issuance of a warehouse receipt or upon the completion of returning the commodity to the depositor. Any settlement sheet used in the pricing of grain for the purpose of sale to the warehouse operator shall have the price shown on all copies of such settlement sheet. Deliveries and settlement transactions shall be posted to the settlement sheet on a daily basis unless a computer system utilized can generate a scale ticket summary sheet for each depositor.

**90.17(5) Multiple locations.** If the licensee operates multiple locations under one license, the branch locations may maintain a separate series of the following documents:

- a. Scale tickets;
- b. Settlement sheets;
- c. Credit-sale contracts;
- d. Warehouse receipts; and
- e. Checks.

However, upon issuance, the warehouse operator's copy (yellow) of all warehouse receipts and a copy of each credit-sale contract shall be returned to the main location.

**90.17(6) Inspection.** For the purpose of inspection, the hours of 8 a.m. to 5 p.m., except Saturday, Sunday and holidays, shall be considered as ordinary business hours. All financial records, grain records and payment records shall be available for inspection by the bureau during ordinary business hours and any other time specified by the bureau in writing. All records shall be made available within the state of Iowa upon request.

**90.17(7) Retention of records.** All records shall be kept for a period of not less than six years. Such records shall be kept for the stated time period even if a license has been canceled, terminated or revoked.

**90.17(8) Grade factors on scale tickets.** All grade factors for determining the quality and grade of grain in accordance with the Official United States Standards for Grain shall be documented on scale tickets or supplemental records at time of deposit.

This rule is intended to implement Iowa Code sections 203C.2, 203C.17, and 203C.35.

#### **21—90.18(203C) Adjustment of records.**

**90.18(1) Adjustment of records for operational shrink.** A consistent operational shrink shall be taken on grain handled

and documented on a monthly basis in the warehouse records. An operational shrink is not required to be taken when there has been no movement of a particular kind of grain.

**90.18(2) Other record adjustments.** Any reduction of record obligation shall be justified. Any increase in adjustments of record obligation shall be made only upon department approval or request. An upward adjustment may be made to the records at any time that a total weigh-up for a particular kind of grain is made and all records of the weigh-up have been maintained for verification. The licensee may make upward adjustments for rail and barge shipments based upon actual unloaded weights when the origin weights were estimated. Outbound truck shipments must be weighed on the licensee's scale if one is available. If the outbound shipment cannot be weighed in a single draft, the licensee may adjust the record to reflect the unloaded weights. A warehouse operator may voluntarily adjust the records at the time of examination when the measured inventory exceeds the record obligation in an amount in excess of 1½ percent. All adjustments shall be readily identifiable in the daily position record. Unless the delivered weight is adjusted for and reflects dry bushels, all adjustments for moisture shall be shown in the adjustment column. A computer-generated scale ticket listing that shows gross weights and net weights will satisfy the requirements of this rule.

This rule is intended to implement Iowa Code sections 203C.2 and 203C.35.

**21—90.19(203C) Shrinkage due to moisture.** A person who, in connection with the receipt of grain for storage, processing, or sale, adjusts the scale weight of the grain to compensate for the moisture content of the grain; or to compensate for losses to be incurred during the handling, processing, or storage of grain shall do so in accordance with provisions of Iowa Code section 203C.25.

This rule is intended to implement Iowa Code section 203C.25.

**21—90.20(203C) Monthly grain statements.** A grain statement shall be prepared at the close of business at the end of each calendar month and filed with the bureau by the tenth of the following month. This grain statement shall be on a form prescribed by the bureau, which shall be furnished to the warehouse operator upon request. A grain statement shall be filed for each calendar month regardless of whether or not the warehouse operator has products in storage.

This rule is intended to implement Iowa Code section 203C.2.

**21—90.21(203C) Grain stored in another warehouse.** Upon approval of the bureau, a warehouse operator may store grain in another licensed warehouse located in the state of Iowa.

**90.21(1) Notice and licensing.** Upon receipt of a written request from a warehouse operator to store a specified amount of grain in another warehouse and confirmation of compliance with Iowa Code section 203C.6, the bureau shall issue an amended license to the warehouse operator. The amended license shall show the number of bushels which the warehouse operator is authorized to store in another warehouse. The warehouse operator shall not store grain in another warehouse prior to the issuance of the amended warehouse license.

**90.21(2) Net worth requirement.** The number of bushels of grain to be stored in another warehouse shall be added to the warehouse operator's gross capacity. The warehouse operator must have sufficient net worth to cover the gross capacity or provide a deficiency bond or irrevocable letter of

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credit as provided for in Iowa Code section 203C.6. The net worth requirements of Iowa Code section 203C.6 shall not apply to transfers of grain between warehouses licensed by the same entity.

**90.21(3) Trust warehouse receipts.** A warehouse operator who stores grain in another warehouse shall obtain a nonnegotiable warehouse receipt for the grain stored. The receipt shall clearly show the following notation: "Held in Trust for the Depositors of (name of original receiving warehouse)". The warehouse receipt shall be on an official form as specified in 90.15(203C) or on an official United States Department of Agriculture authorized bonded warehouse receipt as provided for in the United States Warehouse Act.

**90.21(4) Record keeping—daily position record.** Grain stored in another warehouse under the provisions of this rule shall be reflected in the total stocks section and the appropriate obligations section of the warehouse operator's daily position record.

**90.21(5) Record keeping—shipment records.** Grain shipped to another warehouse operator under the provisions of this rule shall be documented on scale tickets. The warehouse operator shall either clearly indicate "forwarded grain" on the scale ticket or maintain a supplementary record of such shipments. The warehouse operator shall at all times maintain a record of the amount of grain stored in another elevator.

**90.21(6) Monthly grain statement requirement.** On the monthly statements filed pursuant to rule 90.20(203C), a warehouse operator shall disclose the amount of each type of grain stored in another warehouse.

This rule is intended to implement Iowa Code sections 203C.2 and 203C.39.

**21—90.22(203C) Warehouse operator's obligation and storage.** A warehouse operator shall at all times maintain sufficient quality and quantity of stored products in the warehouse to cover the obligations as examination of the records shall indicate. If, at the time of an examination, a shortage is determined, a warehouse operator shall purchase and make actual payment in the manner approved by the bureau for a sufficient quantity and quality of the commodity to fully cover the shortage by the end of the second business day after notice by the bureau, excluding weekends or holidays, unless the bureau chief receives within the same time period a confirmation from a surety company or financial institution for 100 percent bonding of the deficiency. Any shortage secured by 100 percent bonding within the allotted time period shall be covered in full within 30 days from the discovery of the shortage. A warehouse operator who does not have a sufficient quantity or quality of grain to satisfy the warehouse operator's obligation based on an examination by the department shall not purchase grain by credit-sale contract to correct the shortage of grain. The department may suspend the license of any licensee who has a shortage and who is unable to satisfy the above requirements of this rule.

This rule is intended to implement Iowa Code sections 203C.1 and 203C.17.

**21—90.23(203C) Storing of products.** Bulk grain in storage shall be stored in such a manner that the amount of grain in the storage facility can be readily determined. The warehouse operator may be required to level the grain before completion of the examination if the amount of bulk grain in a storage facility cannot be readily measured by the examiner. A product other than bulk grain shall be stored in such a manner that it can be readily inspected and the amount and kind thereof determined. The maintenance, conditioning, care, or surveil-

lance shall be given to stored products as is required to maintain the quality, grade, and safe storage of the products. Nothing shall be placed or stored in a licensed facility that will in any way contaminate the stored products or cause any degrading of grade or value. Storage facilities shall not be overfilled. There shall be sufficient overhead airspace to provide adequate ventilation and to allow the examiner to readily determine the quality and quantity of the grain. The bureau chief may require the installation of overhead ventilation fans in facilities when in the bureau chief's judgment such fans are needed to preserve the quality of stored products. The bureau chief may require the installation of aeration equipment in storage facilities when it is deemed necessary to preserve the quality of stored products.

**90.23(1) Storage of contaminating products or more than one type of agricultural product.** Facilities may be licensed for both bulk grain and agricultural products other than bulk grain; however, if products of a contaminating nature are stored in the facility, the facility shall be removed from the license for any other agricultural products. If more than one type of an agricultural product is being stored in a facility, proper measures shall be implemented to keep such products from intermingling.

**90.23(2) Stored products in licensed facilities.** All stored products shall be maintained in licensed facilities.

This rule is intended to implement Iowa Code sections 203C.2, 203C.8 and 203C.16.

**21—90.24(203C) Facilities.** No facility shall be considered suitable for the storage of bulk grain unless the warehouse has the necessary equipment such as: grain leg, portable augers or vacuators for handling, receiving, and loading out of grain.

**90.24(1) No connection between facilities.** No unlicensed facility shall be connected to a licensed facility unless prior approval is obtained from the bureau.

**90.24(2) Scale required.** All licensees shall have an approved scale for inbound deliveries made by depositors.

This rule is intended to implement Iowa Code sections 203C.2 and 203C.8.

**21—90.25(203C) Maintenance of storage facilities.** All licensed storage facilities shall be maintained in such manner as to be suitable for the proper and safe storage of the particular product or products to be stored therein. Safe and adequate means of ingress and egress to the various storage units and grounds of the warehouse complex shall be provided and maintained by the warehouse operator. Sufficient louvers, outlets, overhead ventilation fans, aeration ducts and fans or any combination of these shall be maintained in each storage facility to prevent deterioration or spoilage and to maintain proper and safe storage of stored products.

**90.25(1) Inspection safety specifications for ladders and lifts on storage units.** Storage units having entrances over 20 feet to a maximum of 100 feet above floor level shall be equipped with a fixed ladder, an attached circular or spiral stairway, an alternating tower-type stairway or a safe and adequate lift. Storage units having entrances in excess of 100 feet above floor level shall be equipped with an adequate electric lift. Catwalks or walkways between storage units may be provided in lieu of ladders or lifts between facilities. Rungs on fixed ladders shall be spaced not to exceed 1-foot centers, and there shall be sufficient space between ladder rung and face of the structure to permit a safe foothold. Any structure required to have a fixed ladder shall have an approved safety cage which shall commence not less than 7 feet or more than 8 feet from ground level. Landing plat-



## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

forms shall be provided for each 30 feet of fixed ladder or fraction thereof for ladders constructed after December 31, 2005. Landing platforms shall be provided for each offset of fixed ladder sections regardless of the length of the ladder sections. Any facilities with a safety cable and belt hookup that were approved for licensing prior to September 1, 1992, shall continue to be approved provided they are maintained in a safe working order. Any facilities with a fixed ladder more than 20 feet in length, but not more than 24 feet in length, that were approved for licensing prior to December 31, 2005, shall continue to be approved provided they are maintained in a safe condition.

**90.25(2)** Catwalks, walkways, landing platforms and stairs. Catwalks, walkways and landing platforms shall be equipped with a top rail 42 inches from the floor and a middle rail. Catwalks, walkways and landing platforms constructed after September 1, 1992, must also be equipped with toeboards which are at least 4 inches in height and which are not more than ¼ inch from the floor. Stairways shall be equipped with handles which are not more than 34 inches nor less than 30 inches in height and of similar construction as catwalk or walkway rails. Catwalks, walkways, landing platforms, stairways, lifts and ladders shall be kept clean and free of grain and other matter which might endanger the safety of persons using them. Guardrails shall be placed around the entrance to any storage facility exceeding 30 feet above the floor, or around a landing platform below such entrance to a facility. At no time shall electrical lines be anchored on or within reach of a ladder or safety cage unless enclosed in conduit. All electrical lines in proximity of the inspection ladder, stairway, walkway or lift shall be enclosed in conduit.

**90.25(3)** Removal of facilities from warehouse license. Any storage facility which fails to meet the requirements of this rule shall be called to the attention of the warehouse operator. Failure of the warehouse operator to place the facility in a suitable condition within a reasonable length of time shall result in the elimination of the facility from coverage under the warehouse operator license in accordance with the provisions of Iowa Code section 203C.8. However, if in the bureau's judgment any facility is unsafe to gain ingress and egress at the time of an examination, the products stored in the facility may not be included in the inventory. Any facility which has deteriorated to the extent that it is unsuitable for storage shall be immediately removed from the warehouse license in accordance with the provisions of Iowa Code section 203C.8, until such time that the facility shall meet the requirements of this rule and has been reinspected.

This rule is intended to implement Iowa Code sections 203C.2 and 203C.8.

**21—90.26(203C) Temporary grain storage facilities.** A temporary grain storage facility may, in the discretion of the department, be approved and licensed on the following bases:

**90.26(1)** License period. A license for a temporary storage facility may be issued at any time but shall be effective for the storage of grain only from August 1 to May 1 of the following year. A temporary storage facility license shall terminate each May 1 unless the licensee requests and obtains an extension in accordance with subrule 90.26(2).

**90.26(2)** Extensions. An extensions of 90 days may be granted if all of the following requirements are satisfied:

a. The licensee has requested an original extension or an additional extension no later than 45 days prior to the expiration of the licensing period or extension then in effect.

b. The bureau has completed an examination of the licensee's temporary storage facility.

c. The licensee has paid the bureau for the cost of the examination of its temporary storage facility. The payment shall include the labor costs, the equipment cost, the sampling cost and any additional costs incurred by the bureau in examining a licensee's temporary storage facilities. Payment shall be made and received by the bureau before any extension may be granted.

d. Every temporary storage facility for which the department has granted an extension shall continue to meet all of the other requirements of rule 90.26(203C). Before an extension is granted, the bureau chief may require the filing of a bond or irrevocable letter of credit in an amount to be determined by the department.

**90.26(3)** Restrictions on extensions. The licensing period for a temporary storage facility may be extended beyond August 1. However, the extension of a licensing period for a temporary storage facility shall not result in the granting of a new August 1 to May 1 licensing period. As a result, a licensee shall be required to request additional extensions at least 45 days prior to the expiration of the extension then in effect.

**90.26(4)** Expiration. The warehouse operator shall either purchase the grain stored in the temporary storage facility or remove the grain from the temporary storage facility prior to May 1 or prior to the expiration of a granted extension.

**90.26(5)** Specifications for temporary storage facilities. Every temporary storage facility shall comply with the following specifications:

a. Each storage unit shall contain aeration equipment to provide at least .13 cubic feet of air per bushel per minute.

b. Each storage unit shall have an asphalt base, concrete base, pozzolanic base, or a compacted limestone base which meets the following minimum specifications:

(1) Base shall be of a depth and compaction to permit trucks or other equipment, used in loading or unloading the pad, to move around over the base without breaking through or unduly scuffing the surface.

(2) Depth of limestone top shall not be less than four inches.

(3) Adequate slope and drainage away from the base shall be provided to prevent any water from standing or backing up under the grain. Base shall be at least six inches above surrounding area.

c. The angle of repose of the stored grain shall be maintained to provide sufficient drainage.

d. The storage unit shall be covered. The cover shall be of sufficient strength to resist tearing under normal expected conditions and to allow a person to walk on the cover without penetrating it.

e. All storage units shall have rigid sidewalls.

**90.26(6)** Inspection for licensing. Every temporary storage facility to be included under a warehouse operator license shall be inspected and licensed before any products to be stored are placed in the facility.

**90.26(7)** Limitation. Temporary licensed storage capacity may not exceed 50 percent of permanent licensed storage capacity.

**90.26(8)** Removal from license. The bureau chief or examiner shall issue written notice to the warehouse operator for any temporary storage facility which no longer meets the requirements of this rule. Failure of the warehouse operator to place the facility in a suitable condition within a reasonable length of time shall result in the elimination of the facility from coverage under the warehouse license. Any facility which has deteriorated to the extent that it is unsuitable for storage shall be immediately removed from the warehouse li-

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

cense until the time that it meets the requirements of this rule and has been reinspected.

**90.26(9) Moisture and quality.** Corn containing more than 14 percent moisture or soybeans containing more than 13 percent moisture shall not be stored in temporary facilities. Corn and soybeans which do not grade No. 2 or better using the Official United States Standards for Grain shall not be stored in a temporary storage facility.

**90.26(10) Periodic maintenance.** The warehouse operator will make observations of grain temperature, aeration outlet temperature and odor, condition of the cover and drainage as necessary to ensure the safe storage of the grain in a temporary storage facility. These observations shall be made at regular intervals.

This rule is intended to implement Iowa Code sections 203C.2, 203C.7, 203C.8, 203C.12, 203C.16, and 203C.18.

**21—90.27(203C) Emergency ground pile storage space.** Emergency ground pile storage space may, in the discretion of the department, be approved and licensed for the storage of corn on the following bases:

**90.27(1) License period.** A license for emergency ground pile storage space shall be effective from August 1 to January 31 of the following year.

**90.27(2) Expiration.** The warehouse operator shall either purchase the grain stored in the emergency ground pile storage space or remove the corn from the emergency ground pile storage space prior to February 1. Any corn remaining in such space after this date will not be included in grain inventory measurements made by the department, and such corn may not be used to cover storage obligations.

**90.27(3) Bonding.** Before any corn can be placed in licensed emergency ground pile storage space, the department shall receive either an irrevocable letter of credit or a surety bond in the amount of \$2 for each bushel to be placed in emergency ground pile storage space. The irrevocable letter of credit or surety bond will expire on April 1. The issuer shall not cancel the irrevocable letter of credit or surety bond filed with the department under this rule on less than 45 days' notice by certified mail to the department and to the licensee. When the department receives notice from an issuer that the issuer has canceled the irrevocable letter of credit or surety bond, and the letter of credit or bond is still needed, the department shall automatically suspend the license if the department does not receive a replacement irrevocable letter of credit or surety bond within 30 days of the issuance of the notice of cancellation. If a replacement irrevocable letter of credit or surety bond is not filed within 10 days following the suspension, the department shall automatically revoke the warehouse operator's license.

**90.27(4) Specifications for emergency ground pile storage.** All emergency ground pile storage space shall have an asphalt base, concrete base, or a compacted limestone base which meets the following minimum specifications:

a. Base shall be of a depth and compaction to permit trucks or other equipment used in loading or unloading the pad to move around over the base without breaking through or unduly scuffing the surface.

b. Depth of limestone top shall be not less than four inches.

c. Adequate slope and drainage away from the base shall be provided to prevent any water from standing or backing up under the grain.

**90.27(5) Licensing.** All emergency ground pile storage space to be included under a warehouse operator license shall be licensed before any corn to be stored is placed in it.

**90.27(6) Limitation.** Emergency licensed ground pile storage space may not exceed 30 percent of permanent licensed storage capacity.

**90.27(7) Record keeping.** A separate daily position record shall be maintained on all corn placed in the emergency licensed ground pile storage space.

**90.27(8) Moisture and quality.** Corn containing more than 15 percent moisture shall not be stored in emergency ground pile storage space. Corn which does not grade No. 2 or better using the Official United States Standards for Grain shall not be stored in emergency ground pile storage space.

**90.27(9) Removal from license.** The bureau chief or examiner shall issue written notice to the warehouse operator for any emergency ground pile storage space which no longer meets the requirements of this rule. Failure of the warehouse operator to place the emergency ground pile storage space in a suitable condition within a reasonable length of time shall result in the emergency ground pile storage space's being eliminated from coverage under the warehouse license.

This rule is intended to implement Iowa Code sections 203C.2, 203C.7, 203C.8, 203C.12, 203C.16, and 203C.18.

**21—90.28(203C) Polyethylene (polyvinyl) bag storage space.** Polyvinyl bag storage space may, in the discretion of the department, be approved and licensed for the storage of corn on the following bases:

**90.28(1) License period.** Licenses for polyvinyl bag storage space shall be effective from August 1 to May 1 of the following year. A polyvinyl bag storage space license shall terminate May 1 unless the licensee requests and obtains an extension in accordance with subrule 90.28(2).

**90.28(2) Extensions.** An extension of 90 days may be granted if all of the following requirements are satisfied:

a. The licensee has requested an original extension or an additional extension no later than 45 days prior to the expiration of the licensing period or extension then in effect.

b. The bureau has completed an examination of the licensee's polyvinyl bag storage space.

c. The licensee has paid the bureau for the cost of the examination of its polyvinyl bag storage space. The payment shall include the equipment cost, sampling cost, labor cost and any additional costs incurred by the bureau in examining a licensee's polyvinyl bag storage space. Payment shall be made and received by the bureau before any extension may be granted.

**90.28(3) Restrictions on extensions.** The licensing period for polyvinyl bag storage space may be extended beyond August 1. However, the extension of a licensing period for polyvinyl bag storage space shall not result in the granting of a new August 1 to May 1 licensing period. As a result, a licensee shall be required to request additional extensions at least 45 days prior to the expiration of the extension then in effect.

**90.28(4) Expiration.** The warehouse operator shall either purchase the corn stored in the polyvinyl bag storage space or remove the corn from the polyvinyl bag storage space prior to May 1 or prior to the expiration of a granted extension.

**90.28(5) Specifications for polyvinyl bag storage space.** All polyvinyl bag storage space shall comply with the following specifications:

a. The polyvinyl bag shall be a minimum of 8.5 mil or thicker.

b. The polyvinyl bag shall be white.

c. The polyvinyl bag site shall be firm and free of objects that could puncture the polyvinyl bag. A gravel base will not be an approved surface.

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

d. The following are approved surfaces:

- (1) Asphalt base.
- (2) Concrete base.
- (3) Compacted limestone base.
- (4) On turf or hay ground that has been mowed to a height (not more than 2.5 inches) not to puncture the polyvinyl bag.
- (5) Bladed dirt.

e. Adequate drainage away from the base shall be provided to prevent any water from standing or backing up under the polyvinyl bags.

f. The polyvinyl bag site shall be free of any spilled grain and tall grass.

g. The polyvinyl bag must be closed in accordance with the manufacturer's written instructions or so that no deterioration of the stored corn can occur.

**90.28(6)** Inspection for licensing. Polyvinyl bag storage space to be included under a warehouse operator license shall be inspected and licensed before any corn to be stored is placed into the bags.

**90.28(7)** Limitations. Polyvinyl bag storage space may not exceed 30 percent of permanent licensed storage capacity.

**90.28(8)** Moisture and quality. Corn containing more than 14 percent moisture shall not be stored in polyvinyl bags. Corn which does not grade No. 2 or better using the Official United States Standards for Grain shall not be stored in polyvinyl bags.

**90.28(9)** Removal from license. The bureau chief or examiner shall issue written notice to the warehouse operator for any polyvinyl bag which no longer meets the requirements of this rule. Failure of the warehouse operator to place the polyvinyl bag in a suitable condition within a reasonable length of time shall result in the elimination of the polyvinyl bag from coverage from the warehouse license. Any polyvinyl bag which has deteriorated to the extent that it is unsuitable for storage shall be immediately removed from the warehouse license until the time that it meets the requirements of this rule and has been reinstated.

**90.28(10)** Periodic maintenance. The warehouse operator will make such observations of the condition of the polyvinyl bags and the surface temperature of the corn as necessary to ensure the safe storage of the corn in polyvinyl bags. Such observations shall be made at regular intervals.

This rule is intended to implement Iowa Code sections 203C.2, 203C.7, 203C.8, 203C.12, 203C.16, and 203C.18.

**21—90.29(203C) Prioritization of inspections of warehouse operators.** Warehouse operators with a probability of failure factor greater than 40 percent, as calculated by the statistical model, shall be examined at least twice in a 12-month period.

This rule is intended to implement Iowa Code sections 203C.2 and 203C.40.

**21—90.30(203C) Department of agriculture and land stewardship enforcement procedures.** The bureau shall follow a step-by-step enforcement policy to ensure consistent compliance with and application of these rules. The department recognizes that violations of certain rules may have more serious ramifications; thus, the enforcement of those rules requires stricter policies. The enforcement policies apply to any violation of these rules unless enforcement provisions are specifically addressed in a particular rule or subrule.

**90.30(1)** If it is necessary to establish proof of a violation of statute or rule, the bureau shall conduct a special investigation of the licensee. The bureau may contact the warehouse operator, the warehouse operator's employees, or any other interested party to gain information for its investigation. The

bureau, in its investigation of a licensee, may cause a special examination to occur if evidence of at least one of the following conditions is present:

- a. Insufficient funds check or failed electronic funds transfer.
- b. Stalled payment for grain.
- c. Quantity deficiency.
- d. Quality deficiency.
- e. Incomplete or inaccurate records as specified in rule 90.17(203C).

The expense of such special examination shall be based on actual costs incurred by the bureau and may be assessed to the licensee. The costs shall include the labor, equipment, sampling and any additional costs incurred by the bureau. Payment shall be made as directed by the bureau.

**90.30(2)** Upon establishment of a rule violation by an examiner or the bureau, the bureau shall consider the following elements in determining the proper period of time within which to require a licensee to comply with the rules:

- a. Gravity of the offense.
- b. Likelihood of depositor loss.
- c. Length of time within which a reasonable licensee in a similar circumstance should be able to comply with the rule.

**90.30(3)** The bureau chief may initiate license suspension or revocation proceedings against the licensee for any violation of these rules. The bureau chief shall consider the following factors in making the determination to initiate the suspension or revocation proceedings:

- a. Likelihood of depositor loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of violations of statute or rule.
- e. Number of violations in the particular report.

**90.30(4)** The bureau chief may cause charges to be filed against the licensee for any violation of these rules. The bureau chief shall consider the following factors in making the determination to file charges:

- a. Likelihood of depositor loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of rule violations.
- e. Number of violations in the particular report.

**90.30(5)** The bureau chief may initiate the assessment of civil penalties against the licensee for any violation of these rules. The bureau chief shall consider the following factors in making the determination to initiate the assessment of civil penalties:

- a. Likelihood of depositor loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of violations of statute or rule.
- e. Number of violations in the particular report.

This rule is intended to implement Iowa Code sections 203C.2, 203C.10, 203C.36 and 203C.36A.

**21—90.31(203C) Review proceedings.** A warehouse licensee or applicant may file a formal written complaint with the department if the licensee or applicant contests any finding or decision of the bureau chief. Any such complaints shall be resolved in contested case proceedings conducted pursuant to the applicable provisions of 21—Chapter 2.

ITEM 2. Rescind 21—Chapter 91 and adopt in lieu thereof the following **new** chapter:

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

CHAPTER 91  
LICENSED GRAIN DEALERS

**21—91.1(203) Application of rules.** These rules are subject to such changes and modifications as the department of agriculture and land stewardship may from time to time deem advisable. These rules are subject to such waivers or variances as may be considered just and reasonable in individual cases, subject to the provisions of 21—Chapter 8.

This rule is intended to implement Iowa Code section 203.2.

**21—91.2(203) Definitions.** For this chapter, the following definitions apply:

“Bureau” means the grain warehouse bureau of the department of agriculture and land stewardship.

“Department” means the Iowa department of agriculture and land stewardship.

“Licensee” means a licensed grain dealer.

“Received” means the earliest of the following:

1. The date a state warehouse examiner acknowledges receipt.

2. The date stamped “received” in the grain warehouse bureau.

3. The date postmarked, if the item is properly addressed, to the Grain Warehouse Bureau, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319.

**21—91.3(203) Application for a grain dealer license.** Application for a grain dealer license (Iowa Code chapter 203) shall be made to the bureau on forms prescribed for that purpose by the bureau. Forms are available from the bureau upon request. All information required by Iowa Code chapter 203 shall be furnished. The bureau may require the applicant to file updated information if the information on the application is no longer current. The background information on a person applying for the license and on the managers must be on file before a license is issued.

This rule is intended to implement Iowa Code sections 203.2 and 203.3.

**21—91.4(203) Grain dealer license not transferable.** A grain dealer license is not transferable between different legal entities. A grain dealer license may be amended to cover a name change of the same legal entity. The licensee shall give the bureau notice of a proposed name change. The bureau shall confirm the name change with the secretary of state or other governmental agency prior to amending the license.

This rule is intended to implement Iowa Code section 203.7.

**21—91.5(203) Posting of license and fee receipt.** The grain dealer license certificate and annual fee receipt for the current license period shall be posted at all times in a conspicuous location in the office or place of business of the grain dealer. A license certificate shall be posted in each location where grain is purchased or delivered.

This rule is intended to implement Iowa Code section 203.7.

**21—91.6(203) Surrender of license.** The grain dealer license and all unused credit-sale contracts shall be forwarded to the bureau immediately upon cancellation, termination, or revocation of such license. A grain dealer’s letter requesting cancellation of the grain dealer license shall also state whether or not there are any unpaid obligations.

This rule is intended to implement Iowa Code sections 203.2, 203.3 and 203.7.

**21—91.7(203) Renewal, termination and reinstatement of license—payment of license fee.**

**91.7(1)** The bureau shall send to each licensed grain dealer written notice that the application and the license fee for annual renewal of the grain dealer license shall be received in accordance with Iowa Code section 203.5. If the bureau does not receive the application and fee by the due date, the license shall be terminated. A license that has been terminated may be reinstated within 30 days of the date of termination conditioned on the applicant’s meeting all statutory requirements and the bureau’s receipt of the following within 30 days of the termination:

- a. Completed application;
- b. License fee; and
- c. The reinstatement fee prescribed in Iowa Code section 203.6.

**91.7(2)** Fees for license periods of less than one year shall be prorated on a month-to-month basis. Fees for license periods of less than one year shall be applicable only under the following circumstances:

- a. When an application for a new license is filed; or
- b. When the fiscal year end of a license holder is changed.

This rule is intended to implement Iowa Code sections 203.5 and 203.6.

**21—91.8(203) Financial statements.**

**91.8(1)** New license applicants. To obtain a grain dealer license, an applicant shall submit a financial statement that shall:

- a. Be prepared within three months from the date of filing and comply with subrule 91.8(2), paragraph “a” or “b”; or
- b. Be prepared as of the applicant’s usual fiscal year and comply with subrule 91.8(2), paragraph “a” or “b,” and the applicant has continuously been in business for one year or more and the applicant has submitted any additional financial information required by the bureau; or
- c. Be a forecasted financial statement prepared by a certified public accountant licensed in this state and the applicant is a new business entity, which is in the process of transferring funds into the business entity. An applicant who files a forecasted financial statement pursuant to this paragraph shall file a financial statement which complies with subrule 91.8(2), paragraph “a” or “b,” within one month after the date the license is issued by the bureau.

**91.8(2)** Financial statement requirements. Financial statements filed pursuant to subrules 91.8(1), 91.8(3), 91.8(4) and 91.8(11) shall be prepared in accordance with accounting principles generally accepted in the United States and shall comply with either of the following:

- a. Be accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. The bureau may accept a qualification in an opinion that is unavoidable by any audit procedure. Opinions that are qualified because of the limited audit procedure or because the scope of an audit is limited shall not be accepted by the bureau; or
- b. Be accompanied by the report of a certified public accountant licensed in this state that is based upon a review performed by the certified public accountant.

**91.8(3)** Sole proprietorship financial statements. An individual licensed as a sole proprietorship shall file a financial statement which conforms with the provisions of subrules 91.8(2) and 91.8(4) on the proprietorship business. The individual shall also file a personal statement of financial condition which conforms with the provisions of subrules 91.8(2) and 91.8(4). The personal statement of financial condition

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shall also disclose the historical cost basis for assets as provided in Iowa Code section 203.3.

**91.8(4)** Filing date of annual statements. Every licensee shall prepare financial statements at the close of the licensee's designated fiscal year and shall file the statements and the bureau's financial information form with the bureau not later than three months thereafter. These financial statements shall be prepared in accordance with generally accepted accounting principles and shall consist, at a minimum, of a balance sheet, statement of income, statement of cash flow, and accompanying notes to the financial statements. The bureau shall notify every licensee during the month after the close of the licensee's fiscal year that the licensee's financial statements are due three months from the close of the licensee's fiscal year.

**91.8(5)** Additional disclosures required in the financial statements. Unless the following information is disclosed in the fiscal year end financial statements, the licensee's certified public accountant shall file with the financial statements a separate letter disclosing the information:

- a. A reconciliation of differences in the grain obligations as shown in the financial statement and the daily position record.
- b. Amount and kind of grain on collateral warehouse receipts.
- c. Amount and kind of company-owned grain which is being stored in unlicensed facilities or which has been transferred to another warehouse.
- d. Bushel and dollar amounts of all outstanding grain payables, including a breakdown of the bushels and dollars of each type of credit-sale contract.
- e. Gross grain sales for the fiscal year.
- f. Gross nongrain sales for the fiscal year.
- g. Cost of all goods sold for the fiscal year.
- h. Depreciation expense for the fiscal year.
- i. Interest expense for the fiscal year.
- j. Number of bushels of grain purchased under each grain dealer's license. For purposes of this paragraph, "purchases" shall mean all grain to which the grain dealer has obtained title during the grain dealer's fiscal year.

**91.8(6)** Filing extension.

a. An extension of one month may be granted by the bureau chief for the filing of financial statements upon receipt of the following:

(1) A letter from the grain dealer's certified public accountant stating the reason for filing the extension request and that work has been done on preparing the financial statements.

(2) An affidavit from the grain dealer stating that the grain dealer meets the financial responsibility requirements of Iowa Code sections 203.3 and 203.15, or that the licensee shall file additional bond in an amount to cover any net worth or current ratio deficiency as provided in Iowa Code sections 203.3 and 203.15, based upon the licensee's certified public accountant's best estimate of the licensee's financial position.

b. Grain dealers who file false affidavits under this rule may be prosecuted under Iowa Code section 203.11. Subrule 91.8(6) does not apply to the filing of financial statements required under the provisions of subrules 91.8(10), 91.8(11) and 91.8(12).

**91.8(7)** Asset valuation. The licensee may submit to the bureau a written request for asset valuation. The written request shall be accompanied by the appraisal and shall have been prepared by a licensed appraiser in this state and shall list the appraiser's credentials. Before an appraisal will be

accepted by the bureau, the licensee shall show a positive net worth. All appraisals are subject to approval by the bureau chief. The bureau chief shall notify the licensee within five working days if the appraisal is unacceptable. Any approved asset valuation may be used in any financial statements prepared by or for the licensee in accordance with subrule 91.8(2).

**91.8(8)** Appraisals. Competent appraisals on file with the bureau shall be valid for use in determining asset value for a maximum period of three years. Thereafter, a new appraisal for asset valuation shall be required and shall be used for a like period of time. In the event the certified public accountant expresses doubt as to the licensee's ability to continue as a going concern, the bureau shall not allow an appraisal to be used to meet net worth requirements. The bureau shall not allow an appraisal to be used to determine the percentage of total liabilities to total assets as it relates to subrule 91.17(2), paragraph "e," concerning the suspension of a licensee's authorization to use credit-sale contracts. All assets included in the appraisal shall be depreciated by the bureau using the following schedule:

- a. Buildings and attached equipment—15 years.
- b. Rolling stock (trucks)—5 years.
- c. Equipment—5 years.

**91.8(9)** Assets allowed in meeting financial requirements.

a. Corporations, limited liability companies and partnerships. When the bureau determines the net worth, current assets to current liabilities ratio and total debts to total assets ratio requirements for corporations, limited liability companies and partnerships, related party assets that require financial disclosure per financial accounting standards shall be disallowed. These assets shall be excluded unless the licensee can show the department sufficient documentation to explain why these assets should be allowed.

b. Sole proprietors. When the bureau determines the net worth and current assets to current liabilities ratio requirements for sole proprietors, related party assets shall be excluded unless the licensee can show the department sufficient documentation to explain why these assets should be included. Only that part of the value of an asset which is subject to execution shall be allowed by the bureau in determining net worth and current assets to current liabilities ratio requirements. When a liability associated with an exempt asset (whether the asset is included or not) exceeds the original cost (or fair market value after an appraisal approved by the bureau), such excess shall be shown as a liability with appropriate footnotes to the financial statement. An applicant or a licensed warehouse operator shall complete the bureau's financial information form regarding this matter and submit the form with the financial statements.

**91.8(10)** Net worth and current ratio deficiency monthly financial statements. Every licensee who has a net worth or current ratio deficiency and who has filed additional bond shall file monthly financial statements with the bureau by the end of the next month until the licensee's net worth or current ratio meets the requirements of Iowa Code section 203.3 for a minimum of three consecutive months. These financial statements shall contain a minimum of a balance sheet and statement of income and shall be prepared in accordance with generally accepted accounting principles.

**91.8(11)** Good cause financial statement. The bureau chief may require a licensee to file a financial statement which complies with paragraph 91.8(2)"b" within 45 days of notification by the bureau if one of the following conditions exists:

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

a. Payment is made by use of a check or electronic funds transfer and a financial institution refuses payment because of insufficient moneys in the licensee's account;

b. Evidence of licensee requesting or delaying payment for grain without the use of a credit-sale contract for grain;

c. Other documented evidence which indicates that the licensee's financial condition has deteriorated since the filing of the licensee's last financial statement;

d. A high risk of loss to the grain depositors and sellers indemnity fund caused by the possible insolvency of the grain dealer based on a statistical model provided in Iowa Code section 203.22; or

e. Record-keeping violations.

**91.8(12)** Additional information. The bureau chief may require an applicant or licensee to provide the bureau with any other information reasonably related to the business of a grain dealer and work papers supporting the financial statements.

**91.8(13)** Penalty for failure to timely supply financial statements. The department may suspend the license of any grain dealer who fails to provide the required financial statements within the time limits prescribed by these rules.

This rule is intended to implement Iowa Code sections 203.1, 203.2, 203.3, 203.6, and 203.15.

**21—91.9(203) Bonds and irrevocable letters of credit.** Bonds filed with the bureau shall be on forms prescribed by the bureau. Irrevocable letters of credit issued to the bureau shall be on the form prescribed by the bureau. Bonds and irrevocable letters of credit shall be written so as to provide funds to protect producers who have sold grain to the licensed grain dealer.

**91.9(1)** Deficiency bond or irrevocable letter of credit. When the net worth or current ratio of a licensee is less than that required by Iowa Code section 203.3, the grain dealer may file a bond or an irrevocable letter of credit with the bureau to cover the deficiency as provided by and within the time prescribed in Iowa Code section 203.3. Bonds filed with the bureau shall be on the form prescribed and furnished by the bureau. Irrevocable letters of credit shall be on the form prescribed by the bureau. Bonds or irrevocable letters of credit shall be written so as to provide a source of funds to protect producers who have sold grain to the licensed grain dealer. Unless the licensee files the bond or irrevocable letter of credit within the prescribed time period, the grain dealer license shall be suspended. The licensee's failure to provide the bond or irrevocable letter of credit within ten days of suspension shall cause the license to be revoked.

**91.9(2)** Time period to correct deficiency. If a grain dealer has current assets equal to less than 50 percent of current liabilities and files a deficiency bond or irrevocable letter of credit as provided in Iowa Code section 203.3(5) within the 30-day period after the notice by the bureau, the grain dealer shall correct the deficiency other than by the use of a deficiency bond or irrevocable letter of credit within 30 days after the filing of the deficiency bond or irrevocable letter of credit. Failure to cure the deficiency other than by the use of a deficiency bond or irrevocable letter of credit within the 30 days shall cause the license to be suspended.

**91.9(3)** Replacement bond or irrevocable letter of credit. The bureau shall send written notice to the licensee notifying the licensee that the bond or irrevocable letter of credit shall be canceled on the date specified by the surety or issuer in its notice to the bureau. The bureau shall send a written notice and information and forms for filing the required replacement bond or irrevocable letter of credit. Replacement bond or irrevocable letter of credit shall be on file with the bureau

prior to the time of cancellation of the bond or irrevocable letter of credit. The department shall suspend any grain dealer license from the time the grain dealer's bond or irrevocable letter of credit is canceled until the replacement bond or irrevocable letter of credit is on file with the department. Unless the bond or irrevocable letter of credit is no longer necessary, the department shall revoke the grain dealer's license if a replacement bond or irrevocable letter of credit is not received from the licensee within 30 days of suspension of the license.

**91.9(4)** Cancellation of the bond or irrevocable letter of credit. The issuer shall send a cancellation notice to the bureau by certified mail. The notice shall be in accordance with the provisions stated in the bond or irrevocable letter of credit. The time period for notice of cancellation stated in the bond or irrevocable letter of credit commences on the date when the bureau receives the notice. The bureau shall send written acknowledgment of notice of the cancellation of the bond or irrevocable letter of credit to the issuer and the principal.

This rule is intended to implement Iowa Code sections 203.3 and 203.4.

**21—91.10(203) Payment.** Payment for grain shall be made as provided by Iowa Code section 203.8. When a dealer has failed to make payment on demand of the seller and the failure has come to the attention of the bureau, the bureau chief shall request the dealer to make payment within 24 hours. The request may be made verbally and confirmed by ordinary mail. The bureau chief may require the dealer to make payment with a cashier's check or money order if there is any evidence of financial instability. Absent a dispute between buyer and seller, the license may be suspended if the dealer fails to make timely payment as requested by the bureau chief. An insufficient funds check or failed electronic funds transfer shall not constitute payment under this rule.

This rule is intended to implement Iowa Code sections 203.2 and 203.8.

**21—91.11(203) Books and records.**

**91.11(1)** General records. A grain dealer shall maintain complete and sufficient records to show all purchases, sales, and payments for grain purchased.

**91.11(2)** Daily position record. Unless otherwise approved by the bureau, every grain dealer shall keep and maintain on a daily basis a grain position record on a form approved by the bureau. The daily position record shall summarize one month's activity in a format approved by the bureau. The daily position record shall indicate at least the increases and decreases and ending balances on a daily basis for unpaid company-owned. The daily position record shall reflect the obligations in the appropriate columns.

A separate daily position record shall be maintained for each kind and class of grain and each type of commodity that is identity preserved. All daily entries to the daily position record shall reflect transactions made through that day's close of business unless another time of day is elected by the licensee and applied by the licensee on a consistent basis.

**91.11(3)** Inspection. For the purpose of inspection, the hours of 8 a.m. to 5 p.m., except Saturday, Sunday and holidays, shall be considered as ordinary business hours. All financial records, grain records and payment records shall be available for inspection by the bureau during ordinary business hours, and any other time specified by the bureau in writing. All records shall be made available within the state of Iowa upon request. Unless the bureau has been notified that the records would not be available for inspection, an examination fee may be assessed to the grain dealer if an ex-

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

aminer arrives at the licensee's location and the records are not available for inspection.

**91.11(4)** Settlement sheets. Unless the grain dealer utilizes a computer system which sequentially numbers settlement sheets as generated, every grain dealer shall have pre-numbered settlement sheets. All settlement sheets shall show, at a minimum, the following:

- a. The grain dealer's name and address;
- b. Seller's name and address;
- c. Date of deliveries;
- d. Scale ticket numbers;
- e. Amount, kind and grade factors of the grain; and
- f. Method of settlement:

(1) If priced, the price per bushel, the quantity of grain priced and the date of pricing.

(2) If paid for, the date, price per bushel, the quantity of grain paid for, the amount of payment and check number or electronic funds transfer number.

(3) If credit-sale contract, the contract type, date and number and the quantity of grain transferred to the contract.

(4) If warehouse receipt, the receipt number, date and quantity of grain transferred to the receipt.

(5) If removed from the warehouse, the delivery document numbers, dates and amounts of the shipments.

Copies of all settlement sheets shall be maintained in alphabetical or numerical order by the dealer as part of the records, unless the dealer uses a computer system approved in writing by the bureau which sequentially numbers and prints settlement sheets and the settlement sheets can be retrieved on and reprinted by the computer system. A copy of the settlement sheet shall be given to the seller upon demand, upon payment or upon the issuance of a credit-sale contract. Any settlement sheet used in the pricing of grain for the purpose of sale to the grain dealer shall have the price shown on all copies of such settlement sheet. Deliveries and settlement transactions shall be posted to the settlement sheet on a daily basis unless a computer system is utilized which can generate a scale ticket summary sheet for each depositor.

**91.11(5)** Scale tickets. If the dealer has a scale or regular access to a scale which can be used for weighing grain, the dealer shall use prenumbered scale tickets showing, at a minimum, the following:

- a. Date.
- b. The dealer's name and location.
- c. Seller's name.
- d. Gross weight, tare weight, and delivered weight.
- e. Type of product or commodity.
- f. An indication of whether the commodity is being received or loaded out.

One copy of each ticket shall be maintained in numerical order, unless the grain dealer uses a computer system approved in writing by the warehouse bureau which sequentially numbers and prints scale tickets and the scale ticket information and can be retrieved on and reprinted by the computer system. However, a ticket printed at the time of weighing shall be the document of record. All copies of reprinted scale tickets shall be marked "duplicate." All scale ticket forms in the possession of a grain dealer shall have been permanently and consecutively numbered at the time of printing. The licensee shall be responsible for providing a list of all scale tickets used at each location. Any scale ticket used in pricing grain for the purpose of sale to the grain dealer shall have the price shown on all copies of such ticket if priced at the time of delivery. If the dealer does not have a scale or regular access to a scale and purchases grain by having the grain custom weighed at various locations or at destination, the dealer shall

maintain one copy of the scale ticket in daily order as part of the grain records.

**91.11(6)** Direct shipment records. When grain is delivered by a producer or the producer's agent to a third party in accordance with an agreement between the producer and the grain dealer and the grain is weighed at the destination or is custom weighed, the following shall apply:

a. The grain dealer shall maintain one copy of every direct shipment scale ticket in daily order as part of the grain records. These scale tickets shall have the name of the producer recorded on them.

b. The direct shipment is to be considered an obligation of the grain dealer on the date stated on the destination scale ticket, and the direct shipment shall be reflected in the daily position record on the date when the grain dealer is able to obtain the load weights.

c. If the destination weights are transferred to the grain dealer's scale tickets, the tickets shall contain a minimum of the producer's name and the destination scale ticket number and weights.

d. A grain dealer who also holds a warehouse operator license may maintain a separate daily position record for each kind of direct shipment grain. The grain dealer shall notify the bureau in writing if the grain dealer elects to maintain such a daily position record.

**91.11(7)** Credit-sale contracts. One copy of every outstanding credit-sale contract shall be maintained in numerical order as part of the records.

a. Required content. A credit-sale contract shall contain a minimum of the following:

- (1) Buyer's name and location;
- (2) Seller's name and address;
- (3) The conditions of delivery;
- (4) Amount and kind of grain delivered;
- (5) Price per bushel or basis of value;
- (6) The date payment is to be made;
- (7) The duration of the credit-sale contract, which shall not exceed 12 months from the date the contract is executed;
- (8) The wording "Credit-Sale Contract," which shall appear in the title or subtitle of the contract;
- (9) Consecutive numbering at the time of printing; and
- (10) Signature and date by both parties.

b. Notice of credit-sale contract acknowledgment. A licensed grain dealer who purchases grain by credit-sale contract shall obtain the seller's signature on a notice of credit-sale contract acknowledgment, which shall be in a form prescribed by the bureau. The notice shall state that the seller has received notice that the grain is not protected by the grain depositors and sellers indemnity fund. A copy of the notice shall be attached to the grain dealer's copy and seller's copy of the credit-sale contract. Failure of the grain dealer to obtain the acknowledgment of the seller is a violation of Iowa Code section 203.15 and may result in license suspension or revocation under Iowa Code section 203.10. Failure of the grain dealer to obtain the acknowledgment of the seller does not alter the fact that the seller shall be unable to recover from the grain depositors and sellers indemnity fund any loss incurred under the credit-sale contract.

c. In lieu of obtaining the separate credit-sale acknowledgment form, the grain dealer may add the following wording to the credit-sale contract directly above the signature of the buyer and seller in bold size print of equal size or larger than the body of the contract: "By their signature hereto, the undersigned aver that the seller has been orally advised by the buyer that this transaction is not covered by the grain depositors and sellers indemnity fund."

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d. If someone other than the seller indicated on a credit-sale contract signs the contract, the grain dealer shall be able to provide the bureau with proof of business relationship between the indicated seller and the person who signed the contract. This document shall be signed by the person who produced the grain or caused the grain to be produced. The document is required for but not limited to contracts signed by the following:

- (1) Landlord or tenant.
- (2) Parent or child.
- (3) Spouse.
- (4) Siblings.
- (5) Farm managers (may use a copy of the management agreement).
- (6) Executors, trustees, administrators, etc. (may use a copy of court document of appointment).
- (7) Corporate officers (other than the president), partners and members or officers of other legal entities.

If a contract is issued to two or more sellers, all must sign the contract.

e. A licensee's purchases of grain by credit-sale contract from a person licensed as a grain dealer in any jurisdiction are not subject to the requirements of 91.11(7). Any grain purchased from a grain dealer is not eligible for recovery from the grain depositors and sellers indemnity fund.

**91.11(8)** Cancellation procedures for credit-sale contracts.

a. One copy of the canceled credit-sale contract shall be maintained in separate numerical order from the outstanding credit-sale contracts as part of the records. The grain dealer shall mark the face of the credit-sale contract with the word "Canceled," the check number, and date of payment. Credit-sale contracts may only be marked "void" if errors are made on the day of issue; otherwise they are to be considered "canceled."

b. Partial payments. Advances and partial payments shall be noted on the face of the outstanding credit-sale contracts or by other method of documentation that shows the net balance and is approved by the bureau. The following information shall be noted:

- (1) Amount of bushels paid;
- (2) Date paid;
- (3) Check number; and
- (4) Remaining balance of the contract.

**91.11(9)** Retention of records. All records shall be kept for a period of not less than six years. Such records shall be kept for the stated time period even if a license has been canceled.

This rule is intended to implement Iowa Code sections 203.2, 203.9, 203.15, 203D.1, 203D.3 and 203D.6.

**21—91.12(203)** **Assignment of contracts.** Upon cancellation, termination, suspension or revocation of the license, credit sale contracts may be assigned to another grain dealer licensed under Iowa Code chapter 203 unless strictly prohibited in the terms of the credit-sale contract. The assignee shall notify all affected producers in writing of the assignment. A copy of the assignment shall be forwarded to the bureau showing the contracts assigned and to whom they are assigned within 30 days of cancellation, termination, suspension or revocation of the license. All credit-sale contracts shall be paid for or reassigned within 30 days of cancellation, termination, or revocation of the license.

This rule is intended to implement Iowa Code sections 203.2 and 203.15.

**21—91.13(203)** **Filing of monthly grain statement and reports.** A grain statement shall be prepared at the close of business at the end of each calendar month and filed with the bureau by the tenth of the following month. The grain statement shall be on a form prescribed by the bureau and furnished to the dealer. A grain statement shall be filed for each calendar month regardless of whether or not the dealer has conducted any business during that period.

The bureau may require the dealer to file other types of reports, and the dealer shall file with the bureau any such report requested by the bureau within the time period as is specified by the bureau.

This rule is intended to implement Iowa Code section 203.2.

**21—91.14(203)** **Notice to the warehouse bureau.**

**91.14(1)** The bureau shall be notified in writing prior to:

- a. Change of ownership of the grain dealer.
- b. Change of name or business address of the grain dealer.
- c. Change of the grain dealer's fiscal year end.
- d. The ceasing of operations.

**91.14(2)** The licensee shall notify the bureau within 24 hours after the licensee knows or should have known any of the following:

- a. Licensee's net worth falling below the amount required by Iowa Code section 203.3 and if the amount of the deficiency is not covered by a net worth deficiency bond.
- b. Licensee's current assets falling below the amount required by Iowa Code section 203.3 and the deficiency is not covered by a current ratio deficiency bond.
- c. Class 2 licensee's grain purchases from producers exceed \$500,000 during the licensee's fiscal year.

**91.14(3)** The licensee shall notify the bureau in writing within ten days after the licensee knows or should have known either of the following:

- a. Change in management.
- b. The death of an individual or member of a partnership licensed as a grain dealer.

This rule is intended to implement Iowa Code sections 203.2 and 203.3.

**21—91.15(203)** **Shrinkage due to moisture.** A person who, in connection with the receipt of grain for storage, processing or sale, adjusts the scale weight of the grain to compensate for the moisture content of the grain; or to compensate for losses to be incurred during the handling, processing, or storage of the grain shall do so in accordance with the provisions of Iowa Code section 203.20.

This rule is intended to implement Iowa Code section 203.20.

**21—91.16(203)** **Requirements for Class 2 licensees.** A Class 2 licensee whose purchases from producers during the fiscal year exceed \$500,000, and who is thereby required by Iowa Code section 203.3 to apply for a Class 1 license, shall file the application with the bureau within 30 days after the purchases exceed \$500,000. The application shall include the additional \$250 annual assessment for Class 1 licensees required under rule 21—92.2(203D).

This rule is intended to implement Iowa Code section 203.3.

**21—91.17(203)** **Requirements for licensees authorized to issue credit-sale contracts.**

**91.17(1)** Financial statements—audit or bond or irrevocable letter of credit. A grain dealer shall not purchase grain by a credit-sale contract until the licensee complies with para-



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graph “a” or “b.” If the grain dealer elects to be authorized to issue credit-sale contracts under paragraph “b,” the grain dealer shall also comply with rule 21—91.8(203).

a. Financial statements filed pursuant to this rule shall be accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state. The bureau may accept a qualification in an opinion that is unavoidable by any audit procedure. Opinions that are qualified because of the limited audit procedure or because the scope of an audit is limited shall not be accepted by the bureau. A sole proprietor who desires to be authorized to issue credit-sale contracts shall file a financial statement on the proprietorship business which is accompanied by an unqualified opinion based upon an audit performed by a certified public accountant licensed in this state, and shall file a personal financial statement which conforms with the provisions of subrule 91.8(3).

b. The grain dealer bond or irrevocable letter of credit filed pursuant to this rule shall be in the amount of \$100,000 payable to the department. Bonds or irrevocable letters of credit shall be on the forms prescribed and furnished by the bureau.

**91.17(2)** Credit-sale contract net worth requirements. When the grain dealer’s net worth falls below the amount required by Iowa Code section 203.15(7), the grain dealer shall immediately cease purchasing grain by credit-sale contract. Failure to cease purchasing grain by credit-sale contract shall result in the suspension of the grain dealer license. Bonds or irrevocable letters of credit filed to correct the deficiency shall be on the forms prescribed and furnished by the bureau. The procedure for the filing of a deficiency bond or irrevocable letter of credit shall be the same as set forth in Iowa Code section 203.3. Bonds or irrevocable letters of credit shall be written so as to provide a source of funds to protect sellers who have sold grain by means of a credit-sale contract to the licensed grain dealer. Advances to sellers on grain purchased by credit-sale contract will be considered when the 50 cents per bushel net worth requirement is calculated. The amount and percentage of advances shall be shown on the face of the credit-sale contract or on a listing which identifies the contracts and the amount of the advance.

**91.17(3)** Suspension of authorization to issue credit-sale contracts. The department may suspend the right of a grain dealer to purchase grain by credit-sale contract based on any of the following conditions:

a. The grain dealer holding a federal or state warehouse license does not have a sufficient quantity or quality of grain to satisfy the warehouse operator’s obligation based on an examination by the department or the United States Department of Agriculture.

b. Collateral receipts cannot be issued for grain represented by credit-sale contract except for the percentage of bushels paid for through advances to sellers on grain purchased by credit-sale contract. The amount and percentage of advances shall be shown on the face of the credit-sale contract or on a listing which identifies the contracts and the amount of the advances.

c. A grain dealer shall not purchase grain on credit-sale contracts during any time period in which the grain dealer’s current assets are less than 100 percent of current liabilities, or in which the grain dealer’s net worth is less than \$75,000.

d. The grain dealer violates Iowa Code section 203.15.

e. The grain dealer’s total liabilities are greater than 75 percent of the grain dealer’s total assets. The valuation of fixed assets as stated by an approved appraisal on file with

the bureau pursuant to subrule 91.8(8) will not be used to determine this percentage.

f. The grain dealer has made payment by use of an electronic funds transfer or a financial instrument which is a check, share draft, draft, or written order on a financial institution, and a financial institution refuses payment on the electronic funds transfer or on the financial instrument because of insufficient funds in a grain dealer’s account.

g. The department discovers that a grain dealer has delayed payment for grain purchased since the department last inspected the grain dealer pursuant to Iowa Code section 203.9.

This rule is intended to implement Iowa Code section 203.15.

**21—91.18(203) Department of agriculture and land stewardship enforcement procedures.** The bureau shall follow a step-by-step enforcement policy to ensure consistent compliance with and application of these rules. The department recognizes that violations of certain rules may have more serious ramifications; thus, the enforcement of those rules requires stricter policies. The enforcement policies apply to any violation of these rules unless enforcement provisions are specifically addressed in a particular rule or subrule.

**91.18(1)** If it is necessary to establish proof of a violation of statute or rule, the bureau shall conduct a special investigation of the licensee. The bureau may contact the licensed grain dealer, the grain dealer’s employees, or any other interested party to gain information for the investigation. The bureau, in its investigation of a licensee, may cause a special examination to occur if evidence of at least one of the following conditions is present:

a. Insufficient funds check, or failed electronic funds transfer.

b. Stalled payment for grain.

c. Quantity deficiency.

d. Quality deficiency.

e. Incomplete or inaccurate records as specified in rule 91.11(203).

The expense of such special examination shall be based on actual costs incurred by the bureau and may be assessed to the licensee. The costs shall include the labor, travel and any other additional costs incurred by the bureau. Payment shall be made as directed by the bureau.

**91.18(2)** Upon establishment by the bureau of a violation of statute or rule, the bureau shall notify the licensee in writing that the licensee must be in compliance with the department’s rules within a period of time to be established by the bureau. The bureau shall consider the following elements in determining the proper period of time within which to require a licensee to comply with the rules:

a. Likelihood of producer loss;

b. Gravity of the offense; and

c. Length of time within which a reasonable licensee in a similar circumstance should be able to comply with the rules.

**91.18(3)** The bureau chief may initiate license suspension or revocation proceedings against the licensee for any violation of these rules. The bureau chief shall consider the following factors in making the determination to initiate the suspension or revocation proceedings:

a. Likelihood of producer loss.

b. Gravity of the offense.

c. Licensee’s intent to violate the rule.

d. Licensee’s record of violations of statute or rule.

e. Number of violations in the particular report.

**91.18(4)** The bureau chief may cause charges to be filed against the licensee for any violation of these rules. The bu-

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reau chief shall consider the following factors in making the determination to file charges:

- a. Likelihood of producer loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of violations of statute or rule.
- e. Number of violations in the particular report.

**91.18(5)** The bureau chief may initiate the assessment of civil penalties against the licensee for any violation of these rules. The bureau chief shall consider the following factors in making the determination to initiate the assessment of civil penalties:

- a. Likelihood of producer loss.
- b. Gravity of the offense.
- c. Licensee's intent to violate the rule.
- d. Licensee's record of violations of statute or rule.
- e. Number of violations in the particular report.

This rule is intended to implement Iowa Code sections 203.2, 203.9, 203.10, 203.11 and 203.11A.

**21—91.19(203) Review proceedings.** A grain dealer licensee or applicant may file a formal written complaint with the department if the licensee or applicant contests the finding or decision of the bureau chief. Any such complaint shall be resolved in contested case proceedings conducted pursuant to the applicable provisions of 21—Chapter 2.

**21—91.20(203) Prioritization of inspections of grain dealers.** Licensees with a probability of failure factor greater than 40 percent, as calculated by the statistical model, shall be examined at least twice in an 18-month period.

This rule is intended to implement Iowa Code section 203.22.

**21—91.21(203) Claims against credit-sale contract bond.**

**91.21(1)** Persons who may file claims—time of filing. These rules are applicable only in those instances where a bond has been filed to satisfy Iowa Code section 203.15. If a bond is on file with the department, a seller may file a claim with the bureau for satisfaction of a loss under the grain dealer's bond. A claim shall not be filed prior to the incurrence date, which is the earlier of the following:

- a. The revocation, termination, or cancellation of the license of the grain dealer; or
- b. The filing of a petition in bankruptcy by a grain dealer.

To be timely, a claim shall be filed within 120 days of the incurrence date.

**91.21(2)** Notice. The bureau shall cause notice of the opening of the claim period to be published once each week for two consecutive weeks in a newspaper of general circulation in each of the counties in which the licensee maintains a business location, and in a newspaper of general circulation in the state. The notice shall state the name and address of the licensee and the claim incurrence date. The notice shall also state that any claims against the bond on account of the licensee shall be sent by certified mail to the bureau within 120 days after the incurrence date, and that the failure to make a timely claim relieves the department from liability to the claimant. This notice may be incorporated by the bureau with the notice required by Iowa Code section 203.12.

**91.21(3)** Determination of eligible claims. The bureau shall determine a claim to be eligible for payment if the bureau finds all of the following:

- a. The claim was timely filed;
- b. The claimant qualifies as a credit-sale contract seller;
- c. A claim derives from a credit-sale contract transaction, if the claimant is a seller who delivered and transferred

title of the grain to the grain dealer by credit-sale contract; and

d. There is adequate documentation to establish the existence of a credit-sale contract claim and to determine the amount of the loss.

**91.21(4)** Value of loss—credit-sale contract claims. The dollar value of a credit-sale contract claim incurred by a seller who has sold and delivered grain and who is a creditor of the licensed grain dealer for all or part of the value of the grain shall be based on the amount stated on the obligation on the date of sale. If the sold grain was unpriced, the value of the claim shall be presumed to be based upon the fair market price, free-on-board from the site of the grain dealer, that is being paid to producers for grain by the grain terminal operator or grain processor nearest the grain dealer on the date of the license revocation or cancellation or the filing of a petition in bankruptcy. If more than one date applies to a claim, the bureau may choose between the two. However, the bureau may accept an alternative valuation of a claim upon a showing of just cause by the seller. All sellers filing claims under this rule shall be bound by the value determined by the bureau. The value of the loss is the outstanding balance on the validated claim at the time of payment.

**91.21(5)** Procedure—appeal. The bureau shall provide for notice to each credit-sale contract seller upon the bureau's determination of eligibility and value of loss. Within 20 days of the notice, the credit-sale contract seller may file a petition for hearing for review of either determination with the district court in the county in which the credit-sale contract seller resides, or in Polk County.

**91.21(6)** Payment of claims. Upon a determination of the status of all credit-sale contract claims, and after the filing period has run, the bureau shall provide a report to all valid, timely filed credit-sale contract claimants. If there are no appeals filed pursuant to subrule 91.21(5), the bureau shall make payment either in full or pro rata, in the event the value of the credit-sale contract claims is greater than the amount of the bonds.

This rule is intended to implement Iowa Code section 203.15.

ITEM 3. Rescind 21—Chapter 92 and adopt in lieu thereof the following **new** chapter:

## CHAPTER 92

## PARTICIPATION IN GRAIN INDEMNITY FUND

**21—92.1(203D) Mandatory participation in fund.** All grain dealers and state warehouse operators shall participate in the grain depositors and sellers indemnity fund (the fund) through the remission of the fees required in rule 92.2(203D). Failure to participate shall result in license suspension or revocation. As used in this chapter, "grain dealer" shall mean a licensed grain dealer pursuant to Iowa Code section 203.3 and "warehouse operator" shall mean a licensed warehouse operator pursuant to Iowa Code section 203C.6. "Licensee" shall mean either a licensed grain dealer or a licensed warehouse operator.

**21—92.2(203D) Required fees.** Until the amounts are amended or waived by the grain indemnity fund board pursuant to Iowa Code section 203D.5, in accordance with Iowa Code chapter 17A, fees shall be assessed as follows:

**92.2(1)** A per-bushel fee on all purchased grain, in an amount of one-quarter cent per bushel, remitted by the licensee.

**92.2(2)** An annual grain dealer/warehouse fee, remitted by the licensee, as follows:

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- a. For Class 1 grain dealers, \$500.
- b. For Class 2 grain dealers, \$250.
- c. For warehouse operators:

(1) For intended storage of bulk grain in any quantity less than 20,000 bushels, \$42 plus \$7 for each 2,000 bushels or fraction thereof in excess of 20,000 bushels.

(2) For intended storage of bulk grain in any quantity not less than 20,000 bushels and not more than 50,000 bushels, \$70 plus \$4.50 for each 3,000 bushels or fraction thereof in excess of 20,000 bushels.

(3) For intended storage of bulk grain in any quantity not less than 50,000 bushels and not more than 70,000 bushels, \$115 plus \$4.50 for each 4,000 bushels or fraction thereof in excess of 50,000 bushels.

(4) For intended storage of bulk grain in any quantity not less than 70,000 bushels, \$137.50 plus \$2.75 for each 5,000 bushels or fraction thereof in excess of 70,000 bushels.

This rule is intended to implement Iowa Code sections 203D.3 and 203D.5.

**21—92.3(203D) “Purchased grain”—grain on which a per-bushel fee is required to be remitted.**

**92.3(1)** “Purchased grain” means all grain which is entered in the company-owned paid position as evidenced on a grain dealer’s daily position record. However, purchased grain does not include the following:

- a. Grain purchased from the United States government or any of its subdivisions or agencies.
- b. Grain purchased from a person licensed as a grain dealer in any jurisdiction.
- c. Grain purchased under a credit-sale contract entered into on or before the date of delivery.

**92.3(2)** Exemption for credit-sale contracts. For the purpose of the exemption of subrule 92.3(1), paragraph “c,” title is deemed to transfer by credit-sale contract if a credit-sale contract for the grain is entered into on or before the date of delivery and the per-bushel fee shall not apply. If no credit-sale contract is issued for grain delivered for sale by the date of delivery, the per-bushel fee, if any, is due when the grain is paid for and entered in the company-owned paid position as evidenced on a grain dealer’s daily position record. If a credit-sale contract is issued subsequent to the delivery date, the transaction is deemed to be a reconveyance by the grain dealer to the seller followed immediately by a transfer of title by the seller to the grain dealer by credit-sale contract, and the transaction is thereafter not a covered transaction eligible for a claim against the fund.

**92.3(3)** Record keeping on exempt purchases. To qualify for the exemption of subrule 92.3(1), paragraph “c,” the licensee must maintain adequate records to show what grain was not assessed the per-bushel fee when entered into the company-owned paid position.

This rule is intended to implement Iowa Code sections 203D.3, 203D.5 and 203D.6.

**21—92.4(203D) Due date for payment of the per-bushel fee.**

**92.4(1)** Quarterly payments. The per-bushel fee established in Iowa Code section 203D.3, as adjusted by rule 92.2(203D), and the quarterly report are due, except as provided in subrule 92.4(2), on the fifteenth day of the calendar month succeeding the calendar quarter in which the fee accrued. The calendar quarters are as follows: January 1 through March 31; April 1 through June 30; July 1 through September 30; and October 1 through December 31.

**92.4(2)** Payments for licensees out of business. If a state grain dealer or warehouse operator license is revoked, terminated, or canceled during the term of a calendar quarter, the

quarterly report and per-bushel fee for that quarter are due 15 days after the date of license revocation, termination, or cancellation.

**92.4(3)** Holidays. If the due date determined under subrules 92.4(1) and 92.4(2) falls on a Sunday, a legal holiday as provided in Iowa Code section 4.1(34), or a Monday following a Sunday which is a named legal holiday, the due date is the following day.

**92.4(4)** Forms and payment. The quarterly report shall be submitted on forms prescribed and provided by the grain warehouse bureau. The amount of the per-bushel fee, as calculated in the quarterly report, shall accompany the report. Checks shall be made payable to the Iowa Department of Agriculture and Land Stewardship (abbreviated as IDALS).

**92.4(5)** “Receiving” defined. The quarterly report and the per-bushel fee must be received on or by the due date to avoid penalty. For the purpose of this chapter, “received” means the earliest of the following:

- a. The date a state warehouse examiner acknowledges receipt;
- b. The date the report is stamped “received” in the warehouse bureau; or
- c. The date on which the report is postmarked, if the item is properly addressed to the Grain Warehouse Bureau, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 203D.3.

**21—92.5(203D) Penalty for delinquent submission of per-bushel fee.**

**92.5(1)** Delinquent payments defined. In regard to the submission of the quarterly report and per-bushel fee, the licensee is deemed to be delinquent if any of the following apply:

- a. The quarterly report and payment of the per-bushel fee due are not received on or before the due date.
- b. The quarterly report and partial payment of the per-bushel fee due are received on or before the due date, but the underpayment exceeds the margin of error, which for this rule is the greater of \$10 or 10 percent of the per-bushel fee due as determined by the warehouse bureau.
- c. The quarterly report and partial payment of the per-bushel fee due are received on or before the due date, and the underpayment is within the margin of error provided, but the amount of the underpayment has not been received on or before the tenth day after the licensee is notified of the underpayment.

**92.5(2)** Penalty when no assessment is due. If the licensee is delinquent because the quarterly report is not received until after the due date, but no per-bushel fee was due for that quarter, there is a one-day penalty of \$10.

**92.5(3)** License suspension and revocation for failure to pay. If the delinquency is not cured within 30 days after the due date, the grain dealer’s or warehouse operator’s license shall be suspended. If the delinquency is not cured within 30 days after suspension, the license shall be revoked.

**92.5(4)** Overpayments. If, upon review of the quarterly report, the grain warehouse bureau determines that there has been an overpayment of \$1 or more, the bureau shall issue a credit to the licensee which may be applied against the amount of assessment due in succeeding quarters. Overpayments of less than \$1 are negated.

This rule is intended to implement Iowa Code section 203D.3.

**21—92.6(203D) Penalty for delinquent payment of per-bushel fee discovered during examination.**

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

**92.6(1) Delinquent payments defined.** In regard to an underpayment discovered during the performance of an examination, the licensee is deemed to be delinquent if any of the following apply:

a. The underpayment for any quarter exceeds the margin of error, which for this rule is the greater of \$100 or 50 percent of the per-bushel fee due for the quarter in question, as determined by the grain warehouse bureau.

b. The underpayment is within the margin of error provided, but the amount of the underpayment has not been received on or before the fifth day after the licensee is notified of the underpayment in the examiner's written report.

**92.6(2) Negated amounts.** Underpayments of less than \$1 are negated and do not constitute delinquency.

**92.6(3) Penalty amount.** If the licensee is delinquent, the penalty is \$10 per day for each day after the due date for the quarter in question, through the earlier of the date the underpayment is received or the date the licensee's license is revoked, terminated, or canceled.

**92.6(4) License suspension and revocation for failure to pay.** If the underpayment is not received within 30 days after the date of the examiner's report, the grain dealer's or warehouse operator's license shall be suspended. If the underpayment is not received within 30 days after suspension, the license shall be revoked.

**92.6(5) Overpayments.** If, during the performance of any examination, the warehouse bureau determines that there has been an overpayment of \$1 or more, the warehouse bureau shall issue a credit to the licensee which may be applied against the amount of assessment due in succeeding quarters. Overpayments of less than \$1 are negated.

This rule is intended to implement Iowa Code section 203D.3.

ITEM 4. Rescind 21—Chapter 93 and adopt in lieu thereof the following **new** chapter:

## CHAPTER 93

GRAIN INDEMNITY FUND BOARD—  
ORGANIZATION AND OPERATIONS

**21—93.1(203D) Location.** The office of the grain indemnity fund board is located in the Wallace State Office Building, Des Moines, Iowa; telephone (515)281-5321; mailing address: Grain Indemnity Fund Board, c/o Grain Warehouse Bureau, Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319.

This rule is intended to implement Iowa Code section 203D.4.

**21—93.2(203D) The board.** The grain indemnity fund board consists of seven members: the secretary of agriculture or the secretary's designee who shall serve as chairperson, the commissioner of insurance or the commissioner's designee who shall serve as secretary, the state treasurer or the state treasurer's designee who shall serve as treasurer, and four representatives of the grain trade (two producers and two operators) appointed by the governor.

This rule is intended to implement Iowa Code section 203D.4.

**21—93.3(203D) Authority of the board.** The board has authority to determine the amount and validity of claims made against the fund, to review and adjust the per-bushel fee and the dealer-warehouse fee, and to approve costs of administering the fund. In addition, the board has the authority to act as an advisor to the secretary of agriculture on administrative matters affecting the fund, and as a result the board will make

only policy recommendations in regard to the areas of administration delegated to the department in Iowa Code chapter 203D.

This rule is intended to implement Iowa Code section 203D.4.

**21—93.4(203D) Meetings.** Unless otherwise determined by the chairperson, the board will meet at 2 p.m. on the third Thursday of each month. In-person board meetings will generally be held in a conference room in the Henry A. Wallace building. Telephone conference call meetings may be permitted and will generally be hosted from the offices of the grain warehouse bureau of the Iowa department of agriculture and land stewardship in the Henry A. Wallace building. The establishment and public notice of meeting dates and locations are the responsibility of the chairperson, unless the majority of the members of the board eligible to vote request a meeting. In addition, the board will schedule meetings when circumstances require the board to address claims made against the fund and, for these meetings, establishment and public notice of meeting dates and locations are the responsibility of the chairperson.

**93.4(1) Agenda.** The tentative agenda is prepared by the chairperson in advance of the board meeting and will be mailed to board members in advance of the meeting date. A copy of the agenda will be mailed to those members of the public who request it and will be prominently posted at the board's office at least 24 hours before the meeting. Members of the public wishing to be scheduled on the board's agenda should notify the chairperson ten days in advance of the meeting and provide written materials explaining their reasons for wishing to address the board. In the case of a board meeting held to deal with claims against the fund, the filing of a written appeal under rule 21—94.9(203D) will satisfy the requirements of the preceding sentence. The chairperson shall have the authority to make all final decisions on the content and length of agenda items.

**93.4(2) General conduct of meetings.** The chairperson, or secretary in the absence of the chairperson, presides at all board meetings. Only individuals recognized by the presiding officer may address the board; in general, Robert's Rules of Order will govern the meeting unless otherwise stated in this chapter or by special action of the board.

In all discussions before the board, members of the public shall address any questions for the board to the presiding officer. Individual questioning of board members will not be allowed without the explicit consent of the presiding officer and the board members in question.

**93.4(3) Voting.** The board consists of seven members who are all eligible to vote on issues. A majority of board members shall constitute a quorum. The affirmative vote of four board members is necessary to carry an action.

**93.4(4) Public participation.** All meetings are open to the public in accordance with the open meetings law, Iowa Code chapter 21, except that portions of a meeting may be closed in accordance with the open meetings law. In the chairperson's discretion, a 15-minute public forum may be scheduled on each agenda of regularly scheduled meetings to allow the public, if necessary, an opportunity to address the board on any issue that may have arisen after the agenda was posted.

This rule is intended to implement Iowa Code sections 203D.4, 203D.5, 203D.5A and 203D.6.

**21—93.5(203D) Minutes.** The minutes of all board meetings are recorded and kept by the secretary in the board's office.

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

This rule is intended to implement Iowa Code section 203D.4.

**21—93.6(203D) Board decisions.** The actions of the board will be authoritatively recorded in the minutes of the board meeting at which the actions were taken. The board may adopt, amend, or repeal rules subject to Iowa Code chapter 17A to govern the operations of the board, to adjust or waive the per-bushel fee and the annual dealer-warehouse fee, and to govern the process of making claims against the fund. These rules shall be published by the department in the Iowa Administrative Code. The board may also recommend the adoption of other rules by the department relating to the fund. The content of any rules will be authoritatively established when they are published by the department in the Iowa Administrative Code.

This rule is intended to implement Iowa Code sections 203D.4, 203D.5, 203D.5A and 203D.6.

**21—93.7(203D) Records.** The records of all the business transacted and other information with respect to the activities of the board are public records and are on file in the board's office. All records including board minutes are available for inspection during regular business hours. Copies may be obtained at a cost of 25 cents per page.

This rule is intended to implement Iowa Code section 203D.4.

**21—93.8(203D) Waiver of per-bushel and annual grain dealer and warehouse operator fees.** Pursuant to Iowa Code section 203D.5, the per-bushel and the annual grain dealer and warehouse operator fees are suspended and waived effective July 1, 1988, until reinstated by rule or statute. This waiver applies to all fees which would have accrued on or after July 1, 1988. To this extent, this rule supersedes rules 21—92.2(203D) and 21—92.4(203D). However, this rule does not waive any fees or penalties which accrued before July 1, 1988, including annual fees which became due and payable on or before June 30, 1988. Penalties on delinquent per-bushel fees arising prior to July 1, 1988, shall continue to run until the delinquency is cured. Further, this rule does not alter the requirement of Iowa Code section 203D.3(4) that new licensees must pay the annual grain dealer and warehouse operator fees for the first year, as set out in Iowa Code section 203D.3 and in 21—subrule 92.2(2).

This rule is intended to implement Iowa Code sections 203D.3, 203D.4 and 203D.5.

ITEM 5. Rescind 21—Chapter 94 and adopt in lieu thereof the following **new** chapter:

## CHAPTER 94

CLAIMS AGAINST THE GRAIN DEPOSITORS  
AND SELLERS INDEMNITY FUND**21—94.1(203D) Definitions.**

"Covered transaction" means a transaction in which the claimant is a seller who transferred title to the grain to the grain dealer other than by credit-sale contract within six months of the incurrence date, or in which the claimant is a depositor who delivered the grain to the warehouse operator.

"Depositor" means a person who deposits grain in a state warehouse for storage, handling, or shipment, or who is the owner or legal holder of an outstanding state warehouse receipt, or who is lawfully entitled to possession of the grain.

"Grain dealer" shall mean a grain dealer licensed pursuant to Iowa Code section 203.3.

"Seller" means a person who sells grain which the person has produced or caused to be produced to a licensed grain

dealer, but excludes a person who executes a credit-sale contract as a seller.

"Warehouse operator" shall mean a licensed warehouse operator pursuant to Iowa Code section 203C.6.

**21—94.2(203D) By whom claims can be made.** Claims shall be made only by a depositor or seller. Claims shall derive from a covered transaction. A claim shall not be made on grain which was initially eligible as a covered transaction but became not covered as a result of a new credit-sale transaction, as defined by rule 21—92.3(203D).

**21—94.3(203D) Procedure for filing claims.** In regard to claims by a depositor or seller arising against a grain dealer or warehouse operator, a claim against the grain depositors and sellers indemnity fund may be filed with the Grain Warehouse Bureau (the bureau), Iowa Department of Agriculture and Land Stewardship, Henry A. Wallace Building, Des Moines, Iowa 50319. The bureau shall create and provide a claim form. Use of the claim form shall be the exclusive manner of filing a claim against the fund. The claim shall include the following information:

1. The name and address of the grain dealer or warehouse operator against whom the claim arose;
2. The name, address, telephone number, and social security or tax identification number of the person making the claim;
3. The type and amount of grain involved;
4. The type of transaction involved;
5. Evidence of ownership;
6. Documentation of a demand on the obligation and a failure to honor the demand; and
7. A notarized signature by each person making the claim.

**21—94.4(203D) Time limitations.** A claim against the fund may be made anytime after the earlier of the license revocation, termination, or cancellation of a grain dealer's or warehouse operator's license or the grain dealer's or warehouse operator's filing a petition for bankruptcy. A claim is not timely unless the claim is postmarked or delivered within 120 days after the revocation, termination, or cancellation of a license, or the filing of a petition for bankruptcy.

**21—94.5(203D) Claims by depositors where bureau is receiver.** In regard to claims by depositors arising against a warehouse operator whose license has been revoked, terminated, or canceled and who has not filed a petition for bankruptcy where the bureau has been appointed by the court as the receiver of the grain assets of the warehouse, a claim properly filed with the bureau as receiver within 120 days of the license revocation, termination, or cancellation also is deemed to be a properly filed claim against the fund.

**21—94.6(203D) Notice of claims.** Within 30 days of the receipt of a claim, the bureau shall send notice of the claim to each member of the board.

**21—94.7(203D) Report by bureau.** When adequate information is available, the bureau shall make a report to the board of claims ready for determination, which report shall note the gross and net amount of each claim and the bureau's recommendations as to the validity and value of each claim. The bureau may report the claims ready for determination either as a class of listed claims relating to an identified licensee or individually, as may be appropriate.

**21—94.8(203D) Determination of claims.** The board shall review the report submitted by the bureau and may request additional information on a claim. The board shall determine

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

the amount of the loss and the amount the claimant is validly entitled to from the fund within 90 days after the submission of the report to the board, unless the board finds good cause to delay the determination. "Good cause" includes the need for additional information on a claim. Notice of the board's determination shall be sent to each claimant by ordinary mail. The notice of the determination shall indicate the date when it is sent.

**21—94.9(203D) Appeal from determination.**

**94.9(1)** Time limit for filing. A claimant whose claim has been determined by the board may appeal the determination by filing an appeal with the board within 20 days of the date the notice of the determination was sent. Appeals shall include a statement as to the amount the appellant is contesting and as to the basis for appeal. The board's determination becomes final if there is no timely appeal.

**94.9(2)** Board action on appeals. Upon the timely filing of an appeal, the board shall schedule an evidentiary hearing or an opportunity for oral argument before the board on the appeal. The hearing or argument shall be scheduled no sooner than 15 days after notice of the hearing or oral argument is sent to the appellant by ordinary mail. If an evidentiary hearing is scheduled, the appellant may appear and submit evidence concerning the claim. The bureau may also appear and submit evidence. If the appellant fails to appear, the board may proceed in the appellant's absence. If a hearing or oral argument is held, the board shall prepare a written decision. The appellant shall be sent a copy of the board's decision by ordinary mail. The decision shall indicate the date when it is sent.

**94.9(3)** Rehearing. If a hearing was held on the appeal, the appellant may request a rehearing within 20 days of the date when the decision is sent. The request is deemed to have been denied unless the board grants the request within 20 days after the board's receipt of the request.

**94.9(4)** Exclusive remedy. The procedure provided by this rule is the exclusive administrative remedy in regard to the board's determinations as to the validity and amount of claims.

**21—94.10(203D) Payment of valid claims—conflicting interests.**

**94.10(1)** Subrogation and payment. If the board has validated all or part of a claim, the board shall authorize the chairperson or the chairperson's designee to facilitate payment from the fund to the claimant in the determined amount upon the claimant's execution of a subrogation of the fund to the rights of the claimant and of an agreement to hold the fund harmless as against competing claims to the determined amount.

**94.10(2)** Joint payments and interpleader for conflicting claims. If the board determines that a valid claim is subject to an interest by more than one depositor or seller, the board may order joint payment. If priority of interests in the validated claim is at issue, the board may bring an equitable action of interpleader against the conflicting parties pursuant to Iowa Rule of Civil Procedure 1.251, and may order the deposit of the determined amount with the court pursuant to Iowa Rule of Civil Procedure 1.253.

These rules are intended to implement Iowa Code section 203D.6.

**ARC 4516B****CORRECTIONS DEPARTMENT[201]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 356.36, the Department of Corrections gives Notice of Intended Action to amend Chapter 50, "Jail Facilities," Iowa Administrative Code.

These rules provide the standards for county jail facility inspections and are being revised consistent with American Correctional Association industry standards for jail operations.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 4, 2005. Such written materials should be directed to the Legal and Policy Department, Iowa Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309; fax (515)281-7345.

A public hearing will be held on October 4, 2005, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Corrections and advise of special needs.

These amendments are intended to implement Iowa Code section 356.36.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 **201—50.1(356,356A)** as follows:

Adopt the following **new** definitions in alphabetical order:

"Disability" means a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of such an impairment; or being regarded as having such an impairment.

"Mental illness" means a psychiatric illness or disease expressed primarily through abnormalities of thought, feeling, and behavior producing either distress or impaired function.

"Unencumbered space" is floor space that is not encumbered by furnishings or fixtures. Unencumbered space is determined by subtracting the floor area encumbered by furnishings and fixtures from the total floor area. (All fixtures must be in operational position for these calculations.)

"Weapons" means any instrument, excluding restraint devices and chemical control agents, with a primary intended use of self-defense, protection of another, or to gain or maintain compliance from an individual.

Amend the following definitions:

## CORRECTIONS DEPARTMENT[201](cont'd)

“Housing unit” means an individual detention area. This area may be a single occupancy cell, multiple occupancy cell, cellblock, or dormitory. For direct supervision jails, “housing unit” means a group of living units housing no more than 50 prisoners that can be efficiently managed by one officer. Staff assigned to the housing unit(s) work among prisoners 24 hours a day.

“Jailer” means any person *who is* involved in the booking or supervision of prisoners, *who has direct contact with prisoners or who has control over the movement or release of prisoners within the jail*, and ~~meeting who meets~~ the requirements of rules 201—50.10(356,356A) and 50.11(356,356A) or 201—51.9(356, 356A) and 51.10(356,356A), Iowa Administrative Code.

“Major remodeling” means construction or repairs to a portion of a jail requiring sealed bids as specified in Iowa Code section 384.96 *that changes the architectural design of an existing jail and that increases or decreases capacity.*

“Multiple occupancy cell” means a cell *or a group of cells* designed for ~~no more than six prisoners~~ *one prisoner and accessible to a dayroom.*

ITEM 2. Amend subrule 50.2(6) as follows:

**50.2(6)** Nondiscriminatory treatment. Each jail administrator shall ensure that staff and prisoners are not subject to discriminatory treatment based upon race, religion, nationality, ~~handicap~~ *disability*, sex or age absent compelling reason for said discriminatory treatment. *Discrimination on the basis of a disability is prohibited in the provision of services, programs, and activities.*

ITEM 3. Renumber rules **201—50.4(356,356A)** to **201—50.8(356,356A)** as **201—50.3(356,356A)** to **201—50.7(356,356A)**.

ITEM 4. Amend renumbered subrule 50.4(4) as follows:

**50.4(4)** Cells. Maximum security cells shall be equipped with tamper-resistant bunks, secured table(s) and seat(s), plus a toilet and washbasin recommended for jail or prison use. Cells shall have an adequate supply of both hot and cold water; mixing valves may be used. Housing areas of less secure design need not contain tamper-resistant fixtures. ~~A jail may contain one or more single occupancy cells or holding areas in which to temporarily contain violent persons. The cell must have not less than 40 square feet of floor space and a ceiling height of not less than 8 feet. The cell must be constructed to minimize self-injury. Toilet facilities should be controlled from outside the cell and may be in the floor. Water need not be available in the cells, but water must be accessible from staff upon request.~~

ITEM 5. Amend renumbered subrule **50.4(8)**, paragraph “c,” as follows:

c. Janitorial supplies shall be stored in a manner to prevent unauthorized prisoner access. Janitorial supplies and equipment shall not be stored in prisoner living areas. ~~Wet mops shall be dried to deter the growth of mildew.~~

ITEM 6. Amend renumbered subrule 50.5(5) as follows:

**50.5(5)** Except in emergency situations, no multiple occupancy cell shall house more ~~than six prisoners~~ *than the rated capacity.*

ITEM 7. Amend renumbered subrules 50.6(1) and 50.6(2) as follows:

**50.6(1)** New housing units may be single occupancy cells, multiple occupancy cells or dormitory units. Each single occupancy cell shall have a minimum of 70 square feet of floor space. Each multiple occupancy cell shall have a minimum

of 70 square feet of floor space for the first prisoner and an additional 50 square feet of floor space for each additional prisoner. ~~Maximum occupancy in a multiple occupancy cell shall be six prisoners.~~ Dormitory units shall provide a minimum of 60 square feet per prisoner.

**50.6(2)** All housing units shall provide:

a. to e. No change.

f. A lavatory that furnishes both hot and cold water for each group of ~~six~~ *nine* prisoners or portion thereof.

g. A functional toilet for each group of ~~six~~ *nine* prisoners or portion thereof.

ITEM 8. Amend renumbered subrule 50.7(1) as follows:

**50.7(1)** New housing units may be single occupancy cells, multiple occupancy cells or dormitory units. Each single occupancy cell shall have a minimum of 70 square feet of floor space. Each multiple occupancy cell shall have a minimum of 35 square feet of unencumbered floor space for each prisoner. ~~Maximum occupancy in a multiple occupancy cell shall be six prisoners.~~ Dormitory units shall provide a minimum of 60 square feet per prisoner.

ITEM 9. Adopt **new** rule 201—50.8(356,356A) as follows:

**201—50.8(356,356A)** **Physical requirements for new and remodeled facilities—after [insert the effective date of this rule].** This rule shall apply to all jails which are of new construction and to all major remodeling or reconstruction after [insert the effective date of this rule].

**50.8(1)** Cells and dormitory units.

a. Single occupancy cells shall provide a minimum of 35 square feet of unencumbered floor space. When confinement exceeds 10 hours per day, except during administrative segregation or emergencies, there shall be at least 70 square feet of total floor space.

b. Multiple occupancy cells shall provide a minimum of 25 square feet of unencumbered floor space for each prisoner. When confinement exceeds 10 hours per day, except during administrative segregation or emergencies, there shall be at least 35 square feet of unencumbered floor space for each occupant.

c. Dormitory units shall provide a minimum of 35 square feet of unencumbered floor space for each prisoner.

**50.8(2)** All housing units shall provide:

a. No less than 8 feet of space between the floor and ceiling.

b. A bunk of adequate size for normal-sized adults for each prisoner and at least 12 inches off the floor.

c. Sufficient desks/tables and chairs/seats to accommodate the capacity of the housing unit.

d. A dayroom, which provides a minimum floor area of 35 square feet of space per prisoner (exclusive of lavatories, showers and toilets) for the maximum number of prisoners who use the dayroom at one time. No dayroom shall encompass less than 100 square feet of space, exclusive of lavatories, showers and toilets. Dayrooms shall provide sufficient seating and writing surfaces. (Dormitories excluded.)

e. A functionally operating shower which produces both hot and cold water for each group of 12 prisoners.

f. A lavatory that furnishes both hot and cold water for each group of 9 prisoners or portion thereof.

g. A functional toilet/stool for each group of 9 prisoners or portion thereof. Urinals may be substituted for up to one-third of the toilets in housing units for male prisoners.

**50.8(3)** Each maximum-security cell shall have a security-type toilet/lavatory-combination fixture that provides adequate hot and cold running water.

## CORRECTIONS DEPARTMENT[201](cont'd)

**50.8(4)** Holding cells/special-needs cells.

a. Holding cells shall provide a minimum of 20 square feet per prisoner with a maximum capacity per cell of eight prisoners. Holding cells need not contain any fixture other than a means whereby prisoners may sit. Drinking water and toilet facilities shall be made available under staff supervision. Dayrooms need not be available to prisoners held in holding cells. Holding cells are for detaining persons for a limited period of time not to exceed 24 hours, except in cases of emergency, while the persons are awaiting booking, processing, transfer, court appearance or discharge. Prisoners will be supplied blankets if detained overnight in the holding cell. Emergencies are defined as unexpected occurrences, requiring immediate attention, of singular incident and resolution.

b. Special-needs cells. A jail may contain one or more single occupancy cells, designated as special-needs cells, in which to temporarily contain violent persons. The cell shall have not less than 40 square feet of floor space and a ceiling height of not less than 8 feet. The cell shall be constructed to minimize self-injury. Toilet facilities may be controlled from outside the cell and may be in the floor. Water need not be available in the cells, but water shall be accessible from staff upon request.

**50.8(5)** Exercise areas. Exercise areas may be indoor or outdoor exercise areas and shall contain 15 square feet per prisoner for the maximum number of prisoners expected to use the space at one time, but not less than 500 square feet of unencumbered space. Exercise areas shall provide opportunity for adequate exercise in accordance with 50.18(1)"c." Exercise areas are not the same as dayrooms.

**50.8(6)** The facility shall be designed to admit natural light and to give access to outside viewing by prisoners where practical.

**50.8(7)** The facility shall be designed and constructed so that prisoners may be segregated according to existing laws and regulations.

**50.8(8)** Except in emergency situations, no housing unit shall house more prisoners than its rated capacity.

**50.8(9)** All hinged doors serving as required exits shall swing with exit traffic.

ITEM 10. Amend subrules 50.9(1) to 50.9(3), 50.9(5), 50.9(8), and 50.9(11) as follows:

**50.9(1)** Approval of building plans. All new construction or major remodeling plans shall be approved by the state fire marshal prior to commencement of construction by the state fire marshal or qualified local fire prevention authority using Life Safety Code NFPA 101.

**50.9(2)** Fire marshal's certificate *Compliance with fire marshal rules.* No jail shall be occupied by a prisoner unless the state fire marshal or qualified local fire prevention authority has issued a fire certificate of inspection within the last 18 24 calendar months. The state fire marshal or qualified local fire prevention authority shall issue this certificate only if documenting that the jail complies with the fire safety standards in these rules and other applicable standards of for jails included in administrative rules promulgated by the state fire marshal. If not in substantial compliance, the facility may be required to submit a corrective plan of action for noncompliant items to the state fire marshal or local fire prevention authority. If deadlines are not met in accordance with the plan of action, the director of the department of corrections may initiate closing proceedings. In jurisdictions lacking personnel specifically trained in fire prevention safety standards, inspections shall be performed by staff of the state fire marshal's office or designee under authority of Iowa

~~Code section 100.12. Jails may be inspected by the fire marshal, or by personnel of local fire departments deemed by the fire marshal qualified to conduct inspections, on a schedule determined by the fire marshal. The state jail inspection unit of the department of corrections, a jail administrator, or the chief executive of an agency that administers a jail retains the authority to may request that the state fire marshal review as deemed necessary inspect a jail for compliance with fire safety standards. If the state fire marshal finds that a jail is not in substantial compliance with fire safety standards based on such an inspection, the state fire marshal may require the jail administrator to submit to the fire marshal a plan of correction of violations of these standards. The director of the Iowa department of corrections may initiate proceedings to close the jail if the jail does not comply with the plan of correction.~~

**50.9(3)** Evacuation plan. The administrator of each jail shall prepare a written plan for emergency evacuation of the facility in the event of fire or other disaster. This plan shall include security arrangements and one or more alternate housing arrangements for displaced prisoners. All personnel employed in the facility shall be thoroughly familiar with this plan and relevant portions thereof shall be conspicuously posted. ~~Fire drills~~ Evacuation drills shall be practiced or simulated by all staff on at least an annual basis and a record thereof shall be maintained according to subrule 50.22(10), Iowa Administrative Code.

**50.9(5)** Fire extinguishers. All jails shall be equipped with not less than one AA-ABC fire extinguisher in operable condition for each 3,000 square feet on any given floor of the building. ~~fire extinguishing equipment approved and located in accordance with standards established by the state fire marshal by administrative rule.~~ Fire extinguishers will shall be tested at least annually to ensure they remain in operative condition. A record of such checks shall be maintained. ~~Fire extinguishers must be wall-mounted (NFPA-10).~~

**50.9(8)** Fire alarms. A means of fire detection utilizing equipment of a type tested and approved by Underwriters Laboratories meeting requirements established by the state fire marshal shall be installed and maintained in operational condition according to the factory manual. These alarms shall be ceiling-mounted if possible and shall be so located and protected free from prisoner access. The detection equipment shall be battery-operated or so constructed as to continue operating during a power failure. Battery-operated systems shall be tested monthly. Electronic systems shall be tested at least annually. A record of test dates and results shall be maintained according to subrule 50.22(10), Iowa Administrative Code.

**50.9(11)** Mattresses. Only fire-resistant mattresses of a type that will not sustain a flame and certified by the manufacturer an independent testing laboratory and approved by that meet the standards established by the state fire marshal or qualified local fire prevention authority shall be used in jails. Mattresses that are ripped, excessively cracked or which contain large holes will shall be replaced. Pillows will shall be replaced when torn or excessively cracked.

ITEM 11. Amend subrule **50.10(1)** by rescinding paragraph "g."

ITEM 12. Amend subrule 50.10(3) as follows:

**50.10(3)** ~~Business transactions with prisoners~~ *Conflict of interest.* No person working in a jail shall transact any business with any prisoner or member of a prisoner's family nor shall any person working in a jail arrange through another party any business transaction with a prisoner. *The jail shall*



## CORRECTIONS DEPARTMENT[201](cont'd)

have a written code of ethics that the jail provides to all employees. At a minimum, the code shall:

- a. Prohibit staff from using their official positions to secure privileges for themselves or others.
- b. Prohibit staff from engaging in activities that constitute a conflict of interest.

ITEM 13. Amend subrule **50.11(1)** by amending paragraph **"d"** and adopting **new** paragraph **"g"** as follows:

d. If the individual is to have access to a ~~handgun~~ **firearm** at any time, the individual shall hold a ~~professional~~ **valid** permit to carry weapons issued under the authority of Iowa Code ~~section 724.6~~ **chapter 724**. The individual shall be professionally trained and qualified in the use of any **firearm**, electric restraint control device, and chemical control agents if ~~used~~ **prior to use** in connection with the individual's duties at the jail.

g. All staff who administer medication shall be trained in accordance with the Iowa State Sheriffs and Deputies Association medication training program or other recognized medication administration course.

ITEM 14. Amend subrule 50.11(2) as follows:

**50.11(2)** Training documented. All jailers and jail administrators shall meet and document *the completion of all training requirements* as specified by the Iowa law enforcement academy training standards as found in 501—9.1(80B) and 501—9.2(80B), Iowa Administrative Code. The jail administrator shall record by log sheet the signature(s) of all persons attending the training.

ITEM 15. Rescind subrule 50.11(3) and adopt in lieu thereof the following **new** subrule:

**50.11(3)** Jailer training.

a. Basic training. All jail administrators shall meet the following requirements within six months of appointment. Jailers shall meet the following requirements within one year of employment:

(1) First aid and cardiopulmonary resuscitation.

1. The individual shall hold an American Red Cross standard first-aid certificate or the equivalent or one of the following:

- Certification of crash injury management from the Iowa department of public health;
- Certification of completion of an emergency medical technician program;
- Certification of completion of a first-aid training program appropriate to jail usage which was developed by a sheriff's department. First-aid training criteria shall include, at a minimum, the following topics:

Shock	Acute abdomen
Bleeding	Allergic reaction
Internal bleeding	Bites and stings
Burns	Convulsions/seizures
Chemical burns	Diabetic coma and insulin shock
Chest injuries	Heat stroke
Eye injuries	Hypothermia
Poisoning by mouth	Fractures
Head and face injuries	Drug overdose
Spine injuries	Hanging
Pain	Childbirth

All instructors providing this training shall be certified pursuant to 501—subrule 9.2(2); or

- Licensure to practice as a licensed practical nurse, registered nurse or medical practitioner in the state of Iowa.
2. The individual shall be certified as having successfully completed the basic life support training conducted under

the program of the American Heart Association or the American Red Cross.

3. All certification or licensure required by this subrule must be maintained current according to the standards of the certifying or licensing agency.

(2) Either the successful completion of a 40-hour training program approved by the Iowa law enforcement academy or the successful completion of a National Sheriffs' Association correspondence course shall be applicable to jailers and administrators employed in all jails as provided in 501—subrule 9.2(1). Either course must be appropriately documented to reflect course content, length of session, and instructor(s). All instructors presenting classes either in the 40-hour or continuing education program shall be certified by academy personnel utilizing certification standards adopted by the academy. It shall be the responsibility of the training program director to make certain all instructors are certified and the training program is approved.

b. Continuing education. During each fiscal year of employment following completion of the required basic training as set forth in 501—subrule 9.1(1), paragraphs "a" and "b," jailers and the administrator of a jail shall complete 20 hours of in-service training, not to include proficiency in first aid. The 20 hours may include 4 hours of CPR recertification and 2 hours of firearms qualification.

c. Classroom training programs shall include the following topics, which are to be completed within the first year of employment pursuant to 501—paragraph 9.1(1)"b." A training program of comparable course content completed in another state or prior to [insert the effective date of these amendments] may be certified as meeting this requirement.

(1) Introduction to Iowa criminal procedure and criminal law as applicable to the jail setting, including laws relating to the use of force.

- (2) Security procedures.
- (3) Supervision of inmates.
- (4) Report writing.
- (5) Inmate rules and regulations.
- (6) Grievance and disciplinary procedures.
- (7) Constitutional rights of inmates.
- (8) Emergency procedures, including methods of restraining violent persons.
- (9) Human relations and communication skills.
- (10) Recognizing symptoms of mental illness, retardation and suicidal tendencies.
- (11) Special needs of minorities, women and juveniles.
- (12) Problem solving and guidance.
- (13) Medical screening at intake.
- (14) Infectious diseases to include: AIDS, hepatitis, and other communicable diseases.

d. Certification of instructors. All instructors in jailer training programs shall be certified by the Iowa law enforcement academy. Application for certification of instructors shall be submitted to the academy on an application form obtained from the academy.

ITEM 16. Amend rule **201—50.11(356,356A)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code ~~sections~~ **section 80B.11A and 356.36**.

ITEM 17. Adopt the following **new** rule:

**201—50.12(356,356A) Standard operating procedures manual.** Pursuant to the authority of Iowa Code sections 356.5 and 356.36, each jail shall establish and the jail administrator shall ensure compliance with a standard operating procedures manual to include the following administrative

## CORRECTIONS DEPARTMENT[201](cont'd)

rules: subrules 50.2(5), 50.2(6), 50.4(11), 50.9(3), 50.9(4), 50.10(1), 50.10(2), 50.10(3), 50.11(1) and rules 50.13(356, 356A) to 50.22(356, 356A) as noted. The following standards do not require written policy: 50.13(2)“c”(3), 50.15(4), 50.16(4), and 50.16(8).

ITEM 18. Rescind the introductory paragraph of rule 201—50.13(356, 356A) and adopt the following **new** catchwords in lieu thereof:

**201—50.13(356, 356A) Admission/classification and security.**

ITEM 19. Amend subrule **50.13(1)** as follows:

Amend paragraph “**d**” by adopting **new** subparagraph (4) as follows:

(4) Prisoners likely to be exploited or victimized by others.

Adopt **new** paragraph “**g**” as follows:

g. Housing for prisoners with disabilities shall be designed for their use or reasonable accommodations shall be provided for the prisoners’ safety and security.

ITEM 20. Amend subrule 50.13(2) as follows:

Amend the introductory paragraph as follows:

**50.13(2) Security and control.** *The jail administrator shall develop and implement written policies and procedures for the jail which provide for the control of prisoners and for the safety of the public and the jail staff. The policy and procedures shall include:*

Amend paragraph “**a**,” subparagraphs (3) and (5), as follows:

(3) At least hourly, personal observation of individual prisoners shall be made and documented. Prisoners considered to be in physical jeopardy because of physical or mental condition, including apparently intoxicated persons, as indicated by the medical history intake process and by personal observation, shall be checked personally at least every 30 minutes until the condition is alleviated. A CCTV-audio monitoring system may supplement but shall not replace personal observations. In order to use a CCTV-audio monitoring system, the following requirements must be met: CCTV and audio must be operational at all times. Visual and audio must be clear and distinct. ~~Prisoners shall be able to be observed at all times. However, observation~~ Observation of shower and restroom activities shall be at the discretion of the jail administrator.

(5) ~~When there are women in the jail population, a female employee shall be on the premises~~ *females are housed in the jail, at least one female staff member shall be on duty in the jail at all times, in accordance with Iowa Code section 356.5(6) (does not apply to alternative jail facilities).*

Amend paragraph “**b**” as follows:

b. Weapons. Except in an emergency situation, no ~~firearms, chemical control agents, saps, or gloves~~ *weapons* shall be allowed in an area occupied by prisoners.

Amend paragraph “**c**” as follows:

c. Searches.

(1) All prisoners *and property* entering or leaving the jail shall be thoroughly searched; searches of persons charged with a simple misdemeanor shall follow provisions of Iowa Code section 804.30.

(2) and (3) No change.

(4) *Prisoner rules shall contain a clear definition of each item permitted in the jail. All other items shall be considered contraband.*

(5) *Random, unannounced, and irregular searches of areas accessible to prisoners will be conducted for contraband and weapons.*

Amend paragraph “**d**” as follows:

d. Key control. *Jail keys shall be stored in a secure area when not in use. There shall be at least one full set of jail keys, separate from those in use, stored in a safe place accessible only to designated jail personnel for use in the event of an emergency.* The jail administrator will identify those persons who may have access to keys.

Adopt **new** paragraphs “**e**” and “**f**” as follows:

e. Facility security.

(1) All areas of the jail shall be inspected regularly and frequently and kept clear of large posters, pictures and articles of clothing that obstruct the view of prisoners by jail staff.

(2) All jail locks, doors, bars, windows, screens, grilles and fencing shall be inspected on at least a monthly basis. Any damaged or nonfunctioning equipment or fixtures shall be reported to the jail administrator in writing. The jail administrator shall ensure prompt repair of any damaged or nonfunctioning equipment or fixture.

(3) The jail administrator shall develop written policy and procedures for the movement and transportation of prisoners outside the secure area of the jail. The policy shall require procedures that will ensure the safety of the jail staff and the public and prevent prisoner escape. The policy shall provide procedures for movement of prisoners for medical treatment and to and from the courts and other facilities. The classification and security risk of the prisoner to be moved will determine the number of staff required and the type of restraints to be used, if any.

(4) The jail administrator shall have written plans for situations that threaten facility security. Such situations include but are not limited to: riots, hunger strikes, disturbances, hostage situations, escape attempts, medical emergencies, natural disasters and staff work stoppage. The plans shall be made available to all applicable personnel and reviewed by jail staff at least annually and updated as needed.

f. Restraint devices shall not be applied as punishment. Restraint devices shall be used only when a prisoner is a threat to self or others or jeopardizes jail security. There shall be defined circumstances under which supervisory approval is needed prior to application of restraints. Restraint devices shall not be applied for more time than is necessary to alleviate the condition requiring the use of the restraint device. While restrained, prisoners shall be either clothed or covered in a manner that maximizes prisoner privacy. Four/five-point restraints shall be used only when other types of restraints have proven ineffective. If prisoners are restrained in a four/five-point position, the following minimum procedures shall be followed:

(1) Observation by staff shall be continuous.

(2) Personal visual observation of the prisoner and the restraint device application shall be made at least every 15 minutes.

(3) Restraint guidelines shall include consideration of an individual’s physical and health condition, such as body weight.

(4) All decisions and actions shall be documented.

ITEM 21. Amend subparagraph **50.14(1)“a”(1)** as follows:

(1) Unless cleaning is done by staff, necessary cleaning equipment shall be provided to prisoners. Cleaning equipment shall be removed from the cell and dayroom areas when cleaning is completed. ~~Mops will be stored for drying after use.~~

ITEM 22. Amend subrule 50.15(2) as follows:

## CORRECTIONS DEPARTMENT[201](cont'd)

**50.15(2)** Trained staff. See subrule 50.11(3).

a. All staff who administer medication shall be trained in accordance with the Iowa state sheriffs' and deputies' association medication training program or other recognized medication administration course.

b. At least one staff member on duty at the jail shall be currently trained in first aid (or the equivalent) and CPR.

ITEM 23. Amend subrule 50.15(5) as follows:

**50.15(5)** Chemical control agents. A prisoner affected by a chemical control agent must shall be offered a medical examination and appropriate treatment as soon as possible.

ITEM 24. Amend subrule **50.15(6)**, paragraphs "c" and "d," as follows:

c. As a part of the admission procedure, a medical history intake form shall be completed for each person admitted to the jail. The intake procedure shall include screening for potential self-injury or potential suicide. *Jail staff with actual knowledge that there is a substantial risk that a prisoner intends to commit suicide shall take reasonable measures to abate that risk.* The jail shall have a written suicide prevention plan. Essential elements of the plan shall include training to recognize the potential for suicide, communication between staff, appropriate housing and intervention procedures.

d. During times when there is no means of immediate access to the district court, a person arrested on a charge constituting a simple misdemeanor and believed by the arresting officer/agency to be mentally ill, and because of that illness is likely to physically injure the person's self or others, shall be admitted to the jail only after the arresting officer/agency has demonstrated a reasonable effort to comply with the emergency hospitalization procedure, as provided in Iowa Code section 229.22. *The jail shall have a written plan to provide prisoners access to services for the detection, diagnosis and treatment of mental illness.*

ITEM 25. Amend paragraph **50.15(7)"b"** as follows:

b. All prescription medicine shall be securely stored and inventory control practiced. *Inventory control shall include control of all medication coming into the jail and the amount returned or destroyed when a prisoner is released.*

ITEM 26. Amend subrule **50.15(9)**, paragraph "a," by adopting **new** subparagraph (4) as follows:

(4) All medication required to be "cool" or "refrigerated" shall be stored in a separate refrigerator or in a separate locked container within a refrigerator that is used for other purposes.

ITEM 27. Amend subrule **50.15(9)**, paragraphs "c" and "d," as follows:

c. Expired drugs or drugs not in unit dose packaging, whose administration had been discontinued by the attending physician, shall be destroyed by the jail administrator or designee in the presence of a witness. A record of drug destruction shall be made in each prisoner's medical record. *The record shall include the name, the strength and the quantity of the drug destroyed, and the record shall be signed by the jail administrator or designee and by the witness.*

d. Medications dispensed by a pharmacy in unit dose packaging may be returned to the dispensing pharmacy pursuant to board of pharmacy examiners rule 657—subrule 23.12(5) 23.15(124,155A).

ITEM 28. Amend subrule 50.16(4) as follows:

**50.16(4)** Documentation. The facility shall document that its food service meets or exceeds *nationally recom-*

*ended* minimum dietary allowances as stated in the recommended dietary allowances of the National Academy of Sciences for basic nutrition for appropriate age groups. Dietary guidelines meeting the above requirements shall be certified by a qualified *nutritionist* or dietitian (no policy required).

ITEM 29. Amend subrule 50.18(1) as follows:

**50.18(1)** Exercise. Prisoners held beyond seven days and not involved in a work release program or other activities allowing the prisoner outside activity leaving the jail pursuant to Iowa Code section 356.26 shall be permitted offered exercise time.

a. A minimum of two one-hour exercise sessions shall be offered during each full calendar week. Playing board games, or cards or reading is recreation and is not considered exercise. *A record of exercise sessions shall be maintained according to subrule 50.22(15).*

b. Restrictions. Exercise requirements may be restricted by disciplinary action for a period not to exceed two weeks in duration during any one calendar month.

c. and d. No change.

ITEM 30. Amend subrule 50.18(2) as follows:

**50.18(2)** Religion. All prisoners shall be afforded a reasonable opportunity to pursue their religious faith. Any infringement upon the opportunity to pursue one's faith must further some compelling interest and must be the least restrictive means of furthering that interest.

*The jail administrator or designee may plan, direct and supervise all aspects of a religious program, including approval and training of both laypersons and clergy persons ministering faiths represented in the prisoner population.*

ITEM 31. Adopt the following **new** subrule:

**50.18(4)** Discrimination. Prisoner activities, programs and services shall be available to prisoners with disabilities.

ITEM 32. Amend subrule 50.19(1) as follows:

**50.19(1)** Prisoner mail.

a. Prisoners held beyond 24 hours shall be furnished a reasonable amount of writing materials upon request. Jail officials may prohibit a prisoner from corresponding with a person who states in writing that the person does not want to correspond with the prisoner. This does not include a "prior approval" list.

b. *Postage.* A reasonable amount of postage shall be provided to indigent prisoners held beyond 24 hours for communication with the courts and for at least two letters per week of a personal nature when other means of communication are not available.

c. No change.

d. Privileged correspondence if so marked may be opened only in the presence of the prisoner and then only to detect the presence of contraband; it may not be read *except by the prisoner.* Privileged correspondence is defined as *incoming and outgoing* mail to or from:

- (1) An attorney;
- (2) A judge;
- (3) The governor of Iowa;
- (4) The citizens aid office;
- (5) A member of the state or federal legislature.

e. *Written policy, procedure, and practice require that, excluding weekends and holidays, incoming and outgoing letters be held for no more than 24 hours and packages be held for no more than 48 hours for inspection before delivery to the prisoner or post office.*

## CORRECTIONS DEPARTMENT[201](cont'd)

ITEM 33. Adopt the following **new** subrule:

**50.19(5)** Detaining non-U.S. citizens. When non-U.S. citizens are detained, they shall be advised of the right to have their consular officials notified or the nearest consular officials shall be notified of the detention, whichever is required by the Vienna Convention. Consular officials shall be given access to non-U.S. citizens in jail and shall be allowed to provide consular assistance. When a jail administrator becomes aware of the death of a non-U.S. citizen, consular officials shall be notified.

ITEM 34. Amend rule 201—50.20(356,356A) as follows:

**201—50.20(356,356A) Access to the courts.** Prisoners shall be provided at their request information regarding access to the courts consistent with minimum constitutional standards and to attorneys pursuant to subrule 50.19(3) who do not have an attorney shall have access to the legal materials the jail decides to provide, in order to facilitate the preparation of legal documents that directly or collaterally attack the prisoner's sentence or that challenge the conditions of the prisoner's confinement.

ITEM 35. Rescind subrule **50.21(3)** and renumber subrules **50.21(4)** to **50.21(6)** as **50.21(3)** to **50.21(5)**.

ITEM 36. Amend renumbered subrule **50.21(3)**, paragraph "**c**," as follows:

c. ~~A procedure for handling prisoner grievance~~ A prisoner grievance procedure which includes at least one level of appeal.

ITEM 37. Amend renumbered subrule 50.21(4) as follows:

**50.21(4)** Prisoners who have allegedly violated jail rules shall be provided information pertaining to the handling of disciplinary hearings consistent with the due process rights of the accused. This information shall include the following:

- a. Notice of charges and hearing;
- b. A description of the hearing process; ~~and. The jail policy and procedures manual shall contain the following:~~
  - (1) Written guidelines for resolving minor prisoner infractions which include a written statement of the rule violated and a hearing and decision within seven days, excluding weekends and holidays, by a person not involved in the rule violation. The prisoner may waive the hearing.
  - (2) A procedure to refer violations of criminal law to the appropriate criminal justice agency.
  - (3) A policy which requires staff members to prepare a disciplinary report and forward it to a designated staff person. Disciplinary reports shall include the following information:

1. Specific rule(s) violated;
2. A statement of the charge;
3. Any unusual prisoner behavior;
4. Any staff witnesses;
5. An explanation of the event that includes who was involved, what transpired, and the time and location of the occurrence;
6. Any physical evidence and its disposition;
7. Any immediate action taken, including the use of force.

(4) A policy that requires an impartial investigation to begin within 24 hours of the time the violation is reported and be completed without unreasonable delay, unless there are exceptional circumstances for delaying the investigation.

(5) A policy and procedure that provides for prehearing detention of prisoners who are charged with a rule violation. The facility administrator or designee shall review the prisoner's prehearing status within 72 hours.

(6) A policy that prisoners charged with a rule violation receive a written statement of the charge(s), including a description of the incident and specific rule(s) violated. The prisoner shall be given the information at least 24 hours prior to the disciplinary hearing. The hearing may be held in less than 24 hours with the written consent of the prisoner.

(7) A policy and procedure that allows the prisoner to be present at the hearing, unless the prisoner waives that right in writing or is a threat to the security and safety of the facility. Prisoners may be excluded during testimony. Any prisoner's absence shall be documented.

(8) A policy that provides for the disciplinary hearing to be conducted no later than seven days, excluding weekends and holidays, following the report of the alleged rule violation.

(9) A policy that provides for postponement or continuance of the disciplinary hearing for a reasonable period and for good cause. Reasons for postponement or continuance shall be documented.

(10) A policy and procedure that provides for an impartial person or panel of persons to conduct the disciplinary hearing. A record of the proceedings shall be made and maintained for at least two years.

(11) A policy and procedure that allows prisoners an opportunity to make a statement and present documentary evidence at the hearing and request witnesses on their behalf. The reasons for denying such a request shall be documented.

(12) A policy and procedure that allows a staff member or agency representative to assist prisoners at disciplinary hearings. A representative shall be appointed when it is apparent that a prisoner is not capable of collecting and presenting evidence on the prisoner's own behalf.

(13) A policy that disciplinary committee decisions are based solely on information obtained in the hearing process.

(14) A policy and procedure to ensure that a written report is made of the decision and the supporting reasons and that a copy is given to the prisoner. The hearing record and documents shall be kept in the prisoner's file. If the prisoner is found not guilty, the disciplinary report shall be removed from the prisoner's file.

(15) A policy that requires the jail administrator or designee to review all disciplinary hearings and dispositions to ensure conformity with the jail policy and procedures.

c. An explanation of the appeal process. The jail policy and procedure manual shall contain a policy and procedure to advise the prisoner that the prisoner may appeal the decision to the jail administrator or designee within 24 hours. The administrator or designee shall affirm or reverse the decision of the disciplinary committee as soon as possible but within 15 days, excluding weekends and holidays.

ITEM 38. Amend subrule **50.22(14)** by amending paragraph "**c**" and adopting **new** paragraph "**d**" as follows:

c. Threats to staff, staff assaults, escapes, fires, prisoner abnormal behavior, any verbal or nonverbal references to suicide and self-mutilation.

d. The state jail inspection unit of the department of corrections shall be notified within 24 hours of any death, attempted suicide, fire, escape, injury to staff or prisoners from assaults, or use of force and prisoner self-injuries. A copy of the investigative reports and other records shall be given to the state jail inspector upon request.

## CORRECTIONS DEPARTMENT[201](cont'd)

ITEM 39. Amend subrule 50.22(15) as follows:

**50.22(15)** Exercise documentation. A record shall be kept relative to date, time and length of exercise periods offered to specific *prisoners*, cell blocks, tiers, or any other type of cell grouping or housing unit.

ITEM 40. Amend subrule 50.25(3) as follows:

**50.25(3)** Prisoners classified as maximum security may not be allowed into areas occupied by other prisoners at any time. Maximum security prisoners may be ~~requested~~ *required* to exercise or perform other activities in a group with other maximum security prisoners only. Facility staff must weigh the potential for violence prior to admitting any maximum security prisoner into a group.

ITEM 41. Amend subrule 50.25(4) as follows:

**50.25(4)** ~~There shall be no more than 50 prisoners in a housing unit. The housing unit shall not exceed its rated capacity.~~

## ARC 4517B

## CORRECTIONS DEPARTMENT[201]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 356.36, the Department of Corrections gives Notice of Intended Action to amend Chapter 51, “Temporary Holding Facilities,” Iowa Administrative Code.

These rules provide for the standards for county jail facility inspections and are being revised consistent with American Correctional Association industry standards for temporary holding facility operations.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 4, 2005. Such written materials should be directed to the Legal and Policy Department, Iowa Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309; fax (515)281-7345.

A public hearing will be held on October 4, 2005, from 11 a.m. to 1 p.m. in the Second Floor Conference Room of the Department of Corrections, 420 Watson Powell Jr. Way, Des Moines, Iowa 50309, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who will attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact the Department of Corrections and advise of special needs.

These amendments are intended to implement Iowa Code section 356.36.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 ~~201—51.1(356,356A)~~ as follows:

Adopt the following ~~new~~ definitions in alphabetical order: “Major remodeling” means construction that changes the architectural design of an existing facility and that increases or decreases capacity.

“Mental illness” means a psychiatric illness or disease expressed primarily through abnormalities of thought, feeling, and behavior producing either distress or impaired function.

“Unencumbered space” means floor space that is not encumbered by furnishings or fixtures. “Unencumbered space” is determined by subtracting the floor area encumbered by furnishings and fixtures from the total floor area. (All fixtures must be in operational position for these calculations.)

“Weapons” means any instrument with a primary intended use of self-defense or protection of another or to gain or maintain compliance from an individual. See paragraph 51.11(2)“b.”

Amend the following definition:

“Temporary holding facility” means secure holding rooms or cells administered by a law enforcement agency where detainees may be held for a limited period of time, not to exceed 24 hours, and a reasonable time thereafter to arrange for transportation to an appropriate facility. *A law enforcement agency is not required to meet the standards for temporary holding facilities provided a detainee is held for less than two hours prior to transportation to an appropriate facility and a trained staff person of the agency is available to respond to, render aid to, or release the detainee in the event of a life-endangering emergency.*

ITEM 2. Amend subrule 51.2(5) as follows:

**51.2(5)** Nondiscriminatory treatment. Each facility administrator shall ensure that staff and detainees are not subject to discriminatory treatment based upon race, religion, nationality, ~~handicap~~ *disability*, sex or age, absent compelling reason for said discriminatory treatment. *Discrimination on the basis of a disability is prohibited in the provision of services, programs and activities.*

ITEM 3. Amend paragraph **51.4(8)“c”** as follows:

c. Janitorial supplies shall be stored in a manner to prevent unauthorized detainee access. Janitorial supplies and equipment shall not be stored in detainee living areas. ~~Wet mops shall be dried to deter the growth of mildew.~~

ITEM 4. Amend subrule 51.5(3) as follows:

**51.5(3)** Except in emergency situations, no multiple occupancy cell shall house more ~~than six~~ detainees *than the designed capacity.*

ITEM 5. Amend subrule 51.6(1) as follows:

**51.6(1)** New housing units may be *dormitory units*, single occupancy cells or multiple occupancy cells. Each single occupancy cell shall have a minimum of 70 square feet of floor space. Each multiple occupancy cell shall have a minimum of 70 square feet of floor space for the first detainee and an additional 50 square feet of floor space for each additional detainee. ~~Maximum occupancy in a multiple occupancy cell shall be six detainees.~~ *Dormitory units shall have a minimum of 35 square feet of unencumbered floor space per detainee.*

ITEM 6. Amend subrule 51.6(3) as follows:

**51.6(3)** Each new *dormitory unit* or single and multiple occupancy cell shall have a security-type toilet/lavatory combination fixture which provides adequate running water. These cells may rely on common toilet facilities located outside the detention room provided that the detainee is never

## CORRECTIONS DEPARTMENT[201](cont'd)

involuntarily locked in the room and denied access to the toilet facilities.

ITEM 7. Adopt **new** subrule 51.6(7) as follows:

**51.6(7)** Holding cells shall provide a minimum of 20 square feet per detainee with a total capacity of eight detainees per cell. Holding cells need not contain any fixture other than a means whereby detainees may sit. Drinking water and toilet facilities shall be made available under staff supervision. Detainees will be supplied blankets if the detainees are detained overnight in the holding cell.

ITEM 8. Amend subrule 51.7(1) as follows:

**51.7(1)** New housing units may be *dormitory units*, single occupancy cells or multiple occupancy cells. Each single occupancy cell shall have a minimum of 70 square feet of floor space. Each multiple occupancy cell shall have a minimum of 35 square feet of unencumbered floor space for each detainee. ~~Maximum occupancy in a multiple occupancy cell shall be six detainees.~~ *Dormitory units shall provide a minimum of 35 square feet of unencumbered floor space per detainee.*

*a. This paragraph shall apply to all temporary holding facilities that are of new or remodeled construction after [insert the effective date of this amendment] and may apply to temporary holding facilities that were constructed prior to [insert the effective date of this amendment].*

*(1) Single occupancy cells shall provide a minimum of 35 square feet of unencumbered floor space. When confinement exceeds 10 hours per day, except during administrative segregation or emergencies, there shall be at least 70 square feet of total floor space.*

*(2) Multiple occupancy cells shall provide a minimum of 25 square feet of unencumbered floor space for each detainee. When confinement exceeds 10 hours per day, except during administrative segregation or emergencies, there shall be at least 35 square feet of unencumbered floor space for each detainee.*

*(3) Dormitory units shall provide a minimum of 35 square feet of unencumbered floor space for each detainee.*

*(4) A facility may contain one or more single occupancy cells, designated as special-needs cells, in which violent persons may be temporarily contained. The cell shall have not less than 40 square feet of floor space and a ceiling height of not less than 8 feet. The cell shall be constructed to minimize self-injury. Toilet facilities may be controlled from outside the cell and may be in the floor. Water need not be available in the cells, but water shall be accessible from staff upon request.*

*b. Reserved.*

ITEM 9. Amend subrule 51.7(3) as follows:

**51.7(3)** Each new *dormitory unit* or single- and or multiple-occupancy cell shall have a security-type toilet/lavatory combination fixture which provides adequate running water for each group of nine detainees or portion thereof. These cells may rely on common toilet facilities located outside the detention room provided that the detainee is never involuntarily locked in the room and denied access to the toilet facilities.

ITEM 10. Amend subrules 51.8(1) to 51.8(3) as follows:

**51.8(1)** Approval of building plans. All new construction or major remodeling plans shall be approved prior to commencement of construction by the state fire marshal ~~or qualified local fire prevention authority using Life Safety Code NFPA 101.~~

**51.8(2)** ~~Fire marshal's certificate~~ *Compliance with fire marshal rules.* No facility shall be occupied by a ~~prisoner detainee~~ unless the state fire marshal or qualified local fire prevention authority has issued a ~~fire certificate of inspection~~ within the last 18 24 calendar months. ~~The state fire marshal or qualified local fire prevention authority shall issue this certificate only if documenting that the facility complies with the fire safety standards in these rules as well as applicable standards of for temporary holding facilities included in administrative rules promulgated by the state fire marshal. If not in substantial compliance, the facility may be required to submit a corrective plan of action for noncompliant items to the state fire marshal or local fire prevention authority. If deadlines are not met in accordance with the plan of action, the director of the department of corrections may initiate closing proceedings. In jurisdictions lacking personnel specifically trained in fire prevention safety standards, inspections shall be performed by staff of the state fire marshal's office or designee under authority of Iowa Code section 100.12.~~

*Temporary holding facilities may be inspected by the fire marshal, or by personnel of local fire departments deemed by the fire marshal qualified to conduct inspections, on a schedule determined by the fire marshal. The state jail inspection unit of the Iowa department of corrections, a temporary holding facility administrator, or the chief executive of an agency which administers a temporary holding facility retains the authority to may request the state fire marshal review as deemed necessary, to inspect a temporary holding facility for compliance with fire safety standards. If the state fire marshal finds, based on such an inspection, that a temporary holding facility is not in substantial compliance with fire safety standards, the state fire marshal may require the facility administrator to submit a plan of correction of violations of these standards to the fire marshal. The director of the Iowa department of corrections may initiate proceedings to close the temporary holding facility if the facility does not comply with the plan of correction.*

**51.8(3)** Evacuation plan. The administrator of each facility shall prepare a written plan for emergency evacuation of the facility in the event of fire or other disaster. This plan shall include security arrangements and one or more alternate housing arrangements for displaced detainees. All personnel employed in the facility shall be thoroughly familiar with this plan, and relevant portions thereof shall be conspicuously posted. ~~Fire Evacuation~~ drills shall be practiced or simulated by all facility staff on at least an annual basis and a record thereof shall be maintained according to subrule 51.19(9), Iowa Administrative Code.

ITEM 11. Amend subrule 51.8(5) as follows:

**51.8(5)** Fire extinguishers. All *temporary holding facilities* shall be equipped with ~~not less than one AA-ABC fire extinguisher in operable condition for each 3,000 square feet on any given floor of the building, fire extinguishing equipment approved and located in accordance with standards established by the state fire marshal by administrative rule.~~ Fire extinguishers ~~will~~ shall be tested at least annually to ensure they remain in operative condition. A record of such checks shall be maintained. ~~Fire extinguishers must be wall-mounted (NFPA-10).~~

ITEM 12. Amend subrule 51.8(8) as follows:

**51.8(8)** Fire alarms. A means of fire detection utilizing equipment of a type tested and approved by Underwriters Laboratories ~~meeting requirements established by the state fire marshal~~ shall be installed and maintained in operational condition according to the factory manual. These alarms

## CORRECTIONS DEPARTMENT[201](cont'd)

shall be ceiling-mounted if possible and shall be so located and protected from detainee access. The detection equipment shall be battery-operated or so constructed as to continue operating during a power failure. Battery-operated systems shall be tested monthly. Electronic systems shall be tested at least annually. A record of test dates and results shall be maintained according to subrule 51.19(9), Iowa Administrative Code.

ITEM 13. Amend subrule 51.8(11) as follows:

**51.8(11) Mattresses.** Only fire-resistant mattresses of a type that will not sustain a flame and are certified by the manufacturer ~~an independent testing laboratory and approved by that meet the standards established by the state fire marshal or qualified local fire prevention authority~~ shall be used in the temporary holding facilities. Mattresses that are ripped, are excessively cracked or contain large holes will ~~shall~~ be replaced. Pillows will ~~shall~~ be replaced when torn or excessively cracked.

ITEM 14. Amend subrule 51.9(1) as follows:

**51.9(1) Requirements for employment.** No person shall be recruited, selected or appointed to serve as a holding facility administrator unless the person:

~~a. Is a qualified peace officer meeting the requirements of 501—subrules 9.3(1) and 9.3(2).~~

b. Is 18 years of age or older.

c. Is able to read and write in English.

d. Is of good moral character as determined by a thorough background investigation including a fingerprint search conducted of local, state and national fingerprint files.

e. Is not by reason of conscience or belief opposed to the use of force, when appropriate or necessary to fulfill the person's duties.

f. Has the ability to perform the essential elements of the position as defined in the department job specification.

~~g. Is free of contagious disease.~~

f. Is an appropriate candidate for employment as demonstrated by qualified psychological screening.

ITEM 15. Amend subrule 51.9(3) as follows:

**51.9(3) Business transactions with detainees Conflict of interest.** No person working in a facility shall transact any business with any detainee or member of a detainee's family, nor shall any person working in a facility arrange through another party any business transaction with a detainee. The facility shall have a written code of ethics that shall be provided to all employees. At a minimum, the code shall:

a. Prohibit staff from using their official positions to secure privileges for themselves or others.

b. Prohibit staff from engaging in activities that constitute a conflict of interest.

ITEM 16. Amend subrule 51.10(1) by amending paragraphs "d" and "e," and relettering paragraph "g" as paragraph "h" and adopting new paragraph "g" as follows:

d. If the individual is to have access to a handgun ~~firearm~~ at any time, the person shall hold a ~~professional valid~~ permit to carry weapons issued under the authority of Iowa Code ~~section 724.6 chapter 724.~~

e. The individual shall be professionally trained and qualified in the use of any ~~firearm~~, electric restraint control device and chemical control agents ~~if used prior to their use~~ in connection with the individual's duties at the facility.

g. All staff providing medication shall be trained in accordance with the Iowa State Sheriffs and Deputies Association medication training program or other recognized medication administration course.

g h. The holding facility administrator shall record by log sheet the signature(s) of all staff performing temporary holding facility duties, attesting that they have full knowledge of the administrative rules referring to facility standards and the written policies and procedures governing the facility's operation.

ITEM 17. Amend subrule 51.10(2) by adopting new paragraphs "a" and "b" as follows:

a. The training shall include a minimum of ten hours of training within the first year of employment. Training shall include the following or comparable course content:

(1) Introduction to Iowa criminal procedure and criminal law as applicable to the temporary holding facility setting, including laws relating to the use of force.

(2) Security procedures, including procedures regarding the proper methods of transporting detainees.

(3) Supervision of detainees, including instruction on the basic civil rights of a detainee, which would be applicable to a temporary holding facility.

(4) Recognition of symptoms of mental illness, retardation or substance abuse.

(5) Specific instruction in the prevention of suicides.

b. During each fiscal year of employment, following completion of the required ten hours of training, temporary holding facility workers and administrators shall complete, at a minimum, five hours of in-service training, not to include hours spent in maintaining required certification or proficiency in first aid, life support, and handling of firearms.

ITEM 18. Amend subrule 51.10(3) as follows:

**51.10(3) First aid.** At least one staff member on duty at the facility shall be trained in first aid (or the equivalent) and CPR.

a. The individual shall hold an American Red Cross standard first-aid certificate or the equivalent or one of the following:

(1) Certification as an Iowa law enforcement emergency care provider from the Iowa department of public health;

(2) Certification of completion of an emergency medical technician program; or

(3) Licensure to practice as a licensed practical nurse, registered nurse or medical practitioner in the state of Iowa.

b. The individual shall be certified as having successfully completed the basic life support training conducted under the program of the American Heart Association or the American Red Cross.

c. All certification or licensure required by this subrule must be maintained current according to the standards of the certifying or licensing agency.

ITEM 19. Amend rule 201—51.11(356,356A), introductory paragraph, as follows:

**201—51.11(356,356A) Standard operating procedures manual.** Pursuant to the authority of Iowa Code sections 356.5 and 356.36, each municipality shall establish and the facility administrator shall ensure compliance with a standard operating procedures manual to include the following administrative rules: subrules 51.2(4), 51.2(5), 51.4(3), 51.4(7), 51.4(10), 51.8(3), 51.8(4), 51.8(5), 51.8(7), 51.8(8), 51.8(11), 51.9(1), 51.9(2), 51.9(3), 51.10(1), 51.10(2), 51.10(3) and rules 51.11(356,356A) to 51.19(356,356A) as noted. The following standards ~~do~~ does not require written policy: 51.13(4) and ~~51.14(4).~~

ITEM 20. Amend subrule 51.11(1) as follows:

Amend the catchwords as follows:



## CORRECTIONS DEPARTMENT[201](cont'd)

**51.11(1)** ~~Admission and classification.~~ *Admission/classification and security.*

Amend paragraph “**d**” by adopting the following **new** subparagraph (4):

(4) Prisoners likely to be exploited or victimized by others.

Adopt the following **new** paragraph “**g**”:

g. Housing for detainees with disabilities shall be designed for the detainees’ use, or reasonable accommodations shall be provided for the detainees’ safety and security.

ITEM 21. Amend subrule 51.11(2) as follows:

Amend the catchwords as follows:

**51.11(2)** *Security and control.*

Amend paragraph “**a**,” subparagraph (3), as follows:

(3) At least hourly, personal observations of individual detainees shall be made and documented. Detainees considered to be in physical jeopardy because of physical or mental condition, including apparently intoxicated persons, as indicated by the medical history intake process and by personal observations, shall be checked personally at least every 30 minutes until the condition is alleviated. Closed circuit television (CCTV)-audio monitoring system may supplement, but shall not replace, personal observations. In order to use a CCTV-audio monitoring system, the following requirements must be met: CCTV and audio must be operational at all times. Visual and audio must be clear and distinct. ~~Detainees shall be able to be observed at all times. However, observation~~ *Observation* of shower and restroom activities shall be at the discretion of the facility administrator.

Amend paragraph “**a**,” subparagraph (5), as follows:

(5) ~~When there are women in the facility population, a female employee shall be on the premises females are housed in the facility, at least one female staff member shall be on duty in the facility at all times,~~ in accordance with Iowa Code section 356.5(6).

Amend paragraph “**b**” as follows:

b. Weapons. Except in an emergency situation, no firearms, chemical control agents, saps, or gloves shall be allowed in an area occupied by detainees.

Amend paragraph “**c**” by amending subparagraph (1) and adopting the following **new** subparagraphs (4) and (5):

(1) All detainees ~~and detainees’ property~~ entering the facility shall be thoroughly searched; searches of persons charged with simple misdemeanors shall follow provisions of Iowa Code section 804.30.

(4) *Detainee rules shall contain a clear definition of each item permitted in the facility. All other items shall be considered contraband.*

(5) *Random, unannounced, irregularly scheduled searches of areas accessible to detainees will be conducted for contraband and weapons.*

Amend paragraphs “**d**” and “**e**” as follows:

d. Key control. *Facility keys must be stored in a secure area when not in use. There must be at least one full set of facility keys, separate from those in use, stored in a safe place and accessible only to designated facility personnel for use in the event of an emergency.* The facility administrator will identify those persons who may have access to keys.

e. Detainees’ property. All personal property of detainees shall be inventoried and accounted for *according to the provisions of Iowa Code section 804.19.*

Adopt the following **new** paragraphs “**f**” and “**g**”:

f. Restraint devices. Restraint devices shall not be applied as punishment. Restraint devices shall be used only when a prisoner is a threat to self or others or jeopardizes facility security. There shall be defined circumstances under

which supervisory approval is needed prior to application. Restraint devices shall not be applied for more time than is necessary to alleviate the condition requiring the use of the restraint device. While restrained, detainees shall be either clothed or covered in a manner that maximizes detainee privacy. Four/five-point restraints may be used only when other types of restraints have proven ineffective. If detainees are restrained in a four/five-point position, the following minimum procedures shall be followed:

(1) Observation by staff shall be continuous;

(2) Personal visual observation of the detainee and the restraint device application shall be made at least every 15 minutes;

(3) Restraint guidelines shall include consideration of an individual’s physical and health condition, such as body weight; and

(4) All decisions and actions shall be documented.

g. Facility security.

(1) All areas of the facility shall be inspected regularly and frequently and kept clear of large posters, pictures and articles of clothing that obstruct the view of detainees by facility staff.

(2) All facility locks, doors, bars, windows, screens, grilles and fencing shall be inspected on at least a monthly basis. Any damaged or nonfunctioning equipment or fixtures must be reported to the facility administrator in writing. The facility administrator shall ensure prompt repair of any damaged or nonfunctioning equipment or fixture.

(3) The facility administrator shall develop written policy and procedures for the movement or transportation of detainees outside the secure area of the facility. The policy shall require procedures that will ensure the safety of the facility staff and the public and prevent detainee escape. The policy shall provide procedures for movement of detainees for medical treatment and to and from the courts and other facilities. The classification and security risk of the detainee to be moved will determine the number of staff required and the type of restraints to be used, if any.

(4) The facility administrator shall have written plans for situations that threaten facility security. Such situations include but are not limited to: riots, hunger strikes, disturbances, hostage situations, escape attempts, medical emergencies, natural disasters and staff work stoppage. The plan shall be made available to all applicable personnel and shall be reviewed by facility staff at least annually and updated as needed.

ITEM 22. Amend subrule 51.12(1), paragraph “**b**,” as follows:

b. Unless cleaning is done by staff, necessary cleaning equipment shall be provided to detainees. Cleaning equipment shall be removed from the cell when cleaning is complete. ~~Mops will be stored for drying after use.~~

ITEM 23. Amend subrule 51.13(2) as follows:

**51.13(2)** Trained staff. ~~Rescinded IAB 2/19/92, effective 3/27/92.~~

a. *All staff providing medication shall be trained in accordance with the Iowa State Sheriffs and Deputies Association medication training program or other recognized medication administration course.*

b. *At least one staff member on duty at the facility shall be currently trained in first aid (or the equivalent) and CPR.*

ITEM 24. Amend subrule 51.13(5) as follows:

**51.13(5)** Chemical control agents. Detainees affected by a chemical control agent ~~must~~ *shall* be offered a medical examination and appropriate treatment as soon as reasonable.



## CORRECTIONS DEPARTMENT[201](cont'd)

ITEM 25. Amend subrule **51.13(6)**, paragraphs “**c**” and “**d**,” as follows:

c. As a part of the admission procedure, a medical history intake form shall be completed for each person admitted to the facility. The intake procedure shall include screening for potential self-injury or suicide. *Facility staff with actual knowledge that there is a substantial risk that a detainee intends to commit suicide shall take reasonable measures to abate the risk.* The facility shall have a written suicide prevention plan. Essential elements of the plan shall include training to recognize the potential for suicide, communication between staff and appropriate housing and intervention procedures.

d. During times when there is no means of immediate access to the district court, a person arrested on a charge constituting a simple misdemeanor and believed by the arresting officer/agency to be mentally ill, and because of that illness is likely to physically injure the person’s self or others, shall be admitted to the facility only after the arresting officer/agency has demonstrated a reasonable effort to comply with the emergency hospitalization procedure as provided in Iowa Code section 229.22. *The facility shall have a written plan to provide detainees access to services for the detection, diagnosis and treatment of mental illness.*

ITEM 26. Amend subrule **51.13(7)**, paragraph “**b**,” as follows:

b. All prescription medicine shall be securely stored and inventory control practiced. *Inventory control shall include documentation of all medication coming into the facility and the amount of medication returned or destroyed when the detainee is released.*

ITEM 27. Amend subrule **51.13(9)** as follows:

Amend paragraph “**a**,” subparagraph (3), as follows:

(3) Refrigerate: temperature that is thermostatically maintained between 2 degrees centigrade (36 degrees Fahrenheit) and 8 degrees centigrade (46 degrees Fahrenheit). *All medication required to be “cool” or “refrigerated” shall be stored in a separate refrigerator or in a separate locked container within a refrigerator that is used for other purposes.*

Amend paragraphs “**c**” and “**d**” as follows:

c. Expired drugs or drugs not in unit dose packaging, whose administration had been discontinued by the attending physician, shall be destroyed by the facility administrator or designee in the presence of a witness. A record of drug destruction shall be made in each detainee’s medical record. *The record shall include the name, the strength and the quantity of the drug destroyed, and the record shall be signed by the facility administrator or designee and by the witness.*

d. Medications dispensed by a pharmacy in unit dose packaging may be returned to the dispensing pharmacy pursuant to board of pharmacy examiners rule 657—subrule 23.12(5) 23.15(124,155A).

ITEM 28. Adopt **new** subrule 51.16(4) as follows:

**51.16(4)** Detaining non-U.S. citizens. When non-U.S. citizens are detained, they shall be advised of the right to have their consular officials notified or the nearest consular officials shall be notified of the detention, whichever is required by the Vienna Convention. Consular officials shall be given access to non-U.S. citizens in the facility and shall be allowed to provide consular assistance. When a facility administrator becomes aware of the death of a non-U.S. citizen, consular officials shall be notified.

ITEM 29. Rescind subrule **51.18(3)** and renumber subrules **51.18(4)** and **51.18(5)** as **51.18(3)** and **51.18(4)**.

ITEM 30. Amend renumbered subrules 51.18(3) and 51.18(4) as follows:

**51.18(3)** The following information shall be made available to all detainees and explained to any detainee unable to read English:

a. and b. No change.

c. ~~A procedure for handling detainees’ grievances. A detainee grievance procedure which includes at least one level of appeal.~~

**51.18(4)** Deprivation of clothing, bedding, or hygienic supplies shall not be used as discipline or punishment. These items may be withheld from any detainee who the staff reasonably believes would destroy such items or use them as weapons, for self-injury or, to aid in escape, or interfere with the normal operation of the facility.

ITEM 31. Amend subrule **51.19(13)** by adopting the following **new** paragraph “**d**”:

d. The state jail inspection unit of the department of corrections shall be notified within 24 hours of any death, attempted suicide, fire, escape, injury to staff or detainees from assaults, use of force and prisoner self-injuries. A copy of the investigative reports and other records shall be given to the state jail inspector upon request.

## ARC 4504B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

The proposed amendments will:

- Eliminate the exceptions of the design low flow requirement.
- Revise the general use classification.
- Designate as Class B(WW-1) Warm Water – Type 1 all of Iowa’s perennial rivers and streams and intermittent streams with perennial pools that are not currently designated. (For more information about the Class B(WW-1) use designation, see **ARC 4505B** published herein.)
- Designate as Class A1 – Primary Contact Recreational Use all of Iowa’s perennial rivers and streams and intermittent streams with perennial pools.

Iowa’s current general use classification applies to all waters of the state. The current definition of general use segments allows stream flows resulting from wastewater treatment plants to be considered as general use segments. This implies general use streams can be classified solely on their origin of flow, which is inconsistent with federal regulations. In addition, protection of aquatic life against acutely toxic conditions within general use waters only during periods of elevated flow is also inconsistent with federal regulations. Protection from acutely toxic conditions should occur in all waters and at all times.

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

The proposed amendments will strike the language that allows discharges from wastewater treatment plants to be considered as general use segments and the language that provides protection in general use segments only at elevated flows.

The current use of the exceptions to the design low flow concept, known commonly as the protected flow concept, in conjunction with the implementation of Iowa's Water Quality Standards for Iowa's streams has not been demonstrated to protect aquatic life uses under critical low flow conditions and is thus considered inconsistent with EPA guidelines. The removal of the protected flow concept will more adequately protect aquatic life because the standard design low stream flows (1Q<sub>10</sub>, 7Q<sub>10</sub> and 30Q<sub>10</sub>) will be associated with the implementation of the numerical criteria.

These proposed amendments will eliminate the language that allows exceptions to the design low flow provisions.

Many perennial-type streams in Iowa are classified as general use segments. This is in contrast to the definition of general use segments that these streams are intermittent watercourses. There is a gap between how general use segments are defined and how the waterbodies in Iowa are actually classified.

The proposed amendments will designate as Class B(WW-1) waters all perennial rivers and streams or intermittent streams with perennial pools in Iowa not specifically listed in the Surface Water Classification. The amendments will also designate as Class A1 waters all perennial rivers and streams or intermittent streams with perennial pools, which is consistent with the national goal in the Clean Water Act that waters should be "fishable and swimmable" wherever attainable.

Additional information on Iowa's Water Quality Standards and the Department's rules can be found on the Department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

Any person may submit written suggestions or comments on the proposed amendments through October 28, 2005. Such written material should be submitted to Adam Schnieders, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or by E-mail to [adam.schnieders@dnr.state.ia.us](mailto:adam.schnieders@dnr.state.ia.us). Persons who have questions may contact Adam Schnieders at (515)281-7409.

Persons are invited to present oral or written comments at public hearings which will be held:

October 4, 2005 11 a.m.  
Municipal Utilities Conference Room  
15 W. Third St.  
Atlantic, Iowa

October 4, 2005 7 p.m.  
Cherokee Community Center  
530 W. Bluff St.  
Cherokee, Iowa

October 10, 2005 7 p.m.  
Clear Lake Community Meeting Room  
15 N. Sixth St.  
Clear Lake, Iowa

October 12, 2005 11 a.m.  
Farmers and Merchants Savings and Trust  
101 E. Main St.  
Manchester, Iowa

October 12, 2005 7 p.m.  
Washington Community Y  
121 E. Main St.  
Washington, Iowa

October 14, 2005 1 p.m.  
Wallace State Office Building  
Fifth Floor Conference Rooms  
502 East 9th Street  
Des Moines, Iowa

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 61.2(5) as follows:

**61.2(5)** Implementation strategy. Numerical criteria specified in these water quality standards shall be met when the flow of the receiving stream equals or exceeds the design low flows noted below.

Type of Numerical Criteria	Design Low Flow Regime
Aquatic Life Protection (TOXICS)	
Acute	1Q <sub>10</sub>
Chronic	7Q <sub>10</sub>
Aquatic Life Protection (AMMONIA – N)	
Acute	1Q <sub>10</sub>
Chronic	30Q <sub>10</sub>
Human Health Protection & MCL	
Noncarcinogenic	30Q <sub>5</sub>
Carcinogenic	Harmonic mean

Exceptions may be made for intermittent or low flow streams classified as significant resource warm waters or limited resource warm waters. For these waters, the department may waive the design low flow requirement and establish a minimum flow in lieu thereof. Such waiver shall be granted only when it has been determined that the aquatic resources of the receiving waters are of no significance at flows less than the established minimum, and that the continued maintenance of the beneficial uses of the receiving waters will be ensured. In no event will toxic conditions be allowed to occur in the receiving waters outside of mixing zones established pursuant to subrule 61.2(4). The policy for granting waivers is described in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004. (Copies are available upon request to the Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319-0034. Copy also on file with the Iowa Administrative Rules Coordinator.)

All minimum flows established under the provisions of this rule will be published by the department. The minimum flows, commonly termed protected flows, are presented in "Iowa Water Quality Standards: Protected Flows For Selected Stream Segments," dated May 19, 2004. A copy of this document is available upon request from the department. A copy is also on file with the Iowa Administrative Rules Coordinator.

a. to d. No change.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

*e. The department may perform use assessment and related use attainability analyses on water bodies where uses may not be known or adequately documented. The preparation of use attainability analysis documents will consider available U.S. Environmental Protection Agency guidance or other applicable guidance. Credible data and documentation will be used to assist in the preparation of use assessments and use attainability analysis reports.*

ITEM 2. Amend subrule **61.3(1)**, paragraph “a,” as follows:

a. General use segments. These are intermittent watercourses and those watercourses which typically flow only for short periods of time following precipitation in the immediate locality or as a result of discharges from wastewater treatment facilities, and whose channels are normally above the water table. These waters do not support a viable aquatic community of significance during low flow, and do not maintain pooled conditions during periods of no flow.

However, during periods when sufficient flow exists in the intermittent watercourses to support various uses, the general use segments are to be protected for livestock and wildlife watering, aquatic life, noncontact recreation, crop irrigation, and industrial, agricultural, domestic and other incidental water withdrawal uses. The aquatic life existing within these watercourses during elevated flows will be protected from acutely toxic conditions.

ITEM 3. Amend subrule **61.3(1)**, paragraph “b,” as follows:

b. Designated use segments. These are water bodies which maintain flow throughout the year, or contain sufficient pooled areas during intermittent flow periods to maintain a viable aquatic community of significance.

*All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa not specifically listed in the surface water classification of 61.3(5) are designated as Class B(WW-1) waters.*

*All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa are designated as Class A1 waters.*

*Designated uses of segments may change based on a use attainability analysis consistent with 61.2(5)“e.” Designated use changes will be specifically listed in the surface water classification of 61.3(5).*

Designated use waters are to be protected for all uses of general use segments in addition to the specific uses assigned. Designated use segments include:

(1) to (11) No change.

ITEM 4. Amend subrule 61.3(2), introductory paragraph, as follows:

**61.3(2)** General water quality criteria. The following criteria are applicable to all surface waters including general use and designated use waters, at all places and at all times to protect livestock and wildlife watering, aquatic life, noncontact recreation, crop irrigation, and industrial, domestic, agricultural and other incidental water withdrawal uses not protected by the specific numerical criteria of subrule 61.3(3) for the uses described in 61.3(1)“a.”

ITEM 5. Amend subrule **61.3(5)** by striking “December 15, 2004” and inserting in lieu thereof the effective date of this amendment.

## ARC 4505B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission gives Notice of Intended Action to amend Chapter 61, “Water Quality Standards,” Iowa Administrative Code.

The proposed amendments will:

- Change the current Class B(LR) use designation from Limited Resource Warm Water to Warm Water – Type 2 (Class B(WW-2)).
- Change the current Class B(WW) use designation from Significant Resource Warm Water to Warm Water – Type 1 (Class B(WW-1)).
- Add a new use designation titled Warm Water – Type 3 (Class B(WW-3)).
- Add a new use designation titled Human Health (Class HH).
- Incorporate by reference the document entitled “Warm Water Stream Use Assessment and Attainability Analysis Protocol,” which proposes an approach to be followed in assessing the warm water uses of streams.
- Establish dissolved oxygen, chemical, and ammonia-nitrogen criteria for the new proposed use designation of Class B(WW-3) at the same level that is associated with the existing Class B(LR) use designation.
- Transfer all existing Class B(WW) designated waters to the new Class B(WW-1) use designation.
- Transfer all existing Class B(LR) designated waters to the new Class B(WW-2) use designation.
- Incorporate the proposed use designation nomenclature into the text of the Water Quality Standards at numerous locations and into the applicable rule-referenced documents.
- Add Class HH to Table 1, Criteria for Chemical Constituents, and transfer to Class HH all Human Health – Fish criteria for Class B(WW), Class B(LW) and Class B(CW) designated waters and Human Health – F & W criteria from Class C designated waters.

Iowa’s current warm water aquatic life stream use designations, Class B(WW) and Class B(LR), include most designated warm water bodies (nearly all lakes and wetlands are designated Class B(LW)) in these two categories of water bodies. The Class B(WW) Significant Resource Warm Water designation is assigned to waters in which temperature, flow, and other habitat characteristics are suitable for the maintenance of a wide variety of reproducing warm water fish and associated aquatic communities, including sensitive species. The Class B(LR) Limited Resource Warm Water designation is assigned to waters in which flow or other physical characteristics limit the ability of the water body to maintain a balanced warm water community. Such waters support only populations composed of species able to survive and reproduce in a wide range of physical and chemical conditions, and are not generally harvested for human consumption.

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

These proposed amendments will rename and redefine the current Class B(WW) and Class B(LR) use designations to: Class B(WW-1) – Type 1, and Class B(WW-2) – Type 2, respectively. The Class B(WW-1) use designation will be defined similarly to the current significant resource warm water use designation. The Class B(WW-2) use designation will be defined similarly to the current limited resource warm water use designation.

A new Class B(WW-3) use designation will be added and defined as waters in which flow persists during periods when antecedent soil moisture and groundwater discharge levels are adequate; however, aquatic habitat typically consists of nonflowing pools during dry periods of the year. These waters generally include small streams of marginally perennial aquatic habitat status. Such waters support a limited variety of native fish and invertebrate species that are adapted to survive in relatively harsh aquatic conditions.

The existing Class B(WW) waters will be transferred to the new Class B(WW-1) use designation and the existing Class B(LR) waters will be transferred to the new Class B(WW-2) use designation. It is expected that any river or stream designated as Class B(WW-1) under the “rebuttable presumption” provisions will be redesignated to the appropriate level (Class B(WW-2) or Class B(WW-3)) waters when adequate assessment documentation is obtained.

The header for Table 1, Criteria for Chemical Constituents, currently displays the Class B(WW) and Class B(LR) use designations. The header is being changed to incorporate the proposed Class B(WW-1), Class B(WW-2) and Class B(WW-3) use designations. In addition, chemical criteria for Class B(WW-3) are being established in Table 1 equivalent to the Class B(LR) values.

A new Class HH use designation will be added and defined as waters in which fish are routinely harvested for human consumption. The current Human Health – Fish criteria for Class B(WW), Class B(LW) and Class B(CW) designated waters will be transferred to Class HH. The current Human Health – F & W criteria for Class C waters will transfer to Class HH with a special notation that the criteria apply to all Class C designated waterbodies. Thus, any waters currently designated as Class B(WW), Class B(LW), Class B(CW) or Class C will also be designated as Class HH waters.

The header for Table 3a, Acute Criterion for Ammonia in Iowa Streams, currently displays the Class B(WW) and Class B(LR) use designations. The header is being changed to incorporate the proposed Class B(WW-1), Class B(WW-2) and Class B(WW-3) use designations.

With the basic principle of protecting warm water fish populations and associated warm water aquatics, the current Class B(WW) dissolved oxygen criteria are proposed for the new Class B(WW-1) use designation. It is proposed that the current dissolved oxygen criteria for Class B(LR) be retained for the new Class B(WW-2) and Class B(WW-3) use designations.

Additional information on Iowa’s Water Quality Standards and the Department’s rules can be found on the Department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

Any person may submit written suggestions or comments on the proposed amendments through October 28, 2005. Such written material should be submitted to Adam Schnieders, Iowa Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or by E-mail to [adam.schnieders@dnr.state.ia.us](mailto:adam.schnieders@dnr.state.ia.us). Persons who have questions may contact Adam Schnieders at (515)281-7409.

Persons are invited to present oral or written comments at public hearings which will be held:

October 4, 2005 11 a.m.	Municipal Utilities Conference Room 15 W. Third St. Atlantic, Iowa
October 4, 2005 7 p.m.	Cherokee Community Center 530 W. Bluff St. Cherokee, Iowa
October 10, 2005 7 p.m.	Clear Lake Community Meeting Room 15 N. Sixth St. Clear Lake, Iowa
October 12, 2005 11 a.m.	Farmers and Merchants Savings and Trust 101 E. Main St. Manchester, Iowa
October 12, 2005 7 p.m.	Washington Community Y 121 E. Main St. Washington, Iowa
October 14, 2005 1 p.m.	Wallace State Office Building Fifth Floor Conference Rooms 502 East 9th Street Des Moines, Iowa

These amendments may have an impact upon small businesses.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 **61.3(1)**, paragraph “**b**,” subparagraph **(8)**, as follows:

~~(8) Significant resource warm water – Type 1 (Class “B(WW-1)”)~~. Waters in which temperature, flow and other habitat characteristics are suitable for the maintenance of a wide variety of reproducing populations of warm water fish and associated aquatic communities, including sensitive species, to maintain warm water game fish populations along with a resident aquatic community that includes a variety of native nongame fish and invertebrate species. These waters generally include border rivers, large interior rivers, and the lower segments of medium-size tributary streams.

ITEM 2. Amend subrule **61.3(1)**, paragraph “**b**,” subparagraph **(9)**, as follows:

~~(9) Limited resource warm water – Type 2 (Class “B(LR WW-2)”)~~. Waters in which flow or other physical characteristics limit the ability of the water body to maintain a balanced warm water community. Such waters support only populations composed of species able to survive and reproduce in a wide range of physical and chemical conditions, and are not generally harvested for human consumption. are capable of supporting a resident aquatic community that includes a variety of native nongame fish and invertebrate species. The flow and other physical characteristics limit the maintenance of warm water game fish populations. These waters generally consist of small perennially flowing streams.

ITEM 3. Amend subrule **61.3(1)**, paragraph “**b**,” by renumbering subparagraphs **(10)** and **(11)** as **(11)** and **(13)**

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

and adopting **new** subparagraphs (10) and (12) as follows:  
 (10) Warm water – Type 3 (Class “B(WW-3)”). Waters in which flow persists during periods when antecedent soil moisture and groundwater discharge levels are adequate; however, aquatic habitat typically consists of nonflowing pools during dry periods of the year. These waters generally include small streams of marginally perennial aquatic habitat status. Such waters support a limited variety of native fish and invertebrate species that are adapted to survive in relatively harsh aquatic conditions.

(12) Human health (Class “HH”). Waters in which fish are routinely harvested for human consumption or waters both designated as a drinking water supply and in which fish are routinely harvested for human consumption.

ITEM 4. Amend subrule **61.3(3)**, paragraph “**b**,” introductory paragraph, as follows:

b. Class “B” waters. All waters which are designated as Class B(CW1), B(CW2), B(WW-1), B(LR WW-2), B(WW-3) or B(LW) are to be protected for wildlife, fish, aquatic, and semiaquatic life. The following criteria shall apply to all Class “B” waters designated in subrule 61.3(5).

ITEM 5. Rescind and reserve subrule **61.3(3)**, paragraph “**b**,” subparagraph (3), numbered paragraph “3.”

ITEM 6. Rescind and reserve subrule **61.3(3)**, paragraph “**b**,” subparagraph (4).

ITEM 7. Amend subrule **61.3(3)**, paragraph “**b**,” subparagraph (6), as follows:

(6) Early life stage for each use designation. The following seasons will be used in applying the early life stage present chronic criteria noted in Table 3b, “Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Present.”

1. For all Class B(CW1) waters, the early life stage will be year-round.

2. For all Class B(CW2) waters, the early life stage will begin on April 1 and last through September 30.

3. For all Class B(WW-1) significant resource waters, the early life stage will begin in March and last through September, except the following as follows:

- For the following, the early life stage will begin in February and last through September:

- The entire length of the Mississippi and Missouri Rivers,

- The lower reach of the Des Moines River south of the Ottumwa dam, and

- The lower reach of the Iowa River below the Cedar River.

- For the following, the early life stage will begin in April and last through September:

- All Class B(WW-1) waters in the Southern Iowa River Basin,

- All of the Class B(WW-1) reach of the Skunk River, the North Skunk River and the South Skunk River south of Indian Creek (Jasper County), and the Class B(WW-1) tributaries to these reaches, and

- ~~The~~ *the* entire Class B(WW-1) reach of the English River.

4. For all Class B(LR WW-2) and Class B(WW-3) waters, the early life stage will begin in April and last through September.

5. For all Class B(LW) lake and wetland waters, the early life stage will begin in March and last through September except for the Class B(LW) waters in the southern two tiers of Iowa counties which will have the early life stage of April through September.

ITEM 8. Amend subrule **61.3(3)** by adopting the following **new** paragraph “**d**”:

d. Class “HH” waters. Waters which are designated as Class HH shall contain no substances in concentrations which will make fish or shellfish inedible due to undesirable tastes or cause a hazard to humans after consumption.

(1) The human health criteria represent the level of protection necessary, in the case of noncarcinogens, to prevent adverse health effects in humans and, in the case of carcinogens, to prevent a level of incremental cancer risk not exceeding 1 in 100,000. Instream concentrations in excess of the human health criteria will be allowed only within the boundaries of the mixing zone.

(2) Reserved.

ITEM 9. Amend subrule **61.3(3)**, Table 1, as follows:

**TABLE 1. Criteria for Chemical Constituents**

(all values in micrograms per liter unless noted otherwise)

Human health criteria for carcinogenic parameters noted below were based on the prevention of an incremental cancer risk of 1 in 100,000. For parameters not having a noted human health criterion, the U.S. Environmental Protection Agency has not developed final national human health guideline values. For noncarcinogenic parameters, the recommended EPA criterion was selected. For Class C waters, the EPA criteria for fish and water consumption were selected using the same considerations for carcinogenic and noncarcinogenic parameters as noted above. For Class C waters for which no EPA human health criteria were available, the EPA MCL value was selected.

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(LR WW-2)	B(WW-3)	B(LW)	C	HH
Alachlor	MCL	—	—	—	—	—	—	2	—
Aluminum	Chronic	87	—	388	773	773	748	—	—
	Acute	1106	—	4539	9035	9035	983	—	—
Antimony	Human Health + — F & W	—	—	—	—	—	—	14	14 <sup>(f)</sup>
Arsenic (III)	Chronic	200	—	200	1000	1000	200	—	—
	Acute	360	—	360	1800	1800	360	—	—
	Human Health — Fish	50	—	50	—	—	50	—	50 <sup>(e)</sup>
	Human Health — F & W	—	—	—	—	—	—	18	18 <sup>(f)</sup>

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

Parameter		Use Designations							C	HH
		B(CW1)	B(CW2)	B(WW-1)	B(LR WW-2)	B(WW-3)	B(LW)			
Asbestos	Human Health — F & W	—	—	—	—	—	—	7(a)	7(a)(f)	
Atrazine	MCL	—	—	—	—	—	—	3	—	
Barium	Human Health + — F & W	—	—	—	—	—	—	1000	1000(f)	
Benzene	Human Health — F & W	—	—	—	—	—	—	12	12(f)	
	Human Health — Fish	712.8	—	712.8	—	—	712.8	—	712.8(e)	
Benzo(a)Pyrene	Human Health — F & W	—	—	—	—	—	—	.044	.044(f)	
Beryllium	MCL	—	—	—	—	—	—	4	—	
Bromoform	Human Health — F & W	—	—	—	—	—	—	43	43(f)	
	Human Health — Fish	3600	—	3600	—	—	3600	—	3600(e)	
Cadmium	Chronic	1	—	15	25	25	1	—	—	
	Acute	4	—	75	100	100	4	—	—	
	Human Health + — Fish	168	—	168	—	—	168	—	168(e)	
	MCL	—	—	—	—	—	—	5	—	
Carbofuran	MCL	—	—	—	—	—	—	40	—	
Carbon Tetrachloride	Human Health — F & W	—	—	—	—	—	—	2.5	2.5(f)	
	Human Health — Fish	44.2	—	44.2	—	—	44.2	—	44.2(e)	
Chlordane	Chronic	.004	—	.004	.15	.15	.004	—	—	
	Acute	2.5	—	2.5	2.5	2.5	2.5	—	—	
	Human Health — Fish	.006	—	.006	—	—	.006	—	.006(e)	
	Human Health — F & W	—	—	—	—	—	—	.021	.021(f)	
Chloride	MCL	—	—	—	—	—	—	250*	—	
Chlorobenzene	Human Health + — Fish	21*	—	21*	—	—	21*	—	21*(e)	
	MCL	—	—	—	—	—	—	100	—	
Chlorodibromo- methane	Human Health — F & W	—	—	—	—	—	—	4.1	4.1(f)	
	Human Health — Fish	340	—	340	—	—	340	—	340(e)	
Chloroform	Human Health — F & W	—	—	—	—	—	—	57	57(f)	
	Human Health — Fish	4700	—	4700	—	—	4700	—	4700(e)	
Chloropyrifos	Chronic	.041	—	.041	.041	.041	.041	—	—	
	Acute	.083	—	.083	.083	.083	.083	—	—	
Chromium (VI)	Chronic	40	—	40	200	200	10	—	—	
	Acute	60	—	60	300	300	15	—	—	
	Human Health + — Fish	3365	—	3365	—	—	3365	—	3365(e)	
	MCL	—	—	—	—	—	—	100	—	
Copper	Chronic	20	—	35	55	55	10	—	—	
	Acute	30	—	60	90	90	20	—	—	
	Human Health + — Fish	1000	—	1000	—	—	1000	—	1000(e)	
	Human Health + — F & W	—	—	—	—	—	—	1300	1300(f)	

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

Parameter		Use Designations							C	HH
		B(CW1)	B(CW2)	B(WW-1)	B(LR WW-2)	B(WW-3)	B(LW)			
Cyanide	Chronic	5	—	10	10	10	10	—	—	
	Acute	20	—	45	45	45	45	—	—	
	Human Health + — F & W	—	—	—	—	—	—	700	700 <sup>(f)</sup>	
Dalapon	MCL	—	—	—	—	—	—	200	—	
Dibromochloro- propane	MCL	—	—	—	—	—	—	.2	—	
4,4-DDT ++	Chronic	.001	—	.001	.029	.029	.001	—	—	
	Acute	.9	—	.8	.95	.95	.55	—	—	
	Human Health — Fish	.0059	—	.0059	—	—	.0059	—	.0059 <sup>(e)</sup>	
	Human Health — F & W	—	—	—	—	—	—	.0059	.0059 <sup>(f)</sup>	
o-Dichlorobenzene	MCL	—	—	—	—	—	—	600	—	
para-Dichloro- benzene	Human Health + — F & W	—	—	—	—	—	—	400	400 <sup>(f)</sup>	
	Human Health + — Fish	2.6*	—	2.6*	—	—	2.6*	—	2.6* <sup>(e)</sup>	
3,3-Dichloro- benzidine	Human Health — Fish	.2	—	.2	—	—	.2	—	.2 <sup>(e)</sup>	
	Human Health — F & W	—	—	—	—	—	—	.4	.4 <sup>(f)</sup>	
Dichlorobromo- methane	Human Health — F & W	—	—	—	—	—	—	5.6	5.6 <sup>(f)</sup>	
	Human Health — Fish	460	—	460	—	—	460	—	460 <sup>(e)</sup>	
1,2-Dichloro- ethane	Human Health — F & W	—	—	—	—	—	—	3.8	3.8 <sup>(f)</sup>	
	Human Health — Fish	986	—	986	—	—	986	—	986 <sup>(e)</sup>	
1,1-Dichloro- ethylene	Human Health — F & W	—	—	—	—	—	—	.57	.57 <sup>(f)</sup>	
	Human Health — Fish	32	—	32	—	—	32	—	32 <sup>(e)</sup>	
cis-1,2-Dichloro- ethylene	MCL	—	—	—	—	—	—	70	—	
trans-1,2-Dichloro- ethylene	Human Health + — F & W	—	—	—	—	—	—	700	700 <sup>(f)</sup>	
Dichloromethane	MCL	—	—	—	—	—	—	5	—	
1,2-Dichloro- propane	Human Health — F & W	—	—	—	—	—	—	5.2	5.2 <sup>(f)</sup>	
Di(2-ethylhexyl) adipate	MCL	—	—	—	—	—	—	400	—	
Di(2-ethylhexyl) phthalate	Human Health — F & W	—	—	—	—	—	—	18	18 <sup>(f)</sup>	
Dieldrin	Chronic	.056	—	.056	.056	.056	.056	—	—	
	Acute	.24	—	.24	.24	.24	.24	—	—	
	Human Health — Fish	.0014	—	.0014	—	—	.0014	—	.0014 <sup>(e)</sup>	
	Human Health — F & W	—	—	—	—	—	—	.0014	.0014 <sup>(f)</sup>	
Dinoseb	MCL	—	—	—	—	—	—	7	—	
2,3,7,8-TCDD (Dioxin)	Human Health — F & W	—	—	—	—	—	—	1.3 <sup>-7</sup>	1.3 <sup>-7(f)</sup>	
	Human Health — Fish	.00014†	—	.00014†	—	—	.00014†	—	.00014† <sup>(e)</sup>	

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

Parameter		Use Designations							C	HH
		B(CW1)	B(CW2)	B(WW-1)	B(LR WW-2)	B(WW-3)	B(LW)			
Diquat	MCL	—	—	—	—	—	—	20	—	
2,4-D	Human Health + — F & W	—	—	—	—	—	—	100	100 <sup>(f)</sup>	
Endosulfan <sup>(b)</sup>	Chronic	.056	—	.15	.15	.15	.15	—	—	
	Acute	.11	—	.3	.3	.3	.3	—	—	
	Human Health + — Fish	240	—	240	—	—	240	—	240 <sup>(e)</sup>	
	Human Health + — F & W	—	—	—	—	—	—	110	110 <sup>(f)</sup>	
Endothall	MCL	—	—	—	—	—	—	100	—	
Endrin	Chronic	.05	—	.036	.036	.036	.036	—	—	
	Acute	.12	—	.086	.086	.086	.086	—	—	
	Human Health + — Fish	.81	—	.81	—	—	.81	—	.81 <sup>(e)</sup>	
	Human Health + — F & W	—	—	—	—	—	—	.76	.76 <sup>(f)</sup>	
Ethylbenzene	Human Health + — F & W	—	—	—	—	—	—	3100	3100 <sup>(f)</sup>	
Ethylene dibromide	MCL	—	—	—	—	—	—	.05	—	
Fluoride	MCL	—	—	—	—	—	—	4000	—	
Glyphosate	MCL	—	—	—	—	—	—	700	—	
Heptachlor	Chronic	.0038	—	.0038	.01	.01	.0038	—	—	
	Acute	.38	—	.38	.38	.38	.38	—	—	
	Human Health — Fish	.002	—	.002	—	—	.002	—	.002 <sup>(e)</sup>	
	Human Health — F & W	—	—	—	—	—	—	.0021	.0021 <sup>(f)</sup>	
Heptachlor epoxide	Human Health — F & W	—	—	—	—	—	—	.001	.001 <sup>(f)</sup>	
Hexachloro-benzene	Human Health — F & W	—	—	—	—	—	—	.0075	.0075 <sup>(f)</sup>	
γ-Hexachloro-cyclohexane (Lindane)	Chronic	N/A	—	N/A	N/A	N/A	N/A	—	—	
	Acute	.95	—	.95	.95	.95	.95	—	—	
	Human Health — Fish	.63	—	.63	—	—	.63	—	.63 <sup>(e)</sup>	
	Human Health — F & W	—	—	—	—	—	—	.19	.19 <sup>(f)</sup>	
Hexachloro-cyclopentadiene	Human Health — F & W	—	—	—	—	—	—	240	240 <sup>(f)</sup>	
Lead	Chronic	3	—	30	80	80	3	—	—	
	Acute	80	—	200	750	750	80	—	—	
	MCL	—	—	—	—	—	—	50	—	
Mercury (II)	Chronic	3.5	—	2.1	3.7	3.7	.91	—	—	
	Acute	6.5	—	4.0	6.9	6.9	1.7	—	—	
	Human Health + — Fish	.15	—	.15	—	—	.15	—	.15 <sup>(e)</sup>	
	Human Health + — F & W	—	—	—	—	—	—	.05	.05 <sup>(f)</sup>	
Methoxychlor	Human Health + — F & W	—	—	—	—	—	—	100	100 <sup>(f)</sup>	





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

Parameter		Use Designations							C	HH
		B(CW1)	B(CW2)	B(WW-1)	B(LR WW-2)	B(WW-3)	B(LW)			
Tetrachloro-ethylene	Human Health — F & W	—	—	—	—	—	—	8	8 <sup>(f)</sup>	
Thallium	Human Health + — F & W	—	—	—	—	—	—	1.7	1.7 <sup>(f)</sup>	
Toluene	Chronic	50	—	50	150	150	50	—	—	
	Acute	2500	—	2500	7500	7500	2500	—	—	
	Human Health + — Fish	300*	—	300*	—	—	300*	—	300 <sup>*(e)</sup>	
	Human Health + — F & W	—	—	—	—	—	—	6800	6800 <sup>(f)</sup>	
Total Residual Chlorine (TRC)	Chronic	10	—	20	25	25	10	—	—	
	Acute	35	—	35	40	40	20	—	—	
Toxaphene	Chronic	.037	—	.037	.037	.037	.037	—	—	
	Acute	.73	—	.73	.73	.73	.73	—	—	
	Human Health — Fish	.0075	—	.0075	—	—	.0075	—	.0075 <sup>(e)</sup>	
	Human Health — F & W	—	—	—	—	—	—	.0073	.0073 <sup>(f)</sup>	
1,2,4-Trichlorobenzene	MCL	—	—	—	—	—	—	70	—	
1,1,1-Trichloroethane	MCL	—	—	—	—	—	—	200	—	
	Human Health + — Fish	173*	—	173*	—	—	173*	—	173 <sup>*(e)</sup>	
1,1,2-Trichloroethane	Human Health — F & W	—	—	—	—	—	—	6	6 <sup>(f)</sup>	
Trichloroethylene (TCE)	Chronic	80	—	80	80	80	80	—	—	
	Acute	4000	—	4000	4000	4000	4000	—	—	
	Human Health — Fish	807	—	807	—	—	807	—	807 <sup>(e)</sup>	
	Human Health — F & W	—	—	—	—	—	—	27	27 <sup>(f)</sup>	
Trihalomethanes (total) <sup>(c)</sup>	MCL	—	—	—	—	—	—	80	—	
Vinyl Chloride	Human Health — F & W	—	—	—	—	—	—	20	20 <sup>(f)</sup>	
	Human Health — Fish	5250	—	5250	—	—	5250	—	5250 <sup>(e)</sup>	
Xylenes (total)	MCL	—	—	—	—	—	—	10*	—	
Zinc	Chronic	200	—	450	2000	2000	100	—	—	
	Acute	220	—	500	2200	2200	110	—	—	
	Human Health + — Fish	5000	—	5000	—	—	5000	—	5000 <sup>(e)</sup>	
	Human Health + — F & W	—	—	—	—	—	—	9100	9100 <sup>(f)</sup>	

\* units expressed as milligrams/liter

\*\* to include the sum of known and suspected carcinogenic PAHs

† expressed as nanograms/liter

+ represents the noncarcinogenic human health parameters

++ The concentrations of 4,4-DDT or its metabolites; 4,4-DDE and 4,4-DDD, individually shall not exceed the human health criteria.

(a) units expressed as million fibers/liter (longer than 10 micrometers)

(b) includes alpha-endosulfan, beta-endosulfan, and endosulfan sulfate in combination or as individually measured

(c) The sum of the four trihalomethanes (bromoform [tribromomethane], chlorodibromomethane, chloroform [trichloromethane], and dichlorobromomethane) may not exceed the MCL.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

(d) Class B numerical criteria are for pentachlorophenol a function of pH using the equation:  $\text{Criterion } (\mu\text{g/l}) = e^{[1.005(\text{pH}) - x]}$ , where  $e = 2.71828$  and  $x$  varies according to the following table:

	B(CW1)	B(CW2)	B(WW-1)	B(LR WW-2)	B(WW-3)	B(LW)
Acute	3.869	—	4.869	4.869	4.869	4.869
Chronic	4.134	—	5.134	5.134	5.134	5.134

(e) This Class HH criterion would be applicable to any Class B(LW), B(CW1), B(WW-1), B(WW-2), or B(WW-3) water body that is also designated Class HH.

(f) This Class HH criterion would be applicable to any Class C water body that is also designated Class HH.

ITEM 10. Amend subrule **61.3(3)**, Table 2, as follows:

**TABLE 2. Criteria for Dissolved Oxygen**  
(all values expressed in milligrams per liter)

	B(CW1)	B(CW2)	B(WW-1)	B(LR WW-2)	B(WW-3)	B(LW)
Minimum value for at least 16 hours of every 24-hour period	7.0	7.0	5.0	5.0	5.0	5.0*
Minimum value at any time during any 24-hour period	5.0	5.0	5.0	4.0	4.0	5.0*

\*applies only to the upper layer of stratification in lakes

ITEM 11. Amend subrule **61.3(3)**, Table 3a, header, as follows:

Acute Criterion, mg/l as N (or Criterion Maximum Concentration, CMC)		
pH	Class B(WW-1), B(LR WW-2), B(WW-3) & B(LW)	Class B(CW1) & B(CW2)

ITEM 12. Amend subrule **61.3(5)** as follows:

**61.3(5)** Surface water classification. The department hereby incorporates by reference “Surface Water Classification,” effective December 15, 2004 [insert effective date]. This document may be obtained from the Records Center, Iowa Department of Natural Resources, Wallace State Office Building, 900 East Grand Avenue, Des Moines, Iowa 50319-0034, or on the department’s Web site at <http://www.state.ia.us/epd/wtresrce/wquality/index.htm> <http://www.iowadnr.com/water/standards/index.html>.

ITEM 13. Adopt new subrule 61.3(7) as follows:

**61.3(7)** Warm water stream use assessment and attainability analysis protocol. The department hereby incorporates by reference “Warm Water Stream Use Assessment and Attainability Analysis Protocol,” effective [insert effective date]. This document may be obtained on the department’s Web site at <http://www.iowadnr.com/water/standards/index.html>.

**ARC 4506B**

**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 and 2005 Iowa Acts, House File 805, section 4, the Environmental Protection Commission proposes to amend Chapter 65, “Animal Feeding Operations,” Iowa Administrative Code.

The amendments separate Chapter 65 into two divisions, one for confinement operations and one for open feedlots. In addition to creating a separate division for open feedlot rules, the amendments implement open feedlot operation requirements in 2005 Iowa Acts, House File 805, including minimum design standards for settled open feedlot effluent basins, nutrient management plans, alternative technology systems and construction permits. Included are provisions necessary to implement the National Pollutant Discharge Elimination System (NPDES) program.

To summarize, Item 1 creates a separate division and title for confinement feeding operations. Item 2 amends the introductory paragraph to the confinement feeding division

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

of the chapter. Items 3, 4 and 8 delete definitions and subrules specific to open feedlot operations from the confinement operations division. Item 5 modifies the confinement feeding operation notification requirements for manure releases to be consistent with requirements for open feedlot operations. Item 6 replaces the rule pertaining to when an operation permit is required for a confinement feeding operation, and a related cross reference is modified in Item 7. Division II, Open Feedlot Operations, is created in Item 9. Item 10 amends Appendix A regarding the timing of land application of open feedlot effluent and corrects terminology to be consistent with the new Division II.

Pursuant to Iowa Code section 455B.105(3), the Commission is required to identify requirements in proposed or adopted rules that are more restrictive than a federal program being implemented. In addition, the Commission is required to state its reasons for proposing more restrictive requirements and explain the general financial impact upon affected parties.

In the definition of "large CAFO" and "medium CAFO" in Item 9, the Commission retains the current policy of adding the animal units when multiple species are maintained at the same operation, to determine whether the threshold is met, as was the case under the prior CAFO definitions. The new federal regulations amend this policy at the federal level so that the threshold value for each species is used individually and the concept of "animal units" is no longer used. For example, if an operation maintained 900 beef cattle and 2000 feeder swine, the threshold limit for each species, 1000 and 2500 respectively, would not be met; but if the species were added together, they would exceed 1000 animal units. The federal regulations would not define this operation as a CAFO; however, the definitions that the Commission has adopted define this operation as a CAFO. Thus, these rules are arguably more stringent than the federal regulations.

The more restrictive definitions are proposed because they are consistent with current Iowa law and the prior federal and state CAFO definitions; they make common sense; and they will have little or no adverse impact on the regulated community. The current, relatively new Iowa law, Iowa Code chapter 459, adopted the animal unit concept for determining regulatory thresholds for animal feeding operations; this concept was also incorporated into 2005 Iowa Acts, House File 805. The prior CAFO regulations, at both the state and federal level, used this concept. Thus, the regulated community is familiar with and accustomed to its use. It does not make sense to the Commission that an operation with a combined 900 head of cattle and 2000 head of swine would have less potential for pollution than a 1000-head cattle operation, or a 2500-head swine operation, each of which would be defined as a CAFO. Moreover, the Commission concludes that this proposal will have little, if any, adverse impact, financial or otherwise, on the livestock industry. First, it does not appear that there are that many facilities in Iowa that feed more than one species at levels that would put them in this category of regulation. Secondly, such facilities are already highly regulated under state law. It is unlikely that being required to obtain an NPDES permit will add any significant regulatory or financial burdens to this size of operation. The Commission has considered the concern, which may apply to a significant number of operations, that a confinement operation that is just under the CAFO threshold, for example, a 960 animal unit (2400 head) swine operation, coupled with a small (50-100 head) beef open lot would subject the small open lot to the more stringent CAFO manure control requirements. For this reason, the rules require, in the case of multiple species, that the type of housing, total confinement or open lots,

be the same for each; i.e., both must be total confinement or both must be open lots.

Subrule 65.104(3) requires an existing animal feeding operation intending to expand to a size that will be a CAFO to apply for an NPDES permit at least 180 days prior to the scheduled expansion. Federal regulations provide that coverage under an NPDES permit must be sought as soon as possible but no later than 90 days after the animal feeding operation became defined as a CAFO. While subrule 65.104(3) is more stringent than the federal regulation, it continues a requirement in Commission rules applicable to open feedlot operations that has been in effect for at least ten years. In other words, open feedlot operations have been subject to this requirement for many years, so subrule 65.104(3) does not reflect a change in Iowa law. Given this history, and the planning and compliance advantages of submitting an application well in advance of the planned expansion, the Commission concludes that the current requirement should be continued. Because a proposed or existing CAFO would be required to submit an application for an NPDES permit under either time frame, it is not anticipated that this subrule will have a significant financial impact. Paragraph 65.104(9)"e" requires submission of quarterly reports by CAFOs documenting various observations at outside liquid impoundments, such as daily precipitation, weekly liquid level, and dates and amounts of liquid removed. Federal regulations require annual reporting and do not require documentation of daily precipitation. The Commission concludes that quarterly reporting provides an opportunity to recognize and address operational problems on a more timely basis than could be achieved with annual reporting. Regarding daily precipitation records, the Commission concludes that this data is necessary to ensure compliance with land application requirements in Appendix A or to document equivalent performance of alternative technology systems. The Commission does not anticipate that these requirements will impose a significant financial burden.

Any interested person may make written suggestions or comments on the proposed amendments on or before October 14, 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, persons are invited to present oral or written comments at public hearings which will be held as follows:

- |  |           |
|--|-----------|
| October 4, 2005  | 10 a.m.   |
| Red Oak Fire Station<br>1904 N. Broadway Street<br>Red Oak, Iowa                           |           |
| October 4, 2005  | 6:30 p.m. |
| DMACC-Carroll Campus<br>Main Building, Rooms 142-146<br>906 N. Grant Road<br>Carroll, Iowa |           |
| October 5, 2005  | 10 a.m.   |
| Clay County Regional Events Center<br>800 West 18th Street<br>Spencer, Iowa                |           |
| October 5, 2005  | 6:30 p.m. |
| Lime Creek Nature Center<br>3501 Lime Creek Road<br>Mason City, Iowa                       |           |

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

October 6, 2005 9 a.m.  
Wallace State Office Building  
Fourth Floor West Conference Room  
502 East 9th Street  
Des Moines, Iowa

October 7, 2005 3 p.m.  
Kirkwood Community College  
Iowa Hall, 3rd Floor, Room Iowa A/B  
6301 Kirkwood Boulevard SW  
Cedar Rapids, Iowa

At the hearings, people 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 hearings and have special requirements such as hearing or mobility impairments should contact the Department of Natural Resources and advise of specific needs.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 4507B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code sections 455B.171 to 455B.191, 459.314, 459.601 and 2005 Iowa Acts, House File 805.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 4501B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 1, “Iowa Ethics and Campaign Disclosure Board,” Iowa Administrative Code.

The proposed amendments reflect statutory amendments enacted by the General Assembly during the 2005 legislative session that involved the jurisdiction of the Board and the issuance of advisory opinions.

The proposed amendments do not contain a waiver provision as no new obligation is being imposed.

Any interested person may make written comments on the proposed amendments on or before October 4, 2005. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

These amendments are intended to implement Iowa Code section 68B.32A(11) as amended by 2005 Iowa Acts, House File 253, section 6.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 1.2(3) as follows:

**1.2(3) Jurisdiction.** The board will issue opinions pertaining only to Iowa Code Supplement chapter 68A, Iowa Code chapter 68B, *Iowa Code section 8.7*, or rules adopted thereunder.

ITEM 2. Amend subrule 1.3(2) as follows:

**1.3(2)** After receiving a qualified opinion request, the board's legal counsel shall prepare a draft opinion for board review. Upon an affirmative vote of at least four members, the board will issue a board advisory opinion. Advice contained in a board opinion, if followed, constitutes a defense to a *subsequent complaint filed with the board that is based on the same facts and circumstances.*

**ARC 4500B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, “Campaign Disclosure Procedures,” Iowa Administrative Code.

Currently, campaign committees are permitted to make campaign expenditures only by check. The proposed amendment permits a campaign committee to also make campaign expenditures by debit card or credit card.

The proposed amendment does not contain a waiver provision as no obligation is being imposed.

Any interested person may make written comments on the proposed amendment on or before October 4, 2005. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code sections 68A.203 as amended by 2005 Iowa Acts, House File 312, section 5, and 68A.402A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 rule 351—4.36(68A,68B) as follows:

**351—4.36(68A,68B) Cash transactions.** All disbursements, including all expenditures and any other withdrawals from committee funds, shall be by check, *debit card, or credit card*. Cash withdrawals and “petty cash” accounts are not permitted. If a committee ~~fund-raising~~ *fundraising* activity necessitates a cash drawer for making change or other cash

## ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

transactions, the committee may issue a check payable to the committee treasurer or the candidate, in the case of a candidate's committee, or payable to the committee treasurer or the committee chairperson, in the case of a political committee. The purpose of the expenditure shall be reported on Schedule B as "cash advance for (describe activity, e.g., concession stand cash drawer)." Upon completion of the ~~fund-raising~~ *fundraising* activity, the committee shall redeposit the same amount as that which was advanced into the committee account. The redeposit shall be reported as a reverse entry on Schedule B as a "redeposit of cash advance for (describe activity)." The proceeds of the ~~fund-raising~~ *fundraising* activity (excluding the cash advance) shall be reported on Schedule A — Contributions Received.

This rule is intended to implement Iowa Code Supplement sections 68A.203 as amended by 2005 Iowa Acts, House File 312, section 5, and ~~68A.402~~ 68A.402A.

**ARC 4487B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****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 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 8, "Executive Branch Lobbying," Iowa Administrative Code.

Iowa Code section 68B.22(4)"r" permits state and local government personnel to attend functions held during the legislative session so long as the sponsor of the function files a report disclosing the total cost of food, beverage, and entertainment provided at the function. Previously, sponsors were required to file separate reports with the legislative branch and with the Board. Pursuant to 2005 Iowa Acts, House File 253, section 5, a sponsor is now required to file the report with the legislative branch and the legislative branch sends a copy to the Board. The proposed amendment rescinds the Board's current rule in regard to a sponsor's filing of a report with the Board.

The proposed amendment does not contain a waiver provision as the obligation is being rescinded.

Any interested person may make written comments on the proposed amendment on or before October 4, 2005. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515)281-3489.

This amendment is intended to implement Iowa Code section 68B.22(4)"r" as amended by 2005 Iowa Acts, House File 253, section 5.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 and reserve rule **351—8.10(68B)**.

**ARC 4511B****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 237A.12, the Department of Human Services proposes to amend Chapter 7, "Appeals and Hearings," rescind Chapter 118, "Crisis Child Care Providers," and adopt new Chapter 118, "Child Care Quality Rating System," Iowa Administrative Code.

These amendments:

- Rescind the rules establishing special licensure and registration classifications for crisis child care providers. Legislative authority for those rules was repealed by 2002 Iowa Acts, chapter 1142, section 29.
- Adopt a new chapter to implement a quality rating system for child care providers, as directed by 2005 Iowa Acts, House File 761, section 20.
- Amend rules on appeals to provide appeal rights for providers applying for a certification of quality rating.

These amendments create five levels of quality rating for child care centers and preschools and for child development homes. The child care provider must certify that the facility meets the requirements for the level of certification requested. A facility achieves Level 1 by being duly licensed, registered, or approved to operate.

Criteria for Level 2 include completion of a health and safety agreement and owner/director survey from the Healthy Child Care Iowa program in the Department of Public Health and participation in the Child and Adult Care Food Program, if the facility serves meals. A child development home provider must also maintain ChildNet certification and complete a professional development self-assessment and plan. Centers and preschools must provide preservice orientation to all staff, have on duty in each room staff who have completed basic safety training, and have completed a self-assessment.

Certification at Levels 3, 4, and 5 is achieved by earning points in each of several categories: professional development, health and safety, environment, family and community partnerships, and, for centers and preschools, leadership and administration. Environmental ratings are based on nationally recognized environmental rating scales, as administered by nationally certified assessors. Training on the use of environmental rating scales is available from Iowa State University Extension Service. Providers must take training on the use of the scale before requesting an assessment of their facilities.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Providers may appeal the Department's decision on awarding a rating certificate. Certificates are issued for a period of 24 months. Providers may request a new rating 12 months or more after their previous certificate was issued.

These amendments do not provide for waivers in specified situations because quality rating is a voluntary system. No provider is required to participate.

Any interested person may make written comments on the proposed amendments on or before October 6, 2005. Comments should be directed to Mary Ellen Imlau, 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).

Interested persons may also present their views either orally or in writing at the public hearings to be held at the places and times listed below. Any person who intends to attend a public hearing and requires special accommodations for specific needs such as hearing or mobility impairments should contact the Office of Policy Analysis at (515)281-2440.

Child Care Resource and Referral of Central Iowa Orchard Place Child Guidance Center 808 5th Ave. Des Moines, Iowa	Wednesday October 5, 2005 4:30 to 6 p.m.
Child Care Resource and Referral of Southeast Iowa Iowa East Central T.R.A.I.N. 500 E. 59th St. Davenport, Iowa	Wednesday October 5, 2005 5 to 6:30 p.m.
Child Care Resource and Referral of Northeast Iowa Exceptional Persons, Inc. Board Room 760 Ansbrough Waterloo, Iowa	Thursday October 6, 2005 5 to 6:30 p.m.
Child Care Resource and Referral of Northwest Iowa Mid-Sioux Opportunity, Inc. 418 S. Marion St. Remsen, Iowa	Thursday October 6, 2005 5 to 6:30 p.m.
Child Care Resource and Referral of Southwest and South Central Iowa West Central Development Corporation 701 10th St. Harlan, Iowa	Thursday October 6, 2005 5 to 6:30 p.m.

These amendments are intended to implement Iowa Code section 237A.30 as amended by 2005 Iowa Acts, House File 761, section 20.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 **441—7.1(17A)**, definition of "aggrieved person," numbered paragraph "7," by adding the following **new** bulleted item at the end of the list:

- Whose application for child care quality rating has not been acted upon in a timely fashion, who disagrees with the department's quality rating decision, or whose certificate of quality rating has been revoked.

ITEM 2. Rescind **441—Chapter 118** and adopt the following **new** chapter in lieu thereof:

CHAPTER 118  
CHILD CARE QUALITY RATING SYSTEM

PREAMBLE

This chapter establishes rules for the child care quality rating system. Participation in the quality rating system is voluntary. The chapter includes application and renewal procedures and standards and criteria for the quality rating system.

**441—118.1(237A) Definitions.**

"Apprenticeship certificate" means a nationally recognized Child Care Development Specialist Registered Apprenticeship Certificate awarded by the U.S. Department of Labor. The certificate requires two years of full-time employment with on-the-job training and 288 hours (at least 19 credits) of approved, related college education or training.

"Child care facility" means a licensed child care center, a preschool, or a registered child development home.

"Child care nurse consultant" means a registered nurse licensed in the state of Iowa who has completed training using a nationally approved curriculum for health and safety in child care and early education. The child care nurse consultant provides on-site consultation, technical assistance, and training to child care and early education providers regarding health and safety.

"Child development associate credential (CDA)" means a credential awarded by the Council for Professional Recognition to individuals working in child care settings who demonstrate proficiency in specific competency standards. The credential requires 120 hours of approved training hours over the past five years.

"ChildNet certification" means verified completion of the 25-hour ChildNet training series in areas specifically designed for child development home providers and completion of the certification process.

"Eligible applicants" means programs meeting the definition of "child care facility" or programs operating under the authority of an accredited school district or nonpublic school.

"Environmental rating scale" means a series of child care program assessment instruments (scales) developed through the auspices of the Frank Porter Graham Child Development Center of the University of North Carolina at Chapel Hill. The scale is the measurement tool used by an assessor during an on-site observation of a child care classroom to evaluate and provide a score to a child care program. Scales must be administered by entities approved by the department of human services or the department's designee.

"Head Start program performance standards" means the standards that define the services that Head Start programs are required to provide to the children and families they serve. The standards constitute the expectations and requirements that Head Start grantees must meet.

"Iowa quality preschool program standards" means standards developed by the Iowa department of education, based on the ten standards of the National Association for the Education of Young Children accreditation.

"National administrator credential (NAC)" means the 40-hour comprehensive training for child care and education administrators and successful completion of the certification process.

**441—118.2(237A) Application for quality rating.** Eligible applicants shall apply to the department of human services or the department's designee for a quality rating on Form 470-4229, Application for Quality Rating. Any required supporting documentation must be included as a part of the application.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**118.2(1)** Change in location of facility. Participants must notify the department of human services or the department's designee and complete a new Form 470-4229, Application for Quality Rating, if the location of the facility changes. The department or the department's designee shall make a new determination of the appropriate rating.

**118.2(2)** Renewal. Participants shall renew participation in the quality rating system every 24 months. To request renewal, eligible applicants shall submit Form 470-4229, Application for Quality Rating, and any required supporting documentation.

**441—118.3(237A) Rating standards for child care centers and preschools.** To participate in the quality rating system, a child care center or preschool shall certify that its facility meets the applicable criteria as defined in subrule 118.3(1).

**118.3(1)** Criteria. Criteria for each rating level are defined as follows.

a. Level 1. To be rated at Level 1, a facility must either:

(1) Have a full or provisional license from the department of human services, with no action pending to revoke or deny the license; or

(2) Operate under the authority of an accredited school district or nonpublic school.

b. Level 2. To be rated at Level 2, a facility must meet the following criteria in addition to meeting the criteria for Level 1:

(1) The facility must complete the Iowa department of public health's Form HCCI-BPA2006, Child Care Business—Partnership Agreement.

(2) The facility must complete the Iowa department of public health's provider health and safety questionnaire, Form HCCI-CDOS2006, Child Care Center Director/Owner Survey.

(3) If eligible, the facility must participate in the child and adult care food program (CACFP), unless children are in attendance less than four hours per day and the program does not serve meals.

(4) The facility must have on duty in each room at all times at least one staff member who has completed training in mandatory reporting of child abuse, universal precautions and infectious disease control, cardiopulmonary resuscitation, and first aid as specified in 441—subrule 109.7(1) and subparagraphs 109.7(2)“a”(1) and (2).

(5) The facility must provide basic orientation for all staff before they begin work.

(6) All staff, including the facility's director, must complete Form 470-4234, Child Care Center Staff Self-Assessment, no more than 12 months before application. The director must also complete Form 470-4233, Child Care Center Self-Assessment.

c. Level 3. To be rated at Level 3, a facility must meet the following criteria in addition to meeting the criteria for Levels 1 and 2:

(1) The facility must earn a minimum of 10 points from the categories listed in subrules 118.3(2) through 118.3(6).

(2) The facility must earn at least one point from each category.

d. Level 4. To be rated at Level 4, a facility must meet the following criteria in addition to meeting the criteria for Levels 1 and 2:

(1) The facility must earn a minimum of 16 points from the categories listed in subrules 118.3(2) through 118.3(6).

(2) The facility must earn at least one point from each category.

e. Level 5. To be rated at Level 5, a facility must meet the following criteria in addition to meeting the criteria for Levels 1 and 2:

(1) The facility must earn a minimum of 22 points from the categories listed in subrules 118.13(2) through 118.13(6).

(2) The facility must earn at least one point from each category.

**118.3(2)** Professional development. A child care center or preschool may earn a maximum of eight points in the professional development category. Points are awarded as follows:

a. Credential. Two points are awarded if the facility director:

(1) Has a current national administrator credential; or

(2) Is a school principal licensed by the Iowa board of educational examiners.

b. Related degree. One point is awarded if at least one staff member at the facility has at least a bachelor's degree in education specific to the age group for whom the person provides care.

c. Education and experience. A facility may earn a maximum of five points for staff education and experience. Points are awarded as follows:

(1) Five points are awarded if more than 50 percent of staff in each classroom have a minimum of a bachelor's degree in education specific to the age group for whom they provide care.

(2) Four points are awarded if more than 50 percent of staff in each classroom have a minimum of an associate's degree in education specific to the age group for whom they provide care.

(3) Three points are awarded if more than 50 percent of staff in each classroom have a minimum of a child development associate credential or apprenticeship certificate.

(4) Two points are awarded if more than 50 percent of staff in each classroom have a minimum of either six college credit hours in education specific to the age group for whom they provide care or have a paraeducator certificate from the Iowa board of educational examiners.

(5) Two points are awarded if more than 50 percent of staff in each classroom have received a minimum of 30 hours of training beyond regulatory requirements in the last 12 months and have at least five years of experience working in a child care facility or a program operating under the authority of an accredited school district or nonpublic school.

(6) One point is awarded if more than 50 percent of staff in each classroom have received a minimum of 15 hours of training beyond regulatory requirements in the last 12 months.

**118.3(3)** Health and safety. A child care center or preschool may earn a maximum of eight points in the health and safety category. Points are awarded as follows:

a. Injury prevention. A facility may earn a maximum of three points for injury prevention. Points are awarded as follows:

(1) One point is awarded if the facility completes the Iowa department of public health's Form HCCI-IP2006, Injury Prevention Summary Report, during a visit with a child care nurse consultant.

(2) Two points are awarded if the child care nurse consultant verifies that the facility has started the process of making recommended corrections.

(3) Three points are awarded if the child care nurse consultant verifies that the facility has completed all corrections.



## HUMAN SERVICES DEPARTMENT[441](cont'd)

b. Child record review. A facility may earn a maximum of two points for child record review. Points are awarded as follows:

(1) One point is awarded if the facility completes the Iowa department of public health's Form HCCI-CRR2006, Child Record Review, during a visit with a child care nurse consultant.

(2) Two points are awarded if the child care nurse consultant verifies that the facility has worked with the child care nurse consultant to refer families to health care providers.

c. Health and safety assessment. A facility may earn a maximum of three points for health and safety assessment. Points are awarded as follows:

(1) One point is awarded if the facility completes the Iowa department of public health's Form HCCI-HSA2006, Health and Safety Assessment, during a visit with the child care nurse consultant.

(2) Two points are awarded if the child care nurse consultant verifies that the facility has developed a plan of action to correct deficiencies.

(3) Three points are awarded if the child care nurse consultant verifies that the facility has completed all corrections.

**118.3(4) Environment.** A child care center or preschool may earn a maximum of nine points in the environment category. Points are awarded as follows:

a. Environmental rating scale training. One point is awarded if the facility director or assistant director completes approved training on using the infant/toddler environment rating scale, the early childhood environment rating scale, or the school-age care environment rating scale to evaluate and improve the facility before outside evaluation.

b. Environmental rating scale. A facility may earn a maximum of three points on the environmental rating scale. The facility director or assistant director must complete training on the use of one of the environmental rating scales before requesting assessment. An assessor approved by the department of human services or the department's designee must perform the environmental rating assessment. At least one-third of the facility's classrooms must be assessed, including at least one classroom in each age group served by the facility. Points are awarded as follows:

(1) One point is awarded if the facility receives an average score of 3 on a scale of 7 (with no subscale scores lower than 2) on the infant/toddler environment rating scale, the early childhood environment rating scale, or the school-age care environment rating scale.

(2) Two points are awarded if the facility receives an average score of 4 on a scale of 7 (with no subscale scores lower than 2) on the infant/toddler environment rating scale, the early childhood environment rating scale, or the school-age care environment rating scale.

(3) Three points are awarded if the facility receives an average score of 5 on a scale of 7 (with no subscale scores lower than 2) on the infant/toddler environment rating scale, the early childhood environment rating scale, or the school-age care environment rating scale.

c. Iowa quality preschool program standards. A facility may earn a maximum of two points on the Iowa quality preschool program standards. Points are awarded as follows:

(1) One point is awarded if the facility completes training on Iowa quality preschool program standards.

(2) One point is awarded if the facility completes the Iowa quality preschool program standards self-assessment and develops a quality improvement plan.

d. Accreditation. A facility may earn a maximum of three points for accreditation. Points are awarded as follows:

(1) One point is awarded if the facility meets accreditation standards for group or class size from an accrediting body identified in subparagraph (2) that is appropriate to the child care setting.

(2) Three points are awarded if the facility is accredited by the National Association for the Education of Young Children, the National Afterschool Association, or another accrediting body approved by the department of human services or if a Head Start program demonstrates compliance with Head Start program performance standards.

**118.3(5) Family and community partnerships.** A child care center or preschool may earn a maximum of two points in the family and community partnerships category. Points are awarded as follows:

a. One point is awarded if the facility is a member of a professional organization specific to the age group for whom care is provided.

b. One point is awarded if the facility provides orientation for new parents and holds annual conferences with parents.

**118.3(6) Leadership and administration.** A child care center or preschool may earn a maximum of four points in the leadership and administration category. Points are awarded as follows:

a. One point is awarded if the facility completes yearly written evaluations for all staff.

b. One point is awarded if the facility develops and updates Form 470-4235, Child Care Center Improvement Plan, annually.

c. One point is awarded if all staff complete Form 470-4236, Professional Development Plan.

d. One point is awarded if all staff who have direct contact with children have a full, facility-based orientation before they work alone with any children.

**441—118.4(237A) Rating criteria for child development homes.** To participate in the quality rating system, a child development home provider shall certify that the home meets the applicable criteria as defined in subrule 118.4(1).

**118.4(1) Criteria for each level of rating.**

a. To be rated at Level 1, the home must be a registered child development home.

b. To be rated at Level 2, the home must meet the following criteria in addition to meeting the criterion for Level 1:

(1) The provider completes and maintains ChildNet certification.

(2) The provider participates in the child and adult care food program (CACFP).

(3) The provider completes the Iowa department of public health's Form HCCI-BPA2006, Child Care Business—Partnership Agreement.

(4) The provider completes the Iowa department of public health's provider health and safety questionnaire, Form HCCI-HDOS2006, Home Child Care Center Director/Owner Survey.

(5) The provider completes Form 470-4231, Child Development Home Professional Development Self-Assessment.

(6) The provider completes Form 470-4236, Professional Development Plan.

c. To be rated at Level 3, the home must meet the following criteria in addition to meeting the criteria for Levels 1 and 2:

(1) The home must earn a minimum of 7 points from the categories listed in subrules 118.4(2) through 118.4(5).

(2) The home must earn at least one point from each category.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

d. To be rated at Level 4, the home must meet the following criteria in addition to meeting the criteria for Levels 1 and 2:

(1) The home must earn a minimum of 12 points from the categories listed in subrules 118.4(2) through 118.4(5).

(2) The home must earn at least one point from each category.

e. To be rated at Level 5, the home must meet the following criteria in addition to meeting the criteria for Levels 1 and 2:

(1) The home must earn a minimum of 16 points from the categories listed in subrules 118.4(2) through 118.4(5).

(2) The home must earn at least one point from each category.

**118.4(2) Professional development.** A child development home may earn a maximum of five points in the professional development category. Points are awarded as follows:

a. Experience and training. A home may earn a maximum of two points for experience and training. Points are awarded as follows:

(1) One point is awarded if the provider has at least two years of experience working in a child care facility or a program operating under the authority of an accredited school district or nonpublic school and 10 hours of additional training per year beyond regulatory requirements.

(2) Two points are awarded if the provider has at least five years of experience working in a child care facility or a program operating under the authority of an accredited school district or nonpublic school and 20 hours of additional training per year beyond regulatory requirements.

b. Education. A home may earn a maximum of three points for education. Points are awarded as follows:

(1) Two points are awarded if the provider has completed an apprenticeship certificate, child development associate credential, or at least nine college credit hours in education specific to the age group for whom care is provided.

(2) Three points are awarded if the provider has completed an associate's degree or above in education specific to the age group for whom care is provided.

**118.4(3) Health and safety.** A child development home may earn a maximum of eight points in the health and safety category. Points are awarded as follows:

a. Injury prevention. A home may earn a maximum of three points for injury prevention. Points are awarded as follows:

(1) One point is awarded if the provider completes the Iowa department of public health's Form HCCI-IP2006, Injury Prevention Summary Report, during a visit with a child care nurse consultant.

(2) Two points are awarded if the child care nurse consultant verifies that the provider has started the process of making recommended corrections.

(3) Three points are awarded if the child care nurse consultant verifies that the provider has completed all corrections.

b. Child record review. A home may earn a maximum of two points for child record review. Points are awarded as follows:

(1) One point is awarded if the provider completes the Iowa department of public health's Form HCCI-CRR2006, Child Record Review, during a visit with a child care nurse consultant.

(2) Two points are awarded if the child care nurse consultant verifies that the provider has worked with the child care nurse consultant to refer families to health care providers.

c. Health and safety assessment. A home may earn a maximum of three points in the health and safety assessment category. Points are awarded as follows:

(1) One point is awarded if the provider completes the Iowa department of public health's Form HCCI-HSA2006, Health and Safety Assessment, during a visit with the child care nurse consultant.

(2) Two points are awarded if the child care nurse consultant verifies that the provider has developed a plan of action to correct deficiencies.

(3) Three points are awarded if the child care nurse consultant verifies that the provider has completed all corrections.

**118.4(4) Environment.** A child development home may earn a maximum of eight points in the environment category. Points are awarded as follows:

a. Environmental rating scale training and self-assessment. A home may earn a maximum of three points for environmental rating scale training and self-assessment. Points are awarded as follows:

(1) One point is awarded if the provider completes approved training on how to use the family day care rating scale to assess the child development home environment.

(2) One point is awarded if, after completing training on how to use the family day care rating scale, the provider completes a self-assessment using the family day care rating scale.

(3) One point is awarded if, after completing training on how to use the family day care rating scale, the provider completes Form 470-4232, Child Development Home Improvement Plan, based on the family day care rating scale self-assessment.

b. Environmental rating scale. A home may earn a maximum of two points on the environmental rating scale. An assessor approved by the department of human services or the department's designee must perform the environmental rating assessment. The provider must complete training on the family day care rating scale before requesting assessment. Points are awarded as follows:

(1) One point is awarded if the home receives an average score of 4 on a scale of 7, with no subscale scores lower than 2.

(2) Two points are awarded if the home receives an average score of 5 on a scale of 7, with no subscale scores lower than 2.

c. Accreditation. Three points are awarded if the home is accredited by the National Association for Family Child Care or another accrediting body approved by the department of human services.

**118.4(5) Family and community partnerships.** A child development home may earn a maximum of two points in the family and community partnerships category. Points are awarded as follows:

a. One point is awarded if the provider is a member of a professional organization specific to the age group for whom care is provided.

b. One point is awarded if the provider offers an orientation for new parents and holds annual conferences with parents.

**441—118.5(237A) Award of quality rating.**

**118.5(1)** The facility shall display Form 470-4230, Quality Rating Certificate, in a conspicuous place.

**118.5(2)** Achievement bonuses may be awarded as funds are available.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**118.5(3)** Participants may request another quality rating no sooner than 12 months after issuance of a quality rating certificate.

**441—118.6(237A) Adverse actions.**

**118.6(1)** An eligible applicant must be notified of the right to appeal the rating decision in accordance with 441—Chapter 7.

**118.6(2)** A participant's quality rating shall be revoked if the facility no longer meets the definition of "eligible applicants."

**118.6(3)** Form 470-4230, Quality Rating Certificate, shall be returned to the department of human services if:

- a. The certificate is revoked;
- b. The certificate is not renewed; or
- c. The provider voluntarily withdraws from the program.

These rules are intended to implement Iowa Code section 237A.30 as amended by 2005 Iowa Acts, House File 761, section 20.

**ARC 4486B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 514I.5, the Department of Human Services proposes to amend Chapter 86, "Healthy and Well Kids in Iowa (HAWK-I) Program," Iowa Administrative Code.

Rules for the HAWK-I program are revised to:

- Reference the electronic application form and the electronic referral process for families that initially applied for Medicaid but were ineligible, or were canceled from Medicaid.
- Clarify the relationship between applications for Medicaid and applications for HAWK-I assistance. Each is recognized by the other program if the family's circumstances warrant. No additional application form, and in most cases, no additional investigation, is required.
- Provide that a child voluntarily excluded from the Medicaid eligible group for any financial reason may qualify for HAWK-I.
- Clarify billing and payment requirements for HAWK-I premiums to allow that payment is timely if it is postmarked by the due date and to allow families one ten-day extension of the initial premium due date.
- Implement health insurance data matching for HAWK-I cases, as is currently done for Medicaid cases.

These amendments do not provide for waivers in specified situations because they either confer a benefit on HAWK-I customers or are required by state law. Individuals may request a waiver of these rules under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before October 5, 2005. Comments should be directed to Mary Ellen Imlau, 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 514I.5(7)"f" and 2005 Iowa Acts, House File 825, section 9, subsection 7.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 441—86.2(524I) as follows:

Amend subrule **86.2(2)** as follows:

Amend paragraph "**b**" as follows:

Amend subparagraphs (17) and (35) as follows:

(17) ~~Unearned income~~ *Income* in kind.

(35) Earnings of a child aged under the age of 19 or younger who is a full-time student as defined at 441—75.54(1)"b"(1) and (2).

Adopt ~~new~~ subparagraph (43) as follows:

(43) Any income restricted by law or regulation that is paid to a representative payee living outside the home, other than to a parent who is the applicant or recipient, unless the income is actually made available to the applicant or recipient by the representative payee.

Amend paragraph "**c**" as follows:

c. Verification of income. Income shall be verified using the best information available. For example, earnings from the 30 days prior to before the date of application may be used to verify earned income if it is representative of the income expected in future months.

(1) Pay stubs, tip records, tax records and employers' statements are acceptable forms of verification of earned income.

(2) Unearned income shall be verified through data matches when possible, award letters, warrant copies, or other acceptable means of verification.

(3) Self-employment income shall be verified using business records or income tax returns from the previous year if they are representative of anticipated earnings.

(4) ~~When a child who has been determined ineligible for Medicaid is referred to the HAWK-I program, The the third-party administrator may shall use the income calculation on amount used by the Medicaid notice of decision as verification of income for the HAWK-I program when a referral is made to HAWK-I from the Medicaid program unless rules in this chapter require the income to be treated differently.~~

Amend subrule 86.2(5) as follows:

**86.2(5)** Ineligibility for Medicaid. The child shall not be receiving Medicaid or eligible to receive Medicaid if application were made except when the child would be required to meet a spenddown under the medically needy program in accordance with the provisions of 441—subrule 75.1(35).

a. ~~Additionally, a~~ A child who would be eligible for Medicaid except for the parent's failure or refusal to cooperate in establishing initial or ongoing eligibility shall not be eligible for coverage under the HAWK-I program.

b. Children who are excluded from the household due to ~~the child's excess income~~ *financial reasons* can participate in the HAWK-I program if otherwise eligible. ~~This does not apply to children who are voluntarily excluded from the household for nonfinancial reasons.~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrule **86.3(6)**, paragraph “a,” as follows:

a. An application shall not be required when a child becomes ineligible for Medicaid and the county local office of the department makes a referral to the HAWK-I program.

(1) ~~Form 470-3565, Referral to the Healthy and Well Kids in Iowa (HAWK-I) Program, A referral to the HAWK-I program pursuant to subrule 86.4(3) or 86.4(4) shall be accepted in lieu of an application.~~

(2) The original Medicaid application or the last review form that is on file in the county local office of the department, whichever is more current, shall suffice to meet the signature requirements.

ITEM 3. Amend rule 441—86.4(524I) as follows:

Amend subrule **86.4(1)**, paragraphs “a” and “c,” as follows:

a. The original Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526, or Form 470-4016, HAWK-I Electronic Application Summary and Signature Page, and copies of any accompanying information and verification shall be forwarded to the department within 24 hours, or the next working day, whichever is sooner. The third-party administrator shall maintain a copy of all documentation sent to the department and a log to track the disposition of all referrals.

c. The referral shall be considered an application for Medicaid in accordance with the provisions of rule 441—76.1(249A). The time limit for processing the referred application begins with the date the Healthy and Well Kids in Iowa (HAWK-I) Application, Form 470-3526, or Form 470-4016, HAWK-I Electronic Application Summary and Signature Page, is date-stamped as being received by the third-party administrator.

Amend subrule 86.4(3) as follows:

**86.4(3)** Medicaid applicant not eligible. If a child is not eligible for Medicaid under the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), or is voluntarily excluded from the Medicaid eligible group under the provisions of 441—75.59(249A) and meets the criteria specified at 86.2(5), the department shall make a referral to the third-party administrator for an eligibility determination under the HAWK-I program as follows:

a. A copy of the original application, copies of any accompanying information and verification, and a copy of the notice of decision shall be forwarded to the third-party administrator within 24 hours of the decision to deny Medicaid eligibility or the next working day, whichever is sooner, the department shall either:

(1) Complete Form 470-3563, Referral to HAWK-I, and send the form and a copy of the Medicaid notice of decision to the third-party administrator; or

(2) Submit an electronic referral to the HAWK-I program.

b. ~~The~~ When the referral is made using Form 470-3563, Referral to HAWK-I, the third-party administrator shall date-stamp the referral.

c. The third-party administrator shall notify the family of the referral, and proceed with an eligibility determination under the HAWK-I program.

e d. ~~The time frame period for processing the application begins with the day on which the referred application Form 470-3563, Referral to HAWK-I, is date-stamped as having been received by the third-party administrator or with the day on which the third-party administrator receives the electronic referral file.~~

d. If it is apparent that the child will not be eligible for the HAWK-I program (e.g., the child is the dependent of a state of Iowa employee), the referral shall not be made.

Amend subrule 86.4(4) as follows:

**86.4(4)** Medicaid recipient becomes ineligible. If a child becomes ineligible for Medicaid under the provisions of rule 441—75.1(249A), with the exception of meeting a spenddown under the medically needy program at 441—subrule 75.1(35), or is voluntarily excluded from the Medicaid eligible group under the provisions of 441—75.59(249A) and meets the criteria specified at 86.2(5), a referral shall be made to the third-party administrator for an eligibility determination under the HAWK-I program as follows:

a. ~~The department shall complete a Referral to HAWK-I, Form 470-3563, and send it to the third-party administrator within 24 hours~~ Within one business day of the determination that the child is no longer eligible for Medicaid or that the child must meet a spenddown under the medically needy program, the department shall either:

(1) Complete Form 470-3563, Referral to HAWK-I, and send the form and a copy of the Medicaid notice of decision to the third-party administrator; or

(2) Submit an electronic referral to the HAWK-I program.

b. ~~The~~ When the referral is made using Form 470-3563, Referral to HAWK-I, the third-party administrator shall date-stamp the referral, notify the family of the referral, and proceed with an eligibility determination under the HAWK-I program. ~~The third-party administrator shall use Form 470-3563, Referral to HAWK-I, as an application for the HAWK-I program. If needed, the third-party administrator shall obtain copies of supporting documentation from the case record at the county office of the department.~~

c. If it is apparent the child will not be eligible for the HAWK-I program (e.g., the child is the dependent of a state of Iowa employee), the referral shall not be made. The third-party administrator shall:

(1) Notify the family of the referral;

(2) Proceed with a HAWK-I eligibility determination using Form 470-3563, Referral to HAWK-I, or the electronic referral file as the HAWK-I application; and

(3) Obtain copies of supporting documentation from the case record at the department local office if needed.

d. The period for processing the HAWK-I application begins with the day on which the third-party administrator:

(1) Date-stamps the received Form 470-3563, Referral to HAWK-I; or

(2) Receives the electronic referral file.

ITEM 4. Amend subrule 86.8(3) as follows:

**86.8(3)** Due date.

a. Initial premium. When the third-party administrator notifies the applicant that the applicant is eligible to participate in the program, the applicant shall pay any premiums due within ten working days. No premiums shall be assessed for months of coverage prior to before, and including, the month of decision.

(1) All premiums due must be paid before the child will be enrolled for coverage. When the premium is received, the third-party administrator shall notify the plan of the enrollment.

(2) At the request of the family, the initial premium due date may be extended once for no more than ten calendar days.

(3) A premium received by the third-party administrator after the due date shall be considered as paid timely when the envelope is postmarked on or before the due date.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

*b. Ongoing premiums.* After the initial month of coverage, premiums shall be due by the tenth day of each month for the next month's coverage and must be received post-marked no later than the last day of the month prior to before the month of coverage.

(1) Failure to pay the premium by the last day of the month before the month of coverage shall result in disenrollment from the plan.

(2) At the request of the family, premiums may be paid in advance (e.g., on a quarterly or semiannual basis) rather than a monthly basis.

ITEM 5. Adopt **new** rule 441—86.18(514I) as follows:

**441—86.18(514I) Health insurance data match program.** Any insurance carrier providing a health benefit plan in Iowa subject to regulation by the Iowa commissioner of insurance shall enter into and maintain an agreement with the department to provide the data necessary to enable the department to match insureds against enrollees in the HAWK-I program and identify third-party payors for the purposes of determining HAWK-I eligibility. The agreement shall be in substantial conformance with the agreement form specified for the Medicaid program in 441—subrule 76.13(2).

**ARC 4512B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 99, "Support Establishment and Adjustment Services," Iowa Administrative Code.

The amendments to Division I, "Child Support Guidelines," align the Department's rules with recent changes to the Iowa Supreme Court Guidelines (Iowa Court Rules, Chapter 9) for calculating the amount of court-ordered child support. The amendments include rules on what to include for income and deductions from income, how to calculate support for joint and split physical care orders and for extraordinary visitation orders, and the amount of support owed when the noncustodial parent's only income is from Supplemental Security Income.

The amendments to Division VI, "Suspension and Reinstatement of Support," align the Department's rules with Iowa Code section 252B.20 as amended by 2005 Iowa Acts, Senate File 350, sections 2 through 5. Previous rules provided for the Child Support Recovery Unit to assist families in suspending a support obligation when the parents jointly requested the suspension because the parents had reconciled and lived with all of the children or because all of the children lived with the person ordered to pay support.

The Department requested a statutory change to allow the Unit to assist families in suspending a support obligation when some but not all of the children have gone to live with the person ordered to pay support. The amended statute allows suspension of an obligation in these circumstances

when there is a "step change" in the order stating what the reduced amount of support should be as the number of children changes. Both parents must still agree to the suspension.

The amended statute also provides for reinstatement of a suspended obligation when the basis for suspension no longer applies to one or more of the children, in accordance with the step change specified in the order, and clarifies that a suspension or reinstatement does not count toward the time limits for requesting modification of an order.

These amendments also remove provisions for denying the request for suspension or reinstatement of an obligation when the request is incomplete. The Unit contacts the parent to complete the request before making a decision on whether suspension or reinstatement criteria are met.

These amendments do not provide for waivers in specified situations because the amendments remove restrictions and because policies for calculating child support using the guidelines are set by Iowa Court Rules and provisions for suspension and reinstatement are set by statute.

Any interested person may make written comments on the proposed amendments on or before October 5, 2005. Comments should be directed to Mary Ellen Imlau, 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 2005 Iowa Acts, Senate File 330, section 40, and Iowa Code section 252B.20 as amended by 2005 Iowa Acts, Senate File 350, sections 2 through 5.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 441—99.1(234,252B,252H) as follows:

Amend subrule **99.1(1)** by adopting **new** paragraph "g" as follows:

g. Earned income tax credit.

Amend subrule **99.1(6)**, paragraph "b," subparagraph (2), as follows:

(2) For income from self-employment, the child support recovery unit shall compute the adjusted gross annual income as defined in subrule 99.1(5); for the relevant years that would accurately depict fluctuations in the person's income. The unit shall use the adjusted gross annual income to compute the average adjusted gross monthly income in the same manner as the computation of average gross monthly income in 99.2(6)\*b\*(1) 99.1(6)\*b\*(1).

ITEM 2. Amend rule 441—99.2(234,252B) as follows:

Amend subrule 99.2(1) as follows:

**99.2(1)** Federal and state income tax.

a. ~~The amount of the deduction for federal and state income taxes may be the amount reported on the parent's financial statement or the amount verified through check stubs or other means. If the amount provided by the parent appears to be inaccurate, the child support recovery unit may shall calculate the appropriate allowable amount of the deduction for federal and state income tax as specified in the Iowa Supreme Court guidelines.~~

b. ~~The unit shall calculate the amount of the federal and state income tax deduction for self-employed persons with fluctuating incomes, as defined in subrule 99.1(6), shall be~~

## HUMAN SERVICES DEPARTMENT[441](cont'd)

computed by applying *computing* the person's averaged income to the federal and state tax tables based on the filing status and dependent exemptions previously identified on previously submitted tax forms and applying the method of calculating a tax deduction as required by Iowa Supreme Court guidelines.

Amend subrule **99.2(8)**, paragraph "a," subparagraph (3), as follows:

(3) In the modification of existing orders. The deduction may be used to limit the amount of an upward modification. The adjustment based upon the qualified additional dependent deduction cannot be used to affect a the threshold determination of eligibility for a downward modification, but may be used after the threshold determination for modification has been is met.

ITEM 3. Amend rule 441—99.4(234,252B) as follows:

Amend subrule 99.4(2) as follows:

**99.4(2)** Establishing current support.

a. *Calculation.* The child support recovery unit shall calculate the amount of support required under the mandatory support Iowa Supreme Court guidelines as follows:

a. (1) Determine the net monthly income of the custodial parent.

b. (2) Determine the net monthly income of the noncustodial parent.

c. (3) Use the chart for the appropriate number of children and the respective incomes of the parents to determine the appropriate percentage to apply.

d. (4) Multiply the noncustodial parent's net monthly income by the percentage determined appropriate. Round this amount to the nearest whole dollar.

b. *Additional factors.*

(1) In all cases other than foster care, CSRU shall establish current support payable in monthly frequencies.

(2) In foster care cases, CSRU may establish current support payable in monthly or weekly frequencies. To establish a weekly amount, CSRU shall divide the figure in paragraph "d" subparagraph 99.4(2)"a"(4) by 4.33 and round to the nearest whole dollar.

(3) *If the court orders joint (equally shared) physical care of a child or split or divided physical care of multiple children, the unit shall calculate current support according to the Iowa Supreme Court guidelines for each parent assuming the other is the custodial parent. If a child begins receiving family investment program (FIP) benefits or if foster care funds are expended, an offset of the two amounts as a method of payment shall be disallowed.*

(4) *The amount of support shall be zero if the noncustodial parent's only income is Supplemental Security Income paid pursuant to 42 U.S.C. 1381a.*

Amend subrule **99.4(5)** by adopting new paragraph "c" as follows:

c. The court has not ordered equally shared physical care.

ITEM 4. Amend rule **441—99.101(252B)** by adopting the following new definition in alphabetical order:

"Step change" shall mean a change designated in a support order that specifies the amount of the child support obligation as the number of children entitled to support under the order changes.

ITEM 5. Amend rule 44—99.102(252B) as follows:

**441—99.102(252B) Availability of service.** The child support recovery unit shall provide the services described in this division only with respect to support orders entered or regis-

tered in this state for which the unit is providing enforcement services in accordance with Iowa Code chapter 252B to collect current or accrued support.

**99.102(1)** Services described in this division shall only be provided if a court in this state would have continuing, exclusive jurisdiction to suspend and reinstate the order under Iowa Code chapter 252K.

**99.102(2)** *Services described in this division shall be provided only if no prior request for suspension of all or part of a support order has been filed with the unit during the two-year period preceding the request. However, if the request was filed during the two-year period preceding July 1, 2005, and the unit denied the request because the suspension did not apply to all children for whom support is ordered, the unit shall provide suspension services if the parents jointly file a request on or after July 1, 2005.*

ITEM 6. Amend subrules 99.103(1) and 99.103(3) as follows:

**99.103(1)** Reconciliation. The child support recovery unit shall assist an obligor and obligee in suspending support for a child and, if contained in a child support order, spousal support, when the obligor and obligee are reconciled and are residing together, with all of the children at least one child entitled to support under the order, in the same household.

**99.103(3)** All-affected Affected children. The unit shall assist an obligor and obligee in suspending all or part of a support order as provided in this division only when if the basis for suspension as described in this rule applies to all of the children entitled to support under the order to be suspended. The unit shall not, under this division, assist an obligor and obligee in suspending a proportion of the support order when the basis for suspension applies to some, but not all, of the children entitled to support under the order as follows:

a. *If the basis for suspension applies to all of the children, the unit shall assist in suspending support obligations for all of the children.*

b. *If the basis for suspension applies to at least one but not all of the children and if the support order includes a step change, the unit shall assist in suspending the support obligations for children for whom the basis for suspension applies.*

ITEM 7. Amend rule 441—99.104(252B) as follows:

Amend subrule 99.104(2), introductory paragraph, as follows:

**99.104(2)** Acknowledging requests. The local unit providing services shall issue a written notice to the obligor and obligee indicating whether the a properly completed request is accepted or denied.

Amend subrule **99.104(3)** by rescinding and reserving paragraphs "b" and "c."

ITEM 8. Amend subrules 99.105(1) and 99.105(2) as follows:

**99.105(1)** When the basis for suspension is reconciliation, the suspension shall apply to any ongoing support provisions of the order, including medical support, with respect to any child, residing with the parents and with respect to any spouse or former spouse entitled to support under the order to be suspended.

**99.105(2)** When the basis for suspension is a change in residency of one or more of the children entitled to support, the suspension shall apply to ongoing support provisions, including medical support, with respect to only the children entitled to support under the order who are residing with the obligor. Any spousal support also ordered in the same support order shall remain unaffected by this action.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 9. Amend rule 441—99.106(252B) as follows:

**441—99.106(252B) Suspension of enforcement of current support.** The child support recovery unit shall suspend enforcement actions intended to collect or enforce any current support obligation that would have accrued during the time the support ~~order~~ *obligation* is suspended. The unit shall continue to provide all appropriate enforcement services to collect any *support not suspended and any arrearages that accrued prior to before* the effective date of the suspension.

ITEM 10. Amend rule 441—99.107(252B) as follows:

Amend the introductory paragraph as follows:

**441—99.107(252B) Request for reinstatement.** The unit may request that the court reinstate the suspended support ~~order~~ *obligation* in accordance with the procedures found in Iowa Code section 252B.20.

Amend subrules 99.107(2) and 99.107(4) as follows:

**99.107(2)** The unit may, at its own initiative, request that the court reinstate a support ~~order~~ *obligation* when it is determined that ~~the children affected by a child for whom the obligation was suspended order are~~ *is* receiving public assistance benefits.

**99.107(4)** A *properly completed* request for reinstatement shall be denied when any of the following conditions exist:

- a. The request is made by someone other than the obligor, *the* obligee, or the obligor's or obligee's attorney.
- ~~b. The request is not signed, or does not contain sufficient information to identify the order and parties involved.~~
- c. The unit is no longer providing enforcement services for the suspended order.
- d. The request is received more than six months since the date of the filing of the order suspending support.
- e. The request is for partial reinstatement of the suspended support *order for some but not all of the children and the order does not contain a step change.*
- f. A court in this state would not have continuing, exclusive jurisdiction to reinstate the order under Iowa Code chapter 252K.

ITEM 11. Amend subrules 99.108(1) and 99.108(2) as follows:

**99.108(1)** The unit shall request that the court reinstate ~~all support provisions a spousal support provision~~ *previously suspended, including spousal support if the provision was included in the suspension in accordance with subrule 99.105(1) and if the unit receives a properly completed request from the obligor or the obligee.*

**99.108(2)** The unit shall ~~not seek to have a the previously suspended order partially support for a child~~ *reinstated under this division when it is determined that the basis for suspension as provided in subrules 99.103(2) and 99.103(3) continues to apply to some, but not all, of the persons entitled to support under the terms of the suspended order the conditions in paragraph "a" or "b" are met.* This provision shall not prohibit any party, including the child support recovery unit, from taking other action to establish support as provided for by law.

- a. *The basis for suspension no longer applies to any of the children for whom support was suspended; or*
- b. *The basis for suspension continues to apply to some but not all of the children for whom support was suspended, and there is a step change in the order.*

ITEM 12. Amend rule 441—99.109(252B) as follows:

**441—99.109(252B) Reinstatement of enforcement of support.** If a suspended support ~~order~~ *obligation* is reinstated,

the unit shall also reinstate all appropriate enforcement measures to enforce all reinstated ongoing support provisions of the support order.

**ARC 4513B****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 237A.12, the Department of Human Services proposes to amend Chapter 109, “Child Care Centers,” Iowa Administrative Code.

These amendments change the personnel requirements for licensed child care centers to require that:

- All center volunteers undergo background checks, regardless of whether the volunteers are counted in the staff ratio; and
- Owners, center personnel, and volunteers not use illegal drugs and not be under the influence of alcohol or of prescription or nonprescription drugs that could impair their ability to function.

These amendments also change the health and safety requirements for licensed centers to:

- Make the requirements for transporting a child congruent with Iowa law regarding the use of child restraints;
- Require regular inspection and maintenance of center vehicles; and

- Limit unrestricted access to children in the center to owners, staff members, substitutes, and volunteers who have a record check and Department approval to be involved with child care. Parents visiting their own children in a child care center shall not have unrestricted access to other children.

These amendments have been recommended by the State Child Care Advisory Council.

These amendments do not provide for waivers in specified situations. The Department may grant a waiver under the Department's general rule on exceptions at rule 441—1.8(17A,217) when the waiver does not endanger the health, safety and well-being of children.

Any interested person may make written comments on the proposed amendments on or before October 5, 2005. Comments should be directed to Mary Ellen Imlau, 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 chapter 237A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 441—109.6(237A) as follows:  
Amend subrule **109.6(5)**, paragraph “b,” as follows:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

b. ~~When a volunteer or substitute is included in the staff ratio count, the~~ *The* center shall have the volunteer or substitute:

(1) Complete Form 595-1396, DHS Criminal History Record Check, Form B.

(2) Complete Form 470-0643, Request for Child Abuse Information.

(3) Sign a statement indicating the volunteer or substitute has been informed of the volunteer's or substitute's responsibilities as a mandatory reporter.

Adopt **new** subrule 109.6(7) as follows:

**109.6(7)** Use of controlled substances and medications.

All owners, personnel, and volunteers shall be free of the use of illegal drugs and shall not be under the influence of alcohol or of prescription or nonprescription drugs that could impair their ability to function.

ITEM 2. Amend rule 441—109.10(237A) as follows:

Amend subrule 109.10(12) as follows:

**109.10(12)** Transportation. As outlined in Iowa Code section 321.446, all children transported in a motor vehicle subject to registration ~~and with a gross weight of 10,000 pounds or less~~, except a school bus, shall be individually secured by a safety belt, safety seat, or harness in accordance with federal motor vehicle safety standards and the manufacturer's instructions.

a. Children under the age of 3 6 shall be secured *during transit* in a federally approved child restraint system. *Children under 1 year of age and weighing less than 20 pounds shall be secured during transit in a rear-facing child restraint system.*

b. Children under the age of 12 shall not be located in the front seating section of the vehicle.

c. Drivers of vehicles shall possess a valid driver's license and shall not operate a vehicle *while* under the influence of alcohol, illegal drugs, prescription or nonprescription drugs that could impair their ability to operate a motor vehicle.

d. *Vehicles that are owned or leased by the center shall receive regular maintenance and inspection according to manufacturer-recommended guidelines for vehicle and tire maintenance and inspection.*

Adopt **new** subrule 109.10(16) as follows:

**109.10(16)** Supervision. The center director and on-site supervisor shall ensure that each staff member, substitute, or volunteer knows the number and names of children assigned to that staff member, substitute, or volunteer for care. Assigned staff, substitutes, and volunteers shall provide careful supervision. Any person in the center who is not an owner, staff member, substitute, or volunteer who has a record check and department approval to be involved with child care shall not have unrestricted access to children for whom that person is not the parent, guardian, or custodian.

## INSURANCE DIVISION

### Notice of Proposed Workers' Compensation Rate Filing

Pursuant to Iowa Code section 515A.6(7), notice is hereby given that the National Council on Compensation Insurance has made a rate filing which affects the premium rates for workers' compensation insurance.

The rate filing proposes an overall increase in rates of 1.8%. The filing has a proposed effective date of January 1, 2006.

A workers' compensation policyholder or an established organization with one or more workers' compensation policyholders among its members may request a hearing before the Commissioner of Insurance regarding this rate filing. Such a request must be filed within 15 days of the date of this publication, that is, by September 29, 2005, and shall be made to the Commissioner of Insurance at the Insurance Division of the State of Iowa, 330 Maple, Des Moines, Iowa 50319. Absent such a request, the Commissioner will issue an order concerning the rates within another 10 days, that is, by October 10, 2005.

## ARC 4519B

## 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 Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences Examiners hereby gives Notice of Intended Action to amend Chapter 60, “Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors for Cosmetology Arts and Sciences,” Iowa Administrative Code.

These proposed amendments implement changes to make the administrative rules consistent with legislative changes relating to intense pulsed light devices and to provide a mechanism for attestation of an applicant's high school graduation.

Any interested person may make written comments on the proposed amendments no later than October 4, 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 October 4, 2005, from 8:30 to 9 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 147 and 157 as amended by 2005 Iowa Acts, House File 789.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 **645—60.1(157)** by adopting the following **new** definitions in alphabetical order:

“General supervision” means the supervising physician is not onsite for laser procedures or use of an intense pulsed light device for hair removal conducted on minors, but is available for direct communication, either in person or by



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

telephone, radio, radiotelephone, television, or similar means.

“Intense pulsed light device” means a device that uses incoherent light to destroy the vein of the hair bulb.

ITEM 2. Rescind subrule **60.2(1)**, paragraphs “**d**” and “**e**,” and adopt the following new paragraphs in lieu thereof:

d. Provide an attestation that the applicant has graduated from high school or its equivalent.

e. Present a copy of the diploma or an official transcript of grades in the practice discipline for which the applicant is requesting licensure. This shall be sent to the testing service with the application, showing completion of training at a school approved by the board of cosmetology arts and sciences examiners. If educated outside the United States, the applicant must attach an original evaluation of the applicant’s education for World Education Services (WES) or any other accredited evaluation service. An applicant may obtain an application for evaluation by contacting WES at (212) 966-6311, or by writing to WES, P.O. Box 745, Old Chelsea Station, New York, New York 10113-0745. An applicant may also provide documentation by attaching a copy of acceptable GED points, a diploma or TABE scores.

ITEM 3. Amend subrules 60.4(1), 60.4(2), 60.4(3), 60.4(4), 60.4(5) and 60.4(7) as follows:

**60.4(1)** A licensed esthetician who holds a permanent license in good standing may administer microdermabrasion or, a certified laser product or an *intense pulsed light device* after the esthetician has submitted to the board office an attestation as described in 60.4(4) on a form approved by the board and the appropriate fees as specified in 645—Chapter 62 and has received board approval.

**60.4(2)** A licensed cosmetologist who holds a permanent license in good standing may administer chemical peels or utilize microdermabrasion or, a certified laser product or an *intense pulsed light device* or after the cosmetologist has submitted to the board office an attestation as described in 60.4(4) on a form approved by the board and the appropriate fees as specified in 645—Chapter 62 and has received board approval. A cosmetologist who receives an initial license in Iowa after July 1, 2005, shall not provide chemical peels, practice microdermabrasion procedures or use certified laser products or an *intense pulsed light device*.

**60.4(3)** A licensed electrologist who holds a permanent license in good standing may utilize a certified laser product or an *intense pulsed light device* for the purpose of hair removal after the electrologist has submitted to the board office an attestation as described in 60.4(4) on a form approved by the board and the appropriate fees as specified in 645—Chapter 62 and has received board approval.

**60.4(4)** The attestation required in subrules 60.4(1), 60.4(2) and 60.4(3) shall include evidence of training and certification specific to each procedure or device to be used. A licensee who includes utilization of a certified laser product or an *intense pulsed light device* in the attestation shall provide evidence that the licensee’s laser product or *intense pulsed light device* training received included a safety training component which provided a thorough understanding of the procedures being performed. The training program shall address fundamentals of nonbeam hazards, management and employee responsibilities relating to control measures, and regulatory requirements.

**60.4(5)** The board shall approve a licensee to provide services or utilize a certified laser product or an *intense pulsed light device* as specified in the attestation and application required by this rule upon board determination that a licensee

has submitted a completed application as required by subrule 60.4(1), 60.4(2) or 60.4(3), provided appropriate evidence supporting the licensee’s training and certification in the attestation, and submitted applicable fees. The applicant shall receive a certification card following board approval. The certification card and the license to practice cosmetology arts and sciences shall be displayed together in a conspicuous public place at the licensee’s primary site of practice.

**60.4(7)** A licensed cosmetologist, esthetician, or electrologist who provides services related to the use of a certified laser product, *intense pulsed light device*, chemical peel, or microdermabrasion shall submit a report to the board within 30 days of any incident in which provision of such services resulted in physical injury requiring medical attention. Failure to comply with this requirement shall result in disciplinary action by the board.

The report shall include the following:

a. to f. No change.

ITEM 4. Amend rules 645—60.5(157) and 645—60.6(157) as follows:

**645—60.5(157) Licensure restrictions relating to practice.**

**60.5(1)** A certified laser product or an *intense pulsed light device* shall only be used on surface epidermal layers of the skin except for hair removal.

**60.5(2)** A laser hair removal product or an *intense pulsed light device* shall not be used on a minor unless the minor is accompanied by a parent or guardian and then shall be used only under general supervision of a physician.

**60.5(3) and 60.5(4)** No change.

**645—60.6(157) Consent and reporting requirements.** A licensed esthetician, cosmetologist, or electrologist, prior to providing services relating to a certified laser product, *intense pulsed light device*, chemical peel, or microdermabrasion, shall obtain from a client a consent form that:

1. to 4. No change.

**ARC 4509B**

## 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 Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences Examiners hereby gives Notice of Intended Action to amend Chapter 60, “Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences,” Iowa Administrative Code.

The proposed amendment amends subrule 60.2(1), paragraph “f,” to clarify the examination required for licensure.

Any interested person may make written comments on the proposed amendment no later than October 4, 2005, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building,

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

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 October 4, 2005, from 8:30 to 9 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 amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 157 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 **60.2(1)**, paragraph **"f,"** as follows:

f. Pass the *written practical and theory* examination for the particular practice discipline with a score or 75 percent or greater.

**ARC 4495B****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 Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 204, "Fees," Iowa Administrative Code.

The proposed amendment rescinds rule 645—204.1(147, 148A) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as online renewals. The Board prenoticed this rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during this prenotice period.

Any interested person may make written comments on the proposed amendment no later than October 4, 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 October 4, 2005, from 10:30 to 11 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 amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 148A and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 rule 645—204.1(147,148A) and adopt the following **new** rule in lieu thereof:

**645—204.1(147,148A) License fees.** All fees are nonrefundable.

**204.1(1)** Licensure fee for license to practice physical therapy or as a physical therapist assistant is \$120.

**204.1(2)** Biennial license renewal fee for a physical therapist is \$60.

**204.1(3)** Biennial license renewal fee for a physical therapist assistant is \$60.

**204.1(4)** Late fee for failure to renew before expiration is \$60.

**204.1(5)** Reactivation fee is \$120.

**204.1(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**204.1(7)** Verification of license fee is \$20.

**204.1(8)** Returned check fee is \$25.

**204.1(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148A and 272C.

**ARC 4489B****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 Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby gives Notice of Intended Action to amend Chapter 210, "Fees," Iowa Administrative Code.

The proposed amendment rescinds rule 645—210.1(147, 148B) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as online renewals. The Board prenoticed this rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during this prenotice period.

Any interested person may make written comments on the proposed amendment no later than October 4, 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 October 4, 2005, from 10:30 to 11 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 amendment.

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

This amendment is intended to implement Iowa Code chapters 21, 147, 148B and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 rule 645—210.1(147,148B) and adopt the following **new** rule in lieu thereof:

**645—210.1(147,148B) License fees.** All fees are nonrefundable.

**210.1(1)** Licensure fee for an OT or OTA license to practice occupational therapy is \$120.

**210.1(2)** Biennial license renewal fee to practice occupational therapy is \$60.

**210.1(3)** Biennial license renewal fee for an occupational therapy assistant is \$60.

**210.1(4)** Late fee for failure to renew before expiration is \$60.

**210.1(5)** Reactivation fee is \$120.

**210.1(6)** Duplicate or reissued license certificate or wallet card fee is \$20.

**210.1(7)** Verification of license fee is \$20.

**210.1(8)** Returned check fee is \$25.

**210.1(9)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 148B and 272C.

**ARC 4499B****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 Iowa Code section 147.76, the Board of Respiratory Care Examiners hereby gives Notice of Intended Action to amend Chapter 261, "Licensure of Respiratory Care Practitioners," Iowa Administrative Code.

The proposed amendment to rule 645—261.5(152B) removes language relating to a graduate to conform the rule to legislative changes in 2005 Iowa Acts, House File 789, section 15.

Any interested person may make written comments on the proposed amendment no later than October 4, 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 October 4, 2005, from 9 to 9:30 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 amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 152B and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 rule 645—261.5(152B) as follows:

**645—261.5(152B) Students/graduates.**

**261.5(1)** A student enrolled in an approved respiratory care training program who is employed in an organized training program in an organized health care system may render services defined in Iowa Code sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for the duration of the respiratory care practitioner program, not to exceed the duration of the respiratory care program or more than two years after the four-year program.

**261.5(2)** A graduate of an approved respiratory care training program employed in an organized health care system may render services as defined in Iowa Code sections 152B.2 and 152B.3 under the direct and immediate supervision of a respiratory care practitioner for one year from the date of the successful completion of the program. The graduate shall be identified as a "respiratory care practitioner license applicant."

**261.5(3 2)** Direct and immediate supervision of a respiratory care student or graduate practitioner means that the licensed respiratory care practitioner shall:

- a. Be continuously on site and present in the department or facility where the student or graduate is performing care;
- b. Be immediately available to assist the person being supervised in the care being performed; and
- c. Be responsible for care provided by students and graduates.

**ARC 4498B****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 Iowa Code section 147.76, the Board of Respiratory Care Examiners hereby gives Notice of Intended Action to amend Chapter 264, "Fees," Iowa Administrative Code.

The proposed amendment rescinds rule 645—264.1(147, 152B) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as online renewals. The Board prenoticed this rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during this prenotice period.

Any interested person may make written comments on the proposed amendment no later than October 4, 2005, ad-

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

dressed 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 October 4, 2005, from 9 to 9:30 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 amendment.

This amendment is intended to implement Iowa Code chapters 21, 147, 152B and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 rule 645—264.1(147,152B) and adopt the following **new** rule in lieu thereof:

**645—264.1(147,152B) License fees.** All fees are nonrefundable.

**264.1(1)** Initial and endorsement licensure fee to practice respiratory care is \$120.

**264.1(2)** Biennial license renewal fee for each biennium is \$60.

**264.1(3)** Late fee for failure to renew before expiration is \$60.

**264.1(4)** Reactivation fee is \$120.

**264.1(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**264.1(6)** Verification of license fee is \$20.

**264.1(7)** Returned check fee is \$25.

**264.1(8)** Disciplinary hearing fee is a maximum of \$75.

This rule is intended to implement Iowa Code section 147.8 and chapters 17A, 152B and 272C.

**ARC 4497B****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 Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners hereby gives Notice of Intended Action to amend Chapter 305, "Fees," Iowa Administrative Code.

The proposed amendment rescinds rule 645—305.1(147) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and to provide other services for licensees such as online renewals. The Board prenoticed this rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during this prenotice period.

Any interested person may make written comments on the proposed amendment no later than October 4, 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 October 4, 2005, from 9 to 9:30 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 amendment.

This amendment is intended to implement Iowa Code chapters 21, 147 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 rule 645—305.1(147) and adopt the following **new** rule in lieu thereof:

**645—305.1(147) License fees.** All fees are nonrefundable.

**305.1(1)** Licensure fee for license to practice speech pathology or audiology, temporary clinical license, licensure by endorsement, or licensure by reciprocity is \$120.

**305.1(2)** Biennial license renewal fee for each biennium is \$96.

**305.1(3)** Late fee for failure to renew before expiration is \$60.

**305.1(4)** Reactivation fee is \$156.

**305.1(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**305.1(6)** Verification of license fee is \$20.

**305.1(7)** Returned check fee is \$25.

**305.1(8)** Disciplinary hearing fee is a maximum of \$75.

**305.1(9)** Temporary clinical license renewal fee is \$60.

**305.1(10)** Temporary permit fee is \$30.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C.

**ARC 4494B****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 Iowa Code section 147.76, the Board of Interpreters for the Hearing Impaired Examiners hereby gives Notice of Intended Action to amend Chapter 364, "Fees," Iowa Administrative Code.

The proposed amendment rescinds rule 645—364.1(147, 80GA, ch1175) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software

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

system and to provide other services for licensees such as on-line renewals.

Any interested person may make written comments on the proposed amendment no later than October 4, 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 October 4, 2005, from 10 to 10:30 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 amendment.

This amendment is 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 § 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 rule 645—364.1(147,80GA,ch1175) and adopt the following **new** rule in lieu thereof:

**645—364.1(147,80GA,ch1175) License fees.** All fees are nonrefundable.

**364.1(1)** Licensure fee for license to practice interpreting for hearing impaired is \$120.

**364.1(2)** Licensure fee for temporary license to practice interpreting for hearing impaired is \$120.

**364.1(3)** Biennial license renewal fee for each biennium is \$120.

**364.1(4)** Late fee for failure to renew before expiration is \$60.

**364.1(5)** Duplicate or reissued license certificate or wallet card fee is \$20.

**364.1(6)** Verification of license fee is \$20.

**364.1(7)** Returned check fee is \$25.

**364.1(8)** Disciplinary hearing fee is a maximum of \$75.

**364.1(9)** Reactivation fee is \$180.

This rule is intended to implement Iowa Code chapters 17A, 147 and 272C and 2004 Iowa Acts, chapter 1175, sections 426 to 429.

## ARC 4514B

### PUBLIC SAFETY DEPARTMENT[661]

#### 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 103A.7, the Building Code Commissioner hereby gives Notice of Intended Action to amend, with the approval of the Building Code Advisory Council, Chapter 16, "State of Iowa Building Code," and to adopt new Chapter 300, "State Building Code

—Administration," Chapter 301, "State Building Code—General Provisions," Chapter 302, "State Building Code—Accessibility of Buildings and Facilities Available to the Public," and Chapter 303, "State Building Code—Requirements for Energy Conservation in Construction," Iowa Administrative Code.

Iowa Code chapter 103A provides for the adoption of a State Building Code. Generally, the State Building Code applies to construction of state-owned buildings and facilities and buildings and facilities in local jurisdictions which have adopted the State Building Code by local ordinance in accordance with procedures established in Iowa Code section 103A.12. In addition, certain provisions of the State Building Code apply statewide, including specifically requirements for accessibility of buildings and facilities to persons with disabilities, when the buildings or facilities are available to the public; requirements for minimum plumbing facilities in places of public assembly, restaurants, pubs, and lounges; energy efficiency requirements; and requirements for factory-built structures, which include manufactured homes and modular buildings.

The State Building Code has become outdated. Revisions to the State Building Code in recent years have been made on a piecemeal basis, without any comprehensive review of the entire Code having been undertaken. The Building Code Commissioner, working in consultation with the Building Code Advisory Council and with various groups of stakeholders, has undertaken such a comprehensive review in recent months. These proposed rules are the result of that review.

All of the rules of the Department of Public Safety are in the process of being renumbered to make them easier to locate. The State Building Code is currently Chapter 16 of the Department's rules. Most of Chapter 16 will be rescinded and replaced by a series of chapters starting with Chapter 300. All chapters in the 300 series will be promulgated under the rule-making authority assigned to the Building Code Commissioner by Iowa Code chapters 103A, 104A, and 104B. Eventually, Chapter 16 will be rescinded entirely. For now, however, the portion of Chapter 16 which deals with requirements for factory-built structures is being retained, as these rules are likely to undergo major revisions before the end of this year.

Proposed new Chapter 300 will contain basic administrative information and requirements related to the State Building Code, including fees and procedures for submitting construction plans for review.

The Code of Iowa provides that, in general, requirements established in the State Building Code apply to construction of state-owned buildings and to construction in local jurisdictions which adopt the State Building Code by local ordinance. It should be noted that there are some other occupancies to which the State Building Code applies if there is no locally adopted building code, including to elder group homes and to apartment buildings being converted to condominiums. The Iowa Racing and Gaming Commission is currently engaged in rule making which, if adopted, will require that construction of gaming facilities comply with the State Building Code if there is not a local building code. General requirements for construction which apply to these cases are located in the proposed new Chapter 301. Chapter 301 includes definitions which apply to all chapters which collectively will constitute the State Building Code, as well as to electrical, mechanical, and plumbing requirements and to requirements for residential construction. In addition, Chapter 301 addresses one area in which the requirements established apply statewide, namely, requirements for minimum plumb-

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

ing facilities provided in places of public assembly, restaurants, pubs, and lounges.

Chapters 302 and 303 will address other requirements of the State Building Code which apply statewide. These include requirements for accessibility to persons with disabilities of buildings and facilities available to the public and energy conservation requirements. Although requirements for factory-built structures also apply statewide, as mentioned earlier, standards for factory-built structures currently in Chapter 16 will not be affected by the rule making proposed here.

New Chapter 302 will contain requirements for accessibility to persons with disabilities to buildings and facilities available to the public. The standards currently in Division VII of Chapter 16 are proposed to be moved to this chapter. The requirements were significantly revised two years ago and are based upon the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG). The U.S. Department of Justice is currently in the early stages of a rule-making process to adopt revisions to ADAAG. The provisions in Chapter 302 are expected to be revised when the federal rule making is complete so that Iowa and federal accessibility requirements remain compatible. The current Division VII of Chapter 16 also includes requirements for accessibility of multiple-dwelling unit buildings which will also be moved to Chapter 302.

New Chapter 303 will establish updated requirements for energy conservation measures in construction undertaken in Iowa. The chapter establishes requirements for residential construction and for nonresidential construction. The proposed rules adopt the provisions of the International Energy Conservation Code (IECC), 2004 supplement, as the requirements for both residential and nonresidential construction in Iowa. The proposed rules would adopt these provisions without amendment. The Building Code Commissioner has been asked to consider a number of possible amendments to IECC, 2004 supplement. Of these, the following amendments or alternatives to adoption of the IECC, 2004 supplement, are under active consideration for adoption, although they were not included in proposed Chapter 303. The Building Code Commissioner has not determined whether to in-

corporate these amendments in the adopted chapter, and comment on these possible amendments is encouraged during the public comment period.

1. Substitute insulation and fenestration requirements similar to those in the International Residential Code, 2003 edition, which are somewhat less restrictive than the requirements in the IECC, 2004 supplement.

2. Allow the use of ResCheck Software keyed to the IECC, 2003 edition. This software, which assists in the calculation of thermal energy efficiency values in residential construction to determine compliance with energy efficiency requirements, is distributed by the U.S. Department of Energy, which does not plan to produce an updated version keyed to the IECC, 2004 supplement.

3. Modify the requirements for an energy review to be completed by a licensed architect or licensed professional engineer to require reviews of the following:

- All new construction of buildings of 50,000 cubic feet of volume which are heated or cooled and intended for regular human occupancy (reviews are currently required for new construction over 100,000 cubic feet of volume),

- All other new construction of publicly owned buildings which are heated or cooled and intended for regular human occupancy, and

- At the discretion of a local jurisdiction, all other new construction of buildings which are heated or cooled and intended for regular human occupancy, regardless of the volume of the building, if the local jurisdiction has adopted and enforces the State Building Code, a local building code, or a compilation of building construction requirements.

4. Rule 661—303.3(103A), as proposed, adopts the IECC, 2004 supplement, as the energy conservation requirements for commercial construction. Chapter 8 of the IECC, 2004 supplement, is based upon the 2001 edition of ASHRAE/IESNA Standard 90.1, Energy Standard for Buildings Except for Low Rise Residential Buildings, published by the American Society of Heating, Refrigeration and Air-Conditioning Engineers. Consideration will be given to replacing chapter 8 with the 2004 edition of the ASHRAE/IESNA standard.

Public hearings on these proposed amendments will be held on October 13, 2005, from 1 to 3 p.m. and from 6 to 8 p.m. Both of these hearings will be accessible via the Iowa Communications Network from multiple locations around the state.

The public hearing from 1 to 3 p.m. on Thursday, October 13, 2005, will be accessible over the Iowa Communications Network from the following locations:

CITY	SITE	LOCATION	ROOM #	ICN SITE #
<b>Des Moines</b>	Wallace State Office Building	502 East 9th Street	Third Floor Conference Room	706
<b>Cedar Rapids</b>	Kirkwood Comm. College	6301 Kirkwood Blvd.	203B, Linn Hall	553
<b>Council Bluffs</b>	Educational Services Center Administration	12 Scott Street		347
<b>Creston</b>	Green Valley Area Education Agency 14	1405 North Lincoln	Turner Room	173
<b>Dubuque</b>	Dubuque Community School District - Forum	2300 Chaney		312
<b>Emmetsburg</b>	Iowa Lakes Comm. College	3200 College Dr.	Room 818, Smith Wellness Center	20
<b>Mason City</b>	North Iowa Area Comm. College	500 College Drive	Careers Building, Room 128	122

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

CITY	SITE	LOCATION	ROOM #	ICN SITE #
<b>Mount Pleasant</b>	Mount Pleasant High School	2104 S. Grand		751
<b>Sioux City</b>	Western Iowa Tech Comm. College	4647 Stone Ave.	Room 925, Building A	78

The public hearing from 6 to 8 p.m. on Thursday, October 13, 2005, will be accessible over the Iowa Communications Network from the following locations:

CITY	SITE	LOCATION	ROOM #	ICN SITE #
<b>Ankeny</b>	Des Moines Area Community College	2006 South Ankeny Blvd.	Room 8, Building 6	70
<b>Cedar Rapids</b>	Grant Wood Area Education Agency 10	4401 Sixth Street SW	Revere Room	198
<b>Council Bluffs</b>	Educational Services Center Administration	12 Scott Street		347
<b>Creston</b>	Green Valley Area Education Agency 14	1405 North Lincoln	Turner Room	173
<b>Cylinder</b>	Prairie Lakes Area Education Agency	Highway 18 & Second Street		174
<b>Dubuque</b>	Dubuque Community School District - Forum	2300 Chaney		312
<b>Mason City</b>	North Iowa Area Comm. College	500 College Drive	CB 118	555
<b>Mount Pleasant</b>	Mount Pleasant High School	2104 S. Grand		751
<b>Sioux City</b>	Western Iowa Tech Comm. College	4647 Stone Ave.	Room 925, Building A	78

An additional public hearing will be held on October 18, 2005, at 10 a.m. in the Fire Marshal Division Conference Room, 401 S.W. 7th Street, Suite N, Des Moines, Iowa 50309.

At the public hearings, persons may present their views concerning these amendments orally or in writing. Persons who wish to make oral presentations at a hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, 502 East 9th Street, Des Moines, Iowa 50319; or by telephone at (515)281-5524 at least one day prior to the hearing.

Any interested persons may make oral or written comments concerning these proposed amendments to the Agency Rules Administrator by mail, telephone, or in person at the above address by 4:30 p.m. on October 13, 2005. Comments may also be submitted by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) by 4:30 p.m. on October 13, 2005.

These amendments are intended to implement Iowa Code chapter 103A.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 **661—Chapter 16**, title, as follows:

CHAPTER 16  
STATE OF IOWA BUILDING CODE—*FACTORY-  
BUILT STRUCTURES*

ITEM 2. Rescind and reserve rules **661—16.1(103A)** through **661—16.500(103A)** and **661—16.700(103A, 104A)** through **661—16.802(103A)**.

ITEM 3. Adopt the following new chapters:

CHAPTER 300  
STATE BUILDING CODE—ADMINISTRATION

**661—300.1(103A) State building code promulgated.** Iowa Code section 103A.7 gives to the building code commissioner, with the approval of the building code advisory council, authority to promulgate the state building code, except that adoption of the state historic building code requires the approval of the state historical society board, rather than the building code advisory council.

The state building code, as authorized by Iowa Code section 103A.7, includes 661—Chapters 16, 300, 301, 302, and 303.

NOTE: Additional chapters will be promulgated and included in the state building code. All chapters of the state building code, other than 661—Chapter 16, will be numbered between 300 and 399. 661—Chapter 16 will be rescinded when all new chapters of the state building code have been adopted.

**661—300.2(103A) Building code commissioner.** The building code commissioner appointed by the commissioner of public safety pursuant to Iowa Code section 103A.4 shall serve as the chief of the building code bureau. The building code commissioner shall adopt, and amend as needed, the state building code, with the approval of the building code advisory council, and the state historic building code, with the approval of the state historical society board. The building code commissioner also shall appoint the board of review from among the council membership. The building code

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

commissioner shall consider any request for the use of alternate materials or methods of construction submitted to the building code bureau pursuant to Iowa Code section 103A.13, and shall either disapprove each such request or shall recommend approval of the request to the building code advisory council.

**661—300.3(103A) Building code advisory council.** The building code advisory council appointed by the governor pursuant to Iowa Code section 103A.14 shall consider amendments to the state building code proposed by the building code commissioner, other than amendments to the state historic building code. The council shall approve or disapprove any changes to the state building code proposed by the building code commissioner. The council shall also consider and approve or disapprove any requests for use of alternate materials or methods of construction, the approval of which has been recommended to the council by the building code commissioner.

**661—300.4(103A) Plan reviews.**

**300.4(1) Plans and specifications review.** Architectural technical submissions, engineering documents, or plans and specifications for all state-owned buildings shall be submitted to and approved by the commissioner before construction is begun. Such submittals shall be filed by the owner or an authorized agent, agency or the responsible design architect or engineer. Submittals to the commissioner shall be certified or stamped and signed as required by Iowa Code chapters 542B and 544A unless the applicant has certified on the submittal to the applicability of a specific exception under Iowa Code section 544A.18 and the submittal does not constitute the practice of professional engineering as defined by Iowa Code section 542B.2.

NOTE: Preliminary or intermediate documents may be submitted for general discussion concerning compliance with the appropriate regulations if the documents are labeled “preliminary” or “not for construction” or are labeled with similar wording indicating that the documents are not being submitted for final approval. Such preliminary documents shall not exhibit the seal and signature.

**300.4(2) Minimum review requirements.** Plans, specifications and other supporting information shall be sufficiently clear and complete to show in detail that the proposed work will comply with the requirements of the applicable provisions of the state building code and with sections 106.1 and 106.1.1 of the International Building Code, 2003 edition. In sections 106.1 and 106.1.1 of the International Building Code, 2003 edition, the word “permit” shall be replaced by “plan review.”

**300.4(3) Copies and fees.** See 661—Chapters 16, 302, and 303 for fees pertaining to factory-built structures, accessibility reviews, and energy conservation reviews.

a. Copies of the state building code or any portion thereof are available through the Web site of the department of public safety.

NOTE: Codes and standards adopted by reference in the state building code which are published by other organizations, including, but not limited to, the American National Standards Institute, the International Code Council, the International Association of Plumbing and Mechanical Officials, and the National Fire Protection Association, may be purchased from the publishing organization. A copy of each code or standard adopted by reference in the state building code has been deposited in the Iowa state law library.

b. The fees for plan reviews completed by the building code bureau shall be calculated as follows:

	Preliminary Plan Review Meeting (Optional)	Plan Review Fee	Plan Review Fee Including Optional Preliminary Plan Review Meeting
AREA IN SQUARE FEET	Cost	Cost	Cost
Up to 5,000	\$75	\$200	\$275
5,001-10,000	\$100	\$300	\$400
10,001-20,000	\$125	\$400	\$525
20,001-50,000	\$150	\$500	\$650
50,001-100,000	\$200	\$600	\$800
100,001-150,000	\$200	\$1,000	\$1,200
150,001-200,000	\$200	\$1,200	\$1,400
200,001-250,000	\$200	\$1,400	\$1,600
250,001-300,000	\$250	\$1,600	\$1,850
300,001-350,000	\$250	\$1,800	\$2,050
350,001-400,000	\$250	\$2,000	\$2,250
400,001-450,000	\$300	\$2,200	\$2,500
More than 450,000	\$300	\$2,400	\$2,700
Special Limited Reviews			Fee
Sprinkler Plan Review			\$100
Fire Alarm Review			\$100
Accessibility Review			\$30

Payment of the assigned fee shall accompany each plan when submitted for review. Payment may be made by money order, check or draft made payable to the Iowa Department of Public Safety—Building Code Bureau.

c. A person who has submitted a plan for review for which a fee has been assessed pursuant to paragraph “d” is eligible to receive a refund of the fee if the plan has not been approved or rejected within 60 calendar days of its receipt by the building code bureau. A person who believes that a refund is due shall notify the building code commissioner who shall provide a form to the person who submitted the plan for review to request a refund. If the request for refund is approved, the building code commissioner shall cause a check for the amount of the refund to be issued to the individual or organization that originally paid the fee. If the original submission of the plan is incomplete, the fee shall be refunded only if the plan has not been approved or rejected within 60 days of a full and complete submission of the plan. “Approved or rejected within 60 days” means that a letter approving or rejecting the plan has been presented or mailed to the submitter within 60 days of the date of receipt by the building code bureau, within the meaning of “time” as defined in Iowa Code section 4.1.

**661—300.5(103A) Local code enforcement.** Provisions of the state building code applicable statewide or applicable in a local jurisdiction which has adopted the state building code by local ordinance may be enforced by the local jurisdiction.

**300.5(1) Creation of department.** There may be established within the governmental subdivision a “building department” which shall be under the jurisdiction of the building official designated by the appointing authority. Within the state building code, including publications adopted by reference within the state building code, the terms “administrative authority,” “authority having jurisdiction,” and “authorized representative” shall mean the building official.



## PUBLIC SAFETY DEPARTMENT[661](cont'd)

**300.5(2)** Powers and duties of building official. The building official in those governmental subdivisions establishing a building department shall enforce all the provisions of this code as prescribed by local law or ordinance and as outlined by Iowa Code section 103A.19.

**300.5(3)** Permits only. Any governmental subdivision that has not established a building department but requires a permit to construct or occupancy permit or both shall be known as the “issuing authority.”

These rules are intended to implement Iowa Code chapter 103A.

## CHAPTER 301

## STATE BUILDING CODE—GENERAL PROVISIONS

**661—301.1(103A) Scope and applicability.** The provisions of this chapter apply generally to buildings and facilities owned by the state of Iowa and to buildings and facilities in local jurisdictions which have adopted the state building code by local ordinance in accordance with the provisions of Iowa Code section 103A.12.

**661—301.2(103A) Definitions.** The following definitions apply to 661—Chapters 300, 301, 302, and 303.

“Board of appeals” means the local board of appeals as created by local ordinance.

“Board of review” or “board” means the state building code board of review created by Iowa Code section 103A.15. The three members of the board of review are appointed by the building code commissioner from among the membership of the building code advisory council.

“Building” means a combination of materials, whether portable or fixed, to form a structure affording facilities or shelter for persons, animals or property. The word “building” includes any part of a building unless the context clearly requires a different meaning. This definition does not apply to 661—Chapter 302.

“Building code advisory council” or “council” means the seven-member council appointed by the governor to advise and confer with the commissioner in matters relating to the state building code.

“Building component” means any part, subsystem, subassembly, or other system designed for use in, or as a part of, a structure, including but not limited to: structural, electrical, mechanical, fire protection, or plumbing systems, and including such variations thereof as are specifically permitted by regulation, and which variations are submitted as part of the building system or amendment thereof.

“Building department” means an agency of any governmental subdivision charged with the administration, supervision, or enforcement of building regulations, prescribed or required by state or local building regulations.

“Building system” means plans, specifications and documentation for a system of manufactured factory-built structures or buildings or for a type or a system of building components, including but not limited to: structural, electrical, mechanical, fire protection, or plumbing systems, and including such variations thereof as are specifically permitted by regulation, and which variations are submitted as part of the building system or amendment thereof.

“Commissioner” means the state building code commissioner appointed by the commissioner of public safety pursuant to Iowa Code section 103A.4.

“Construction” means the construction, erection, reconstruction, alteration, conversion, repair, equipping of buildings, structures or facilities, and requirements or standards

relating to or affecting materials used in connection therewith, including provisions for safety and sanitary conditions.

“Enforcement authority” means any state agency or political subdivision of the state that has the authority to enforce the state building code.

“Equipment” means plumbing, heating, electrical, ventilating, conditioning, refrigeration equipment, and other mechanical facilities or installations.

“Governmental subdivision” means any state, city, town, county or combination thereof.

“Label” means an approved device affixed to a factory-built structure or building, or building component, by an approved agency, evidencing code compliance.

“Listing agency” means an agency approved by the commissioner which is in the business of listing or labeling and which maintains a periodic inspection program on current production of listed models, and which makes available timely reports of such listing including specific information verifying that the product has been tested to approved standards and found acceptable for use in a specified manner.

“Structure” means that which is built or constructed, an edifice or building of any kind, or any piece of work artificially built up or composed of parts joined together in some definite manner except transmission and distribution equipment of public utilities. The word “structure” includes any part of a structure unless the context clearly requires a different meaning.

**661—301.3(103A) General provisions.** The provisions of the International Building Code, 2003 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the general requirements for building construction, with the following amendments:

Delete sections 101 through 115 except for sections 106.1 and 106.1.1.

Add the following new section 1100:

Any building or facility which is in compliance with the applicable requirements of 661—Chapter 302 shall be deemed to be in compliance with any applicable requirements contained in the International Building Code concerning accessibility for persons with disabilities.

Delete chapter 29.

Delete appendices A through J.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2005 edition.”

**301.3(1) Hospitals and health care facilities.**

a. A hospital, as defined in rule 661—205.1(100), that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the hospital is in compliance with the provisions of rule 661—205.5(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the state building code, the hospital shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

b. A nursing facility or hospice, as defined in rule 661—205.1(100), that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the nursing facility or hospice is in compliance with the provisions of rule 661—205.10(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is

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inconsistent with an applicable requirement of the state building code, the nursing facility or hospice shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

c. An intermediate care facility for the mentally retarded, as defined in rule 661—205.1(100), or intermediate care facility for persons with mental illness that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the intermediate care facility is in compliance with the provisions of rule 661—205.15(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the state building code, the intermediate care facility shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

d. An ambulatory health care facility, as defined in rule 661—205.1(100), that is required to meet the provisions of the state building code shall be deemed to be in compliance with the fire safety requirements of the state building code if the ambulatory health care facility is in compliance with the provisions of rule 661—205.20(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the state building code, the ambulatory health care facility shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

e. A religious nonmedical health care institution that is required to meet the provisions of the state building code shall be deemed to be in compliance with the provisions of the state building code if the institution is in compliance with the provisions of rule 661—205.25(100). In any other case in which an applicable requirement of the Life Safety Code, 2000 edition, is inconsistent with an applicable requirement of the state building code, the religious nonmedical health care institution shall be deemed to be in compliance with the state building code requirement if the Life Safety Code requirement is met.

**301.3(2)** Reserved.

**661—301.4(103A) Mechanical requirements.** The provisions of the International Mechanical Code, 2003 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for the design, installation, maintenance, alteration, and inspection of mechanical systems that are permanently installed and utilized to provide control of environmental conditions and related processes within buildings, with the following amendments:

Delete chapter 1.

Delete appendices A and B.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2005 edition.”

**661—301.5(103A) Electrical requirements.** The provisions of the National Electrical Code, 2005 edition, published by the National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02169-7471, are hereby adopted by reference as the requirements for electrical installations, with the following amendments:

Delete appendices A through G.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

**661—301.6(103A) Plumbing requirements.** Provisions of the state plumbing code, 641—Chapter 25, adopted by the Iowa department of public health pursuant to Iowa Code chapter 135, apply to plumbing installations in cities or which are connected to municipal water systems or municipal wastewater treatment systems.

**301.6(1)** Plumbing installations which are not subject to the state plumbing code, 641—Chapter 25, and which are in buildings or facilities subject to the state building code may comply either with the state plumbing code or with the International Plumbing Code, 2003 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, except that any assembly occupancy, restaurant, pub or lounge constructed on or after January 1, 1991, shall comply with the provisions of subrule 301.6(2) regarding the provision of minimum plumbing facilities.

**301.6(2)** Places of public assembly, restaurants, pubs and lounges constructed on or after January 1, 1991, shall provide at least the numbers of plumbing facilities required in the Uniform Plumbing Code, 2000 edition, Table 4-1, published by the International Association of Plumbing and Mechanical Officials, 5001 E. Philadelphia St., Ontario, CA 91761. Additions to, or adding seating capacity in, these types of occupancies shall require the installation of additional fixtures based upon the added number of occupants unless it can be shown that the existing facilities comply for the total number of occupants including the additional occupants.

All water closets installed pursuant to this subrule shall be water-efficient water closets complying with requirements of the U.S. Department of Energy.

This subrule is intended to implement Iowa Code section 104B.1.

**301.6(3)** Fuel gas piping shall comply with the requirements established in 661—Chapter 51.

**661—301.7(103A) Existing buildings.**

**301.7(1)** Definition. “Existing building” means a building erected for which a building permit has been issued or for which plans have received approval from the building code bureau of the fire marshal division of the department of public safety prior to [effective date of rule to be inserted here].

**301.7(2)** Adoption. The provisions of the International Existing Building Code, 2003 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for repair, alteration, change of occupancy, addition, and relocation of existing buildings, with the following amendments:

Delete chapter 1.

Delete appendix A, chapters A1 through A5, and appendix B.

Delete resource A.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2005 edition.”

**661—301.8(103) Residential construction requirements.** The provisions of the International Residential Code, 2003 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

stories in height with a separate means of egress and their accessory structures, with the following amendments:

Delete all references to the "International Plumbing Code" and insert in lieu thereof "state plumbing code."

Add the following new sections:

P2500. Chapter 25 shall not apply to construction of residences if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P2600. Chapter 26 shall not apply to construction of residences if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P2700. Chapter 27 shall not apply to construction of residences if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P2800. Chapter 28 shall not apply to construction of residences if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P2900. Chapter 29 shall not apply to construction of residences if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P3000. Chapter 30 shall not apply to construction of residences if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P3100. Chapter 31 shall not apply to construction of residences if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

P3200. Chapter 32 shall not apply to construction of residences if the residence is within the boundaries of an incorporated municipality or if the plumbing in the residence is connected to a municipal water system or a municipal wastewater treatment system.

EXCEPTION: A structure which is subject to this rule and which is an "existing building" as defined in subrule 301.7(1) shall be deemed to be in compliance with this rule if the structure meets the applicable provisions of the International Existing Building Code, 2003 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041.

These rules are intended to implement Iowa Code chapter 103A.

## CHAPTER 302

STATE BUILDING CODE—ACCESSIBILITY OF  
BUILDINGS AND FACILITIES  
AVAILABLE TO THE PUBLIC

**661—302.1(103A,104A) Purpose and scope.** Rules 661—302.1(103A,104A) through 661—302.20(103A,104A) are intended to ensure that buildings and facilities used by the public are accessible to, and functional for, persons with disabilities. Rules 661—302.1(103A,104A) through 661—302.11(103A,104A) apply statewide to new construction,

renovation, and rehabilitation projects on existing buildings and facilities when local or state building codes require compliance with standards for new construction.

Some requirements contained in rules 661—302.1(103A,104A) through 661—302.11(103A,104A) are not readily enforceable through the plan review process and may not be enforced through this means. Any of the requirements may be enforced during inspections in jurisdictions which inspect construction projects for compliance with building code requirements. Owners and operators of buildings and facilities subject to the provisions of rules 661—302.1(103A,104A) through 661—302.11(103A,104A) are responsible for compliance with any applicable requirements contained within these rules regardless of whether those requirements are enforced through plan reviews or inspections.

Rules 661—302.2(103A,104A) through 661—302.11(103A,104A) are based upon the federal Americans with Disabilities Act Accessibility Guidelines (ADAAG) and in many instances adopt the language of ADAAG by reference. However, state and local building officials charged with enforcement of rules 661—302.2(103A,104A) through 661—302.11(103A,104A) are unable to warrant the acceptance of any interpretation of ADAAG language by federal agencies or any other state. A state or local official's decision to approve a building plan under rules 661—302.2(103A,104A) through 661—302.11(103A,104A) does not prevent the federal government or another state from making a different decision under ADAAG or other applicable law, notwithstanding any similarities among such laws.

NOTE A: See rule 661—302.20(103A,104A) for specific requirements within the individual dwelling units and public and common use spaces of multiple-dwelling unit buildings.

NOTE B: Other federal and state laws address requirements for accessibility for persons with disabilities and may be applicable to buildings and facilities subject to rules 661—302.1(103A,104A) through 661—302.20(103A,104A). Nothing in these rules should be interpreted as limiting the applicability of other provisions of state or federal law. These provisions include, but are not limited to, the following:

1. Iowa Code chapter 216, the Iowa Civil Rights Act of 1965.
2. Iowa Code chapter 216C, which enumerates the rights of persons who are blind or partially blind and persons with physical disabilities.
3. Iowa Code chapter 321L and 661—Chapter 18, which relate to requirements for parking for persons with disabilities.
4. The federal Architectural Barriers Act of 1968 (Public Law 90-480).
5. The federal Rehabilitation Act of 1973 (Public Law 93-112).
6. The federal Fair Housing Act of 1968 (Public Law 90-284), the federal Fair Housing Amendments Act of 1988 (Public Law 100-430), and related regulations, including 24 CFR 100, Subpart D.

**661—302.2(103A,104A) Definitions.** The following definitions are adopted for purposes of rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

NOTE: Many of these definitions have been taken from or adapted from ADAAG.

"Access aisle" means an accessible pedestrian space between elements, such as parking spaces, seating, and desks, which provides clearances appropriate for use of the elements.

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“Accessible” describes a site, building, facility, or portion thereof that complies with rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

“Accessible element” means an element specified by and which complies with rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

“Accessible route” means a continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts.

“Accessible space” means space that complies with rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

“ADA” means the federal Americans with Disabilities Act, Public Law 101-336.

“ADAAG” means Americans with Disabilities Act Accessibility Guidelines for Buildings and Facilities, 28 CFR Part 36, Appendix A, as revised through July 1, 1994. Persons wishing to obtain copies of ADAAG may access the following Web site: [www.adaproject.org/Publications.html](http://www.adaproject.org/Publications.html) for a downloadable copy.

“Adaptability” means the ability of certain building spaces and elements, such as kitchen counters, sinks, and grab bars, to be added or altered so as to accommodate the needs of individuals with or without disabilities or to accommodate the needs of persons with different types or degrees of disability.

“Addition” means an expansion, extension, or increase in the gross floor area of a building or facility.

“Administrative authority” means the governmental agency that adopts or enforces regulations and guidelines for the design, construction, or alteration of buildings and facilities.

“Alteration” means a change to a building or facility that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes in or rearrangement of the structural parts of elements, and changes in or rearrangement of the plan configuration of walls and full-height partitions. Normal maintenance, reroofing, painting or wallpapering, or changes to mechanical and electrical systems, are not alterations unless they affect the usability of the building or facility.

“Area of rescue assistance” means an area, which has direct access to an exit, where people who are unable to use stairs may remain temporarily in safety to await further instructions or assistance during emergency evacuation.

“Assembly area” means a room or space accommodating a group of individuals for recreational, educational, political, social, civic, or amusement purposes, or for the consumption of food and drink.

“Automatic door” means a door equipped with a power-operated mechanism and controls that open and close the door automatically upon receipt of a momentary actuating signal. The switch that begins the automatic cycle may be a photoelectric device, floor mat, or manual switch. See “power-assisted door.”

“Building” means any structure used and intended for supporting or sheltering any use or occupancy.

“Circulation path” means an exterior or interior way of passage from one place to another for pedestrians including,

but not limited to, walks, hallways, courtyards, stairways, and stair landings.

“Clear” means unobstructed.

“Clear floor space” means the minimum unobstructed floor or ground space required to accommodate a single, stationary wheelchair and occupant.

“Closed circuit telephone” means a telephone with dedicated line(s) such as a house telephone, courtesy telephone or telephone that must be used to gain entrance to a facility.

“Common use” refers to those interior and exterior rooms, spaces, or elements that are made available for the use of a restricted group of people (for example, occupants of a homeless shelter, the occupants of an office building, or the guests of such occupants).

“Cross slope” means the slope that is perpendicular to the direction of travel. See “running slope.”

“Curb ramp” means a short ramp cutting through a curb or built up to it.

“Detectable warning” means a standardized surface feature built in or applied to walking surfaces or other elements to warn visually impaired people of hazards on a circulation path.

“Educational occupancy” means any building primarily used to deliver instruction in a classroom setting to students enrolled in primary or secondary schools or postsecondary institutions.

“Egress, means of” refers to a continuous and unobstructed way of exit travel from any point in a building or facility to a public way. A means of egress comprises vertical and horizontal travel and may include intervening room spaces, doorways, hallways, corridors, passageways, balconies, ramps, stairs, enclosures, lobbies, horizontal exits, courts and yards. An accessible means of egress is one that complies with rules 661—302.1(103A,104A) through 661—302.20(103A,104A) and does not include stairs, steps, or escalators. Areas of rescue assistance or evacuation elevators may be included as part of accessible means of egress.

“Element” means an architectural or mechanical component of a building, facility, space, or site. Examples of elements include, but are not limited to, telephones, curb ramps, doors, drinking fountains, seating, or water closets.

“Entrance” means any access point to a building or portion of a building or facility used for the purpose of entering. An entrance includes the approach walk, the vertical access leading to the entrance platform, the entrance platform itself, vestibules if provided, the entry door(s) or gate(s), and the hardware of the entry door(s) or gate(s).

“Equivalent facilitation” means the use of alternative designs and technologies which provide for substantially greater or equivalent access to and usability of a facility than is provided by technologies and designs which comply with the requirements of rules 661—302.1(103A,104A) through 661—302.20(103A,104A). Departures from particular technical and scoping requirements of rules 661—302.1(103A,104A) through 661—302.20(103A,104A) are permitted where the alternative designs and technologies used will provide equivalent facilitation.

“Facility” means all or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site.

“Government facility” means a structure accessible to the public which is owned or used by the state of Iowa or a political subdivision.

“Ground floor” means any occupiable floor less than one story above or below grade with direct access to grade. A

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building or facility always has at least one ground floor and may have more than one ground floor as where a split level entrance has been provided or where a building is built into a hillside.

“Marked crossing” means a crosswalk or other identified path intended for use by pedestrians in crossing a vehicular way.

“Mezzanine” or “mezzanine floor” means that portion of a story which is an intermediate floor level placed within the story and having occupiable space above and below its floor.

“Multifamily dwelling” means any building containing four or more dwelling units. Rule 661—302.20(103A, 104A) establishes accessibility requirements for multifamily dwellings of four or more units.

“Occupiable” describes a room or enclosed space designed for human occupancy in which individuals congregate for amusement, educational or similar purposes, or in which occupants are engaged at labor, and which is equipped with means of egress, light, and ventilation.

“Operable part” means a part of a piece of equipment or appliance used to insert or withdraw objects, or to activate, deactivate, or adjust the equipment or appliance (for example, coin slot, push button, handle).

“Power-assisted door” means a door used for human passage with a mechanism that helps to open the door, or relieves the opening resistance of a door, upon the activation of a switch or a continued force applied to the door itself.

“Private facility” means a place of public accommodation or commercial facility which is not owned or used by the state of Iowa or a political subdivision and which is subject to Title III of the ADA and 28 CFR Part 36 or which is a transportation facility subject to Title III of the ADA and 49 CFR 37.45.

“Public facility” means a facility or portion of a facility constructed by, on behalf of, or for the use of a public entity subject to Title II of the ADA and 28 CFR Part 35 or to Title II of the ADA and to either 49 CFR 37.41 or 49 CFR 37.43.

“Public use” describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned.

“Ramp” means a walking surface which has a running slope greater than 1:20.

“Running slope” means the slope that is parallel to the direction of travel. See “cross slope.”

“Service entrance” means an entrance intended primarily for delivery of goods or services.

“Signage” means displayed verbal, symbolic, tactile, and pictorial information.

“Site” means a parcel of land bounded by a property line or a designated portion of a public right-of-way.

“Site improvement” means landscaping, paving for pedestrian and vehicular ways, outdoor lighting, recreational facilities, and the like, added to a site.

“Sleeping accommodations” means rooms whose primary use is for people to sleep including, but not limited to, dormitory and hotel or motel guest rooms or suites.

“Space” means an identifiable area. Examples of spaces include, but are not limited to, rooms, toilet rooms, halls, assembly areas, entrances, storage rooms, alcoves, courtyards, and lobbies.

“Story” means that portion of a building included between the upper surface of a floor and upper surface of the floor or roof next above. If such portion of a building does not include occupiable space, it is not considered a story for purposes of rules 661—302.1(103A,104A) through 661—

302.20(103A,104A). There may be more than one floor level within a story as in the case of a mezzanine or mezzanines.

“Structural frame” means columns and the girders, beams, trusses and spandrels having direct connections to the columns and all other members which are essential to the stability of the building as a whole.

“Tactile” describes an object that can be perceived using the sense of touch.

“TDD” means a telecommunication device for the deaf. See “text telephone (TTT).”

“Technically infeasible” means, with respect to an alteration of a building or a facility, that the alteration has little likelihood of being accomplished because existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame; or because other existing physical or site constraints prohibit modification or addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility.

“Text telephone (TTT)” means machinery or equipment that employs interactive text-based communications through the transmission of coded signals across the standard telephone network. Text telephones include devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. Text telephones are also called TTYs, an abbreviation for teletypewriter.

“Transient lodging” means a building, facility, or portion thereof, excluding inpatient medical care facilities and residential facilities, that contains sleeping accommodations. Transient lodging may include, but is not limited to, resorts, group homes, hotels, motels, and dormitories.

“Vehicular way” means a route intended for vehicular traffic, such as a street, driveway, or parking lot.

“Walk” means an exterior pathway with a prepared surface intended for pedestrian use, including general pedestrian areas such as plazas and courts.

**661—302.3(103A,104A) Plan review procedures.** Prior to the commencement of construction of a facility which is required to comply with rules 661—302.1(103A,104A) through 661—302.20(103A,104A), the owner of the property, or a contractor or architect acting on behalf of the owner of the property, shall submit an application for approval of the construction plans. The application shall be of a form required by the building code commissioner and shall be submitted to the local building authority, if there is one. If there is no local building authority, the application shall be submitted to the building code bureau. The application shall be accompanied by a copy of the construction plans and payment of the applicable fee.

**661—302.4(103A,104A) Site development.**

**302.4(1)** Development. Proper attention to site development in the early stages of design is the most practical and economical way of making a site accessible and providing accessible entrances to buildings. The siting of facilities, grading, parking, and the routes of walks shall provide convenience, safety and unrestricted circulation of persons with disabilities and their vehicles.

**302.4(2)** Grading. The site shall be graded, even contrary to existing topography, so that it attains a level with all primary entrances, making the building or facility accessible to persons with physical disabilities.

**302.4(3)** Accessible routes. ADAAG section 4.3 is adopted by reference as the requirements for accessible

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routes in and around facilities required to comply with rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

**302.4(4) Parking and passenger loading zones.** Parking spaces, parking lots and passenger loading zones shall comply with 661—Chapter 18.

**661—302.5(103A,104A) Building elements and spaces accessible to the physically handicapped.** ADAAG chapter 4 is adopted by reference as the requirements for accessible building elements and spaces for buildings and facilities required to comply with rules 661—302.1(103A,104A) through 661—302.20(103A,104A), with the following amendments:

Delete section 4.3.

NOTE: ADAAG section 4.3 is adopted by reference in subrule 302.4(3).

Delete section 4.34.

**661—302.6(103A,104A) Restaurants and cafeterias.** ADAAG chapter 5 is adopted by reference as the accessibility requirements for restaurants and cafeterias.

**661—302.7(103A,104A) Medical care facilities.** ADAAG chapter 6 is adopted by reference as the accessibility requirements for medical care facilities which are required to comply with rules 661—302.1(103A,104A) through 661—302.20(103A,104A) with the following amendments:

Delete section 6.1, subsection (1), and insert in lieu thereof the following new subsection (1):

(1) Hospitals—general purpose hospitals, psychiatric facilities, detoxification facilities—All patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

Delete section 6.1, subsection (3), and insert in lieu thereof the following new subsection (3):

(3) Long-term care facilities, nursing homes—All patient bedrooms and toilets, and all public use and common use areas are required to be designed and constructed to be accessible.

**661—302.8(103A,104A) Business and mercantile facilities.** ADAAG chapter 7 is adopted by reference as the accessibility requirements for business and mercantile facilities which are required to comply with rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

**661—302.9(103A,104A) Libraries.** ADAAG chapter 8 is adopted by reference as the accessibility requirements for libraries which are required to comply with rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

**661—302.10(103A,104A) Transient lodging facilities.** ADAAG chapter 9 is adopted by reference as the requirements for accessible transient lodging in facilities which are required to comply with rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

**661—302.11(103A,104A) Transportation facilities.** ADAAG chapter 10 is adopted by reference as the accessibility requirements for transportation facilities which are required to comply with rules 661—302.1(103A,104A) through 661—302.20(103A,104A).

Rules 302.1(103A,104A) through 302.11(103A,104A) are intended to implement Iowa Code sections 103A.7, 103A.9, and 104A.1.

**661—302.12 to 302.19** Reserved.

**661—302.20(103A,104A) Making apartments accessible and functional for persons with disabilities.**

**302.20(1) Multiple-dwelling unit buildings.** The requirements of this rule shall apply to the individual dwelling units and the common use spaces which are accessible to persons with disabilities in multiple-dwelling unit buildings. The term “multiple-dwelling unit building” means any building consisting of four or more dwelling units if such a building has one or more elevators; and ground floor units in other buildings consisting of four or more units.

EXCEPTION: A multiple-dwelling unit building shall be deemed to be in compliance with this rule if it is located in a local jurisdiction which has enacted accessibility rules which have been recognized by the U.S. Department of Housing and Urban Development as providing a safe harbor for compliance with the accessibility requirements established in the federal Fair Housing Act and if the building has been found to be in compliance with those requirements.

“Dwelling unit” means a single unit of residence for a household of one or more persons. Examples of a dwelling unit covered by these rules includes a condominium, an apartment unit within an apartment building, and another type of dwelling in which sleeping accommodations are provided but toilet or cooking facilities are shared by occupants of more than one room or portion of the dwelling. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

“Ground floor” means a floor of a building with a building entrance on an accessible route. A building may have one or more ground floors. Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor.

a. The individual dwelling units shall contain an accessible route into and through the unit.

(1) All doors intended for use as passage through the dwelling unit shall have a clear opening of at least 32” nominal width with the door open 90 degrees, measured between the face of the door and the stop. Openings more than 24” in depth are not considered doorways.

NOTE 1: An illustration of door widths which comply with this provision may be found in ADAAG Figure 25.

NOTE 2: A 34” door, hung in the standard manner, provides an acceptable 32” opening.

(2) Except at doorways, the minimum clear width of the accessible route shall be at least 36” wide.

(3) In single-story units, special features such as lofts or sunken or raised areas are not required to be on an accessible route provided the areas do not interrupt the accessible route through the remainder of the dwelling unit.

(4) In multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator shall be the primary entry to the unit and such entry/accessible floor shall comply with the requirements of subparagraphs (1), (2) and (3) above. The entry/accessible floor shall contain a bathroom or powder room which complies with paragraph “c” below.

(5) Exterior deck, patio, or balcony surfaces shall be no more than ½” below the floor level of the interior of the dwelling unit, unless they are constructed of impervious material such as concrete, brick or flagstone. In such case, the surface shall be no more than 4” below the floor level of the interior or lower if required by local building code.

(6) Thresholds at exterior doors, including sliding tracks, shall be no higher than ¾”. Thresholds and changes in eleva-

## PUBLIC SAFETY DEPARTMENT[661](cont'd)

tions as in subparagraph (5) above shall be beveled with a slope no greater than 1:2.

b. Kitchens shall meet or be adaptable to meet the following:

(1) A clear floor space at least 30" × 48" that allows a parallel approach by a person in a wheelchair must be provided at the range or cooktop and the sink. Either a parallel or forward approach must be provided at the oven, dishwasher, refrigerator/freezer or trash compactor.

(2) Clearance between counters and all opposing base cabinets, countertops, appliances or walls must be at least 40". In U-shaped kitchens with a sink or cooktop at the base of the "U," the base cabinets must be removable at that location or a 60" turning radius must be provided.

c. All bathrooms of covered multifamily dwelling units shall comply with provisions of subparagraph (1) of this paragraph or at least one bathroom in the dwelling unit shall comply with provisions of subparagraph (2) of this paragraph and all other bathrooms and powder rooms within the dwelling unit must be on an accessible route with usable entry doors in accordance with paragraph "a" above.

However, in multistory dwelling units, only those bathrooms on the accessible level are subject to these requirements. Where the powder room is the only facility provided on the accessible level of a multistory dwelling unit, the powder room must comply with the provisions of subparagraph (1) or (2) of this paragraph.

(1) Sufficient maneuvering space shall be provided within the bathroom for a person using a wheelchair or other mobility aid to enter and close the door, use the fixtures, reopen the door and exit. Doors may swing into the clear floor space provided at any fixture if the maneuvering space is provided. Maneuvering space may include any knee space or toe space available below the bathroom fixtures.

Clear floor space at fixtures may overlap.

If the shower stall is the only bathing facility provided in the covered dwelling unit, the shower stall shall measure at least 36" × 36".

NOTE: Cabinets under lavatories are acceptable provided the bathroom has space to allow a parallel approach by a person in a wheelchair; if parallel approach is not possible within the space, any cabinets provided would have to be removable to afford the necessary knee clearance for forward approach.

(2) Where the door swings into the bathroom, there shall be a clear space (2'6" × 4'0") within the room to position a wheelchair or other mobility aid clear of the path of the door as it is closed and to permit the use of the fixtures. This clear space can include any knee space and toe space available below the bathroom fixtures.

Where the door swings out, a clear space shall be provided within the bathroom for a person using a wheelchair or other mobility aid to position the wheelchair such that the person is allowed use of the fixtures. There also shall be a clear space to allow persons using wheelchairs to reopen the door to exit.

When both tub and shower fixtures are provided in the bathroom, at least one fixture shall be made accessible. When two or more lavatories are provided in a bathroom, at least one shall be made accessible.

Toilets shall be located within bathrooms in a manner that permits a grab bar to be installed on one side of the fixture. In locations where toilets are adjacent to walls or bathtubs, the centerline of the fixture shall be a minimum of 1'6" from the obstacle. The other (nongrab bar) side of the toilet fixture shall be a minimum of 1'3" from the finished surface of the adjoining walls, vanities, or the edge of a lavatory.

Vanities and lavatories shall be installed with the centerline of the fixture a minimum of 1'3" horizontally from an adjoining wall or fixture. The top of the fixture rim is a maximum height of 2'10" above the finished floor. If knee space is provided below the vanity, the bottom of the apron is at least 2'3" above the floor. If provided, full knee space (for front approach) is at least 1'5" deep.

Bathtubs and tub/showers located in the bathroom shall provide a clear access aisle adjacent to the lavatory that is at least 2'6" wide and extends for a length of 4'0" (measured from the head of the bathtub).

Stall showers in the bathroom may be of any size or configuration. A minimum clear floor space 2'6" wide × 4'0" deep should be available outside the stall. If the shower stall is the only bathing facility provided in the covered dwelling unit, or on the accessible level of a covered multistory unit, and measures a nominal 36" × 36", the shower stall must have reinforcing to allow for installation of an optional wall-hung bench seat.

d. Walls in bathrooms which are to be adaptable shall be reinforced to allow later installation of grab bars around toilet, tub, shower stall and shower seat where provided.

Where the toilet is not placed adjacent to a side wall, provision shall be made for floor-mounted foldaway or similar alternative grab bars. Where the powder room is the only toilet facility located on an accessible level of a multistory dwelling unit, it must comply with this requirement for reinforced walls for grab bars. "Powder room" means a room with a toilet and sink.

NOTE: A tub may have shelves or benches at either end; or a tub may be installed without surrounding walls, if there is provision for alternative mounting of grab bars. For example, a sunken tub placed away from walls could have reinforced areas for installation of floor-mounted grab bars. The same principle applies to shower stalls, e.g., glass-walled stalls could be planned to allow floor-mounted grab bars to be installed later.

Reinforcement for grab bars may be provided in a variety of ways (for example, by plywood or wood blocking) so long as the necessary reinforcement is placed so as to permit later installation of appropriate grab bars.

e. Public and common use areas shall be readily accessible to and usable by persons with disabilities.

f. Light switches, electrical outlets, thermostats and other environmental controls shall be located no higher than 48", and no lower than 15", above the floor. If the reach is over an obstruction (for example, an overhanging shelf) between 20" and 25" in depth, the maximum height is reduced to 44" for forward approach; or 46" for side approach, provided the obstruction (for example, a kitchen base cabinet) is no more than 24" in depth. Obstructions should not extend more than 25" from the wall beneath a control. (See ADAAG Figure 5.)

NOTE: Controls or outlets that do not satisfy these specifications are acceptable provided that comparable controls or outlets (i.e., that perform the same functions) are provided within the same area and are accessible.

**302.20(2) Elevators.** An elevator shall be required in any apartment building of four or more stories. An elevator required by this subrule shall meet the requirements established for accessible elevators in rule 661—302.5(103A, 104A), which adopts by reference section 4.10 of the Americans with Disabilities Act Accessibility Guidelines (28 CFR Part 36, Appendix A).

NOTE: Elevators are not required in apartment buildings of three or fewer stories. If an elevator is installed in an

PUBLIC SAFETY DEPARTMENT[661](cont'd)

apartment building of three or fewer stories, then the elevator is not subject to the requirements of rule 661—302.5(103A, 104A).

**302.20(3)** Any covered units within a multiple-unit dwelling which comply with a code or standard which has been certified as a safe harbor for compliance with the accessibility requirements of the federal Fair Housing Act by the U.S. Department of Housing and Urban Development shall be deemed to be in compliance with rule 661—302.20(103A, 104A).

Rule 302.20(103A,104A) is intended to implement Iowa Code sections 103A.7(5) and 104A.2.

### CHAPTER 303

#### STATE BUILDING CODE—REQUIREMENTS FOR ENERGY CONSERVATION IN CONSTRUCTION

##### **661—303.1(103A) Scope and applicability of energy conservation requirements.**

**303.1(1)** Scope. Rules 661—303.1(103A) through 303.3(103A) establish thermal and lighting efficiency standards for the design of new buildings and structures or portions thereof and additions to existing buildings which provide facilities or shelter intended primarily for human occupancy or use by regulating their exterior envelopes and selection of their heating, ventilation, and air-conditioning systems, service water heating, electrical distribution and illuminating systems and equipment for the efficient use of energy.

**303.1(2)** Applicability. Rules 661—303.1(103A) through 661—303.3(103A) apply to design and construction of buildings which provide facilities or shelter intended primarily for human occupancy or use throughout the state of Iowa. All residential construction is covered, as is all nonresidential construction of public buildings; any building within a jurisdiction which has adopted the state building code, a local building code, or a compilation of requirements for building construction; or any construction of a building or facility with more than 100,000 cubic feet of enclosed space. Rule 661—303.2(103A) establishes standards for design and construction of low-rise residential buildings. Rule 661—303.3(103A) establishes standards for nonresidential and high-rise residential design and construction.

In any case in which the language of a code adopted herein by reference is in conflict with this chapter or the Code of Iowa, the language of this chapter or the Code of Iowa shall prevail.

The occupancy of any building covered by this chapter shall be determined based upon the occupancy definitions in chapter 3 of the International Building Code, 2003 edition.

**661—303.2(103A) Adoption of residential energy code.** The International Energy Conservation Code, 2004 supplement, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is adopted by reference as the residential energy code of the state building code, applicable to low-rise residential construction throughout the state of Iowa on or after [effective date of rule to be inserted here], with the following amendments:

**303.2(1)** In addition to the requirements of this rule, the energy usage for detached one- and two-family dwellings shall be no greater than five BTU per Fahrenheit degree-day per square foot as calculated by the home heating index as provided in Iowa Code section 103A.8A.

**303.2(2)** Reserved.

**661—303.3(103A) Adoption of nonresidential energy code.** The International Energy Conservation Code, 2004

supplement, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, is hereby adopted by reference as the nonresidential energy code of the state building code, applicable to nonresidential or high-rise residential construction within the state of Iowa on or after [effective date of rule to be inserted here].

**661—303.4(103A,473) Life cycle cost analysis.** Any public agency as defined by Iowa Code section 470.1 shall prepare a life cycle cost analysis for any new construction having 20,000 square feet of usable floor space which is heated or cooled by a mechanical or electrical system or for any renovation where additions or alterations exceed 50 percent of the value of the facility and affect an energy system.

The life cycle cost analysis shall be prepared in compliance with Iowa Code chapter 470 and be submitted to the state building code commissioner before construction commences.

Any public agency which is a state agency as defined in Iowa Code section 7D.34 shall, within 60 days of final selection of a design architect or engineer, notify the commissioner and the department of natural resources of the methodology to be used to perform the life cycle cost analysis. Notice shall be provided on the forms provided by the department of natural resources for this purpose. A life cycle cost analysis prepared by a state agency shall be submitted in sufficient time ahead of the releasing of plans for bids to allow for revisions or additions which may be made to the plans.

**661—303.5(103A) Submission fee.** Included with the submission of documents for an energy review shall be a remittance of \$15, which may be by money order, check, or warrant made payable to Treasurer, State of Iowa.

These rules are intended to implement Iowa Code chapter 103A.

## ARC 4515B

### PUBLIC SAFETY DEPARTMENT[661]

#### 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 103A.41, the Building Code Commissioner hereby gives Notice of Intended Action to adopt, with the approval of the State Historical Society Board, new Chapter 350, “State Historic Building Code,” Iowa Administrative Code.

Iowa Code section 103A.41 authorizes and requires the Building Code Commissioner, with the approval of the State Historical Society Board, to adopt the State Historic Building Code. The State Historic Building Code provides an “alternative” building code for qualified historical buildings which meet the requirements for inclusion in the National Register of Historic Places.

This Notice proposes the adoption of a new chapter containing provisions which would apply, as an alternative to the State Building Code or local building codes, to historic buildings.

Public hearings on this proposed amendment will be held on October 13, 2005, from 1 to 3 p.m. and from 6 to 8 p.m.



## PUBLIC SAFETY DEPARTMENT[661](cont'd)

These hearings will be accessible via the Iowa Communications Network from multiple locations around the state. These hearings are combined with hearings on another No-

tice of Intended Action, published herein as **ARC 4514B**, which proposes the adoption of a new State Building Code.

The public hearing from 1 to 3 p.m. on Thursday, October 13, 2005, will be accessible over the Iowa Communications Network from the following locations:

CITY	SITE	LOCATION	ROOM #	ICN SITE #
<b>Des Moines</b>	Wallace State Office Building	502 East 9th Street	Third Floor Conference Room	706
<b>Cedar Rapids</b>	Kirkwood Comm. College	6301 Kirkwood Blvd.	203B, Linn Hall	553
<b>Council Bluffs</b>	Educational Services Center Administration	12 Scott Street		347
<b>Creston</b>	Green Valley Area Education Agency 14	1405 North Lincoln	Turner Room	173
<b>Dubuque</b>	Dubuque Community School District - Forum	2300 Chaney		312
<b>Emmetsburg</b>	Iowa Lakes Comm. College	3200 College Dr.	Room 818, Smith Wellness Center	20
<b>Mason City</b>	North Iowa Area Comm. College	500 College Drive	Careers Building, Room 128	122
<b>Mount Pleasant</b>	Mount Pleasant High School	2104 S. Grand		751
<b>Sioux City</b>	Western Iowa Tech Comm. College	4647 Stone Ave.	Room 925, Building A	78

The public hearing from 6 to 8 p.m. on Thursday, October 13, 2005, will be accessible over the Iowa Communications Network from the following locations:

CITY	SITE	LOCATION	ROOM #	ICN SITE #
<b>Ankeny</b>	Des Moines Area Community College	2006 South Ankeny Blvd.	Room 8, Building 6	70
<b>Cedar Rapids</b>	Grant Wood Area Education Agency 10	4401 Sixth Street SW	Revere Room	198
<b>Council Bluffs</b>	Educational Services Center Administration	12 Scott Street		347
<b>Creston</b>	Green Valley Area Education Agency 14	1405 North Lincoln	Turner Room	173
<b>Cylinder</b>	Prairie Lakes Area Education Agency	Highway 18 & Second Street		174
<b>Dubuque</b>	Dubuque Community School District - Forum	2300 Chaney		312
<b>Mason City</b>	North Iowa Area Comm. College	500 College Drive	CB 118	555
<b>Mount Pleasant</b>	Mount Pleasant High School	2104 S. Grand		751
<b>Sioux City</b>	Western Iowa Tech Comm. College	4647 Stone Ave.	Room 925, Building A	78

At the public hearings, persons may present their views concerning this amendment orally or in writing. Persons who wish to make oral presentations at a hearing should contact the Agency Rules Administrator, Iowa Department of Public Safety, 502 East 9th Street, Des Moines, Iowa 50319; or by telephone at (515)281-5524 at least one day prior to the hearing.

Any interested persons may make oral or written comments concerning this proposed amendment to the Agency Rules Administrator by mail, telephone, or in person at the above address by 4:30 p.m. on October 13, 2005. Comments

may also be submitted by electronic mail to [admrule@dps.state.ia.us](mailto:admrule@dps.state.ia.us) by 4:30 p.m. on October 13, 2005.

This amendment is intended to implement Iowa Code sections 103A.41 through 103A.45.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 proposed.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

CHAPTER 350  
STATE HISTORIC BUILDING CODE

**661—350.1(103A) Scope and definition.**

**350.1(1) Scope.** This chapter applies to buildings which meet the requirements for placement on the National Register of Historic Places. This chapter is an alternative to the state building code or local building codes for the buildings to which it applies.

“Historic building” means a building or structure which meets the requirements for placement on the National Register of Historic Places, as certified by the state historic preservation officer.

**350.1(2) Administration.** The provisions of 661—Chapter 301 are adopted by reference, with the following amendment:

Delete “building code advisory council” wherever it appears and insert in lieu thereof “state historical society board.”

**350.1(3) Adoption.** The provisions of the International Existing Building Code, 2003 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted as the alternative requirements for rehabilitation, preservation, restoration, and relocation of historic buildings, with the following amendments:

Delete chapter 1.

Delete the definition of “historic building.”

Delete appendix A, chapters A1 through A5, and appendix B.

Delete resource A.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete all references to the “ICC Electrical Code” and insert in lieu thereof “National Electrical Code, 2005 edition.”

This rule is intended to implement Iowa Code sections 103A.41 through 103A.45.

**ARC 4518B**

**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 39, “Filing Return and Payment of Tax,” 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 2005 Iowa Acts, House Files 857, 868 and 882.

Item 1 amends subrule 39.1(7) to change the name of the property rehabilitation tax credit to the historic preservation and cultural and entertainment district tax credit.

Item 2 amends subrule 42.13(1) to allow eligible housing business tax credits for individual income tax to be assigned when partnerships, limited liability companies and S corpo-

rations earn these credits when Section 42 low-income housing credits are used to finance the housing development. The subrule was also amended to correct a cross reference to another subrule, and to reference the Iowa Department of Economic Development rules on eligible housing business tax credits.

Item 3 amends subrule 42.13(2) to allow eligible housing business tax credits for individual income tax to be transferred when the housing development is located in a brown-field site or a blighted area.

Item 4 amends rule 701—42.15(422) to provide for additional historic preservation and cultural and entertainment district tax credits for individual income tax for projects located in cultural and entertainment districts, and to allow these credits to be assigned when partnerships, limited liability companies and S corporations earn these credits when Section 42 low-income housing credits are used to finance the project.

Item 5 amends rule 701—42.20(15E) to provide for additional endow Iowa tax credits for individual income tax and to extend the time period to claim these credits.

Item 6 amends rule 701—42.23(422) to change the name of the property rehabilitation tax credit to the historic preservation and cultural and entertainment district tax credit.

Item 7 amends rule 701—52.12(422) to change the name of the property rehabilitation tax credit to the historic preservation and cultural and entertainment district tax credit.

Item 8 amends subrule 52.15(1) to allow eligible housing business tax credits for corporation income tax to be assigned when partnerships, limited liability companies and S corporations earn these credits when Section 42 low-income housing credits are used to finance the housing development. The subrule was also amended to reference the Iowa Department of Economic Development rules on eligible housing business tax credits. This change is similar to that made in Item 2.

Item 9 amends subrule 52.15(2) to allow eligible housing business tax credits for corporation income tax to be transferred when the housing development is located in a brown-field site or a blighted area. This change is similar to that made in Item 3.

Item 10 amends rule 701—52.18(422) to provide for additional historic preservation and cultural and entertainment district tax credits for corporation income tax for projects located in cultural and entertainment districts, and to allow these credits to be assigned when partnerships, limited liability companies and S corporations earn these credits when Section 42 low-income housing credits are used to finance the project. This change is similar to that made in Item 4.

Item 11 amends rule 701—52.23(15E) to provide for additional endow Iowa tax credits for corporation income tax and to extend the time period to claim these credits. This change is similar to that made in Item 5.

Item 12 amends rule 701—58.8(15E) to allow eligible housing business tax credits for franchisee tax to be assigned when partnerships, limited liability companies and S corporations earn these credits when Section 42 low-income housing credits are used to finance the housing development. These changes are similar to those made in Items 2 and 8.

Item 13 amends subrule 58.8(1) for franchise tax to reference the Iowa Department of Economic Development rules on eligible housing business tax credits. These changes are similar to those made in Items 2 and 8.

Item 14 amends subrule 58.8(2) to allow eligible housing business tax credits for franchise tax to be transferred when the housing development is located in a brownfield site or a blighted area. These changes are similar to those made in Items 3 and 9.

## REVENUE DEPARTMENT[701](cont'd)

Item 15 amends rule 701—58.10(422) to change the name of the property rehabilitation tax credit to the historic preservation and cultural and entertainment district tax credit.

Item 16 amends rule 701—58.13(15E) to provide for additional endow Iowa tax credits for franchise tax and to extend the time period to claim these credits. These changes are similar to those made in Items 5 and 11.

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 October 17, 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 October 4, 2005. 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 October 7, 2005.

These amendments are intended to implement Iowa Code sections 15E.193B, 15E.305, and 422.11D and Iowa Code chapter 404A as amended by 2005 Iowa Acts, House Files 857, 868 and 882.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 39.1(7) and the implementation clause for rule **701—39.1(422)** as follows:

**39.1(7)** Returns filed for refund. A taxpayer whose Iowa source net income or all source net income is less than the amount for which the filing of an Iowa individual income tax return is required must file a return to receive a refund of Iowa income tax withheld or Iowa estimate tax paid in the tax year or to receive a refund from an Iowa refundable tax credit. Refundable tax credits include the child and dependent care credit, the research activities credit, the motor vehicle fuel tax credit, the claim of right credit (if elected in accordance with rule 701—38.18(422)) the assistive device credit, the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district* tax credit, the ethanol blended gasoline tax credit and the investment tax credit for value-

added agricultural products or biotechnology-related processes.

This rule is intended to implement Iowa Code sections 422.5 and 422.13 as amended by 2001 Iowa Acts, chapter 427.

ITEM 2. Amend subrule **42.13(1)**, second and sixth unnumbered paragraphs, as follows:

A taxpayer may claim on the taxpayer's individual income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, S corporation, limited liability company, estate, or trust. The portion of the credit claimed by the individual shall be in the same ratio as the individual's pro-rata share of the earnings of the partnership, S corporation, limited liability company, or estate or trust, *except for projects beginning on or after July 1, 2005, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.*

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.13(4)(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy. *The administrative rules for the eligible housing business tax credit for the Iowa department of economic development may be found under 261—Chapter 59.*

ITEM 3. Amend subrule 42.13(2), introductory paragraph, and the implementation clause for rule **701—42.13(15E)** as follows:

**42.13(2)** Transfer of the eligible housing business tax credit. For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. *In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than \$3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than \$1.5 million being transferred for any one eligible housing business in a calendar year.*

This rule is intended to implement Iowa Code section 15E.193B as amended by 2003 2005 Iowa Acts, ~~Senate File 444 House File 857 and House File 882, sections 53 through 55.~~

ITEM 4. Amend rule 701—42.15(422) as follows:

REVENUE DEPARTMENT[701](cont'd)

**701—42.15(422) ~~Property rehabilitation~~ *Historic preservation and cultural and entertainment district tax credit.***

A ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit*, subject to the availability of the credit, may be claimed against a taxpayer's Iowa individual income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for approved rehabilitation projects of eligible property in Iowa. The administrative rules for the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* for the historical division of the department of cultural affairs may be found under 223—Chapter 48.

**42.15(1)** Eligible properties for the ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit*. The following types of property are eligible for the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit*:

a. Property verified as listed on the National Register of Historic Places or eligible for such listing through the state historic preservation office (SHPO).

b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation by being located in an area previously surveyed and evaluated as eligible for the National Register of Historic Places.

c. Property or district designated as a local landmark by a city or county ordinance.

d. Any barn constructed prior to 1937.

**42.15(2)** Application and review process for the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit*. Taxpayers who want to claim an income tax credit for completing a ~~property rehabilitation~~ *historic preservation and cultural and entertainment district* project must submit an application for approval of the project. The application forms for the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515) 281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For fiscal years beginning on or after July 1, 2000, \$2.4 million shall be appropriated for ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credits* for each year. *For the fiscal years beginning July 1, 2005, and ending June 30, 2015, an additional \$4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than \$4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. Tax credits shall not be reserved by the department of cultural affairs for more than five years except for tax credits issued for contracts entered into prior to July 1, 2005.*

Applicants for the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* must include all information and documentation requested on the application forms for the credit in order for the application to be processed.

The state historic preservation office (SHPO) is to establish selection criteria and standards for rehabilitation projects

involving eligible property. The approval process is not to exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards used by SHPO are to be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property that is listed on the National Register of Historic Places or is designated as of historic significance to a district listed in the National Register of Historic Places.

The selection standards are to provide that a taxpayer who qualifies for the rehabilitation investment credit under Section 47 of the Internal Revenue Code shall automatically qualify for the state ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* to the extent that all the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credits* appropriated for the fiscal year have not already been awarded.

Once SHPO approves a particular ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* project application, the office will encumber an estimated ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* under the name of the applicant(s) for the year the project is approved.

**42.15(3)** Computation of the amount of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit*. The amount of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* is 25 percent of the qualified rehabilitation costs made to an eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by SHPO for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

In the case of commercial property, rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least \$25,000 or 25 percent of the fair market value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs are not to exceed \$100,000 per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the date two years prior to the project completion date, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified rehabilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.

For purposes of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit*, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment*

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*district tax credit* are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation expenses that are equal to the amount of the computed ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* for the tax year.

For example, the basis of a commercial building in a historic district was \$500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, \$600,000 in rehabilitation costs were expended to complete the project and \$500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* of \$125,000. Therefore, the basis of the building for Iowa income tax purposes was \$975,000, since the qualified rehabilitation costs of \$125,000, which are equal to the amount of the ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was \$1,100,000. However, for tax years beginning only in the 2000 calendar year, the basis of the building for Iowa income tax purposes would have been \$600,000, since for those tax periods, any qualified rehabilitation expenses used to compute the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* for the tax year could not be added to the basis of the property. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code. If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would not be affected by the federal credit.

**42.15(4)** Completion of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district* project and claiming the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* on the Iowa return. After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historical preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit*, the state historical preservation office, in consultation with the Iowa department of economic development, is to issue a ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit certificate* which is to be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed and the amount of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit*. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 42.15(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and

the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
5%	\$.784
6%	\$.747
7%	\$.713
8%	\$.681
9%	\$.650
10%	\$.621
11%	\$.594
12%	\$.567
13%	\$.543
14%	\$.519
15%	\$.497
16%	\$.476
17%	\$.456
18%	\$.437

**EXAMPLE:** The following is an example to show how the table can be used to compute a refund for a taxpayer. An individual has a ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* of \$800,000 for a project completed in 2001. The individual had an income tax liability prior to the credit of \$300,000 on the 2001 return, which leaves an excess credit of \$500,000. We will assume that the annual interest rate for tax refunds issued by the department of revenue in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the \$500,000 excess credit, \$500,000 is multiplied by the compound factor for 11 percent of .594 in the table, which results in a refund of \$297,000.

**42.15(5)** Allocation of ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credits* to the individual owners of the entity. When the taxpayer that has earned a ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* is a partnership, limited liability company, *S corporation*, estate or trust where the individual owners of the business entity are taxed on the income of the entity, the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* is to be allocated to the individual owners. The business entity is to allocate the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* to each individual owner on the same pro-rata basis as the earnings of the business are allocated to the owners *for projects beginning prior to July 1, 2005*. For example, if a partner of a partnership received 25 percent of the earnings or income of the partnership for the tax year in which the partnership had earned a ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit*, 25 percent of the credit would be allocated to this partner.

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For projects beginning on or after July 1, 2005, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the rehabilitation project, the credit does not have to be allocated based on the pro-rata share of earnings of the partnership, limited liability company or S corporation. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.

**42.15(6)** Transfer of the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ historic preservation and cultural and entertainment district tax credit certificates may be transferred to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ tax credit should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

If the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ tax credit of the transferee exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 42.15(4) just as the refund would have been discounted on the Iowa income tax return of the taxpayer.

This rule is intended to implement Iowa Code chapter 404A as amended by 2004 2005 Iowa Acts, Senate House File 2298 868, ~~section 250 sections 20 through 26~~, and Iowa Code Section 422.11D as amended by 2005 Iowa Acts, House File 882, section 64.

ITEM 5. Amend rule 701—42.20(15E), introductory paragraph, first unnumbered paragraph, and the implementation clause, as follows:

**701—42.20(15E) Endow Iowa tax credit.** Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to an endow Iowa qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's endowment gift to an endow Iowa qualified community foundation approved by the Iowa department of economic development. The administrative rules

for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is \$2 million, ~~and the in the aggregate for the 2003 and 2004 calendar years~~. The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2008 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less. The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000. An endow Iowa tax credit shall not be authorized after December 31, 2005 2008. The endow Iowa tax credit cannot be transferred to any other taxpayer.

This rule is intended to implement Iowa Code section 15E.305 as amended by 2003 2005 Iowa Acts, First Extraordinary Session, chapter 2 House File 868, sections 83 and 84 74 through 77.

ITEM 6. Amend rule **701—42.23(422)**, numbered paragraph "12," as follows:

12. ~~Property rehabilitation Historic preservation and cultural and entertainment district tax credit~~.

ITEM 7. Amend rule **701—52.12(422)**, numbered paragraph "8," as follows:

8. ~~Property rehabilitation Historic preservation and cultural and entertainment district tax credit~~.

ITEM 8. Amend subrule **52.15(1)**, second and sixth unnumbered paragraphs, as follows:

A taxpayer may claim on the taxpayer's corporation income tax return the pro-rata share of the Iowa eligible housing business tax credit from a partnership, limited liability company, estate, or trust. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, or estate or trust, *except for projects beginning on or after July 1, 2005, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.*

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit and the tax year for which the credit may be claimed. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.15(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy. *The administrative rules for the eligible housing business tax credit for the Iowa department of economic development may be found under 261—Chapter 59.*

ITEM 9. Amend subrule 52.15(2), introductory paragraph, and the implementation clause for rule **701—52.15(15E)** as follows:

**52.15(2)** Transfer of the eligible housing business tax credit. For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing devel-

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opment. *In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than \$3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than \$1.5 million being transferred for any one eligible housing business in a calendar year.*

This rule is intended to implement Iowa Code section 15E.193B as amended by 2004-2005 Iowa Acts, Senate File 441 House File 857 and House File 882, sections 53 through 55.

ITEM 10. Amend rule 701—52.18(422) as follows:

**701—52.18(422) ~~Property rehabilitation~~ *Historic preservation and cultural and entertainment district tax credit.***

A ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~, subject to the availability of the credit, may be claimed against a taxpayer's Iowa corporate income tax liability for 25 percent of the qualified costs of rehabilitation of property to the extent the costs were incurred on or after July 1, 2000, for approved rehabilitation projects of eligible property in Iowa. The administrative rules for the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ for the historical division of the department of cultural affairs may be found under 223—Chapter 48.

**52.18(1)** Eligible properties for the ~~rehabilitation historic preservation and cultural and entertainment district tax credit~~. The following types of property are eligible for the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~:

- a. Property verified as listed on the National Register of Historic Places or eligible for such listing through the state historic preservation office (SHPO).
- b. Property designated as of historic significance to a district listed in the National Register of Historic Places or eligible for such designation by being located in an area previously surveyed and evaluated as eligible for the National Register of Historic Places.
- c. Property or district designated as a local landmark by a city or county ordinance.
- d. Any barn constructed prior to 1937.

**52.18(2)** Application and review process for the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~. Taxpayers who want to claim an income tax credit for completing a ~~property rehabilitation historic preservation and cultural and entertainment district~~ project must submit an application for approval of the project. The application forms for the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ may be requested from the State Tax Credit Program Manager, State Historic Preservation Office, Department of Cultural Affairs, 600 E. Locust, Des Moines, Iowa 50319-0290. The telephone number for this office is (515)281-4137. Applications for the credit will be accepted by the state historic preservation office on or after July 1, 2000, until such time as all the available credits allocated for each fiscal year are encumbered. For fiscal years beginning on or after July 1, 2000, \$2.4 million shall be appropriated for ~~property rehabilitation historic preservation and cultural and entertainment district tax credits~~ for each year. *For the fiscal years beginning July 1, 2005, and ending June 30, 2015, an additional*

*\$4 million of tax credits is appropriated for projects located in cultural and entertainment districts which are certified by the department of cultural affairs. If less than \$4 million of tax credits is appropriated during a fiscal year, the remaining amount shall be applied to reserved tax credits for projects not located in cultural and entertainment districts in the order of original reservation by the department of cultural affairs. Tax credits shall not be reserved by the department of cultural affairs for more than five years except for tax credits issued for contracts entered into prior to July 1, 2005.*

Applicants for the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ must include all information and documentation requested on the application forms for the credit in order for the application to be processed.

The state historic preservation office (SHPO) is to establish selection criteria and standards for rehabilitation projects involving eligible property. The approval process is not to exceed 90 days from the date the application is received by SHPO. To the extent possible, the standards used by SHPO are to be consistent with the standards of the United States Secretary of the Interior for rehabilitation of eligible property that is listed on the National Register of Historic Places or is designated as of historic significance to a district listed in the National Register of Historic Places.

The selection standards are to provide that a taxpayer who qualifies for the rehabilitation investment credit under Section 47 of the Internal Revenue Code shall automatically qualify for the state ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ to the extent that all the ~~property rehabilitation historic preservation and cultural and entertainment district tax credits~~ appropriated for the fiscal year have not already been awarded.

Once SHPO approves a particular ~~rehabilitation historic preservation and cultural and entertainment district tax credit~~ project application, the office will encumber an estimated ~~rehabilitation historic preservation and cultural and entertainment district tax credit~~ under the name of the applicant(s) for the year the project is approved.

**52.18(3)** Computation of the amount of the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~. The amount of the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ is 25 percent of the qualified rehabilitation costs made to an eligible property in a project. Qualified rehabilitation costs are those rehabilitation costs approved by SHPO for a project for a particular taxpayer to the extent those rehabilitation costs are actually expended by that taxpayer.

In the case of commercial property, rehabilitation costs must equal at least 50 percent of the assessed value of the property, excluding the value of the land, prior to rehabilitation. In the case of residential property or barns, the rehabilitation costs must equal at least \$25,000 or 25 percent of the fair market value, excluding the value of the land, prior to the rehabilitation, whichever amount is less. In computing the tax credit for eligible property that is classified as residential or as commercial with multifamily residential units, the rehabilitation costs are not to exceed \$100,000 per residential unit. In computing the tax credit, the only costs which may be included are the rehabilitation costs incurred between the period ending on the project completion date and beginning on the date two years prior to the project completion date, provided that any qualified rehabilitation costs incurred prior to the date of approval of the project must be qualified reha-



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bilitation expenditures under the federal rehabilitation credit in Section 47 of the Internal Revenue Code.

For purposes of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit*, qualified rehabilitation costs include those costs properly included in the basis of the eligible property for income tax purposes. Costs treated as expenses and deducted in the year paid or incurred and amounts that are otherwise not added to the basis of the property for income tax purposes are not qualified rehabilitation costs. Amounts incurred for architectural and engineering fees, site survey fees, legal expenses, insurance premiums, development fees, and other construction-related costs are qualified rehabilitation costs to the extent they are added to the basis of the eligible property for tax purposes. Costs of sidewalks, parking lots, and landscaping do not constitute qualified rehabilitation costs. Any rehabilitation costs used in the computation of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* are not added to the basis of the property for Iowa income tax purposes if the rehabilitation costs were incurred in a tax year beginning on or after January 1, 2000, but prior to January 1, 2001. Any rehabilitation costs incurred in a tax year beginning on or after January 1, 2001, are added to the basis of the rehabilitated property for income tax purposes except those rehabilitation expenses that are equal to the amount of the computed ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* for the tax year.

For example, the basis of a commercial building in a historic district was \$500,000, excluding the value of the land, before the rehabilitation project. During a project to rehabilitate this building, \$600,000 in rehabilitation costs were expended to complete the project and \$500,000 of those rehabilitation costs were qualified rehabilitation costs which were eligible for the ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* of \$125,000. Therefore, the basis of the building for Iowa income tax purposes was \$975,000, since the qualified rehabilitation costs of \$125,000, which are equal to the amount of the ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* for the tax year, are not added to the basis of the rehabilitated property. The basis of the building for federal income tax purposes was \$1,100,000. However, for tax years beginning only in the 2000 calendar year, the basis of the building for Iowa income tax purposes would have been \$600,000, since for those tax periods, any qualified rehabilitation expenses used to compute the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* for the tax year could not be added to the basis of the property. It should be noted that this example does not consider any possible reduced basis for the building for federal income tax purposes due to the rehabilitation investment credit provided in Section 47 of the Internal Revenue Code. If the building in this example were eligible for the federal rehabilitation credit provided in Section 47 of the Internal Revenue Code, the basis of the building for Iowa tax purposes would not be affected by the federal credit.

**52.18(4)** Completion of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district project* and claiming the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* on the Iowa return. After the taxpayer completes an authorized rehabilitation project, the taxpayer must get a certificate of completion of the project from the state historical preservation office of the department of cultural affairs. After verifying the taxpayer's eligibility for the ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax*

credit, the state historical preservation office, in consultation with the Iowa department of economic development, is to issue a ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit certificate* which is to be attached to the taxpayer's income tax return for the tax year in which the rehabilitation project is completed. The tax credit certificate is to include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the address or location of the rehabilitation project, the date the project was completed and the amount of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit*. In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 52.18(6). In addition, if the taxpayer is a partnership, limited liability company, estate or trust, where the tax credit is allocated to the owners or beneficiaries of the entity, a list of the owners or beneficiaries and the amount of credit allocated to each owner or beneficiary should be provided with the certificate. The tax credit certificate should be attached to the income tax return for the period in which the project was completed. If the amount of the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* exceeds the taxpayer's income tax liability for the tax year for which the credit applies, the taxpayer is entitled to a refund of the excess portion of the credit at a discounted value. However, the refund cannot exceed 75 percent of the allowable tax credit. The refund of the tax credit is to be computed on the basis of the following table:

Annual Interest Rate	Five-Year Present Value/Dollar Compounded Annually
5%	\$.784
6%	\$.747
7%	\$.713
8%	\$.681
9%	\$.650
10%	\$.621
11%	\$.594
12%	\$.567
13%	\$.543
14%	\$.519
15%	\$.497
16%	\$.476
17%	\$.456

**EXAMPLE:** The following is an example to show how the table can be used to compute a refund for a taxpayer. An individual has a ~~rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* of \$800,000 for a project completed in 2001. The individual had an income tax liability prior to the credit of \$300,000 on the 2001 return, which leaves an excess credit of \$500,000. We will assume that the annual interest rate for tax refunds issued by the department of revenue in the 2001 calendar year is 11 percent. Therefore, to compute the five-year present value of the \$500,000 excess credit, \$500,000 is multiplied by the compound factor for 11 percent of .594 in the table, which results in a refund of \$297,000.

**52.18(5)** Allocation of ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credits* to the ~~shareholders of the corporation~~ *individual owners of the entity*. When the ~~corporation~~ *business entity* that



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has earned a ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* is an S corporation ~~where the shareholders are taxed on the income of the corporation, partnership, limited liability company, estate or trust where the individual owners of the business entity are taxed on the income of the entity,~~ the ~~property rehabilitation~~ *historic preservation and cultural and entertainment district tax credit* is to be allocated to the ~~shareholders individual owners.~~ The ~~corporation business entity~~ is to allocate the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ to each individual ~~shareholder owner~~ on the same pro-rata basis as the earnings or profits of the ~~corporation business entity~~ are allocated to the ~~shareholders owners for projects beginning prior to July 1, 2005.~~ For example, if a shareholder of an S corporation received 25 percent of the earnings of the corporation and the corporation had earned a ~~property rehabilitation historic preservation and cultural and entertainment district tax credit,~~ 25 percent of the credit would be allocated to the shareholder.

*For projects beginning on or after July 1, 2005, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the rehabilitation project, the credit does not have to be allocated based on the pro-rata share of earnings of the partnership, limited liability company or S corporation. For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.*

**52.18(6)** Transfer of the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit.~~ For tax periods beginning on or after January 1, 2003, the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ certificates may be transferred to any person or entity.

Within 90 days of transfer of the tax credit certificate, the transferee must submit the transferred tax credit certificate to the state historic preservation office of the department of cultural affairs, along with a statement which contains the transferee's name, address and tax identification number and amount of the tax credit being transferred. Within 30 days of receiving the transferred tax credit certificate and the statement from the transferee, the state historic preservation office shall issue a replacement tax credit certificate to the transferee. If the transferee is a partnership, limited liability company or S corporation, the transferee shall provide a list of the partners, members or shareholders and information on how the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ should be divided among the partners, members or shareholders. The transferee shall also provide the tax identification numbers and addresses of the partners, members or shareholders. The replacement tax credit certificate must contain the same information that was on the original certificate and must have the same expiration date as the original tax credit certificate.

The transferee may use the amount of the tax credit for any tax period for which the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included in Iowa taxable income for individual income, corporation income or franchise tax purposes. Any consideration paid for the transfer of the tax credit shall not be deducted from Iowa taxable income for individual income, corporation income or franchise tax purposes.

If the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ of the transferee

exceeds the tax liability shown on the transferee's return, the refund shall be discounted as described in subrule 52.18(4) just as the refund would have been discounted on the Iowa income tax return of the taxpayer.

This rule is intended to implement Iowa Code chapter 404A as amended by 2004 2005 Iowa Acts, *Senate House File 2298 868*, ~~section 250 sections 20 through 26~~, and Iowa Code section 422.33.

ITEM 11. Amend rule 701—52.23(15E), introductory paragraph, first unnumbered paragraph, and the implementation clause, as follows:

**701—52.23(15E) Endow Iowa tax credit.** Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to a *an endow Iowa* qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's endowment gift to a *an endow Iowa* qualified community foundation approved by the Iowa department of economic development. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is \$2 million, ~~and the in the aggregate for the 2003 and 2004 calendar years.~~ *The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2008 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less.* The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000. An endow Iowa tax credit shall not be authorized after December 31, ~~2005 2008.~~ The endow Iowa tax credit cannot be transferred to any other taxpayer.

This rule is intended to implement Iowa Code section 15E.305 *as amended by 2005 Iowa Acts, House File 868, sections 74 through 77,* and section 422.33 ~~as amended by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 85.~~

ITEM 12. Amend rule **701—58.8(15E)**, first unnumbered paragraph, as follows:

An eligible housing business may receive a tax credit of up to 10 percent of the new investment which is directly related to the building or rehabilitating of homes in an enterprise zone. The tax credit may be taken on the tax return for the tax year in which the home is ready for occupancy. The portion of the credit claimed by the taxpayer shall be in the same ratio as the taxpayer's pro-rata share of the earnings of the partnership, limited liability company, estate or trust, *except for projects beginning on or after July 1, 2005, which used low-income housing credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the housing development.* *For these projects, the partnership, limited liability company or S corporation may designate the amount of the tax credit to be allocated to each partner, member or shareholder.* Any eligible housing business tax credit in excess of the franchise tax liability must be carried forward for seven years or until it is used, whichever is the earlier.

ITEM 13. Amend subrule **58.8(1)**, third unnumbered paragraph, as follows:

Effective for tax periods beginning on or after January 1, 2003, the taxpayer must receive a tax credit certificate from the Iowa department of economic development to claim the eligible housing business tax credit. The tax credit certificate shall include the taxpayer's name, the taxpayer's address, the taxpayer's tax identification number, the date the project was completed, the amount of the eligible housing business tax credit, and the tax year for which the credit may be claimed.

REVENUE DEPARTMENT[701](cont'd)

In addition, the tax credit certificate shall include a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred, as provided in subrule 58.8(2). The tax credit certificate must be attached to the income tax return for the tax period in which the home is ready for occupancy. *The administrative rules for the eligible housing business tax credit for the Iowa department of economic development may be found under 261—Chapter 59.*

ITEM 14. Amend subrule 58.8(2), introductory paragraph, and the implementation clause for rule **701—58.8(15E)** as follows:

**58.8(2)** Transfer of the eligible housing business tax credit. For tax periods beginning on or after January 1, 2003, the eligible housing business tax credit certificates may be transferred to any person or entity if low-income housing tax credits authorized under Section 42 of the Internal Revenue Code are used to assist in the financing of the housing development. *In addition, the eligible housing business tax credit certificates may be transferred to any person or entity for projects beginning on or after July 1, 2005, if the housing development is located in a brownfield site as defined in Iowa Code section 15.291, or if the housing development is located in a blighted area as defined in Iowa Code section 403.17. No more than \$3 million of tax credits for housing developments located in brownfield sites or blighted areas may be transferred in a calendar year, with no more than \$1.5 million being transferred for any one eligible housing business in a calendar year.*

This rule is intended to implement Iowa Code section 15E.193B as amended by 2003 2005 Iowa Acts, Senate File 444 House File 857 and House File 882, sections 53 through 55.

ITEM 15. Amend rule 701—58.10(422) as follows:

**701—58.10(422) Property rehabilitation Historic preservation and cultural and entertainment district tax credit.** For tax years beginning on or after January 1, 2001, a ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~, subject to the availability of the credit, may be claimed against a taxpayer's Iowa franchise tax liability for 25 percent of the qualified rehabilitation costs to the extent the costs were incurred for the rehabilitation of eligible property in Iowa. For information on those types of property that are eligible for the ~~rehabilitation historic preservation and cultural and entertainment district tax credit~~, how to file applications for the credit, how the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ is computed, how the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ can be transferred for tax periods beginning on or after January 1, 2003, and other details about the credit, see rule 701—52.18(422). See also the administrative rules for the ~~property rehabilitation historic preservation and cultural and entertainment district tax credit~~ for the historical division of the department of cultural affairs under 223—Chapter 48.

This rule is intended to implement Iowa Code chapter 404A as amended by 2003 2005 Iowa Acts, Senate House File 441 868, section 250 sections 20 through 26, and Section 422.60.

ITEM 16. Amend rule 701—58.13(15E), introductory paragraph, first unnumbered paragraph, and the implementation clause, as follows:

**701—58.13(15E) Endow Iowa tax credit.** Effective for tax years beginning on or after January 1, 2003, a taxpayer who makes an endowment gift to a *an endow Iowa* qualified community foundation may qualify for an endow Iowa tax credit, subject to the availability of the credit. The credit is equal to 20 percent of a taxpayer's endowment gift to a *an endow Iowa* qualified community foundation approved by the Iowa department of economic development. The administrative rules for the endow Iowa tax credit for the Iowa department of economic development may be found under 261—Chapter 47.

The total amount of endow Iowa tax credits available is \$2 million, ~~and the in the aggregate for the 2003 and 2004 calendar years.~~ *The total amount of endow Iowa tax credits is \$2 million annually for the 2005-2008 calendar years, and \$200,000 of these tax credits on an annual basis is reserved for endowment gifts of \$30,000 or less.* The maximum amount of tax credit granted to a single taxpayer shall not exceed \$100,000. An endow Iowa tax credit shall not be authorized after December 31, 2005 2008. The endow Iowa tax credit cannot be transferred to any other taxpayer.

This rule is intended to implement Iowa Code section 15E.305 as amended by 2005 Iowa Acts, House File 868, sections 74 through 77, and section 422.60 as amended by 2003 Iowa Acts, First Extraordinary Session, chapter 2, section 86.

## ARC 4521B

### SOIL CONSERVATION DIVISION[27]

#### 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 2005 Iowa Acts, Senate File 200, section 5(3)“g,” the Watershed Improvement Review Board gives Notice of Intended Action to adopt new Chapter 101, “Organization and Purpose,” Chapter 102, “Rules of Practice,” Chapter 103, “Appointment and Terms of Members,” Chapter 104, “Local Watershed Improvement Committees,” Chapter 105, “Watershed Improvement Grant Program,” Chapter 106, “Watershed Improvement Fund,” and Chapter 107, “Public Records and Fair Information Practices,” Iowa Administrative Code.

This amendment proposes rules for the Watershed Improvement Review Board and its organization, purpose and rules of practice. Provision is also made for appointment of Board members, local watershed improvement committees and the Watershed Improvement Grant Program.

These rules do not contain a waiver provision, but are subject to the Division's general waiver requirements.

Any interested person may make written suggestions or comments on the amendment proposed in this Notice of Intended Action. Such written materials should be directed to the Division of Soil Conservation, Department of Agriculture and Land Stewardship, Wallace State Office Building, Des Moines, Iowa 50319. Comments may also be faxed to the Division at (515)281-6170 or E-mailed to [Ken.Tow@idals.state.ia.us](mailto:Ken.Tow@idals.state.ia.us). Comments and suggestions must be re-

## SOIL CONSERVATION DIVISION[27](cont'd)

ceived by the Division no later than 4 p.m., Tuesday, October 4, 2005.

A public hearing will be held on Tuesday, October 4, 2005, at 1 p.m. in the Second Floor Conference Room of the Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa. Comments presented at the hearing may be offered either orally or in writing.

This amendment is intended to implement 2005 Iowa Acts, Senate File 200.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 4520B**. The content of that submission is incorporated by reference.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 4482B****TRANSPORTATION  
DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 400, "Vehicle Registration and Certificate of Title," Chapter 401, "Special Registration Plates," Chapter 411, "Persons with Disabilities Parking Permits," Chapter 425, "Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers," Chapter 451, "Emergency Vehicle Permits," and Chapter 750, "Aircraft Registration," Iowa Administrative Code.

These rules are amended to reflect the amendments made to Iowa Code chapter 321 by 2004 Iowa Acts, chapter 1013, and to accommodate the new computer system for registering and titling vehicles, which was activated in January 2005. 2004 Iowa Acts, chapter 1013, makes procedural changes to the registration and title application process, permits electronic transactions and repeals the requirement to submit a copy of the registration receipt when exchanging regular plates for special plates or when applying for a registration credit or refund.

These rules are also amended to streamline processes where warranted, remove form numbers and titles and use more generic descriptions for forms, correct or delete outdated language, strike language that unnecessarily repeats the Iowa Code, consolidate and simplify wording, add the Department's Internet address for vehicle-related forms and information, update citations to federal and state laws in the text of rules and in implementation clauses, and otherwise clean up the rules.

Following are descriptions of amendments that may need further explanation:

Rule 761—400.9(321) regarding security interest notations is rescinded because the statute the rule implements was repealed.

Rules 761—400.13(321) and 761—400.16(321) regarding title bonds and specially constructed and reconstructed vehicles are rescinded and rewritten to streamline the application processes and make the rules easier to understand.

The requirement that an application must include exhibits, such as a pencil tracing of the vehicle identification number and a photograph of the vehicle, is eliminated. The exhibits are unnecessary because a motor vehicle investigator will examine the vehicle.

Rule 761—400.17(321) regarding remanufactured vehicles is rescinded because it is obsolete. 2005 Iowa Acts, House File 216, sections 3 and 6, strike Iowa Code requirements for remanufactured vehicles.

Rule 761—400.29(321) regarding registration of vehicles that were formerly registered under Iowa Code chapter 326 is rescinded because the subject matter is covered in rule 761—400.60(321).

Rule 761—400.33(321) regarding disabled veteran plates is rescinded because the subject matter is covered in new rule 761—401.13(321).

Rule 761—400.43(321) is amended to clarify that a replacement plate fee is payable when a vehicle is registered after it was placed in storage in any month prior to the expiration of the registration.

An amendment to rule 761—400.50(321) allows a person to apply for refund of vehicle registration fees in any county, rather than the county where the vehicle was registered. Another amendment strikes language which provides for filing disapproved claims for refund with the state appeal board. Iowa Code section 25.1 does not allow the state appeal board to consider claims for refund of vehicle registration fees.

Rule 761—400.51(321) regarding the assignment of assigned identification numbers is rescinded and rewritten to streamline the process and make the rule easier to understand.

Rule 761—400.55(321) regarding damage disclosure statements is amended to delete unnecessary language and conform to 2004 Iowa Acts, chapter 1007.

Chapter 401, "Special Registration Plates," is revised to shorten the chapter by consolidating provisions regarding late renewals, gift certificates and plate reassignments that are currently scattered throughout the chapter and by eliminating unnecessary repetition of the Iowa Code or other rules. Chapter 401 is also revised to:

- Eliminate a restriction that formerly limited the validity of gift certificates for special registration plates to 90 days.
- Eliminate the requirement that a copy of the amateur radio license must accompany an application for amateur radio call letter plates. The application form has been revised to include a space for listing the license number.
- Add new rule 761—401.13(321) on disabled veteran plates. The subject matter was formerly covered in Chapter 400. The new location should be more convenient for readers.
- Allow county treasurers to approve applications for and issue persons with disabilities plates.
- Add rule 761—401.32(321), which establishes a uniform time period of 30 days for the surrender of special registration plates when the person to whom the plates are issued is no longer eligible for the plates. This new rule also provides for the proration of registration fees when special registration plates exempt from the payment of regular registration fees are exchanged for regular registration plates.
- Add rule 761—401.33(321), which states that validation fees for special registration plates are not prorated.
- Allow lessees who have special registration plates to reassign the plates.

Chapter 411, "Persons with Disabilities Parking Permits," is amended to specify where application forms may be obtained and returned and to eliminate unnecessary repetition

## TRANSPORTATION DEPARTMENT[761](cont'd)

of the Iowa Code. Also, rule 761—411.6(321L) is rescinded because 2005 Iowa Acts, House File 216, section 40, eliminates the requirement that the Department provide a list of names and addresses of vendors who sell wheelchair parking cones.

Chapter 425, “Motor Vehicle and Travel Trailer Dealers, Manufacturers, Distributors and Wholesalers,” is amended to move language on car lots and travel trailer lots from rule 761—425.3(322) to rule 761—425.17(322). The new location should be more convenient for readers. Also, rule 761—425.72(321) is amended to change the procedure for issuing demonstration permits. The \$10 permit fee is eliminated. The permit form is changed from a three-part form to a one-part form.

Chapter 451, “Emergency Vehicle Permits,” is amended to remove definitions that are not needed. Also, the expiration date of certificates of designation for privately owned, authorized emergency vehicles is changed from an annual expiration date to an expiration date of midnight on the thirty-first day of December five years from the issuance date.

Chapter 750, “Aircraft Registration,” is amended to strike a sentence on damaged aircraft that does not agree with Iowa Code section 328.21 and to update the rule on renewal notices.

These amendments 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: [julie.fitzgerald@dot.iowa.gov](mailto:julie.fitzgerald@dot.iowa.gov).

5. Be received by the Director’s Staff Division no later than October 4, 2005.

A meeting to hear requested oral presentations is scheduled for Thursday, October 6, 2005, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

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 by October 17, 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 § 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 rule 761—400.1(321) as follows:

**761—400.1(321) Definitions.** The definitions in Iowa Code section 321.1 are hereby made part of this chapter. In addition, the following words and phrases, when used in Iowa Code chapter 321 or this chapter, shall have the meanings respectively ascribed to them, except when the context otherwise requires.

**400.1(1)** “Certificate of title” means a document issued by the appropriate official which contains a statement of the owner’s title, the name and address of the owner, a description of the vehicle, a statement of all security interests and additional information required under the laws or rules of the jurisdiction in which the document was issued, and which is recognized as a matter of law as a document evidencing ownership of the vehicle described. The terms “title certificate,” “title only,” and “title” shall be synonymous with the term “Certificate of title.”

**400.1(2)** “Dealer’s or manufacturer’s stock or inventory” means a vehicle owned by a dealer which is being held for sale or trade and for which the dealer has a duly assigned ownership document as required by Iowa Code section 321.45.

**400.1(3)** “Farm trailer” means a trailer used exclusively by a farmer in the conduct of the farmer’s agricultural operation. The term shall not include a “semitrailer.”

**400.1(4)** “Half-year fee” means the first semiannual installment of an annual registration fee. The term “half-year registration” shall be synonymous with the term “half-year fee.”

**400.1(5)** “Hearse” means a motor vehicle used exclusively to transport a deceased person.

**400.1(6)** ~~“Housecar” means a motor truck, other than a van-type vehicle, that has been converted to provide a temporary or recreational dwelling which is not permanently equipped with enough systems to meet the definition of a motor home.~~

**400.1(7)** ~~“Kit vehicle” means a motor vehicle which has been assembled by a person other than a manufacturer of vehicles.~~

~~a. To be termed a “kit vehicle,” the assembled motor vehicle shall consist of a minimum of the following new parts:~~

~~(1) Truck or truck tractor: Vehicle cab and frame.~~

~~(2) Motorcycle or motorized bicycle: Vehicle frame. However, a new motorcycle or motorized bicycle which is delivered by a manufacturer, distributor or importer to a purchaser as an unassembled vehicle shall not be considered a kit vehicle.~~

~~(3) All other motor vehicles: Vehicle body.~~

~~b. The term “glider kit” shall be synonymous with the term “kit vehicle.”~~

**400.1(8)** “Lien” means an interest in a vehicle which secures payment or performance of an obligation. The term “security interest” shall be synonymous with the term “lien.”

**400.1(9)** “Manufacturer’s certificate of origin” means a certification signed by the manufacturer, distributor or importer that the vehicle described has been transferred to the person or dealer named and that the transfer is the first transfer of the vehicle in ordinary trade and commerce.

~~a. 1. The terms “manufacturer’s statement,” “importer’s statement or certificate,” “MSO” and “MCO” shall be synonymous with the term “manufacturer’s certificate of origin.”~~

~~b. 2. In addition to the requirements of Iowa Code subsection 321.45(1), the certificate shall contain a description of the vehicle which includes the make, model, style and vehicle identification number. The description of a motorized bicycle shall also specify the engine displacement and maximum speed.~~

## TRANSPORTATION DEPARTMENT[761](cont'd)

e. 3. For 1992 and subsequent model year vehicles, the form used for manufacturers' certificates of origin shall be the universal form adopted in 1990 by the American Association of Motor Vehicle Administrators (AAMVA). This requirement does not apply to trailer-type vehicles. A copy of this universal form is on file in the office of vehicle services at the address in subrule 400.6(1).

~~400.1(10)~~ "Model year," except where otherwise specified, means the year of original manufacture or the year certified by the manufacturer. For purposes of titling and registration, the model year shall advance one year each January 1.

~~400.1(11)~~ Rescinded IAB 2/6/02, effective 3/13/02.

~~400.1(12)~~ "Registered" means that the appropriate registration fee has been paid for a vehicle and a registration card evidencing payment has been issued to the owner.

~~400.1(13)~~ "Registration card" means a document issued to the owner of a vehicle by the appropriate agency whose duty it is to register vehicles, which contains the name and address of the owner and a description of the vehicle, and which is issued to the owner when the vehicle has been registered. The terms "registration certificate," "registration receipt" and "registration renewal receipt" are synonymous with the term "registration card."

~~400.1(14)~~ "Security interest" means an interest in a vehicle which secures payment or performance of an obligation. The term "lien" shall be synonymous with the term "security interest."

~~400.1(15)~~ "Special fuel" means any type of fuel, other than gasoline or gasohol, that propels a motor vehicle, including fuel which is manufactured from gasoline by-products and any type of fuel that does not meet the definition of motor fuel in Iowa Code subsection 452A.2(1).

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23, 321.24, 321.40, 321.41, 321.45, 321.50, 321.117, 321.123, 321.134 and 321.157.

ITEM 2. Amend subrule 400.2(8) as follows:

~~400.2(8)~~ Private school buses, fire trucks, *authorized emergency vehicles*, and transit buses. In accordance with Iowa Code sections 321.18, 321.19 and 321.22, private school buses, fire trucks not owned or operated for a pecuniary profit, *certain authorized emergency vehicles owned and operated by nonprofit organizations*, and urban and regional transit system buses are ~~exempted~~ *exempt* from the payment of registration fees. However, these vehicles are not ~~exempted~~ *exempt* from the requirements for obtaining a certificate of title as set out in Iowa Code chapter 321, including payment of the appropriate certificate of title fee.

ITEM 3. Amend rule 761—400.3(321) as follows:

**761—400.3(321) Application for certificate of title or registration for a vehicle.**

~~400.3(1)~~ Application form. To apply for a certificate of title or registration for a vehicle, the owner of the vehicle shall complete ~~Form 411007 an application form prescribed by the department. However, if the vehicle is leased, the owner shall complete Form 411179 instead.~~ Application shall be made in accordance with Iowa Code sections 321.20, 321.23, 321.46, and 321.71, ~~this rule chapter 321, these rules~~, and other applicable provisions of law.

~~400.3(2)~~ No change.

~~400.3(3)~~ Information about owner, lessee and primary user. *See Iowa Code sections 321.20 and 321.109.*

a. If the owner is an individual:

(1) ~~The individual's driver's license number and social security number shall be listed on the application form. If the individual does not have a social security number but has a~~

~~passport, the passport number shall be listed. If the individual does not have a driver's license, a social security number or a passport, the department shall assign a unique, temporary motor vehicle control number valid for two months. Before the expiration of two months, the individual shall return to the county treasurer's office and report the newly acquired driver's license, social security or passport number.~~

(2) ~~The individual's Iowa driver's license number is the motor vehicle control number. If the individual does not have an Iowa driver's license, the individual's social security number is the motor vehicle control number.~~

b. ~~If the owner is a partnership, corporation, association, or governmental subdivision, the federal employer's identification number shall be listed on the application form. This number is the entity's motor vehicle control number. If the organization does not have a federal employer's identification number, the department shall assign a unique motor vehicle control number.~~

c. ~~The motor vehicle control number will not appear on the certificate of title and registration receipt issued for the vehicle. However, the motor vehicle control number is coded and listed on the department's title and registration records for the vehicle as follows:~~

~~1—Iowa driver's license number~~

~~2—Social security number~~

~~3—Federal employer's identification number~~

~~400.3(4)~~ Information about lessee. If the vehicle is leased and has a gross vehicle weight of less than 10,000 pounds, the application shall contain information relating to the lessee of the vehicle, as listed in Iowa Code Supplement section 321.20(1).

~~400.3(5)~~ Information about primary user. If the vehicle is owned by a nonresident, the application shall contain information relating to the primary user of the vehicle, as listed in Iowa Code Supplement section 321.20.

~~400.3(6)~~ ~~400.3(4)~~ Plate number and validation number. If the owner has registration plates that have been assigned to the owner and affixed to the vehicle, the owner shall list the plate number on the application form. The validation number from the validation sticker shall also be listed.

~~400.3(7)~~ ~~400.3(5)~~ Birth or registration month. If the vehicle is owned by one individual, the individual's month of birth shall be listed on the application form and shall determine the registration year. If the vehicle is owned by two or three individuals, the month of birth of one of the individuals shall be listed and shall determine the registration year. If the vehicle is owned by a partnership, corporation, association, or governmental subdivision, the birth or registration month shall be left blank on the application; the county treasurer shall determine the month of registration.

~~400.3(8)~~ ~~400.3(6)~~ Model year. The application shall include the model year of the vehicle.

~~400.3(9)~~ ~~400.3(7)~~ Purchase information. The application shall include the date of purchase or acquisition and, if the vehicle was not purchased from a dealer, the purchase price.

~~400.3(10)~~ ~~400.3(8)~~ Vehicle color. The application shall include the vehicle color.

~~400.3(11)~~ ~~400.3(9)~~ Foreign registered vehicle. If the vehicle is registered in a foreign jurisdiction, the application shall include the date the vehicle was brought into Iowa.

~~400.3(12)~~ ~~400.3(10)~~ Signature of applicant. The owner shall sign the application form ~~in ink.~~

~~400.3(13)~~ ~~400.3(11)~~ Dealer certification.

a. No change.

## TRANSPORTATION DEPARTMENT[761](cont'd)

b. The certification shall include the dealer's number and name and shall be signed ~~in ink~~ by the dealer or an authorized representative of the dealer.

~~400.3(14)~~ **400.3(12)** Weigh ticket. If application is being made to lower the tonnage on any motor truck, bus or truck tractor, the county treasurer may require a copy of a stamped weigh ticket issued by any public scale.

~~400.3(13)~~ **400.3(13)** Credits. See rule 400.60(321) for:

*Credit for unexpired registration fee.*

*Credit for transfer to spouse, parent or child.*

*Credit from/to proportional registration.*

*Assignment of credit and registration plates from lessor to lessee.*

~~400.3(15)~~ **400.3(15)** Credit for unexpired registration fee. See 400.60(1).

~~400.3(16)~~ **400.3(16)** Credit for transfer to spouse, parent or child. See 400.60(2).

~~400.3(17)~~ **400.3(17)** Credit from/to proportional registration. See 400.60(3).

~~400.3(18)~~ **400.3(18)** Assignment of credit and registration plates from lessor to lessee. See 400.60(4).

~~400.3(19)~~ **400.3(14)** Leased vehicle. As required by Iowa Code section 423.7A, the lessor shall list the lease price of the vehicle on the application form.

~~400.3(20)~~ **400.3(20)** Transfer of ownership with Iowa title. When transferring ownership of a vehicle with an Iowa title, the application provided with the certificate of title may be used in lieu of Form 411007.

This rule is intended to implement Iowa Code sections 321.1, 321.8, 321.20, 321.23 to 321.26, 321.31, 321.34, 321.46, 321.109, 321.122 and 423.7A.

ITEM 4. Amend subrule **400.4(1)**, paragraph "c," as follows:

c. If a 1980 or subsequent model year vehicle is manufactured by a person other than the original manufacturer, both the original manufacturer's certificate of origin and the final manufacturer's certificate of origin shall be submitted. All assignments or reassignments of ownership of the vehicle shall be made on the final manufacturer's certificate of origin. The face of the original manufacturer's certificate of origin shall be stamped in bold type with the statement: "Final manufacturer's MSO MCO has been issued on this vehicle." The original manufacturer's vehicle identification number shall be listed on the final manufacturer's certificate of origin.

ITEM 5. Amend subrule 400.4(6) as follows:

**400.4(6)** Vehicle acquired by a resident of this state by operation of law. If the vehicle was acquired by the applicant by operation of law as upon inheritance, devise or bequest, order in bankruptcy, insolvency, replevin, foreclosure or execution sale, under the laws of descent and distribution, artisan's lien sale, storage lien sale or abandoned vehicle sale specified in Iowa Code section 321.47, the last issued certificate of title shall be submitted by the applicant, or when that is not possible, presentation of satisfactory proof of the applicant's ownership and right of possession to the vehicle shall be submitted by the applicant. Proof of ownership may consist of a foreclosure sale affidavit, artisan's or storage lien affidavit, affidavit of death intestate, abandoned vehicle sales receipt, peace officers bill of sale or court order. See also subrules 400.14(4) and 400.14(5).

ITEM 6. Amend rule **761—400.4(321)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.30, 321.31, 321.45 to 321.50, and 321.67, and 321.71.

ITEM 7. Amend subrule 400.5(2) as follows:

**400.5(2)** Application shall be made to the department's office of vehicle services for the following:

a. Titling and registration of vehicles owned by the government. This requirement does not apply to manufactured or mobile homes subject to a scavenger public bidder sale pursuant to as explained in Iowa Code subsection 321.46(2).

b. to d. No change.

e. *Registration of certain authorized emergency vehicles owned and operated by nonprofit organizations.*

e. f. Registration of private school buses.

f. g. Registration of vehicles under the provisions of Iowa Code subsection 321.23(4), relating to restricted-use vehicles.

ITEM 8. Amend rule 761—400.6(17A) as follows:

**761—400.6(17A) Addresses, information and forms.** Information and forms for vehicle registration, certificate of title, or other procedures covered under Iowa Code sections 321.18 to 321.173 may be obtained from the county treasurer or these department offices from:

**400.6(1)** and **400.6(2)** No change.

**400.6(3)** The Internet at the following address: <http://www.iamvd.com>.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 9. Amend rule 761—400.7(321) as follows:

**761—400.7(321) Information appearing on title and or registration.** In addition to the requirements of Iowa Code sections 321.24, 321.52, 321.69, 321.71 and 322G.12, a certificate of title or registration receipt or both shall contain the following information when applicable:

**400.7(1)** No change.

**400.7(2)** Registration month, as explained in subrule 400.3(4) rule 400.3(321).

**400.7(3)** No change.

**400.7(4)** Description of the vehicle, including the following items. These items may be represented on the title and registration by code letters or numbers.

a. to d. No change.

e. Series: *of a motor home, which will be shown on the title as "motor home a," "motor home b" or "motor home c."*

(1) ~~The series of a motor home shall be the letters "MH" followed by the class designation of the motor home—"A," "B" or "C."~~

(2) ~~Reserved.~~

f. to j. No change.

**400.7(5) to 400.7(7)** No change.

**400.7(8)** ~~Fee code, penalties, Penalties and title, registration and security interest receipt number numbers.~~

**400.7(9) and 400.7(10)** No change.

**400.7(11)** Full legal name of owner. ~~If the full legal name exceeds 32 characters, the middle initial, rather than the full legal middle name, will be shown.~~

This rule is intended to implement Iowa Code sections 321.24, 321.31, 321.40, 321.45, 321.48, 321.52, 321.69, 321.71, 321.124 and 322G.12.

ITEM 10. Amend rule 761—400.8(321) as follows:

TRANSPORTATION DEPARTMENT[761](cont'd)

**761—400.8(321) Release form for cancellation of security interest.**

**400.8(1)** A secured party may use ~~Form 411168~~ a form prescribed by the department to note the cancellation of a security interest.

**400.8(2)** No change.

**400.8(3)** The secured party shall forward the original release cancellation form or statement (~~Form 411168 or the signed statement~~) to the department or to the county treasurer of the county where the title was issued. Facsimiles and photocopies are not acceptable.

**400.8(4)** No change.

This rule is intended to implement Iowa Code subsection 321.50(4).

ITEM 11. Rescind and reserve rule **761—400.9(321)**.

ITEM 12. Amend rule 761—400.11(321) as follows:

**761—400.11(321) Sheriff's levy noted as a security interest.** A sheriff's levy may be noted as a security interest on a certificate of title if the sheriff so desires.

~~Form 411046, "Application for Notation of Security Interest," shall be completed and shall be signed by To apply for a notation of a security interest, the sheriff or the sheriff's deputy shall complete an application form prescribed by the department. The sheriff or sheriff's deputy shall sign the application in the space where the signature of the owner is ordinarily required. The signature of the owner shall is not be required. The appropriate notation fee shall be submitted with the application form to the county treasurer of the county where the certificate of title was issued. If the certificate of title is not surrendered with the application, the county treasurer shall notify the holder of the certificate of title in the manner prescribed in Iowa Code section 321.50.~~

This rule is intended to implement Iowa Code section 321.50.

ITEM 13. Amend subrule 400.12(2) as follows:

**400.12(2)** Application for a replacement certificate of title shall be made on ~~Form 411033~~ a form prescribed by the department. All owners of the vehicle as listed on the certificate of title shall sign the application form. If an owner is deceased, the signatures and documents specified in subrules 400.14(4) and 400.14(5) shall be required in lieu of the deceased owner's signature. A person entitled to vehicle ownership under the laws of descent and distribution shall sign the required forms and shall insert the words "heir at law" following the signature.

ITEM 14. Rescind rule 761—400.13(321) and adopt in lieu thereof **new** rule 761—400.13(321) as follows:

**761—400.13(321) Bond required before title issued.** An applicant for a certificate of title who cannot provide the supporting documents required in rule 400.4(321) shall be required to file a bond as a condition to obtaining a title and registration plates.

**400.13(1) Procedures.** This subrule describes the procedures to be followed to obtain a "bonded" certificate of title. The procedures described are in addition to the regular procedures for titling and registering a vehicle.

a. The applicant shall submit a bond application to the office of vehicle services on a form prescribed by the department. The application shall be accompanied by a copy of the written ownership document received at the time the vehicle was acquired.

b. The department shall search the state files to determine if there is an owner of record for the vehicle and if the vehicle has been reported stolen or embezzled.

(1) If a record is found, the applicant shall complete a request for release of personal information form explaining that the applicant is the current owner and is requesting a duplicate title. The department shall mail the release by first-class mail to the owner of record, at the owner's last-known address.

(2) If the department receives no response from the owner of record within ten days after the date of mailing or the owner of record does not want the owner's personal information released, the department will continue processing the bond application.

c. If the department determines that the applicant has complied with this rule, that there is sufficient evidence to indicate that the applicant is the rightful owner, and that there is no known unsatisfied security interest, the department shall determine the current value of the vehicle and notify the applicant to deposit cash or file a surety bond with the department in an amount equal to one and one-half times the current value of the vehicle.

d. After the cash deposit or surety bond has been deposited, a motor vehicle investigator of the department shall examine the vehicle to verify the information submitted on the application is correct. After verifying the information, the investigator shall give to the applicant a document authorizing the county treasurer to issue a title for and register the vehicle. Should the vehicle not meet the equipment requirements of Iowa Code chapter 321, the investigator shall authorize the county treasurer to issue a title and registration but instruct the county treasurer to immediately suspend the registration until such time as the vehicle meets these equipment requirements. If applicable, the investigator shall also affix an assigned identification number to the vehicle and give to the applicant an assigned vehicle identification number (VIN) form.

e. The applicant shall then submit the authorization document and, if applicable, the VIN form to the county treasurer and make application for a certificate of title and registration.

**400.13(2) Disapproval.** If the department determines that the applicant has not complied with this rule, that there is sufficient evidence to indicate that the applicant may not be the rightful owner, or that there is an unsatisfied security interest, then the department shall not authorize issuance of a certificate of title or registration receipt and shall notify the applicant in writing of the reason(s).

**400.13(3) Junked vehicle.** A certificate of title shall not be reinstated for a vehicle that has been issued a junking certificate unless the junking certificate was issued in error, as explained in rule 400.23(321), or the vehicle qualifies as an antique vehicle under Iowa Code subsection 321.115(1).

This rule is intended to implement Iowa Code sections 321.24 and 321.52.

ITEM 15. Amend subrule 400.14(5) as follows:

**400.14(5) Death without a will.** When ownership is transferred from a decedent without a will and there is no administration of the estate, a certificate an affidavit of death intestate form signed by the clerk of court shall be required. When ownership is transferred from a decedent without a will but there is an administration of the estate, a copy of the court order or the letter of appointment appointing the person assigning the title as administrator shall be required.



## TRANSPORTATION DEPARTMENT[761](cont'd)

ITEM 16. Amend rule **761—400.14(321)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.20, 321.24, 321.45, 321.47, 321.49, and 321.67.

ITEM 17. Rescind rule 761—400.16(321) and adopt in lieu thereof **new** rule 761—400.16(321) as follows:

**761—400.16(321) Application for certificate of title or original registration for a specially constructed or reconstructed vehicle.**

**400.16(1)** Definitions applicable to this rule.

a. "Ownership document for the vehicle" means the certificate of title, the manufacturer's certificate of origin, the junking certificate, or other evidence of ownership acceptable to the department.

b. "Ownership documents for essential parts" means bills of sale for all essential parts used to construct or reconstruct the vehicle. Each bill of sale shall contain a description of the part, the manufacturer's identification number of the part, if any, and the name, address, and telephone number of the seller.

**400.16(2)** Procedures. This subrule describes the procedures for obtaining department approval to title and register a specially constructed or reconstructed vehicle. The procedures described are in addition to the regular procedures for titling and registering a vehicle.

a. The applicant shall apply to the county treasurer for a certificate of title and registration. The county treasurer, upon receiving an application that indicates the vehicle is a specially constructed or reconstructed vehicle, shall forward the application to a motor vehicle investigator of the department.

b. The investigator shall contact the applicant in person or by telephone and schedule a time and place for an examination of the vehicle and the ownership documents. The applicant, when appearing with the vehicle for the examination, shall submit to the investigator the ownership document for the vehicle, the ownership documents for essential parts, and a weigh ticket indicating the weight of the vehicle. However, a weigh ticket is not required for motorcycles, trucks, truck tractors, road tractors or trailer-type vehicles.

c. If the investigator determines that the vehicle complies with 761—Chapter 450, that the integral parts and components have been identified as to ownership, and that the application has been completed properly:

(1) The investigator shall approve the application, affix to the vehicle an assigned vehicle identification number, and return the application and ownership documents to the applicant. The investigator shall also give to the applicant an assigned vehicle identification number (VIN) form that the applicant shall submit with the application to the county treasurer.

(2) If the vehicle is a passenger-type motor vehicle, the department shall determine its weight and value. The vehicle weight shall be fixed at the next even 100 pounds above the actual weight of the vehicle fully equipped, as provided in Iowa Code section 321.162. The weight and value shall constitute the basis for determining the annual registration fee under Iowa Code section 321.109, except as provided in Iowa Code section 321.113.

(3) The applicant shall then submit the approved application, ownership document for the vehicle, and VIN form to the county treasurer and continue with the regular title and registration process.

**400.16(3)** Disapproval. If the department determines that the vehicle does not comply with 761—Chapter 450, that the integral parts or components have not been identified as to

ownership, or that the application has not been completed properly, then the department shall not approve the vehicle for titling and registration.

**400.16(4)** Model year. The model year of a specially constructed or reconstructed vehicle is the year the vehicle is approved by the department as a specially constructed or reconstructed vehicle.

This rule is intended to implement Iowa Code sections 321.20, 321.23, 321.24, 321.52, 321.109 and 321.162.

ITEM 18. Rescind and reserve rule **761—400.17(321)**.

ITEM 19. Amend rule 761—400.20(321), introductory paragraph, as follows:

**761—400.20(321) Registration of motor vehicle weighing 55,000 pounds or more.** When applying for registration or renewal of registration for a motor vehicle weighing 55,000 pounds or more, the owner shall present to the department or to the county treasurer proof of compliance with the federal heavy vehicle use tax required by the ~~Surface Transportation Assistance Act of 1982 26 U.S.C. Section 4481~~ and 26 CFR Part 41 as amended in the Federal Register on May 23, 1985.

ITEM 20. Amend subrule 400.21(3) as follows:

**400.21(3)** A certificate of restriction shall be issued in conjunction with registration of the vehicle, listing the restrictions that apply to the operation of the vehicle.

a. No change.

b. The department may *waive approve exceptions to* those equipment requirements of Iowa Code chapter 321 which cannot be met due to the particular use for which the vehicle is designed or intended.

ITEM 21. Amend rule **761—400.21(321)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.1 and 321.234A and subsections 321.23(4), 321.30(2), and ~~321.101(2)~~ 321.101(1).

ITEM 22. Amend rule 761—400.25(321) as follows:

**761—400.25(321) Fees established by the department.**

~~**400.25(1)** If a manufacturer or importer fails to provide a sworn statement of the department cannot obtain the retail list price and weight for a particular motor vehicle model registered under Iowa Code subsection 321.109(1) and sold or offered for sale in Iowa, the department shall determine a list price and weight. This subrule does not apply to multipurpose vehicles.~~

~~**400.25(2)** Beginning with the 1993 model year, if the manufacturer or importer fails to provide a list price and weight for a multipurpose vehicle, the department shall use the fee specified in Iowa Code paragraph 321.124(3)"h" to determine the annual registration fee due.~~

This rule is intended to implement Iowa Code sections 321.109, ~~321.124~~ 321.157 and 321.159.

ITEM 23. Amend subrule **400.27(4)**, paragraph "c," as follows:

c. The vehicle has been registered in a foreign state or country that does not permit its titles to be reassigned by Iowa dealers or all reassignment spaces on the title are full and the application for a new certificate of title is submitted more than ~~45~~ 30 days after the date the vehicle entered Iowa. The registration fee due shall be prorated for the remaining unexpired months of the dealer's registration year.

ITEM 24. Rescind and reserve rule **761—400.29(321)**.

ITEM 25. Amend rule **761—400.30(321)**, implementation clause, as follows:



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This rule is intended to implement Iowa Code sections 321.18, 321.20, 321.53 to 321.55, 321.101 and 321.135.

ITEM 26. Rescind and reserve rule **761—400.33(321)**.

ITEM 27. Amend rule 761—400.35(321), introductory paragraph, as follows:

**761—400.35(321) Registration of vehicles equipped for persons with disabilities.** The registration fee shall be reduced for a multipurpose vehicle with permanent equipment for assisting a person with a disability or for a multipurpose vehicle used by a person who uses a wheelchair as the person's only means of mobility. To qualify for the reduction, the owner of the vehicle must ~~certify~~ *provide a written self-certification at the first registration and at each renewal on forms provided by the department*:

ITEM 28. Amend rule **761—400.40(321)**, implementation clause, as follows:

This rule is intended to implement Iowa Code sections 321.1, 435.1, 435.26, 435.26A and 435.27.

ITEM 29. Amend rule 761—400.43(321) as follows:

**761—400.43(321) Storage of vehicles.**

**400.43(1)** The owner of a vehicle upon which the registration fee is not delinquent may surrender all registration plates for the vehicle to the county treasurer where the vehicle is registered and shall have the right to register the vehicle later upon payment of the annual registration fee. *However, if a vehicle was placed in storage any month prior to the expiration of the registration, the fee is \$5 for a set of replacement plates.*

**400.43(2)** The registration plates which have been surrendered shall be retained and reissued to the owner if the vehicle is registered again within 30 days from the date of surrender of the plates. If the vehicle is not registered within the 30-day period, the plates shall be destroyed and new plates assigned to the owner when the vehicle is registered, ~~without payment of a replacement plate fee.~~

**400.43(3)** The owner of a motor vehicle which is placed in storage when the owner enters the military service of the United States shall comply with Iowa Code subsection 321.126(3), and ~~this rule subrule 400.43(1) shall does not apply.~~

This rule is intended to implement Iowa Code sections 321.126 and 321.134.

ITEM 30. Amend rule 761—400.44(321) as follows.

**761—400.44(321) Penalty on registration fees.**

**400.44(1) to 400.44(4)** No change.

~~**400.44(5)** Specific penalty date. When a specific penalty date is provided by law, the penalty shall accrue from that date, even if the day is a Saturday, Sunday or holiday.~~

~~**400.44(6)** **400.44(5)** Statement of nonuse. If the owner of a vehicle, on which the registration fees have not been paid for more than three complete registration years, certifies to the county treasurer of the owner's residence that the vehicle has not been moved or operated upon the highway since the year it was last registered, the county treasurer may register the vehicle upon payment of the current year's registration fee.~~

This rule is intended to implement Iowa Code sections 321.39, 321.46, 321.47, 321.49, 321.134 and 321.135.

ITEM 31. Amend subrule 400.45(1) as follows:

**400.45(1)** The department shall suspend or revoke registration and plates under Iowa Code section 321.101 when a

written request is received from a peace officer or the county treasurer's office that issued the registration and plates.

a. A request from a peace officer shall be submitted on Form 411012, "Request for Cancellation of Title or Revocation or Suspension of Registration and Plates," signed by the officer's supervisor *a form prescribed by the department*.

b. A request from a county treasurer's office shall be signed by the county treasurer *or designee*.

ITEM 32. Amend rule **761—400.47(321)**, implementation clause, as follows:

This rule is intended to implement Iowa Code section 321.466, subsections (5) and (6) ~~and (7)~~.

ITEM 33. Amend rule 761—400.50(321,326) as follows:

**761—400.50(321,326) Refund of registration fees.**

**400.50(1)** Vehicles registered by county treasurer.

a. No change.

b. The owner of the motor vehicle shall claim the refund by submitting Form 411047 ~~and the registration receipt a form prescribed by the department to the county treasurer's office in the any county where the vehicle is registered. The form may be obtained from the county treasurer or from the office of vehicle services at the address in subrule 400.6(1).~~ If the registration receipt was submitted to claim a credit, the county treasurer will provide a complete copy of the registration receipt to be used for claiming the refund.

c. and d. No change.

e. ~~If the sold or junked vehicle was a trailer not subject to titling, the owner may obtain a free duplicate registration receipt from the county treasurer for the purpose of claiming a refund.~~

f. ~~For a vehicle that was junked, The the date on the junking certificate or the date entered on the registration receipt shall determine the date the vehicle was sold or junked.~~

g. f. If the claim for refund is for excess credit or no replacement vehicle:

(1) No change.

(2) ~~The county treasurer shall write the computer-assigned claim number on the refund form and forward, daily, to the office of vehicle services processed claims for refund and registration receipts in claim number order.~~

(3) (2) The claim for refund shall be approved or denied by the office of vehicle services.

h. g. All other claims for refund shall be forwarded to the office of vehicle services for processing.

**400.50(2)** No change.

~~**400.50(3)** Disapproved claim. If the department does not approve payment of the refund because it appears that the claimant has not complied with this rule or Iowa Code section 321.126, the claimant may file a claim with the state appeal board. If the claim is not approved by the board, the claim will be reviewed by the general assembly.~~

This rule is intended to implement Iowa Code sections 25.1, 321.126 to 321.128 and 326.15.

ITEM 34. Rescind rule 761—400.51(321) and adopt in lieu thereof new rule 761—400.51(321) as follows:

**761—400.51(321) Assigned identification numbers.** The department is authorized to issue to the owner an assigned vehicle identification number for a vehicle, an assigned component part number for a component part, and an assigned product identification number for a fence-line feeder, grain cart, or tank wagon. An identification number shall be assigned only if the department is satisfied as to the true identity and ownership of the vehicle, component part, fence-line feeder, grain

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cart or tank wagon. When an assigned vehicle identification number has been issued for a vehicle, the vehicle shall be registered and titled under that number. An assigned component part number or an assigned product identification number shall be used only for identification purposes.

**400.51(1)** Issuance of an identification number. The department shall issue an assigned vehicle identification number, assigned component part number or assigned product identification number, as applicable, only if:

a. The original number has been destroyed, removed or obliterated.

b. The vehicle has had a cab, body, or frame change and the replacement cab, body, or frame is within the manufacturer's interchangeability parts specifications catalog and is compatible with the make, model, and year of the vehicle. If the replacement cab, body, or frame change is not within the manufacturer's interchangeability parts specifications catalog or is not compatible with the make, year, and model of the vehicle, the vehicle shall be considered reconstructed and subject to rule 400.16(321).

c. The vehicle is a specially constructed or reconstructed vehicle. See rule 400.16(321) for the requirements and procedures applicable to specially constructed or reconstructed vehicles.

**400.51(2)** Procedures.

a. Request. Whenever an assigned identification number is required under subrule 400.51(1) and the request does not apply to a specially constructed or reconstructed vehicle, the owner of the vehicle, component part, fence-line feeder, grain cart or tank wagon, or the person holding lawful custody, shall contact the department's office of motor vehicle enforcement and request the assignment of a number.

b. Examination. A motor vehicle investigator shall contact the owner and schedule a time and place for examination of the vehicle, component part, fence-line feeder, grain cart or tank wagon and ownership documents.

If the vehicle has had a cab, body, or frame change, the owner shall have, for evidence of ownership for the replacement cab, body, or frame, a bill of sale with a description of the part, complete with the manufacturer's identification number, if any, and the name, address, and telephone number of the seller. The bill of sale, the vehicle, and the cab, body, or frame that has been replaced shall be made available for examination at the time and place scheduled.

c. Assigned vehicle identification number.

(1) The investigator upon approval of the request shall affix to the vehicle an assigned vehicle identification number and give to the owner an assigned vehicle identification number (VIN) form.

(2) The owner shall submit the VIN form, the certificate of title, and the registration receipt issued for the vehicle to the county treasurer. If the certificate of title is in the possession of a secured party, the county treasurer shall notify the secured party to return the certificate of title to the county treasurer for the purpose of issuing a corrected title. Upon receipt of the notification, the secured party shall submit the certificate of title within ten days. The county treasurer, upon receipt of the certificate of title, the registration receipt and the VIN form, shall issue a corrected title and registration receipt listing as the vehicle identification number the assigned vehicle identification number.

d. Assigned component part number. The investigator upon approval of the request shall affix to the component part an assigned component part number and give to the owner a component part form. The owner shall retain the form as a

record of issuance and attachment. The form shall be made available on demand by any peace officer for examination.

e. Assigned product identification number. The investigator upon approval of the request shall affix an assigned product identification number to the fence-line feeder, grain cart or tank wagon and give to the owner an assigned product identification number form. The owner shall retain the form as a record of issuance and attachment. The form shall be made available on demand by any peace officer for examination.

**400.51(3)** Fees. A certificate of title fee and a fee for a notation of a security interest, if applicable, shall be collected by the county treasurer upon issuance of a corrected certificate of title.

This rule is intended to implement Iowa Code sections 321.1, 321.43 and 321.92.

ITEM 35. Amend rule 761—400.52(321) as follows:

**761—400.52(321) Odometer statement.**

**400.52(1)** Pursuant to Iowa Code section 321.71 and the Truth in Mileage Act of 1986 (15 U.S.C. 1988) 49 U.S.C. Section 32705, an odometer disclosure statement shall be submitted with an application for certificate of title for a motor vehicle. The statement shall provide a current odometer reading and reflect whether the mileage is "actual," "not actual" or "exceeds mechanical limits."

**400.52(2)** If the transferor failed to provide an odometer disclosure statement or if the transferee lost the statement, and the transferee has attempted in good faith to contact the transferor to obtain a statement, the transferee may file a sworn statement of these facts on Form 411099 which is available from a county treasurer or the department a form prescribed by the department. The sworn statement shall be accepted by the county treasurer or the department in lieu of the required odometer disclosure statement. The subsequent title issued from Form 411099 the sworn statement will record "not actual" mileage.

**400.52(3)** No change.

This rule is intended to implement Iowa Code section 321.71.

ITEM 36. Amend subrule 400.53(2) as follows:

**400.53(2)** Special fuel user identification sticker. If the vehicle uses a special fuel as defined in subrule 400.1(15) of this chapter Iowa Code section 452A.2, a special fuel user identification sticker shall be issued. This sticker shall be displayed on the cover of the fuel inlet of the motor vehicle or on the outside panel of the motor vehicle within 3 inches of the fuel inlet so as to be in view when fuel is delivered into the motor vehicle.

ITEM 37. Amend rule 761—400.55(321) as follows:

**761—400.55(321) Damage disclosure statement.**

**400.55(1)** Pursuant to Iowa Code section 321.69, a damage disclosure statement shall be submitted with an application for certificate of title for a motor vehicle. The damage disclosure statement in the assignment/reassignment area on the back of the title shall be used. However, if this is not available or if a separate disclosure document is required, the damage disclosure statement shall be made on a separate form approved by the department for this purpose.

**400.55(2)** **400.55(1)** If the transferor failed to provide a damage disclosure statement or if the transferee lost the statement, and the transferee has attempted in good faith to contact the transferor to obtain a statement, the transferee may file a sworn statement of these facts. The transferee shall also complete section 2 4, question 2, of a separate damage dis-

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closure document, Form No. 411408, *statement* and sign on the buyer's line. The sworn statement and *damage disclosure document statement* completed by the transferee shall be accepted by the county treasurer or the department in lieu of the damage disclosure statement required from the transferor.

~~400.55(3) Any damage disclosed by a damage disclosure statement shall be rounded to the nearest whole dollar when recorded on the face of the title.~~

~~400.55(4) The county treasurer shall retain the damage disclosure statement for the life of the title.~~

~~400.55(5)~~ **400.55(2)** A model year formula for damage disclosure statements shall be the current year minus ten *eight*. The resulting number represents the first model year for which a motor vehicle is exempt from the damage disclosure statement requirements incident to a transfer.

This rule is intended to implement Iowa Code section 321.69.

ITEM 38. Amend rule 761—400.58(321) as follows:

**761—400.58(321) Motorized bicycles.** The following rules shall apply to motorized bicycles.

**400.58(1)** Maximum speed. If the department has reasonable cause to believe that a particular vehicle or model is capable of speeds exceeding 25 30 miles per hour, the department may conduct independent tests to determine the maximum speed of the vehicle or model. If the department determines that the maximum speed of the particular vehicle or model exceeds 25 30 miles per hour, the vehicle or model shall not be registered as a motorized bicycle.

**400.58(2)** No change.

This rule is intended to implement Iowa Code section *sections* 321.1 and 321.166.

ITEM 39. Amend rule 761—400.60(321) as follows:

**761—400.60(321) Credit of registration fees.**

**400.60(1)** Credit for unexpired registration fee. The applicant may claim credit, as specified in Iowa Code subsection 321.46(3), toward the registration fee for one newly acquired replacement vehicle.

a. On the reverse side of the application form, the applicant shall indicate if any credit is due; if no credit is due, the applicant shall write "none."

b. The credit may be claimed only when the owner of the newly acquired vehicle is applying for a certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) for the newly acquired vehicle.

c. The registration receipt for the formerly owned or junked vehicle shall be submitted with the application form. If applicable, the applicant shall fill in the blanks on the registration receipt to show the transfer of ownership. If the registration receipt has been lost and if the applicant has traded the formerly owned vehicle to a dealer and purchased a replacement vehicle from that dealer, the dealer may obtain a replacement registration receipt from the dealer's county treasurer. If a titled vehicle has been junked by the vehicle's owner, the junking certificate issued under Iowa Code section 321.52 shall also be submitted.

(1) b. For a junked vehicle, the The date entered on the registration receipt or on the junking certificate shall determine the date the vehicle was transferred or junked.

(2) If the sold or junked vehicle was a trailer not subject to titling, the owner may obtain a free duplicate registration receipt from the county treasurer for the purpose of claiming credit.

d. c. Excess credit shall not be applied toward the registration fee for a second vehicle.

e. d. Credit shall be allowed for one or two vehicles which have been sold, traded or junked toward one replacement vehicle. Credit shall be based on the remaining unexpired months of the registration year(s) of the vehicle(s) sold, traded or junked.

**400.60(2)** Credit for transfer to spouse, parent or child. Credit shall be allowed toward a new registration for a vehicle being transferred to the applicant from the applicant's spouse, parent or child, or from a former spouse pursuant to a dissolution of marriage decree, if application for the certificate of title and registration (or just registration if the vehicle is not subject to titling provisions) is made within 30 days after the date of transfer. The registration receipt, showing assignment to the applicant, shall be submitted with the application. If the owner is deceased, credit may be transferred under rule 400.14(321) of this chapter.

**400.60(3)** No change.

**400.60(4)** Assignment of credit and registration plates from lessor to lessee. When a lessee purchases the leased vehicle and within 15 days requests the assignment of the vehicle's fee credit and registration plates, the lessor shall assign the registration fee credit and registration plates for the purchased vehicle to the lessee. The lessor shall fill in the blanks on the registration receipt and shall enter the date that the lessee requested the assignment of the registration fee credit and registration plates.

This rule is intended to implement Iowa Code sections 321.46, 321.46A, 321.48, 321.126 and 321.127.

ITEM 40. Amend rule 761—400.61(321) as follows:

**761—400.61(321) Reassignment of registration plates.**

**400.61(1)** No change.

**400.61(2)** Registration plates may be reassigned when credit is allowed toward a new registration for a vehicle being transferred to the owner's spouse, parent, or child, or to a former spouse pursuant to a dissolution of marriage decree. The owner's copy of the registration receipt, showing assignment to the transferee, shall be submitted. If the owner is deceased, plates may be transferred under rule 400.14(321).

**400.61(3)** No change.

**400.61(4)** Registration plates may be reassigned and credit allowed if two or more corporations, associations, partnerships, or firms merge into one corporation, association, partnership or firm. The owner's copy of the registration receipt showing assignment to the new entity shall be submitted.

**400.61(5)** Registration plates may be assigned and credit allowed if an owner listed on the certificate of title and registration transfers ownership of the vehicle to a trust created by that owner. The owner's copy of the registration receipt showing assignment to the trust shall be submitted.

This rule is intended to implement Iowa Code sections 321.34 and 321.46.

ITEM 41. Amend rule 761—400.64(321) as follows:

**761—400.64(321) County treasurer's report of motor vehicle collections and funds.** The county treasurer shall file the report provided for in Iowa Code section 321.153 in duplicate on the form entitled "County Treasurer's Report of Motor Vehicle Collections and Funds." in a manner prescribed by the department. The report shall be filed in the following manner:

**400.64(1)** Part One of the report shall be received by the department on or before the tenth day of the month following the month for which the fees were collected. If the tenth day falls on a Saturday, Sunday or legal holiday, the report shall be received the next working day. The amount of total

## TRANSPORTATION DEPARTMENT[761](cont'd)

collections less the amount the county treasurer is entitled to retain shall be electronically transmitted to the department on or before the due date of the report.

**400.64(2)** Upon determining that the report is in proper order, the department shall send a receipt to the county treasurer's office for the amount remitted to the department.

**400.64(3)** Part Two of the report shall be retained by the county treasurer.

This rule is intended to implement Iowa Code section 321.153.

ITEM 42. Amend rule 761—401.1(321) as follows:

**761—401.1(321) Definition.** "Special registration plates" means those registration plates issued under Iowa Code sections 321.34 and 321.105 other than regular or sample plates. Special registration plates shall be issued in accordance with Iowa Code sections 321.34 and 321.105, this chapter of rules, and other applicable provisions of law.

ITEM 43. Amend rule 761—401.2(321) as follows:

**761—401.2(321) Application, issuance and renewal.**

**401.2(1)** Original application.

a. No change.

b. Collegiate plates, personalized plates, and special registration plates that have eligibility requirements must be requested using an application form prescribed by the department. Unless otherwise specified, completed application forms for these plates shall be submitted to the department at the following address: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines. Application forms may be obtained from the office of vehicle services or from any county treasurer's office. Application forms are also available on the department's Web site at <http://www.dot.state.ia.us/mvd/ovs/plates/index.htm> <http://www.iamvd.com>.

c. No change.

**401.2(2)** No change.

**401.2(3) Renewal.** Special registration plates are renewed at the office of the county treasurer of the county of residence of the applicant. The renewal fee, if any, is termed a "validation" fee. The validation fee shall be paid when the regular annual registration fee is due and is in addition to the regular annual registration fee. *If renewal is delinquent for more than one month:*

a. *A new application and a new issuance fee are required.*

b. *The department may issue the combination of characters on personalized plates to another applicant.*

**401.2(4) Fees.** *The issuance and validation fees for the various types of special registration plates that are available are set out in Iowa Code section 321.34.*

ITEM 44. Adopt **new** rule 761—401.4(321) as follows:

**761—401.4(321) Gift certificates.** Gift certificates for collegiate plates, personalized plates, and special registration plates that have eligibility requirements may be purchased using the prescribed plate application form. Gift certificates for special registration plates that counties have in their inventories may be purchased from county treasurers' offices.

ITEM 45. Amend rule 761—401.5(321) as follows:

**761—401.5(321) Amateur radio call letter plates.**

**401.5(1) Application.** Application for amateur radio call letter plates shall be made to the county treasurer on ~~Form 41113~~ *a form prescribed by the department.* The number of

*the amateur radio license issued by the Federal Communications Commission shall be shown to listed on the county treasurer at the time of application.*

**401.5(2) Issuance.** ~~If an individual to whom amateur radio call letter plates have been issued is a joint owner of a vehicle other than the vehicle to which the plates are assigned, and the other owner also holds an amateur radio license, the other owner may apply for amateur radio call letter plates for the other vehicle. However, only one set of amateur radio call letter plates shall be issued to each amateur radio licensee.~~

ITEM 46. Amend rule 761—401.6(321) as follows:

**761—401.6(321) Personalized plates.**

**401.6(1) Application.** Application for personalized plates shall be submitted to the department on a form prescribed by the department. ~~The issuance fee is \$25.~~

**401.6(2)** No change.

~~**401.6(3) Renewal.** A validation fee of \$5 shall be paid each year. If renewal is delinquent for more than one month:~~

a. ~~A new application and \$25 issuance fee are required, even if the same combination of characters is still available.~~

b. ~~The department may issue the plates' combination of characters to another applicant.~~

~~**401.6(4) Reassignment.** A vehicle owner who has personalized plates assigned to a currently registered vehicle may assign the plates to another owner of a currently registered vehicle. A written request for reassignment shall be signed by both vehicle owners and submitted to the county treasurer of the assignor's county of residence. The personalized plates and a registration receipt shall be issued to the assignee by the county treasurer of the assignee's county of residence in exchange for the registration plates and registration receipt previously issued.~~

~~**401.6(5) Gift certificate.** A gift certificate for the issuance fee may be purchased from the department using the prescribed application form. A gift certificate is void 90 days after issuance.~~

ITEM 47. Amend rule 761—401.7(321) as follows:

**761—401.7(321) Collegiate plates.**

**401.7(1) Application.** Application for collegiate plates shall be submitted to the department on a form prescribed by the department. The applicant may request letter-number designated collegiate plates or personalized collegiate plates. ~~The issuance fee is \$50. Collegiate plates for motorcycles and small trailers are not available.~~

**401.7(2)** No change.

~~**401.7(3) Renewal.** A validation fee of \$5 shall be paid each year. If renewal is delinquent for more than one month:~~

a. ~~A new application and \$50 issuance fee are required.~~

b. ~~The department may issue the combination of characters on personalized collegiate plates to another applicant.~~

~~**401.7(4) Reassignment.** A vehicle owner may request reassignment of personalized collegiate plates in accordance with subrule 401.6(4).~~

~~**401.7(5) Gift certificate.** A gift certificate for the issuance fee may be purchased from the department using the prescribed application form. A gift certificate is void 90 days after issuance.~~

ITEM 48. Rescind rule 761—401.11(321) and adopt in lieu thereof **new** rule 761—401.11(321) as follows:

**761—401.11(321) Natural resources plates.** Letter-number designated natural resources plates are limited to five characters. Personalized natural resources plates shall consist

## TRANSPORTATION DEPARTMENT[761](cont'd)

of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

ITEM 49. Rescind and reserve rule **761—401.12(321)**.

ITEM 50. Adopt **new** rule 761—401.13(321) as follows:

**761—401.13(321) Disabled veteran plates.**

**401.13(1)** Disabled veteran plates are issued in accordance with Iowa Code sections 321.34, 321.105 and 321.166.

**401.13(2)** To apply for disabled veteran plates, the disabled veteran shall submit to the county treasurer a certification from the U.S. Department of Veterans Affairs that the motor vehicle to which the plates will be assigned has been provided by the United States government. The certification is required when the motor vehicle is first registered. Another certification may be required for the first registration of a newly acquired vehicle or when the veteran moves to another county.

**401.13(3)** The disabled veteran plates shall be surrendered to the county treasurer in exchange for regular registration plates within 30 days after the death of the disabled veteran. The motor vehicle to which the plates are assigned shall become subject to the payment of regular registration fees on the first day of the month following the death of the disabled veteran. The registration fees shall be prorated for the remaining unexpired months of the registration year.

ITEM 51. Amend subrule 401.15(1) as follows:

**401.15(1)** Application Form 41146 shall be used to submit a request to the department to recommend to request a new special registration plate with a processed emblem shall be submitted to the department on a form prescribed by the department.

ITEM 52. Rescind rule 761—401.16(321) and adopt in lieu thereof **new** rule 761—401.16(321) as follows:

**761—401.16(321) Special plates with processed emblems—general.** Special registration plates with processed emblems are limited to five characters. Personalized, special registration plates with processed emblems shall consist of no less than two nor more than five characters and shall be issued in accordance with subrule 401.6(2), paragraphs "a" to "d."

ITEM 53. Rescind subrules **401.17(4)**, **401.17(5)** and **401.17(6)**.

ITEM 54. Amend rule 761—401.20(321) as follows:

**761—401.20(321) Persons with disabilities plates.**

**401.20(1)** Application. Application for special plates with a persons with disabilities processed emblem shall be submitted to the ~~department~~ county treasurer on a form prescribed by the department.

a. and b. No change.

c. *A new application form is not required when an individual's application for issuance of persons with disabilities plates, nonexpiring removable windshield placards or parking stickers has previously been approved.*

**401.20(2)** and **401.20(3)** No change.

ITEM 55. Rescind and reserve rules **761—401.27(321)**, **761—401.28(321)**, **761—401.29(321)** and **761—401.30(321)**.

ITEM 56. Adopt **new** rules 761—401.32(321), 761—401.33(321), and 761—401.34(321) as follows:

**761—401.32(321) Surrender of plates.** Special registration plates issued to a person who is no longer eligible for the plates shall be surrendered to the county treasurer in exchange for regular registration plates within 30 days after the date of the event that made the person ineligible. If the vehicle was exempt from the payment of regular registration fees due to the type of special registration plates issued, the vehicle shall become subject to the payment of regular registration fees on the first day of the month following the date of the event that made the person ineligible. The regular registration fees shall be prorated for the remaining unexpired months of the registration year.

**761—401.33(321) Validation fees.** Validation fees shall not be prorated. The annual validation fee is due when there is a change in registration month.

**761—401.34(321) Reassignment of plates.**

**401.34(1)** A vehicle owner or lessee who has special registration plates assigned to a currently registered vehicle may request that the plates be reassigned to another currently registered vehicle owned or leased by that person or owned or leased by another person. However, special registration plates that have eligibility requirements may not be reassigned to a vehicle owned or leased by another person.

**401.34(2)** To reassign plates to a vehicle owned or leased by another person, a written request for reassignment signed by both the assignor and assignee shall be submitted to the county treasurer of the assignee's county of residence. The special registration plates shall be issued to the assignee by the county treasurer of the assignee's county of residence in exchange for the registration plates previously issued.

**401.34(3)** When ownership of a vehicle is transferred to another person, the owner shall, within 30 days after the transfer, either surrender the special registration plates to the county treasurer or request reassignment of the plates, as explained in subrules 401.34(1) and 401.34(2).

**401.34(4)** When the lease for a vehicle is terminated, the lessee shall, within 30 days after the termination, either surrender the special registration plates to the county treasurer or request reassignment of the plates, as explained in subrules 401.34(1) and 401.34(2).

ITEM 57. Rescind rule 761—401.35(321) and adopt the following **new** rules:

**761—401.35(321) Revocation of special registration plates.** Special registration plates shall be revoked if they have been issued in conflict with the statutes or rules governing the plates' issuance. Revoked plates shall be surrendered to the department within 30 days of the date of revocation.

**761—401.36(321) Refund of fees.** No refund of fees for special registration plates shall be allowed unless the special plates were issued in conflict with the statutes or rules governing their issuance.

ITEM 58. Amend **761—Chapter 401**, implementation clause, as follows:

These rules are intended to implement Iowa Code sections 35A.11, 321.34, 321.105, 321.166 and 321L.1.

ITEM 59. Amend rule 761—411.1(321L) as follows:

**761—411.1(321L) Administration.** The office of vehicle services administers this chapter. Its mailing address is Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. It is located in Park Fair Mall, 100 Euclid Avenue, Des Moines. *Information about persons with disabilities parking permits is available*

## TRANSPORTATION DEPARTMENT[761](cont'd)

from the office of vehicle services or on the department's Web site at <http://www.iamvd.com>.

ITEM 60. Amend rule 761—411.2(321L) as follows:

**761—411.2(321L) Application for persons with disabilities parking permit.**

**411.2(1)** Application for a persons with disabilities parking permit shall be made on Form 411055, which a form prescribed by the department.

**411.2(1)** Application forms may be obtained from the department department's Web site, the office of vehicle services, a driver's license examination station, a county treasurer's office, or the Persons with Disabilities Division, Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319.

**411.2(2)** ~~The completed form~~ Completed applications shall be submitted to the office of vehicle services. ~~The form~~ Completed applications may also be taken to a driver's license examination station or a county treasurer's office.

**411.2(2)** The application shall include a signed statement written on the physician's, chiropractor's, physician assistant's or advanced registered nurse practitioner's letterhead. The statement shall indicate that the person is a person with a disability and whether the disability is permanent or temporary.

**411.2(3)** If the applicant is an agency or organization that is providing transportation for persons with disabilities or elderly persons, the application shall include the name, mailing address, telephone number and federal employer's identification number of the agency or organization and the signature of its authorized representative.

ITEM 61. Amend subrule **411.3(1)**, paragraph "b," as follows:

b. An agency or organization providing transportation for persons with disabilities or elderly persons is eligible for a removable windshield placard valid for four years from the date of issuance. ~~However, the first reissuance will occur in the year 2001.~~ The placard shall bear the name of the agency or organization and the signature of its authorized representative.

ITEM 62. Rescind and reserve rule **761—411.6(321)**.

ITEM 63. Amend subrule 425.1(2) as follows:

**425.1(2)** The office of vehicle services administers this chapter.

a. The mailing address is: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278.

b. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines.

a. Applications required by the chapter shall be submitted to the office of vehicle services.

b. Information about dealer plates and the licensing of motor vehicle and travel trailer dealers, manufacturers, distributors and wholesalers is available from the office of vehicle services or on the department's Web site at <http://www.iamvd.com>.

ITEM 64. Amend rule **761—425.3(322)** by rescinding the definitions of "car lot" and "travel trailer lot."

ITEM 65. Amend subrule 425.10(1) as follows:

**425.10(1)** Applications Application forms. To apply for a license as a motor vehicle or travel trailer dealer, the applicant shall complete Form 417008, "Application for Dealer's License," and Form 417009, "Fees for Dealer License Ap-

plication," an application on forms prescribed by the department and submit them to the office of vehicle services.

ITEM 66. Amend subrule 425.10(8) as follows:

**425.10(8)** Financial liability. The applicant for a motor vehicle dealer's license shall certify on the application that the applicant has the required financial liability coverage in the limits as set forth in Iowa Code Supplement section 322.4(8). It is the applicant's responsibility to ensure the required financial liability coverage is continuous with no lapse in coverage as long as the applicant maintains a valid dealer's license.

ITEM 67. Amend rule 761—425.17(322) as follows:

**761—425.17(322) Extension lot license.** Extension lots of motor vehicle and travel trailer dealers must be licensed. Application to license an extension lot shall be made on Form 417072, "Application for Dealer's Extension Lot License," a form prescribed by the department.

**425.17(1)** For a motor vehicle dealer, an extension lot is a car lot for the sale of motor vehicles that is located within the same city or township as, but is not adjacent to, the motor vehicle dealer's principal place of business.

**425.17(2)** For a travel trailer dealer, an extension lot is a travel trailer lot for the sale of travel trailers that is located within the same county as, but is not adjacent to, the travel trailer dealer's principal place of business.

**425.17(3)** Parcels of property are adjacent if the parcels are separated only by an alley, street or highway that is not a fully controlled access facility.

This rule is intended to implement Iowa Code sections 322.1 to 322.15 and 322C.1 to 322C.6.

ITEM 68. Amend subrule **425.26(2)**, paragraph "b," as follows:

b. A "full" fair, show or exhibition permit allows a motor vehicle dealer to display and offer new motor vehicles for sale and negotiate sales of new motor vehicles at a specified county or district fair, vehicle show or vehicle exhibition that is held in the same county as the motor vehicle dealer's principal place of business. EXCEPTION: A motor vehicle dealer who is licensed to sell motor homes may be issued a permit to offer for sale Class "A" and Class "C" motor homes at a specified fair, show or exhibition in any Iowa county. A "full" fair, show or exhibition permit is not valid on Sundays.

ITEM 69. Amend subrule 425.26(5) as follows:

**425.26(5)** Permit application. A motor vehicle or travel trailer dealer shall apply for a fair, show or exhibition permit on Form 411119 an application form prescribed by the department. The application shall include the dealer's name, address and license number and the following information about the fair, show or exhibition: name, location, sponsor(s) and duration, including the opening and closing dates.

ITEM 70. Amend subrule 425.29(2) as follows:

**425.29(2)** Application for a classic car permit shall be made on Form 411045 a form prescribed by the department. The application shall include the dealer's name, address and license number and the following information about the county fair, vehicle show or vehicle exhibition: name, location, sponsor(s) and duration, including the opening and closing dates.

ITEM 71. Amend rule 761—425.30(322) as follows:

**761—425.30(322) Motor truck display permit.** Application for a permit under Iowa Code subsection 322.5(4) shall be made on Form 411176 a form prescribed by the depart-

## TRANSPORTATION DEPARTMENT[761](cont'd)

*ment.* The application shall include information or documentation showing that the nonresident motor vehicle dealer is eligible for issuance of a permit and that the event meets the statutory conditions for permit issuance.

This rule is intended to implement Iowa Code subsection 322.5(4).

ITEM 72. Amend subrule 425.31(1) as follows:

**425.31(1)** Application for a firefighting and rescue show permit shall be made on ~~Form 411220~~ *a form prescribed by the department.* The application shall include the name, address and license number of the applicant, the type of vehicles being displayed, and the following information about the vehicle show or exhibition: name, location, sponsor(s), and duration, including the opening and closing dates.

ITEM 73. Amend subrule 425.50(1) as follows:

**425.50(1)** Application for license. To apply for a license, the applicant shall complete ~~Form 417029, "Manufacturer, Distributor, Wholesaler Application for License,"~~ *an application form prescribed by the department.* ~~and submit it to the office of vehicle services, accompanied by a~~ list of the applicant's franchised dealers in Iowa and a sample copy of a completed manufacturer's certificate of origin that is issued by the firm *shall accompany the application.* A distributor or wholesaler shall also provide a copy of written authorization from the manufacturer to act as its distributor or wholesaler.

ITEM 74. Amend subrule **425.50(2)**, paragraph "b," as follows:

b. New motor homes delivered to Iowa dealers must contain the systems and meet the standards specified in Iowa Code paragraph ~~321.1(39)"d."~~ *321.1(36C)"d."*

ITEM 75. Amend subrule **425.52(1)**, paragraph "a," as follows:

a. To apply for a license as a used vehicle wholesaler, the applicant shall complete ~~Form 417004, "Used Vehicle Distributor/Wholesaler Application for License,"~~ *an application form prescribed by the department* ~~and submit it to the office of vehicle services.~~

ITEM 76. Amend rule 761—425.72(321) as follows:

**761—425.72(321) Demonstration permits.**

**425.72(1)** Demonstration permits may be issued ~~to~~ by motor vehicle dealers to permit the use of dealer plates for the purpose of demonstrating the load capabilities of motor trucks and truck tractors. ~~The fee for a permit is \$10. A demonstration permit must be issued on a form prescribed by the department.~~

**425.72(2)** The dealer shall complete the permit, ~~Form 417051.~~ The information to be filled out includes, but is not limited to, the following:

a. to e. No change.

**425.72(3)** ~~The permit is a three-part form. The original copy of the permit shall at all times be carried in the motor vehicle to which it refers and shall be shown to any peace officer upon request. The dealer shall mail or deliver the second copy to the office of vehicle services within 48 hours after issuance. The dealer shall retain the third copy for at least one year from the date of issuance.~~

**425.72(4)** and **425.72(5)** No change.

This rule is intended to implement Iowa Code sections 321.57 to 321.63.

ITEM 77. Amend rule 761—451.1(321) as follows:

**761—451.1(321) Address Information.** *Information about certificates of designation for authorized emergency vehicles*

*is available from the office of vehicle services.* The address of the office of vehicle services is: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines.

This rule is intended to implement Iowa Code sections 321.2 and 321.3.

ITEM 78. Amend rule 761—451.2(321) as follows:

**761—451.2(321) Authorized emergency vehicle certificate.**

**451.2(1) Definitions.**

"Ambulance" is defined in Iowa Code section 321.1.

"Rescue vehicle" is a vehicle used to extricate or assist persons in dangerous situations involving their bodily welfare, or a vehicle used by a person to supervise such operation.

"Privately owned vehicle" is a vehicle that is not owned by a federal, state, county or city government.

**451.2(2) 451.2(1)** Application. Application for a certificate which designates a privately owned vehicle as an authorized emergency vehicle shall be submitted ~~on Form 411025~~ to the office of vehicle services *on a form prescribed by the department.* Iowa Code section 321.451 lists the types of privately owned vehicles that may be issued a certificate of designation and the requirements for designation.

**451.2(2) Expiration.** *The certificate of designation expires at midnight on the thirty-first day of December five years from the year in which it was issued.*

This rule is intended to implement Iowa Code section 321.451.

ITEM 79. Amend rule 761—750.2(328) as follows:

**761—750.2(328) Definitions.** The definitions in Iowa Code section 328.1 ~~and rule 761—700.1(328)~~ apply to this chapter of rules.

This rule is intended to implement Iowa Code section 328.1.

ITEM 80. Amend rule 761—750.3(17A) as follows:

**761—750.3(17A) Information and forms.** Information, instructions and forms are available from the office of vehicle services *or on the department's Web site at <http://www.iamvd.com>.* Application forms may also be obtained from aircraft dealers. The mailing address of vehicle services is: Office of Vehicle Services, Iowa Department of Transportation, P.O. Box 9278, Des Moines, Iowa 50306-9278. The office is located in Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

This rule is intended to implement Iowa Code section 17A.3.

ITEM 81. Amend subrule 750.10(2) as follows:

**750.10(2) Application.**

a. The owner of an unregistered aircraft shall submit ~~Form 300038, "Aircraft Registration Application,"~~ to the department *an application for aircraft registration on a form prescribed by the department.*

b. and c. No change.

d. Upon receipt of the completed application, registration fee, and use tax or evidence of tax exemption, the department shall issue ~~Form 300018, "Aircraft Registration Certificate,"~~ to the applicant *an aircraft registration certificate for the aircraft.*

ITEM 82. Amend rule 761—750.15(328) as follows:



TRANSPORTATION DEPARTMENT[761](cont'd)

**761—750.15(328) Aircraft not airworthy.** ~~An aircraft that is damaged and is not in flying condition is not airworthy. The An aircraft that is not airworthy is not subject to registration fees if the owner submits with the registration application a written, signed explanation of the aircraft's condition and an estimate of the date when the aircraft will be airworthy. The department shall issue a certificate and shall mark the record of the aircraft until the owner notifies the department that the aircraft is airworthy or until the aircraft is no longer subject to registration in Iowa.~~

This rule is intended to implement Iowa Code section 328.21.

ITEM 83. Amend rule 761—750.20(328) as follows:

**761—750.20(328) Renewal notice.**

~~750.20(1) Notice.~~ Thirty days before the ~~beginning end~~ of the registration year, the department shall send a renewal application for notice to the owner of each registered aircraft to the owner as shown on department records. The renewal application notice shall state the registration fee due for the upcoming registration year and the descriptive data recorded for the aircraft.

~~750.20(2) Submission.~~ If all data is correct, the renewal application and registration fee shall be returned to the department. If the data is incorrect, the renewal application shall be returned to the department with an explanation of the changes.

~~750.20(3) Issuance.~~ The department shall issue the certificate of registration within 15 days after receipt of the renewal fee.

~~750.20(4) Penalty.~~ Rescinded IAB 1/15/97, effective 2/19/97.

This rule is intended to implement Iowa Code sections 328.20, 328.21, 328.26, 328.27, 328.37, and 328.56A.

## ARC 4522B

### WORKERS' COMPENSATION DIVISION[876]

#### 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 86.8, the Workers' Compensation Commissioner hereby gives Notice of Intended Action to amend Chapter 3, "Forms," Chapter 4, "Contested Cases," Chapter 6, "Settlements and Commutations," Chapter 8, "Substantive and Interpretive Rules," and Chapter 11, "Electronic Data Interchange (EDI)," Iowa Administrative Code.

Items 1 and 9 relate to filing of reports with the Division. Item 2 relates to compliance proceedings. Item 3 relates to filing an appearance in a contested case proceeding. Item 4 specifies the method for scheduling contested case hearings. Item 5 relates to appeals to the Workers' Compensation Commissioner when an application for rehearing of a proposed decision is also filed. Item 6 relates to issues in a contested case when there is an appeal to the Workers' Compensation Commissioner. Item 7 provides more current tables for life expectancy and life expectancy remarriage

probability tables for commutation of workers' compensation weekly benefits. Item 8 relates to the mileage reimbursement rate for transportation expenses incurred in workers' compensation matters.

The Division has determined that these amendments will not necessitate additional annual expenditures exceeding \$100,000 or combined expenditures exceeding \$500,000 within five years by all affected persons, including the agency within the meaning of Iowa Code section 17A.4(3). Therefore, no fiscal impact statement accompanies this rule making.

The Division has determined that these amendments will have no impact on small business within the meaning of Iowa Code section 17A.4A.

The Division has determined that these amendments will not necessitate additional annual expenditures exceeding \$100,000, or \$500,000 within five years, by political subdivisions or agencies which contract with political subdivisions within the meaning of Iowa Code section 25B.6. Therefore, no fiscal impact statement accompanies this rule making.

Any interested person may make written suggestions or comments on these proposed amendments on or before October 4, 2005, to the Workers' Compensation Commissioner, Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These amendments do not include a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

These amendments are intended to implement Iowa Code sections 17A.3(1)"b," 17A.12, 17A.15, 17A.16, 85.26(2), 85.27(1), 85.39, 85.45, 85.47, 86.8, 86.11, 86.12, 86.13, 86.17, 86.18 and 86.24(1) and (2).

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 3.1(1) as follows:

**3.1(1)** First report of injury. The first report of injury (FROI) contains general information concerning the employee, the employer and the claimed injury. It is to be filed whether or not an adjudication or admission of liability for the injury exists and is to be filed as provided in Iowa Code section 86.11 and 876—Chapter 11. The first report of injury is to be filed *when demanded by the commissioner pursuant to Iowa Code section 86.12 and when an employer is served with an original notice and petition that alleges an injury for which a first report has not been filed. If an original notice and petition alleges multiple injury dates, only one first report of injury should be filed, and the date of injury reported should be the date the reporter uses when adjusting the claim within four days of notice or knowledge of an alleged injury. In the event the transmission of a first report of injury (FROI) contains errors (TE), the errors shall be corrected within five days of the date of notification by the agency.*

ITEM 2. Amend rule 876—4.3(85,85A,86,87) as follows:

**876—4.3(85,85A,86,87) Compliance proceedings.** If the workers' compensation commissioner shall have reason to believe that there has not been compliance with the workers' compensation law by any person or entity, the commissioner may on the commissioner's own motion give notice to the person or entity and schedule a hearing for the purpose of determining whether or not there has been compliance by the



## WORKERS' COMPENSATION DIVISION[876](cont'd)

person or entity. The notice shall state the time and place of the hearing and a brief statement of the matters to be considered. *The notice of hearing may be given by ordinary mail and may be given to the insurer for the employer in lieu of the employer as permitted by Iowa Code section 87.10 if the insurer has filed a report, pleading or motion that acknowledges that it is the insurer for the claim at issue.* Following the hearing, the commissioner may issue a finding regarding compliance. In the event a failure to comply is found, the commissioner may impose sanctions in accordance with Iowa Code sections 86.12, 86.13 or 86.13A or order compliance within a specified time and under specified circumstances. The workers' compensation commissioner may file a certified copy of the order in an appropriate district court and may file a certified copy of the order with the Iowa insurance division [commerce department] with a request for action by the insurance division upon failure to comply with the order.

Nothing in this rule shall prevent the workers' compensation commissioner from conducting an informal conference with any person or entity concerning problems of compliance prior to the initiation of a compliance proceeding.

ITEM 3. Amend rule 876—4.9(17A) as follows:

Amend subrule 4.9(1) as follows:

**4.9(1)** Respondent—appearance. A respondent shall appear by filing an answer or a motion within 20 days after the service of the original notice and petition upon such the respondent. *The caption of an answer shall disclose the file number of the compliance file in which the first report of injury was filed for the injury that is alleged in the original notice and petition.*

Rescind and reserve subrule **4.9(3)**.

ITEM 4. Amend subrule **4.19(3)**, paragraph “a,” as follows:

a. Within 120 days, but not less than 60 days, following filing of a petition, the counsel of record for all parties and all pro se litigants shall jointly telephone contact the hearing administrator by telephone at (515)281-6621 between the hours of 8:30 a.m. and 11 a.m. central time, Monday through Friday, excluding holidays, or by E-mail at [dwc.hearing@iwd.state.ia.us](mailto:dwc.hearing@iwd.state.ia.us) to schedule a hearing date, place and time. Claimant has primary responsibility for initiating the call contact. *The parties shall identify the case by file number and the names of the parties and request that the hearing be set at a specific date, place and time that is shown to be available on the hearing scheduler published on the division's Web site. Primary and backup times must be requested for hearings in venues other than Des Moines. When the contact is made by E-mail, a copy of the request shall be sent to each opposing party, and the hearing administrator will reply indicating whether or not the case is assigned at the time requested. If a request is denied, the parties shall continue to contact the hearing administrator by telephone or E-mail until the case is scheduled or a prehearing conference is ordered.* A joint scheduling call contact may be initiated by any party after the petition has been on file more than 120 days or at any other time agreeable to the parties. If more than 120 days have elapsed since the petition was filed, any party may move to schedule the hearing at a particular date, time and place that is available and the hearing administrator may assign the case for hearing at that date, time and place. The hearing date shall be within 12 months following the date the petition was filed or as soon thereafter as reasonably practicable as determined by the hearing administrator. If the parties fail to schedule the hearing with the hearing adminis-

trator, the case will be scheduled at the discretion of the hearing administrator without prior notice to the parties.

ITEM 5. Amend rule 876—4.25(17A,86) as follows:

**876—4.25(17A,86) Appeal when rehearing requested.**

An appeal to or review on motion of the workers' compensation commissioner must be filed within 20 days after the application for rehearing of a proposed decision by a deputy workers' compensation commissioner under 4.24(17A,86) has been denied or deemed denied or a decision on rehearing has been issued. If a notice of appeal *is filed by one party* and an application for rehearing *are is filed by a different party*, the deputy retains jurisdiction to act on the application for rehearing, and the notice of appeal is stayed and deemed to have been filed on the day after the application for rehearing is denied or deemed denied or the decision on rehearing is issued.

ITEM 6. Amend subrule 4.28(7) as follows:

**4.28(7)** Issues considered on appeal. The appeal will consider the issues presented for review by the appellant and cross-appellant in their briefs and any issues necessarily incidental to or dependent upon the issues that are expressly raised, except as provided in 4.29(86,17A). An issue will not be considered on appeal if the issue could have been, but was not, presented to the deputy, ~~including an issue concerning whether the deputy considered or misconstrued evidence or made a scrivener's error.~~ An issue raised on appeal is decided de novo and the scope of the issue is viewed broadly. ~~Once an issue is raised, the opposing party may urge a result on appeal that is more favorable to the opposing party than the ruling from which the appeal was taken, and the result on appeal may be less favorable to the appealing party than the ruling from which the appeal was taken.~~ If the ruling from which the appeal was taken made a choice between alternative findings of fact, conclusions of law, theories of recovery or defenses and the alternative selected in the ruling is challenged as an issue on appeal, de novo review includes reconsideration of all alternatives that were available to the deputy.

ITEM 7. Amend rule 876—6.3(85,86) as follows:

Amend subrule **6.3(1)** by rescinding the “Life Expectancy Table” and adopting in lieu thereof the following **new** table:

LIFE EXPECTANCY TABLE

AGE	WEEKS
0-1	4020
1-2	3994
2-3	3942
3-4	3895
4-5	3843
5-6	3791
6-7	3739
7-8	3687
8-9	3635
9-10	3583
10-11	3531
11-12	3484
12-13	3432
13-14	3380
14-15	3328
15-16	3276
16-17	3224
17-18	3177
18-19	3125
19-20	3078

## WORKERS' COMPENSATION DIVISION[876](cont'd)

LIFE EXPECTANCY TABLE

AGE	WEEKS
20-21	3026
21-22	2980
22-23	2928
23-24	2881
24-25	2829
25-26	2782
26-27	2730
27-28	2683
28-29	2631
29-30	2584
30-31	2532
31-32	2486
32-33	2434
33-34	2387
34-35	2335
35-36	2288
36-37	2236
37-38	2189
38-39	2142
39-40	2090
40-41	2044
41-42	1997
42-43	1950
43-44	1903
44-45	1856
45-46	1810
46-47	1763
47-48	1716
48-49	1669
49-50	1622
50-51	1576
51-52	1534
52-53	1487
53-54	1446
54-55	1399
55-56	1357
56-57	1310
57-58	1269
58-59	1227
59-60	1186
60-61	1144
61-62	1102
62-63	1061
63-64	1024
64-65	983
65-66	946
66-67	910
67-68	868
68-69	832
69-70	801
70-71	764
71-72	728
72-73	697
73-74	666
74-75	629
75-76	598

LIFE EXPECTANCY TABLE

AGE	WEEKS
76-77	572
77-78	541
78-79	510
79-80	484
80-81	458
81-82	432
82-83	406
83-84	385
84-85	359
85-86	338
86-87	317
87-88	302
88-89	281
89-90	265
90-91	250
91-92	234
92-93	224
93-94	208
94-95	198
95-96	187
96-97	177
97-98	166
98-99	156
99-100	151
100+	140

Amend subrule 6.3(3), introductory paragraph and first unnumbered paragraph, as follows:

**6.3(3)** Life expectancy and remarriage probability table. This table expresses *in weeks* the combined probability of life expectancy and remarriage ~~in weeks~~. The column on the left indicates the age of the surviving spouse at the time of the work-related death. Columns A through E indicate, respectively, the first through fifth years following the date of death that the surviving spouse remains unmarried. For example, if the date of death was July 1, ~~1977~~ 2005, and the surviving spouse was age 20 at the time of *the decedent's* death, a commutation sought on the second anniversary of the death, July 2, ~~1979~~ 2007, would result in an expected duration of ~~519.75~~ 550.02 weeks, the amount found in Column B which indicates the second year of unmarried status following age 20. Following the second anniversary of the date of death and including the third anniversary, Table C would be applicable. Begin in the left-hand column in the line indicating the age at date of death—not the age at which a commutation is sought. ~~One then moves~~ *Then move* to the column which is indicative of the number of years the surviving spouse has remained unmarried.

A surviving spouse, 20 years old on the date of *the decedent's* death who seeks a commutation after the fifth anniversary of the date of death, would use Table F. The fact that the surviving spouse has remained unmarried for over five years negates use of Columns A through E. A commutation sought during the fifth year of remaining unmarried would result in an expected duration of ~~959.97~~ 1031.64 weeks. For example, if the surviving spouse, who was 20 years old on the date of *the decedent's* death, is 30 years old at the time a commutation is sought and seeks a commutation after the tenth anniversary of the date of death, start in Column "F" in line "20" at the age column. For each year beyond the sixth anniversary of the death, move down Column F one line for each year.

## WORKERS' COMPENSATION DIVISION[876](cont'd)

[Note the left-hand age column plays no part at this point.] In this example, the 30-year-old surviving spouse who seeks a commutation after the tenth anniversary of the date of death would have an expected duration of ~~1440.61~~ 1247.07 weeks.

Amend subrule **6.3(3)** by rescinding the table "Expected Duration of Life and Remarriage in Weeks" and adopting the following **new** table:

EXPECTED DURATION OF LIFE AND REMARRIAGE IN WEEKS						
AGE	A	B	C	D	E	F
19	452.18	505.55	640.75	788.27	905.44	993.12
20	495.82	550.02	683.69	828.42	943.01	1031.64
21	541.23	596.18	729.80	868.87	982.17	1071.64
22	589.23	646.05	776.66	911.67	1023.48	1115.36
23	640.88	696.92	825.34	956.43	1068.72	1157.99
24	693.76	749.90	875.77	1005.20	1113.34	1200.77
25	748.61	804.49	929.45	1053.51	1158.36	1247.07
26	804.72	861.90	982.20	1102.07	1206.94	1290.45
27	863.24	917.91	1034.48	1153.43	1252.42	1332.79
28	919.92	972.96	1089.02	1201.54	1296.56	1376.65
29	975.76	1029.70	1140.04	1248.06	1342.09	1415.27
30	1034.13	1083.96	1190.18	1296.47	1382.06	1450.83
31	1087.87	1135.18	1239.43	1337.76	1419.17	1482.26
32	1140.84	1187.76	1283.95	1376.65	1452.19	1514.63
33	1195.00	1235.69	1325.54	1411.36	1486.03	1539.38
34	1244.19	1281.06	1363.39	1447.25	1512.62	1560.28
35	1290.62	1322.51	1402.06	1475.89	1535.47	1577.36
36	1333.45	1365.12	1433.98	1501.08	1554.46	1590.73
37	1377.93	1401.32	1462.76	1522.96	1570.28	1595.37
38	1414.42	1432.95	1486.92	1540.28	1575.74	1600.95
39	1447.51	1460.93	1507.65	1548.65	1583.08	1603.12
40	1476.55	1484.88	1519.19	1558.50	1586.74	1601.68
41	1501.23	1499.62	1531.97	1564.58	1586.80	1590.32
42	1517.04	1515.76	1541.35	1567.27	1577.19	1581.72
43	1533.81	1528.55	1547.54	1560.49	1570.28	1564.36
44	1546.84	1537.33	1543.96	1556.10	1554.65	1543.01
45	1556.54	1537.28	1543.60	1543.67	1534.98	1519.60
46	1555.21	1538.43	1533.33	1526.06	1512.93	1499.07
47	1556.30	1530.44	1518.64	1506.46	1493.84	1463.67
48	1547.08	1517.04	1500.92	1489.22	1459.61	1432.74
49	1532.42	1499.98	1484.71	1456.21	1429.75	1399.10
50	1514.59	1485.36	1453.56	1427.91	1396.88	1364.95
51	1496.96	1453.45	1424.86	1395.28	1363.33	1322.96
52	1464.50	1426.08	1393.79	1362.79	1321.79	1286.44
53	1433.32	1393.23	1359.71	1320.40	1285.68	1242.63
54	1401.59	1361.60	1319.99	1285.81	1242.14	1199.73
55	1367.01	1320.16	1283.74	1241.95	1199.37	1155.90
56	1324.97	1284.38	1240.69	1199.62	1155.55	1111.53
57	1286.93	1239.69	1196.89	1154.69	1110.98	1070.85
58	1243.31	1197.46	1153.84	1111.07	1070.21	1025.48
59	1200.31	1153.99	1109.49	1069.88	1024.57	986.90
60	1156.15	1109.74	1069.03	1024.18	985.85	944.55
61	1111.72	1069.39	1023.90	985.32	943.26	902.07
62	1052.14	1009.56	976.00	938.77	899.17	866.59
63	1010.13	974.17	936.60	898.84	866.01	822.92
64	975.20	935.34	897.28	866.19	822.35	786.37
65	935.81	895.62	864.23	822.48	785.91	752.62
66	896.90	863.56	821.55	786.69	752.25	713.35
67	864.14	820.43	785.30	752.93	712.94	681.47
68	821.01	784.34	751.79	713.70	681.08	645.13
69	784.83	750.98	712.72	681.88	644.76	610.80
70	751.92	712.57	681.58	646.12	610.45	578.30

## WORKERS' COMPENSATION DIVISION[876](cont'd)

AGE	EXPECTED DURATION OF LIFE AND REMARRIAGE IN WEEKS					
	A	B	C	D	E	F
71	712.75	680.79	645.24	611.61	577.91	547.80
72	681.26	644.91	611.27	579.40	547.43	513.50
73	645.03	610.64	578.74	548.89	513.25	486.97
74	610.85	578.30	548.43	514.74	486.74	455.68
75	578.57	548.13	514.38	488.35	455.51	428.23
76	548.68	514.51	488.51	457.72	428.11	397.70
77	514.31	487.93	457.11	430.12	397.62	374.66
78	487.92	456.77	429.75	411.41	374.60	348.88
79	457.82	430.58	400.47	377.94	348.85	324.95
80	428.23	397.79	375.01	349.47	324.92	298.01
81	400.21	377.46	352.11	328.63	298.01	286.57
82	376.27	350.69	327.08	300.46	286.57	271.47
83	350.54	326.80	300.18	289.12	271.47	259.15
84	326.67	299.90	288.84	274.06	259.15	249.81
85	299.74	288.56	273.74	261.78	249.81	249.60

ITEM 8. Amend rule **876—8.1(85)**, numbered paragraph **"2,"** as follows:

2. All mileage incident to the use of a private auto. The per-mile rate for use of a private auto ~~on or after~~ from August 1, 2005, through June 30, 2006, shall be 40.5 cents per mile. For annual periods beginning July 1, 2006, and thereafter, the per-mile rate shall be the rate allowed by the Internal Revenue Service for the business standard mileage rate in effect on July 1 of each year.

ITEM 9. Amend rule 876—11.2(85,86) as follows:

**876—11.2(85,86) Definitions.** The following definitions apply to 876—Chapter 3 and this chapter.

"EDI" means electronic transmission or reception, or both, of data through a telecommunications process utilizing a value-added network or the Internet as set forth in the EDI partnering agreement.

"EDI partnering agreement" means the written agreement between an entity and the division of workers' compensation specifying the terms and manner of reporting by EDI.

"Filed" means receipt and acceptance of a report by the division of workers' compensation. A report is considered to be "filed" on the date it is accepted (TA) by the division of workers' compensation. A report that is submitted but rejected (TR) is not considered "filed." A report that is accepted with errors (TE) must be corrected within five days after the acknowledgment is sent.

"Implementation plan" means the written document prepared by a reporter specifying a timetable for reporting by EDI.

"Report" means a first report of injury (FROI) or a subsequent report of injury (SROI), or both.

"Reporter" means the person who is responsible for reporting to the division of workers' compensation pursuant to the Iowa workers' compensation laws and includes an employer, an employer who has been relieved from insurance pursuant to Iowa Code section 87.11, and an insurance carrier which provides an employer workers' compensation insurance.

"Reporting" means submission of claims data and data fields of information of a report.

## ARC 4481B

## AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 159.5(11), 163.1, and 170.3, the Department of Agriculture and Land Stewardship hereby amends Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

The amendment rescinds rule 21—64.119(163), which provides that rules regarding the Department's Chronic Wasting Disease program were to be rescinded on August 17, 2005. Rule 21—64.119(163) was originally adopted because funding for the Chronic Wasting Disease program was limited to one calendar year and was set to terminate on August 17, 2005. However, the 2005 Iowa Legislature appropriated moneys to continue the program indefinitely. As a result, the termination of the Chronic Wasting Disease program and rescission of the rules is no longer necessary.

Pursuant to Iowa Code section 17A.4(2), the Department finds that notice and public participation are impractical. Notice and public participation would result in the needless termination of the Chronic Wasting Disease program. Participation in the program is voluntary for the farm deer producers. The specific appropriation for the program shows legislative support for its continuation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on August 16, 2005. The amendment confers a benefit to the farm deer industry because it continues the Chronic Wasting Disease program without interruption.

No waiver provision is included in this amendment. The amendment does not create any new rules, but rather rescinds a rule. In addition, the Department has a general rule that allows for waivers in appropriate cases.

This amendment is intended to implement Iowa Code chapters 163 and 170.

This amendment became effective on August 16, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 adopted.

Rescind rule **21—64.119(163)**.

[Filed Emergency 8/16/05, effective 8/16/05]

[Published 9/14/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/14/05.

## ARC 4507B

## ENVIRONMENTAL PROTECTION COMMISSION[567]

### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 459.103 and 2005 Iowa Acts, House File 805, section 4, the Environmental Protection Commission hereby adopts amendments to Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

The amendments separate Chapter 65 into two divisions, one for confinement operations and one for open feedlots. In addition to creating a separate division for open feedlot rules, the amendments implement open feedlot operation requirements in 2005 Iowa Acts, House File 805, including minimum design standards for settled open feedlot effluent basins, nutrient management plans, alternative technology systems and construction permits. Included are provisions necessary to implement the National Pollutant Discharge Elimination System (NPDES) program.

To summarize, Item 1 creates a separate division and title for confinement feeding operations. Item 2 amends the introductory paragraph to the confinement feeding division of the chapter. Items 3, 4 and 8 delete definitions and subrules specific to open feedlot operations from the confinement operations division. Item 5 modifies the confinement feeding operation notification requirements for manure releases to be consistent with requirements for open feedlot operations. Item 6 replaces the rule pertaining to when an operation permit is required for a confinement feeding operation, and a related cross reference is modified in Item 7. Division II, Open Feedlot Operations, is created in Item 9. Item 10 amends Appendix A regarding the timing of land application of open feedlot effluent and corrects terminology to be consistent with the new Division II.

Pursuant to Iowa Code section 455B.105(3), the Commission is required to identify requirements in proposed or adopted rules that are more restrictive than a federal program being implemented. In addition, the Commission is required to state its reasons for proposing more restrictive requirements and explain the general financial impact upon affected parties.

In the definition of "large CAFO" and "medium CAFO" in Item 9, the Commission retains the current policy of adding the animal units when multiple species are maintained at the same operation, to determine whether the threshold is met, as was the case under the prior CAFO definitions. The new federal regulations amend this policy at the federal level so that the threshold value for each species is used individually and the concept of "animal units" is no longer used. For example, if an operation maintained 900 beef cattle and 2000 feeder swine, the threshold limit for each species, 1000 and 2500 respectively, would not be met; but if the species were added together, they would exceed 1000 animal units. The federal regulations would not define this operation as a CAFO; however, the definitions that the Commission has adopted define this operation as a CAFO. Thus, the adopted rules are arguably more stringent than the federal regulations.

The more restrictive definitions are adopted because they are consistent with current Iowa law and the prior federal and state CAFO definitions; they make common sense; and they will have little or no adverse impact on the regulated community. The current, relatively new Iowa law, Iowa Code chap-

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

ter 459, adopted the animal unit concept for determining regulatory thresholds for animal feeding operations; this concept was also incorporated into 2005 Iowa Acts, House File 805. The prior CAFO regulations, at both the state and federal levels, used this concept. Thus, the regulated community is familiar with and accustomed to its use. It does not make sense to the Commission that an operation with a combined 900 head of cattle and 2000 head of swine would have less potential for pollution than a 1000-head cattle operation, or a 2500-head swine operation, each of which would be defined as a CAFO. Moreover, the Commission concludes that this proposal will have little, if any, adverse impact, financial or otherwise, on the livestock industry. First, it does not appear that there are that many facilities in Iowa that feed more than one species at levels that would put them in this category of regulation. Secondly, such facilities are already highly regulated under state law. It is unlikely that being required to obtain an NPDES permit will add any significant regulatory or financial burdens to this size of operation. The Commission has considered the concern, which may apply to a significant number of operations, that a confinement operation that is just under the CAFO threshold, for example, a 960 animal unit (2400 head) swine operation, coupled with a small (50-100 head) beef open lot would subject the small open lot to the more stringent CAFO manure control requirements. For this reason, the rules require, in the case of multiple species, that the type of housing, total confinement or open lots, be the same for each; i.e., both must be total confinement or both must be open lots.

Subrule 65.104(3) requires an existing animal feeding operation intending to expand to a size that will be a CAFO to apply for an NPDES permit at least 180 days prior to the scheduled expansion. Federal regulations provide that coverage under an NPDES permit must be sought as soon as possible but no later than 90 days after the animal feeding operation became defined as a CAFO. While subrule 65.104(3) is more stringent than the federal regulation, it continues a requirement in Commission rules applicable to open feedlot operations that has been in effect for at least ten years. In other words, open feedlot operations have been subject to this requirement for many years, so subrule 65.104(3) does not reflect a change in Iowa law. Given this history, and the planning and compliance advantages of submitting an application well in advance of the planned expansion, the Commission concludes that the current requirement should be continued. Because a proposed or existing CAFO would be required to submit an application for an NPDES permit under either time frame, it is not anticipated that this subrule will have a significant financial impact. Paragraph 65.104(9)"e" requires submission of quarterly reports by CAFOs documenting various observations at outside liquid impoundments, such as daily precipitation, weekly liquid level, and dates and amounts of liquid removed. Federal regulations require annual reporting and do not require documentation of daily precipitation. The Commission concludes that quarterly reporting provides an opportunity to recognize and address operational problems on a more timely basis than could be achieved with annual reporting. Regarding daily precipitation records, the Commission concludes that this data is necessary to ensure compliance with land application requirements in Appendix A or to document equivalent performance of alternative technology systems. The Commission does not anticipate that these requirements will impose a significant financial burden.

Pursuant to Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these

amendments should be waived and these amendments should be effective upon publication, as they confer a benefit on a segment of the public.

These amendments are also published herein under Notice of Intended Action as **ARC 4506B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 455B.171 to 455B.191, 459.314, 459.601 and 2005 Iowa Acts, House File 805.

These amendments became effective September 14, 2005.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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 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:

**567—65.1(455B) Definitions.** In addition to the definitions in Iowa Code sections 455B.101 and 455B.171 and Iowa Code section ~~455B.161~~ 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. Rescind paragraph **65.2(9)"a"** and adopt the following **new** paragraph in lieu thereof:

a. Notification. A person storing, handling, transporting, or land-applying manure from a confinement feeding operation who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department at (515)281-8694. 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 rule shall be confirmed in writing as provided in 65.2(9)"c."

ITEM 6. Rescind 567—65.4(455B) and adopt the following **new** rule in lieu thereof:

**567—65.4(455B) Operation permit required.** A confinement feeding operation shall apply for and obtain an operation permit if the department notifies the operation in writing that, in accordance with the departmental evaluation provisions of 65.5(2)"a," application for an operation permit is required.

ITEM 7. Amend paragraph **65.5(2)"a"** as follows:

a. Apply for an operation permit if the operation receives a written notification from the department that it is required to apply for an operation permit. However, no operation with an animal capacity less than that specified in ~~subrule 65.4(2)~~ *the following subparagraphs* shall be required to apply for a permit unless manure from the operation is discharged into a water of the state through a man-made manure draining sys-

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tem or is discharged into a water of the state which traverses the operation:-

- (1) 300 beef cattle
- (2) 200 dairy cattle
- (3) 750 butcher and breeding swine (over 55 lbs.)
- (4) 3000 sheep or lambs
- (5) 16,500 turkeys
- (6) 30,000 broiler or layer chickens
- (7) 150 horses
- (8) 300 animal units

ITEM 8. Amend rule 567—65.9(455B) by rescinding subrule **65.9(2)**.

ITEM 9. Amend 567—Chapter 65 by adopting the following **new** division:

DIVISION II  
OPEN FEEDLOT OPERATIONS

**567—65.100(455B,459,81GA,HF805) Definitions.** In addition to the definitions in Iowa Code sections 455B.101 and 455B.171 and 2005 Iowa Acts, House File 805, section 2, the following definitions shall apply to Division II of this chapter:

“Abandoned” means an open feedlot operation structure that has been razed, removed from the site of an open feedlot operation, filled in with earth, or converted to uses other than an open feedlot operation structure so that it cannot be used as an open feedlot operation structure without significant reconstruction.

“Adjacent.” Two or more open feedlot operations are defined as adjacent if both the following occur:

1. At least one open feedlot operation structure is constructed on or after July 17, 2002.
2. An open feedlot operation structure which is part of one open feedlot operation is separated by less than 1250 feet from an open feedlot operation structure which is part of the other open feedlot operation.

“Alternative technology settled open feedlot effluent control system” or “AT system” means use of an open feedlot effluent control technology other than a conventional runoff containment system to control and dispose of settled open feedlot effluent. The department may allow an open feedlot operation covered by the NPDES permit application requirements of 65.102(455B,81GA,HF805) or 65.103(455B,81GA,HF805) to use an AT system, provided the open feedlot operation satisfactorily demonstrates the AT system will provide an equivalent level of performance to that achieved by a 25-year, 24-hour runoff containment system that is designed and operated as required by statute, 567—subrule 62.4(12) and Division II of this chapter. Demonstration of equivalent performance must include submitting results of computer modeling which compares the predicted performance of the proposed system with that of a conventional runoff containment system over the same period. The specific requirements which must be met for an open feedlot operation to qualify for use of an AT system and the information which must be submitted to the department are outlined in rule 65.110(81GA,HF805).

Design requirements have been established for two types of AT systems. These are a vegetative infiltration basin (VIB) followed by a vegetative treatment area (VTA) and a stand-alone vegetative treatment area (VTA). If other AT systems are developed that meet the equivalent performance standard established under EPA’s CAFO rules, the department will consider their acceptance on a case-by-case basis.

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

“Animal capacity” means the maximum number of animals which the owner or operator will confine in an open feedlot 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.

Pursuant to federal regulations a livestock market could satisfy the definitions of an AFO and a CAFO and thus be subject to NPDES permit requirements. In order to implement the federal NPDES permit program, the commission must adopt rules which are no less stringent than federal regulations. Therefore, for the purposes of the NPDES permit program, an AFO can include a livestock market.

“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 open feedlot operation.

“Common management” means significant control by a person of the management of the day-to-day operations of each of two or more open feedlot operations. “Common management” does not include control over a contract livestock facility by a contractor, as defined in Iowa Code section 202.1.

“Common ownership” means to hold an interest in each of two or more open feedlot operations as any of the following:

1. A sole proprietor.
2. A joint tenant or tenant in common.
3. A holder of a majority equity interest in a business association as defined in Iowa Code section 202B.102, including as a shareholder, partner, member, beneficiary, or other equity interest holder.

An interest in an open feedlot operation under “2” or “3” above is a common ownership interest when it is held directly or 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 area” means a known sinkhole, or a cistern, abandoned well, unplugged agricultural drainage well, agricultural drainage well surface tile inlet, drinking water well, designated wetland, lake, or water source. A designated area

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does not include a terrace tile inlet or surface tile inlet other than an agricultural drainage well surface tile inlet.

“Designated CAFO” means an AFO that has been designated as a CAFO pursuant to rule 65.103(455B,81GA, HF805).

“Discontinued open feedlot operation” means an open feedlot operation in which the open feedlot operation structures have been abandoned or the use of the open feedlot operation structures has been discontinued as evidenced by the removal of all animals, and the owner or operator has no immediate plans to repopulate the structures.

“Formed settled open feedlot effluent basin” means a settled open feedlot effluent basin 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.

“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.

“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, losing streams, or caves. If a 25-foot vertical separation distance can be maintained between the bottom of an open feedlot operation structure and limestone, dolomite, or other soluble rock, then the structure is not considered to be in karst terrain. Assistance in identifying karst terrain or potential karst terrain may be obtained by referring to: [http://csbweb.igsb.uiowa.edu/imsgate/maps/afo\\_siting\\_atlas.asp](http://csbweb.igsb.uiowa.edu/imsgate/maps/afo_siting_atlas.asp).

“Large concentrated animal feeding operation” or “large CAFO.” An AFO is defined as a large CAFO if it stables or confines as many as or more than the numbers of animals specified in any of the following categories:

1. 700 mature dairy cows, whether milked or dry;
2. 1000 cattle, including but not limited to heifers, steers, bulls, veal calves and cow/calf pairs;
3. 2500 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. 1000 animal units, where more than one category of animals is maintained using the same type of operation.

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

“Medium concentrated animal feeding operation” or “medium CAFO.” The term medium CAFO includes 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 fall 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 2499 swine each weighing 55 pounds or more;
- (4) 3000 to 9999 swine each weighing less than 55 pounds;
- (5) 150 to 499 horses;
- (6) 3000 to 9999 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; and

b. Either one of the following conditions is met:

- (1) Manure or process wastewater is discharged into waters of the United States through a man-made ditch, flushing system, or other similar man-made device; or
- (2) Manure or process wastewater is discharged directly into waters of the United States which originate outside of and pass over, across or through the facility or otherwise come into direct contact with animals confined in 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.

“Nutrient management plan” or “NMP” means a plan which provides for the management of manure, process wastewater, settled open feedlot effluent, settleable solids, open feedlot effluent, including the application of effluent, as provided in 65.112(81GA, HF805).

“Open feedlot” means a lot, yard, corral, building, or other area used to house animals in conjunction with an open feedlot operation.

“Open feedlot effluent” means a combination of manure, precipitation-induced runoff, or other runoff from an open feedlot before its settleable solids have been removed.

“Open feedlot operation” means an unroofed or partially roofed animal feeding operation if crop, vegetation, or forage growth or residue is not maintained as part of the animal feeding operation during the period that animals are confined in the animal feeding operation.

2005 Iowa Acts, House File 805, section 3, provides that two or more open feedlot operations under common ownership or management are deemed to be a single open feedlot operation if they are adjacent or utilize a common area or system for open feedlot effluent disposal. To determine if two or more open feedlot operations are deemed to be one open feedlot operation, the first test is whether the open feedlot operations are under common ownership or management. If they are not under common ownership or management, they are not one open feedlot operation. The second test is whether the two open feedlot operations are adjacent or utilize a common area or system for open feedlot effluent disposal. If the two operations are not adjacent and do not use a common area or system for open feedlot effluent disposal, they are not one open feedlot operation.

“Open feedlot operation structure” means an open feedlot, settled open feedlot effluent basin, a solids settling facility, or an AT system. “Open feedlot operation structure” does not



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include a manure storage structure as defined in Iowa Code section 459.102.

“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. It 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 vegetation cover consisting of grasses, legumes, or both, and includes, but is not limited to, pastures, grasslands or forages.

“Process wastewater” means water directly or indirectly used in the operation of the AFO for any or all of the following: spillage or overflow from animal or poultry watering systems; washing, cleaning, or flushing pens, barns, manure pits, or other AFO facilities; direct contact swimming, washing, or spray cooling of animals; or dust control. Process wastewater also includes any water which comes into contact with any raw materials, products, or byproducts including manure, litter, feed, milk, eggs or bedding.

“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 included 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 open feedlot effluent, settled open feedlot effluent, or settleable solids from an open feedlot operation structure to surface water, groundwater, or an actual, imminent or probable discharge directly to a drainage tile line or intake resulting from storing, handling, transporting or land-applying open feedlot effluent, settled open feedlot effluent or settleable solids.

“Settleable solids” means that portion of open feedlot effluent that meets all the following requirements:

1. The solids do not flow perceptibly under pressure.
2. The solids are not capable of being transported through a mechanical pumping device designed to move a liquid.
3. The constituent molecules of the solids do not flow freely among themselves but do show the tendency to separate under stress.

“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” or “runoff control basin” means a covered or uncovered impoundment which is

part of an open feedlot operation, 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.

“Solids settling facility” means a basin, terrace, diversion, or other structure or solids removal method which is part of an open feedlot operation and which is designed and operated to remove settleable solids from open feedlot effluent. A “solids settling facility” does not include a basin, terrace, diversion, or other structure or solids removal method which retains the liquid portion of open feedlot effluent for more than seven consecutive days following a precipitation event.

“Unformed settled open feedlot effluent basin” means a settled open feedlot effluent basin, other than a formed settled open feedlot effluent basin.

“Vegetative infiltration basin” or “VIB” means an open feedlot operation structure in which settled open feedlot effluent is discharged into a relatively flat basin area which is bermed to prevent entry or discharge of surface water flows and is planted to permanent vegetation. An extensive tile system installed at a depth of three to five feet is used to collect infiltrated settled open feedlot effluent from the VIB and discharge it into a VTA for further treatment. As opposed to wetlands, which are designed to maintain a permanent water level, a VIB is designed to maximize water infiltration into the soil and thus normally will have standing water for only short periods of time. Removal of settleable solids is required prior to discharge of open feedlot effluent into the VIB. Soil suitability is essential to ensure adequate filtration and treatment of pollutants. Periodic harvesting of vegetation is required.

“Vegetative treatment area” or “VTA” means an open feedlot operation structure in which settled open feedlot effluent is discharged into areas which are level in one dimension and have a slight slope (less than 5 percent) in the other dimension and are planted to relatively dense permanent vegetation. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders or other practices may be required to maintain even flow throughout the length of the VTA. Management to maintain a dense vegetation cover is required, as is periodic harvesting of vegetation.

“Water of the state” means any stream, lake, pond, marsh, watercourse, waterway, well, spring, reservoir, aquifer, irrigation system, drainage system, and any other body or accumulation of water, surface or underground, natural or artificial, public or private, which are contained within, flow through or border upon the state or any portion thereof.

“Waters of the United States” means the same as defined in 40 CFR 122.2 as that section existed on July 1, 2005.

**567—65.101(81GA, HF805) Minimum open feedlot effluent control requirements and reporting of releases.** An open feedlot operation shall provide for the management of manure, process wastewater, settled open feedlot effluent, settleable solids and open feedlot effluent by using an open feedlot control method as provided in subrules 65.101(1) to 65.101(8). A release shall be reported to the department as provided in subrule 65.101(9).

**65.101(1)** All settleable solids from open feedlot effluent shall be removed prior to discharge into a water of the state.

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a. The settleable solids shall be removed by use of a solids settling facility. The construction of a solids settling facility is not required where existing site conditions provide for removal of settleable solids prior to discharge into a water of the state.

b. The removal of settleable solids shall be deemed to have occurred when the velocity of flow of the open feedlot effluent has been reduced to less than 0.5 feet per second for a minimum of five minutes. A solids settling facility shall have sufficient capacity to store settleable solids between periods of land application and to provide required flow-velocity reduction for open feedlot effluent flow volumes resulting from a precipitation event of less intensity than a ten-year, one-hour frequency event. A solids settling facility which receives open feedlot effluent shall provide a minimum of one square foot of surface area for each eight cubic feet of open feedlot effluent per hour resulting from a ten-year, one-hour frequency precipitation event.

**65.101(2)** This subrule shall apply to an open feedlot operation which has obtained an NPDES permit pursuant to 65.102(455B,81GA,HF805) or 65.103(455B,81GA,HF805).

a. An open feedlot operation may discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent into any waters of the United States due to a precipitation event, if any of the following apply:

(1) For an open feedlot operation that houses cattle, other than veal cattle, the operation is designed, constructed, operated, and maintained to comply with the requirements of 567—subrule 62.4(12) and to not discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent resulting from precipitation events less than or equal to the 25-year, 24-hour precipitation event into any waters of the United States.

(2) For an open feedlot operation that houses veal calves, swine, chickens, or turkeys, the operation is designed, constructed, operated, and maintained to not discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent resulting from precipitation events less than or equal to the 100-year, 24-hour precipitation event into any waters of the United States.

b. If the open feedlot operation is designed, constructed, and operated in accordance with the requirements of 567—subrule 62.4(12) and in accordance with any of the manure control alternatives listed in Appendix A of these rules or the AT system requirements in rule 65.110(81GA,HF805), the operation shall be considered to be in compliance with this rule, unless a discharge from the operation causes a violation of state water quality standards. If water quality standards violations occur, the department may impose additional open feedlot effluent control requirements upon the operation, as specified in subrule 65.101(3).

**65.101(3)** An open feedlot operation which has an animal unit capacity of 1000 animal units or more, or an open feedlot operation which is a large CAFO, or a medium CAFO as defined in rule 65.100(455B,459,81GA,HF805) or a designated CAFO pursuant to rule 65.103(455B,81GA,HF805) shall not discharge manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent from an open feedlot operation structure or production area into any waters of the United States, unless the discharge is pursuant to an NPDES permit. The control of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent originating from the open feedlot operation may be accomplished by the use of a solids settling

facility, settled open feedlot effluent basin, AT system, or any other open feedlot effluent control structure or practice approved by the department. The department may require the diversion of surface drainage prior to contact with an open feedlot operation structure. Settleable solids shall be settled from open feedlot effluent before the effluent enters a settled open feedlot effluent basin or AT system.

**65.101(4)** Alternative control practices. If, because of topography or other factors related to the site of an open feedlot operation, it is economically or physically impractical to comply with open feedlot effluent control requirements using an open feedlot control method in subrule 65.101(2), the department shall allow an open feedlot operation covered by the NPDES permit application requirements of 65.102(455B,81GA,HF805) or 65.103(455B,81GA,HF805) to use other open feedlot effluent control practices, provided the open feedlot operation satisfactorily demonstrates by appropriate methods that those practices will provide an equivalent level of open feedlot effluent control that would be achieved by using an open feedlot control method as provided in 65.101(2). The specific requirements which must be met for an open feedlot operation to qualify for use of an AT system and the information which must be submitted to the department are set forth in rule 65.110(81GA,HF805).

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

**65.101(6)** Land application.

a. General requirements. Open feedlot effluent shall be land-applied in a manner which will not cause surface or groundwater pollution. Application in accordance with the provisions of state law and the rules in this chapter shall be deemed as compliance with this requirement.

b. Designated areas. A person shall not apply manure on land within 200 feet from a designated area or, in the case of a high quality water resource, within 800 feet, unless one of the following applies:

(1) The manure is land-applied by injection or incorporation on the same date as the manure was land-applied.

(2) An area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the area of permanent vegetation cover is not subject to manure application.

**65.101(7)** The owner of an open feedlot operation who discontinues the use of the operation shall remove and land-apply in accordance with state law all manure, process wastewater and open feedlot effluent from the open feedlot operation structures as soon as practical but not later than six months following the date the open feedlot operation is discontinued. The owner of a CAFO shall maintain compliance with all requirements in the CAFO's NPDES permit until all manure, process wastewater and open feedlot effluent has been removed and land-applied pursuant to the CAFO's NMP.

**65.101(8)** Stockpiling of scraped manure and settleable solids. A CAFO must manage stockpiles as required by 65.101(2) or 65.101(3). For an open feedlot operation that is not a CAFO, stockpiles of manure scraped from open feedlot operations and stockpiles of settleable solids shall comply with the following requirements.

a. Stockpiles must be land-applied in accordance with 65.101(6) as soon as possible but not later than six months after they are established.

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b. Stockpiles shall not be located within 200 feet from a designated area or, in the case of a high quality water resource, within 800 feet, unless the following applies: an area of permanent vegetation cover, including filter strips and riparian forest buffers, exists for 50 feet surrounding the designated area other than an unplugged agricultural drainage well or surface intake to an unplugged agricultural drainage well, and the stockpile is not located in the area of permanent vegetation cover.

c. Stockpiles shall not be located in grassed waterways.

d. Stockpiles must be located downgradient of any drainage tile line intake within 200 feet of the stockpile.

**65.101(9)** A release, as defined in rule 65.100(455B,459, 81GA,HF805), shall be reported to the department as provided in this subrule. This subrule does not apply to land application of manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids in compliance with these rules, or to precipitation- or snowmelt-induced runoff from open feedlots which complies with the minimum control requirements set forth in this rule.

a. Notification. A person storing, handling, transporting, or land-applying manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids from an open feedlot operation who becomes aware of a release shall notify the department of the occurrence of release as soon as possible but not later than six hours after the onset or discovery of the release by contacting the department at (515)281-8694. 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 rule shall be confirmed in writing as provided in 65.101(9)"c."

b. Verbal report. The verbal report of such a release should provide information on as many items listed in 65.101(9)"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 contain at a minimum the following information:

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

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

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

(6) The source of the manure, process wastewater, open feedlot effluent, settled open feedlot effluent or settleable solids allegedly released (e.g., settled open feedlot effluent basin).

(7) The estimated or known volume of manure, process wastewater, open feedlot effluent, settled open feedlot effluent, or settleable solids 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 approximate location 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. Reporting of subsequent findings. All subsequent findings and laboratory results should 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 drainage tile line or intake will not result in a discharge to a water of the state.

**567—65.102(455B,81GA,HF805) NPDES permits required for CAFOs.** Concentrated animal feeding operations (CAFOs) are point sources that require NPDES permits.

**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 must apply for an individual NPDES permit. The application procedures are prescribed in rule 65.104(455B,81GA,HF805).

**65.102(2)** Exception. An open feedlot operation shall not be required to obtain an NPDES permit if the operation does not discharge manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent into any waters of the United States

**567—65.103(455B, 81GA,HF805) Departmental evaluation; CAFO designation; remedial actions.**

**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 a significant contributor of manure or process wastewater to waters of the United States. 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 United States;

b. The location of the operation relative to waters of the United States;

c. The means of conveyance of manure or process wastewater to waters of the United States;

d. The slope, vegetation, rainfall, and other factors affecting the likelihood or frequency of discharge of manure or process wastewater into waters of the United States; 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 United States:

a. Through a man-made ditch, flushing system, or other similar man-made device; or

b. Which originates outside of and passes over, across or through the facility or otherwise comes into direct contact with animals confined in the operation.

**65.103(3)** The owner or operator of a designated CAFO shall apply for an NPDES permit no later than 90 days after

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receiving written notice of the designation, unless the required corrective actions are taken prior to that time.

**65.103(4)** If departmental evaluation determines that any of the conditions listed in paragraph 65.103(4)“a,” “b,” or “c” exist, the open feedlot operation shall institute necessary remedial actions within a time 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.

a. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is being discharged into a water of the state and the operation is not providing the applicable minimum level of manure control as specified in rule 65.101(81GA, HF805);

b. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause pollution of a water of the state; or

c. Settled open feedlot effluent, settleable solids from the open feedlot operation, or open feedlot effluent is causing or may reasonably be expected to cause a violation of state water quality standards.

**567—65.104(455B, 81GA, HF805) 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 September 14, 2005, 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 prior to April 14, 2003, which were defined as CAFOs under rules that were in effect prior to April 14, 2003, but have not obtained a permit, should have applied for an NPDES permit by April 14, 2003. Animal feeding operations in existence on September 14, 2005, which were not defined as CAFOs under rules that were in effect prior to September 14, 2005, shall apply for an NPDES permit no later than February 13, 2006.

**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. 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, 81GA, HF805)) 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. Applications submitted after September 30, 2006, shall include a nutrient management plan as required in rule 65.112(81GA, HF 805). 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(81GA, HF805).

**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 operated and maintained as required by Iowa law, to protect the public health and beneficial uses of waters of the United States, and to prevent water pollution from manure storage or application operations. Any more stringent conditions of 2005 Iowa Acts, House File 805, 567—subrule 62.4(12), 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 requirements of 65.112(81GA, HF805) and any additional nutrient management plan requirements for CAFOs in these rules by December 31, 2006. CAFOs that seek to obtain coverage under an NPDES permit issued after December 31, 2006, shall have a nutrient management plan developed and implemented upon the date of permit coverage.

b. Inspections and record keeping.

(1) Visual inspections. Routine visual inspections of the CAFO production area must be conducted. At a minimum the following must be visually inspected:

1. Weekly inspections of all storm water diversion, runoff diversion structures, and devices channelling contaminated storm water to the open feedlot structure.

2. Daily inspection of water lines, including drinking water or cooling water lines.

(2) Corrective actions. Any deficiencies found as a result of the inspections required in 65.104(9)“b”(1) or as a result of the liquid level reporting required in 65.104(9)“d” must be corrected as soon as possible.

(3) The following records must be maintained on-site for a period of five years from the date they are created and must be made available to the department upon request:

1. Records documenting the inspections required in 65.104(9)“b”(1).

2. Records of weekly liquid level observations as required in 65.104(9)“d.”

3. Records documenting any actions taken to correct deficiencies as required in 65.104(9)“b”(2).

c. Large CAFOs—transfer of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent. Prior to transferring manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent to other persons, a large CAFO must provide the recipient of the manure, process wastewater, settled open

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feedlot effluent, settleable solids or open feedlot effluent with the most current nutrient analysis. A large CAFO must retain for five years records of the date, recipient name and address, nutrient analysis and approximate amount of manure, process wastewater, settled open feedlot effluent, settleable solids or open feedlot effluent transferred to another person.

d. Monitoring requirements for AT systems. During the first two years of operation of an AT system, the following monitoring will be required:

(1) Discharge monitoring. An effluent collection point must be established at the outlet of the AT system, and the flow volume recorded and an effluent sample collected on each day a discharge from the AT system occurs. Discharge samples must be submitted to a certified laboratory and analyzed for: total Kjeldahl N, NH<sub>4</sub> N, total P, COD, total suspended solids, and chloride.

(2) Discharge monitoring—tile lines. If the AT system includes a tile system installed to enhance infiltration within the VTA in accordance with 65.110(6)“h” or 65.110(7)“h”, water samples shall be collected from a sampling point located downgradient of the VTA on each individual tile line or combination of tile lines on the following schedule:

1. Quarterly sampling. One sample shall be taken from each sampling point once each quarter (January - March, April - June, July - September, October - December), and the level of flow in the tile system recorded at the time of sampling. Collected samples shall be submitted to a certified laboratory and analyzed for: total Kjeldahl N, NH<sub>4</sub> N, total P, COD, total suspended solids, and chloride.

2. Event sampling. Each year, two rainfall event related tile flow samples shall be collected from each sampling point. For each sampling event, one sample shall be taken from each sampling point three to five days following a rainfall event of one inch or greater, and the level of flow in the tile system recorded at the time of sampling. Collected samples shall be submitted to a certified laboratory and analyzed for: total Kjeldahl N, NH<sub>4</sub> N, total P, COD, total suspended solids, and chloride.

(3) Groundwater monitoring. A minimum of two groundwater monitoring wells or piezometers (one upgradient and one downgradient) must be established at each AT system. Additional wells or piezometers may be required if the department determines they are necessary to adequately assess the impacts the AT system is having on groundwater. Samples must be collected from these wells quarterly and analyzed for: NH<sub>4</sub> N, NO<sub>3</sub> N, and chloride.

(4) Soil sampling.

1. Initial and permit renewal sampling. Soil sampling shall be conducted prior to initial discharge of open feedlot effluent into the AT system and repeated prior to renewal of the NPDES permit, as outlined below:

- VTA. A minimum of two sampling sites shall be established within each VTA cell, one located where runoff enters the VTA and one where runoff is discharged from the VTA. Soil samples shall be taken from these sites to a depth of 4 feet, with separate samples taken to represent the 0 to 6-inch depth, the 6- to 12-inch depth, and in one-foot increments thereafter. All samples shall be analyzed for NO<sub>3</sub> N, NH<sub>4</sub> N, P by either the Olsen or Mehlich-3 method, and pH.

If the length of effluent flow through the VTA exceeds 400 feet, an additional soil sample representing the 0 to 6-inch depth should be taken for each additional 200 feet of VTA length. Samples shall be analyzed for NO<sub>3</sub> N, NH<sub>4</sub> N, P by either the Olsen or Mehlich-3 method, and pH.

- VIB. One sampling site shall be established where open feedlot effluent enters the VIB. Soil samples at this site shall be taken to a depth of 4 feet, with separate samples taken to represent the 0 to 6-inch depth, the 6- to 12-inch depth, and in one-foot increments thereafter. These samples shall be analyzed for NO<sub>3</sub> N, NH<sub>4</sub> N, P by either the Olsen or Mehlich-3 method, and pH.

An additional sampling site shall be established where open feedlot effluent is discharged from the VIB through the tile system. Soil samples shall be taken at this site to represent the 0 to 6-inch depth, and analyzed for NO<sub>3</sub> N, NH<sub>4</sub> N, P by either the Olsen or Mehlich-3 method, and pH.

2. Annual sampling. One sampling site shall be established in each cell of a VTA and VIB in an area which is expected to receive the greatest amount of open feedlot effluent. Soil samples shall be taken from each site prior to initiating discharge of open feedlot effluent into the VTA or VIB and shall be repeated annually. Each sample shall represent a composite of 10 to 12 individual samples taken to a 6-inch depth, and analyzed for P using either the Olsen or Mehlich-3 method and for pH.

Monitoring requirements for an AT system following the initial two-year operation period will be determined at the time the NPDES permit for the operation is due for renewal.

e. Reporting requirements for CAFOs with outside liquid impoundments.

(1) Quarterly reports. 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, weekly impoundment liquid levels, volume of liquid removed from the impoundments, and the date, time, duration, and estimated volume of any overflow. Liquid levels must be obtained by observing a depth marker which clearly indicates the minimum capacity necessary to contain the runoff and direct precipitation of the 25-year, 24-hour rainfall event or the 100-year, 24-hour rainfall event as applicable pursuant to 65.101(2)“a.”

(2) Annual reports. All permittees must submit an annual report to the department by January 10 of the following year. The annual report must include:

1. The number and type of animals in open feedlot operation;

2. Estimated amount of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent 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, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent discharges from the production area that have 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.

f. Quarterly reporting requirements for CAFOs with AT systems. A permittee with an AT system must submit quarterly reports by April 10, July 10, October 10, and January

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10, following the respective calendar quarters. The quarterly reports shall provide all of the following information:

- (1) Daily precipitation.
- (2) Dates on which manure, process wastewater, settled open feedlot effluent, open feedlot effluent, or settleable solids were removed from the production area and estimated amounts of manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent removed (tons/gallons).
- (3) Dates on which discharges from the production area or the AT system occurred and the estimated duration and volume of discharge on each discharge date.
- (4) Results of laboratory analyses of discharge samples for each date a discharge from the production area or the AT system occurred. If the results of laboratory analyses are not available by the due date of the quarterly report, the results shall be provided with the following quarter's report.
- (5) Results of laboratory analyses of samples taken from the groundwater monitoring wells or piezometers. If the results of laboratory analyses are not available by the due date of the quarterly report, the results shall be provided with the following quarter's report.
  - g. Annual reporting requirements for CAFOs with AT systems. A permittee shall submit an annual report by January 10 of the following year. The annual report must include all of the following:
    - (1) The number and type of animals in the open feedlot operation.
    - (2) Estimated amount of total manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent generated by the CAFO in the previous 12 months (tons/gallons).
    - (3) Estimated amount of total manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent 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, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent in the previous 12 months.
    - (5) Summary of all manure, process wastewater, settled open feedlot effluent, settleable solids, or open feedlot effluent discharges from the production area or AT system that have occurred in the previous 12 months, including date, time, and approximate volume.
    - (6) Harvest dates and estimated amounts of forage removed from the AT system during the previous 12 months.
    - (7) Results of soil and groundwater sampling within the AT system during the previous 12 months.
    - (8) 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.**

a. General requirements. 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 need to retain an NPDES permit if the permittee can demonstrate to the satisfaction 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.

b. Permits involving use of AT systems.

(1) During the first two years of operation of an AT system, a permittee will be issued a two-year NPDES permit. Renewal of this permit is contingent upon proper operation and maintenance of the AT system, submittal of all required records and reports, and demonstration that the AT system is providing an equivalent level of performance to that achieved by a properly designed and operated 25-year, 24-hour runoff containment system.

(2) If departmental review of an AT system indicates the system is not meeting the equivalent performance standard, the permittee may either be required to make needed system modifications to enable compliance with this standard or be required to install a conventional runoff containment system. Open feedlot operations 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.

**65.104(11) Permit modification, suspension or revocation.** The department may modify, suspend, refuse to renew or revoke in whole or 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(81GA, HF805) Construction permits.**

**65.105(1) Open feedlot operations required to obtain a construction permit.** An open feedlot operation must obtain a construction permit prior to any of the following:

- a. The construction, including expansion, of a settled open feedlot effluent basin or AT system if the open feedlot operation is required to be issued an NPDES permit.
- b. The department has previously issued the open feedlot operation a construction permit and any of the following applies:

(1) The animal unit capacity of the open feedlot operation will be increased to more than the animal unit capacity approved by the department in the previous construction permit.

(2) The volume of settled open feedlot effluent, settleable solids and open feedlot effluent stored at the open feedlot operation would be more than the volume approved by the department in the previous construction permit.

(3) The open feedlot operation was discontinued for 24 months or more and the animal unit capacity would be 1000 animal units or more.

**65.105(2) When a construction permit is not required.**

a. Research colleges. A construction permit is not required to construct a settled open feedlot effluent basin or AT system if the basin or system is part of an open feedlot operation which is owned by a research college conducting research activities as provided in 2005 Iowa Acts, House File 805, section 5.

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b. Solids settling facilities. A construction permit is not required to construct a solids settling facility.

**65.105(3)** Applications that cannot be approved. The department shall not approve an application for a construction permit unless the applicant submits all of the following:

a. For an open feedlot operation submitting an application for a construction permit on or after September 30, 2006, a nutrient management plan as provided in rule 65.112(81GA, HF805).

b. An engineering report, construction plans, and specifications prepared by a professional engineer or the Natural Resources Conservation Service of the United States Department of Agriculture certifying that the construction of the settled open feedlot effluent basin or AT system complies with the construction design standards required in this Division II of Chapter 65.

**65.105(4)** Plan review criteria; time for approval or disapproval.

a. Plan review criteria. Review of plans and specifications shall be conducted by the department to determine the potential of the settled open feedlot effluent basin or AT system to achieve the level of control being required of the open feedlot operation. Applicable criteria contained in federal law, state law, these rules, Natural Resources Conservation Service design standards and specifications, unless inconsistent with federal or state law or these rules, and department of commerce precipitation data will be used in the review. If the proposed facility plans are not adequately covered by these criteria, applicable criteria contained in current technical literature shall be used.

b. Time for approval or disapproval. The department shall approve or disapprove an application for a construction permit within 60 days after receiving the permit application. However, the applicant may deliver a notice requesting a continuance. Upon receipt of a notice, the time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than 30 days after the department's receipt of the notice. The applicant may submit more than one notice. If review of the application is delayed because the application is incomplete, and the applicant fails to supply requested information within a reasonable time prior to the deadline for action on the application, the permit may be denied and a new application will be required if the applicant wishes to proceed. The department may also provide for a continuance when it considers the application. The department shall provide notice to the applicant of the continuance. The time required for the department to act upon the application shall be suspended for the period provided in the notice, but for not more than 30 days. However, the department shall not provide for more than one continuance.

**65.105(5)** Expiration of construction permits. The construction permit shall expire if construction, as defined in rule 65.106(81GA, HF805), is not begun within one year and completed within three years of the date of issuance. A construction permit issued prior to September 14, 2005, shall expire if construction, as defined in rule 65.106(81GA, HF805), is not begun within one year of the date of issuance and shall expire on September 15, 2012, if construction is not completed by September 14, 2012. The director may grant an extension of time to begin or complete construction if it is necessary or justified, upon showing of such necessity or justification to the director.

**65.105(6)** Revocation of construction permits. The department may suspend or revoke a construction permit, modify the terms or conditions of a construction permit, or

refuse to renew a permit expiring according to subrule 65.105(5) if it determines that the operation of the open feedlot 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 a settled open feedlot effluent basin or AT system until the person has been granted a permit for the construction by the department.

**567—65.106(81GA, HF805) 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 commences for a proposed open feedlot operation structure or proposed expansion of an existing open feedlot operation structure.

b. Installation of forms for concrete for a proposed open feedlot operation structure or the proposed expansion of an existing open feedlot operation structure.

c. Installation of piping for movement of settled open feedlot effluent or open feedlot effluent within or between open feedlot operation structures as proposed or proposed to be expanded.

**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(81GA, HF805) Construction permit application.** An open feedlot operation 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 is scheduled to start.

**65.107(1)** Conceptual design. Prior to submitting an application for a construction permit, the applicant may submit a conceptual design and site investigation report to the department for review and comment.

**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 settled open feedlot effluent basin or AT system to achieve the level of control required of the open feedlot. A construction permit application shall include the following:

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

b. The name of the contact person for the open feedlot operation, including the person's mailing address and telephone number.

c. The location of the open feedlot operation.

d. A statement providing that the application is for any of the following:

(1) The construction or expansion of a settled open feedlot effluent basin or AT system for an existing open feedlot operation which is not expanding;

(2) The construction or expansion of a settled open feedlot effluent basin or AT system for an existing open feedlot operation which is expanding;

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(3) The construction of a settled open feedlot effluent basin or AT system for a proposed new open feedlot operation.

e. The animal unit capacity for each animal species in the open feedlot operation before and after the proposed construction.

f. An engineering report, construction plans and specifications, prepared by a professional engineer or by Natural Resources Conservation Service personnel for the settled open feedlot effluent basin or AT system.

g. A report on the soil and hydrogeologic information for the site, as described in subrules 65.109(2) and 65.110(4).

h. Information including, but not limited to, maps, drawings and aerial photos that clearly show the location of all the following:

(1) The open feedlot operation and all existing and proposed settled open feedlot effluent basins or AT systems, clean water diversions, and other pertinent features or structures.

(2) Any other open feedlot operation under common ownership or common management and located within 1250 feet of the open feedlot operation.

(3) Any public water supply system as defined in Iowa Code section 455B.171 or drinking water well which is located less than the distance from the open feedlot operation required by rule 65.108(455B,81GA,HF805). Information shall also be provided as to whether the proposed settled open feedlot effluent basin or AT system will meet all applicable separation distances.

**567—65.108(455B,81GA,HF805) Well separation distances for open feedlot operations.**

**65.108(1)** Settled open feedlot effluent basins. Settled open feedlot effluent basins shall be separated from wells as follows:

a. Public wells. 1000 feet from shallow wells and 400 feet from deep wells;

b. Private wells. 400 feet from both shallow and deep wells.

**65.108(2)** Open feedlots, solids settling facilities and AT systems. Open feedlots, solids settling facilities and AT systems shall be separated from wells as follows: for both public and private wells, 200 feet from shallow wells and 100 feet from deep wells.

**65.108(3)** Variances to this rule may be granted by the director if the applicant provides an alternative that is substantially equivalent to the rule or provides improved effectiveness or protection as required by the 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—65.109(81GA,HF805) Settled open feedlot effluent basins—investigation, design and construction requirements.**

A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to 2005 Iowa Acts, House File 805, section 7, shall meet the design and construction requirements set forth in this rule.

**65.109(1)** Drainage tile investigation and removal. Prior to constructing a settled open feedlot effluent basin, the owner of the open feedlot operation shall investigate the site for the basin for a drainage tile line. The investigation shall be made by digging a core trench to a depth of at least six feet deep from ground level at the projected center of the berm of the basin. A written record of the investigation shall be submitted as part of the construction certification required in rule 65.111(81GA,HF805). If a drainage tile line is discovered, one of the following solutions shall be implemented:

a. The drainage tile line shall be rerouted around the perimeter of the basin at a distance of least 25 feet horizontally separated from the outside toe of the berm of the basin. For an area of the basin where there is not a berm, the drainage tile line shall be rerouted at least 50 feet horizontally separated from the edge of the basin.

b. The drainage tile line shall be replaced with a nonperforated tile line under the basin floor. The nonperforated tile line shall be continuous and without connecting joints. There must be a minimum of three feet between the nonperforated tile line and the basin floor.

**65.109(2)** Soils and hydrogeologic report. A settled open feedlot effluent basin required to be constructed pursuant to a construction permit issued pursuant to rule 65.105(81GA,HF805) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 65.107(81GA,HF805). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the basin.

b. The subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-92 or D 2488-90.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the basin reflecting the continuous soil profile existing within the area of the basin. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed basin, including conditions found near the corners and the deepest point of the proposed basin. The soils investigation shall be conducted to a minimum depth of ten feet below the proposed bottom elevation of the basin.

(3) By methods which identify the continuous soil profile and do not result in mixing of soil layers. Soil corings using hollow stem augers, soil test pits, and other suitable methods may be used.

(4) If located in karst terrain, at least one soil coring shall be taken to a minimum depth of 25 feet below the bottom elevation of the settled open feedlot effluent basin or into bedrock, whichever is shallower. The department may accept information from the department's Geosam database in lieu of the coring. 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.

(5) Soil corings may be used to determine current groundwater levels by completing the corings as temporary monitoring wells as provided in 65.109(3)"a"(1) and measuring the water levels in these wells no earlier than seven days after installation as provided in 65.109(3)"a"(2).

(6) Upon abandonment of 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.

(7) If soil test pits or other excavation methods are used in conducting the soils investigation, upon closure these ex-



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cavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the basin liner.

**65.109(3) Hydrology.**

a. Determination of groundwater table. For purposes of this rule, groundwater table is the seasonal high-water table determined by a professional engineer, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or Natural Resources Conservation Service (NRCS). If a construction permit is required, the department must approve the groundwater table determination.

(1) Current groundwater levels shall be measured using at least one of the following for either a formed settled open feedlot effluent basin or an unformed settled open feedlot effluent basin:

1. Temporary monitoring wells. Three temporary monitoring wells shall be developed according to 567—subrule 110.11(8). The top of the well screen shall be within five feet of the ground surface. Each well shall be extended to at least two feet below the proposed top of the liner of an unformed settled open feedlot effluent basin, or to at least two feet below the proposed bottom of the footings of a formed settled open feedlot effluent basin.

- Unformed basins. For an unformed settled open feedlot effluent basin, the monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.109(2)“c.”

- Formed basins. For a formed settled open feedlot effluent basin, at least three temporary monitoring wells shall be installed as close as possible to three corners of the structure, with one of the wells close to the corner of deepest excavation. If the formed settled open feedlot effluent basin is circular, the three monitoring wells shall be equally spaced and one well shall be placed at the point of deepest excavation.

2. Test pits. Test pits may be used in lieu of temporary monitoring wells to determine the seasonal high-water table or prior to the construction of an unformed settled open feedlot effluent basin's liner to ensure the required separation distance to the seasonal high-water table is being met. The bottom of each pit shall be a minimum of two feet below the floor of the proposed settled open feedlot effluent basin. However, if the test pit is also being used to conduct the soils investigation required in 65.109(2)“c,” the bottom of the pit shall be a minimum of ten feet below the floor of the proposed basin. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or NRCS qualified staff for the determination of soil characteristics and related groundwater influence. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. Test pits shall be constructed at locations that reflect the continuous soil profile conditions existing within the area of the proposed basin, including conditions found near the corners and the deepest point of the proposed basin. A description of the materials present in the test pit shall be documented by all of the following:

- Digital photos;
- Description of soils including mottling;
- Weather conditions both prior to and during the period in which test pits are open.

(2) The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells or test pits not earlier than seven days following installation, NRCS soil

survey information, soil characteristics such as color and mottling, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.109(3)“c,” the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

b. The settled open feedlot effluent basin shall be constructed with a minimum separation of two feet between the top of the liner of the basin and the seasonal high-water table.

c. If a drainage tile line around the perimeter of the basin is installed a minimum of two feet below the top of the basin liner to artificially lower the seasonal high-water table, the top of the basin's liner may be a maximum of four feet below the seasonal high-water table which existed prior to installation of the perimeter tile system. The seasonal high-water table may be artificially lowered by gravity flow tile lines or other similar system. However, the following shall apply:

(1) Except as provided in subparagraph (2), an open feedlot operation shall not use a nongravity mechanical system that uses pumping equipment.

(2) If the open feedlot operation was constructed before July 1, 2005, the operation may continue to use its existing nongravity mechanical system that uses pumping equipment, or it may construct a new nongravity mechanical system that uses pumping equipment. However, an open feedlot operation that expands the area of its open feedlot on or after April 1, 2011, shall not use a nongravity mechanical system that uses pumping equipment.

(3) Drainage tile lines may be installed to artificially lower the seasonal high-water table at a settled open feedlot effluent basin, if all of the following conditions are satisfied:

1. A device to allow monitoring of the water in the drainage tile lines and a device to allow shutoff of the flow in the drainage tile lines are installed, if the drainage tile lines do not have a surface outlet accessible on the property where the settled open feedlot effluent basin is located.

2. Drainage tile lines are installed horizontally at least 25 feet away from the outside toe of the berm of the settled open feedlot effluent basin. Drainage tile lines shall be placed in a vertical trench and encased in granular material which extends upward to the level of the seasonal high-water table which existed prior to installation of the perimeter tile system.

**65.109(4) Karst terrain.**

a. Construction prohibited. Settled open feedlot effluent basins shall not be constructed in areas which drain to known sinkholes or in karst terrain. Structure sites located within one mile of karst terrain shall be considered to be located in karst terrain, unless site-specific geologic information is submitted documenting that 25 feet of suitable materials exist between the structure bottom and carbonated bedrock or limestone or dolomite.

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

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

(2) The use of formed structures constructed of materials other than concrete and located in areas which drain to known sinkholes or located in karst terrain may be approved by the department if the proposed structures are designed by a professional engineer, a minimum of five 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

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structure's base is sufficiently low to provide an adequate barrier to prevent percolation into carbonated bedrock or groundwater.

c. Construction of settled open feedlot effluent basins is allowed in areas identified as karst terrain if site-specific geologic information is submitted documenting that 25 feet of suitable materials exist between the structure bottom and carbonated bedrock or limestone or dolomite.

**65.109(5)** Bedrock separation. A settled open feedlot effluent basin shall be constructed with at least four feet of separation between the bottom of the basin and a bedrock formation.

**65.109(6)** Floodplain requirements.

a. Construction in floodplains. Open feedlot operation 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—Chapters 71 and 72.

b. Permits for dam construction. Open feedlot operation structures exceeding storage capacity or dam height thresholds may be required to obtain DNR permits, as specified in 567—71.3(455B) and 72.3(455B).

**65.109(7)** Liner design and construction. The liner of a settled open feedlot effluent basin shall comply with all of the following:

a. The liner shall comply with any of the following permeability standards:

(1) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin as determined by percolation tests conducted by the professional engineer. If a clay soil liner is used, the liner shall be constructed with a minimum thickness of 12 inches or the minimum thickness necessary to comply with the percolation rate in this paragraph, whichever is greater.

(2) The liner shall be constructed to have a percolation rate that shall not exceed one-sixteenth inch per day at the design depth of the basin. The design of the liner will specify a moisture content, compaction requirement, and liner thickness that will comply with the maximum allowable percolation requirement, and will be based on moisture content and percentage of maximum density as determined by a standard 5 point proctor test performed in accordance with ASTM D698 (Method A). The liner thickness will be based on laboratory tests of the compacted material, with a minimum liner thickness of 12 inches. Appropriate field or laboratory testing during construction shall be provided to verify the design requirements are met.

b. If a synthetic liner is used, the liner shall be installed to comply with the percolation rate required in 65.109(7)“a”(1).

**65.109(8)** Berm erosion inspection and repair. The owner of an open feedlot operation using a settled open feedlot effluent basin shall inspect the berms of the basin at least semi-annually for evidence of erosion. If the inspection reveals erosion which may impact the basin's structural stability or the integrity of the basin's liner, the owner shall repair the berms.

**567—65.110(81GA,HF805) AT systems—design requirements.**

**65.110(1)** Containment volume.

a. Adequate capacity must be provided within the AT system or within the solids settling facility for the open feedlot operation to contain expected open feedlot effluent from November 1 to March 30 or to hold the 25-year, 24-hour precipitation event, whichever is greater. Controls on the solids

settling facility or the AT system shall prevent release of collected open feedlot effluent to waters of the United States during the period from November 1 to March 30.

b. If the containment volume required in 65.110(1)“a” is provided in an open feedlot operation structure whose primary purpose is to remove settleable solids from open feedlot effluent prior to discharge into an AT system, the basin shall not be required to comply with the liner design and construction requirements of 65.109(7), provided the basin does not retain collected open feedlot effluent for more than seven consecutive days following a precipitation event during the period from March 30 to November 1.

**65.110(2)** Solids settling. Settleable solids shall be removed from open feedlot effluent prior to discharge of the effluent into an AT system. Solids settling shall be conducted in conformance with the requirements of paragraph 65.101(1)“b.”

**65.110(3)** Drainage tile investigation and removal. Prior to constructing an AT system, the owner of the open feedlot operation shall investigate the site for the AT system for drainage tile lines. The investigation shall be made by digging a core trench to a depth of at least six feet from ground level at the projected center of the berm of the AT system. A written record of the investigation shall be submitted as part of the construction certification required in rule 65.111(81GA,HF805). If a drainage tile line is discovered, one of the following solutions shall be implemented:

a. The drainage tile line shall be rerouted around the perimeter of the AT system at a distance of least 25 feet horizontally separated from the toe of the outside berm of the AT system. For an area of the system where there is not a berm, the drainage tile line shall be rerouted at least 50 feet horizontally separated from the edge of the system.

b. The drainage tile line shall be replaced with a nonperforated tile line under the AT system. The nonperforated tile line shall be continuous and without connecting joints. There must be a minimum of three feet of separation between the nonperforated tile line and the soil surface of the AT system.

**65.110(4)** Soils and hydrogeologic report. An AT system constructed pursuant to a construction permit issued pursuant to rule 65.105(81GA,HF805) shall meet design standards as required by a soils and hydrogeologic report. The report shall be submitted with the construction permit application as provided in rule 65.107(81GA,HF805). The report shall include all of the following:

a. A description of the steps taken to determine the soils and hydrogeologic conditions at the proposed construction site, a description of the geologic units encountered, and a description of the effects of the soil and groundwater elevation and direction of flow on the construction and operation of the AT system.

b. Subsurface soil classification of the site. A subsurface soil classification shall be based on ASTM international designation D 2487-92 or D 2488-90.

c. The results of a soils investigation conducted at a minimum of three locations within the area of the proposed AT system for AT systems of five acres or less, with one additional soils investigation site utilized for each additional three acres of surface area or fraction thereof. The soils investigation results shall be used in determining subsurface soil characteristics and groundwater elevation and direction of flow at the proposed AT system site. The soils investigation shall be conducted and utilized as follows:

(1) By a qualified person ordinarily engaged in the practice of performing soils investigations.

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(2) At locations that reflect the continuous soil profile conditions existing within the area of the proposed AT system. The soils investigation shall be conducted to a minimum depth of ten feet below the elevation of the soil surface of the proposed AT system.

(3) By methods which identify the continuous soil profile and do not result in mixing of soil layers. Investigation methods may include soil corings using hollow stem augers, soil test pits, or other suitable methods.

(4) If located in karst terrain, at least one soil coring shall be taken to a minimum depth of 25 feet below the elevation of the soil surface of the proposed AT system or into bedrock, whichever is shallower. The department may accept well log information from the department's Geosam database in lieu of the coring. 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.

(5) Soil core holes may be used to determine current groundwater levels by completing the core holes as temporary monitoring wells and measuring the water levels in these wells not earlier than seven days after installation.

(6) 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.

(7) If soil test pits or other excavation methods are used in conducting the soils investigation, upon closure these excavations must be filled with suitable materials and adequately compacted to ensure they will not compromise the integrity of the AT system.

**65.110(5) Hydrology—groundwater table.** For purposes of this rule, groundwater table is the seasonal high-water table determined by a professional engineer, a groundwater professional certified pursuant to 567—Chapter 134, or qualified staff from the department or Natural Resources Conservation Service (NRCS). If a construction permit is required, the department must approve the groundwater table determination.

a. Groundwater level measurements. Groundwater levels shall be measured using at least one of the following methods:

(1) Temporary monitoring wells. Three temporary monitoring wells shall be developed to a minimum of ten feet below the surface of the proposed AT system and constructed in accordance with requirements of 567—subrule 110.11(8). The top of the well screen shall be within five feet of the ground surface. These monitoring wells may be installed in the soil core holes developed as part of conducting the soils investigation required in paragraph 65.110(4)“c.”

(2) Test pits. Test pits may be used in lieu of temporary monitoring wells to determine the seasonal high-water table or prior to the construction of an AT system to ensure the required separation distance to the seasonal high-water table is being met. The bottom of each pit shall be a minimum of five feet below the proposed surface of the AT system. However, if the test pit is also being used to conduct the soils investigation required in 65.110(4)“c,” the bottom of the pit shall be a minimum of ten feet below the surface of the proposed AT system. Each pit shall be allowed to remain open and unaltered for a minimum of seven days for viewing by the department or NRCS qualified staff. Adequate protection (temporary berms and covers) shall be provided to prevent surface runoff from entering the test pits. Test pits shall be located as needed to provide an accurate assessment of soil materials and seasonal high groundwater levels throughout the area of

the proposed AT system. A description of the materials present in the test pit shall be documented by all of the following:

- Digital photos;
- Description of soils including mottling;
- Weather conditions both prior to and during the period in which test pits are open.

b. Determination of seasonal high-water table. The seasonal high-water table shall be determined by considering all relevant data, including the groundwater levels measured in the temporary monitoring wells or test pits not earlier than seven days following installation, NRCS soil survey information, soil characteristics such as color and mottling found in soil cores and test pits, other existing water table data, and other pertinent information. If a drainage system for artificially lowering the groundwater table will be installed in accordance with the requirements of paragraph 65.110(6)“g” or 65.110(7)“g,” the level to which the groundwater table will be lowered will be considered to represent the seasonal high-water table.

**65.110(6) Vegetative infiltration basin followed by vegetative treatment area.**

a. Computer modeling. Results of predictive computer modeling for the proposed AT system shall be used to determine suitability of the proposed site for the AT system and to predict performance of the AT system as compared to the use of a 25-year, 24-hour runoff containment system, over a 25-year period. A summary of the computer modeling results shall be provided to the department.

b. Size. The computer model used to determine if the proposed AT system will meet the equivalent performance standard shall also be used to establish the minimum required size of the VIB and VTA. However, the size of the VIB shall not be less than 30 percent of the total drainage area (feedlot and other) served by the basin, and the size of the VTA shall not be less than 30 percent of the surface area of the VIB.

c. Slope. The following slope requirements apply to the constructed system components.

(1) VIB. The maximum slope of the constructed VIB shall not exceed 1 percent.

(2) VTA. The constructed VTA shall be level in one dimension and have a slight slope (maximum of 5 percent) in the other dimension.

d. Berming.

(1) VIB. The VIB must be bermed to prevent inflow of surface water from outside the VIB and prevent surface outflow of feedlot effluent from the VIB.

(2) VTA. The VTA must be bermed to prevent inflow of surface water from outside areas.

e. Spreaders. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders or other practices may be required to maintain uniform flow of settled open feedlot effluent throughout the length of the VTA.

f. Soil permeability. Soil permeability within the VIB and VTA must be from 0.6 to 2.0 inches per hour throughout the soil profile to a depth of five feet. Soil permeability must be verified by conducting on-site or laboratory soil permeability testing.

g. Groundwater lowering system. The seasonal high-water table within the VIB and the VTA must be capable of being lowered to a depth of four to five feet with a perimeter tile system installed outside of the VIB or VTA. Design information must be provided which demonstrates the adequacy of the proposed groundwater lowering system. The tile system must satisfy the following requirements:

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(1) If the tile system does not have a surface outlet accessible on the property where the AT system is located, a device to allow monitoring of the water in the tile system and a device to allow shutoff of the flow in the tile system must be installed.

(2) Tile lines in the system must be installed horizontally at least 25 feet away from the outside toe of the berm of the VIB or VTA.

h. Tile system to enhance infiltration within the VTA. A tile system may be installed at the perimeter of the VTA cells to enhance infiltration within the VTA. The tile system must satisfy the following requirements:

(1) Tile lines shall be installed at the centerline of the berms of the VTA cells.

(2) The tile lines shall be constructed such that no settled open feedlot effluent can enter the lines except through infiltration through the soil profile.

(3) A shutoff valve and sampling point located downslope of the VTA cell shall be provided for each individual tile line. However, if multiple tile lines are brought together into a common tile line, a single shutoff valve and sampling point may be utilized.

(4) Monitoring of the tile lines must be conducted in accordance with the requirements of 65.104(9)“d”(2).

i. Depth to sands, gravels, or glacial outwash.

(1) VIB. A VIB is not allowed if the depth to sands, gravels, or glacial outwash is less than ten feet.

(2) VTA. A VTA is not allowed if the depth to sands, gravels, or glacial outwash is less than six feet.

j. Depth to bedrock. A minimum of ten feet of overburden or loose material must exist between the surface of the constructed VIB or VTA and underground bedrock.

k. Flooding. Both the VIB and the VTA must be constructed in areas which are not subject to flooding more frequently than once in 25 years.

l. Distance to water bodies. The following distances, measured along the path of water flow, shall be provided between the point of discharge from the VTA and the receiving water body.

(1) Classified water bodies or perennial streams. A minimum distance of 500 feet or one-half foot distance per animal unit capacity of the open feedlot area which drains to the vegetative treatment area, whichever is greater, shall be provided.

(2) Uncrossable intermittent streams. A minimum distance of 200 feet shall be provided.

**65.110(7) Stand-alone VTA.**

a. Computer modeling. Results of predictive computer modeling for the proposed alternative technology system shall be used to determine suitability of the proposed site for the system and to predict performance of the alternative technology system as compared to the use of a 25-year, 24-hour runoff containment system, over a 25-year period. A summary of the computer modeling results shall be provided to the department.

b. Size. The computer model used to determine if the proposed AT system will meet the equivalent performance standard shall also be used to establish the minimum required size of the VTA. However, in no case shall the size of the VTA be less than the following:

(1) 50 percent of the total drainage area (feedlot and other) served if the soil permeability is from 0.6 to 2.0 inches per hour.

(2) 100 percent of the total drainage area (feedlot and other) served if the soil permeability is from 0.2 to 0.6 inches per hour.

c. Slope. The constructed VTA shall be level in one dimension and have a slight slope (maximum of 5 percent) in the other dimension.

d. Berming. The VTA must be bermed to prevent inflow of surface water from outside areas.

e. Spreaders. Settled open feedlot effluent must be discharged evenly across the top width of the VTA and allowed to slowly flow downslope through the VTA. Level spreaders or other practices may be required to maintain uniform flow of settled open feedlot effluent throughout the length of the VTA.

f. Soil permeability. Soil permeability within the VTA must be from 0.2 to 2.0 inches per hour throughout the soil profile to a depth of five feet. Soil permeability must be verified by conducting on-site or laboratory soil permeability testing.

g. Groundwater lowering system. The seasonal high-water table within the VTA must be capable of being lowered to a depth of four to five feet with a perimeter tile system installed outside of the VTA. Design information must be provided which demonstrates the adequacy of the proposed groundwater lowering system. The tile system must satisfy the following requirements:

(1) If the tile system does not have a surface outlet accessible on the property where the AT system is located, a device to allow monitoring of the water in the tile system and a device to allow shutoff of the flow in the tile system must be installed.

(2) Tile lines in the system must be installed horizontally at least 25 feet away from the outside toe of the berm of the VTA.

h. Tile system to enhance infiltration within the VTA. A tile system may be installed at the perimeter of the VTA cells to enhance infiltration within the VTA. The tile system must satisfy the following requirements:

(1) Tile lines shall be installed at the centerline of the berms of the VTA cells.

(2) The tile lines shall be constructed such that no settled open feedlot effluent can enter the lines except through infiltration through the soil profile.

(3) A shutoff valve and sampling point located downslope of the VTA cell shall be provided for each individual tile line. However, if multiple tile lines are brought together into a common tile line, a single shutoff valve and sampling point may be utilized.

(4) Monitoring of the tile lines must be conducted in accordance with the requirements of 65.104(9)“d”(2).

i. Depth to sands, gravels, or glacial outwash. A VTA is not allowed if the depth to sands, gravels, or glacial outwash is less than six feet.

j. Depth to bedrock. A minimum of ten feet of overburden or loose material must exist between the surface of the constructed VTA and underground bedrock.

k. Flooding. The VTA must be constructed in areas which are not subject to flooding more frequently than once in 25 years.

l. Distance to water bodies. The following distances, measured along the path of water flow, shall be provided between the point of discharge from the VTA and the receiving water body.

(1) Classified water bodies or perennial streams. A minimum distance of 500 feet or one-half foot distance per animal unit capacity of the feedlot area which drains to the VTA, whichever is greater, shall be provided.

(2) Uncrossable intermittent streams. A minimum distance of 200 feet shall be provided.

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**567—65.111(81GA, HF805) Construction certification.**

**65.111(1)** The owner of an open feedlot operation who is issued a construction permit for a settled open feedlot effluent basin or AT system as provided in rule 65.105(81GA, HF805) on or after July 1, 2005, shall submit to the department a construction certification from a professional engineer certifying all of the following:

a. The basin or AT system was constructed in accordance with the design plans submitted to the department as part of an application for a construction permit pursuant to rule 65.107(81GA, HF805). If the actual construction deviates from the approved design plans, the construction certification shall identify all changes and certify that the changes were consistent with all applicable standards of these rules.

b. The basin or AT system was inspected by the professional engineer after completion of construction and before commencement of operation.

**65.111(2)** A written record of an investigation for drainage tile lines, including the findings of the investigation and actions taken to comply with 65.109(1) or 65.110(3), shall be submitted as part of the construction certification.

**567—65.112(81GA, HF805) Nutrient management plan requirements.**

**65.112(1)** The owner of an open feedlot operation which has an animal unit capacity of 1000 animal units or more or which is required to be issued an NPDES permit shall develop and implement a nutrient management plan meeting the requirements of this rule by December 31, 2006. For the purpose of this rule, requirements pertaining to open feedlot effluent also apply to settled open feedlot effluent and settleable solids.

**65.112(2)** Not more than one open feedlot operation shall be covered by a single nutrient management plan.

**65.112(3)** A person shall not remove manure, process wastewater or open feedlot effluent from an open feedlot operation structure which is part of an open feedlot operation for which a nutrient management plan is required under this rule, unless the department approves a nutrient management plan as required in this rule.

**65.112(4)** The department shall not approve an application for a permit to construct a settled open feedlot effluent basin or AT system unless the owner of the open feedlot operation applying for approval submits a nutrient management plan together with the application for the construction permit as provided in rule 65.105(81GA, HF805). The owner shall also submit proof that the owner has published a notice for public comment as provided in 65.112(7).

**65.112(5)** If a construction permit is required as provided in rule 65.105(81GA, HF805), the department shall approve or disapprove the nutrient management plan as part of the construction permit application. If a construction permit is not required, the department shall approve or disapprove the nutrient management plan within 60 days from the date that the department receives the nutrient management plan.

**65.112(6)** Prior to approving or disapproving a nutrient management plan as required in this rule, the department may receive comments exclusively to determine whether the nutrient management plan is submitted according to procedures required by the department and that the nutrient management plan complies with the provisions of this rule.

**65.112(7) Public notice.**

a. The owner of the open feedlot operation shall publish a notice for public comment in a newspaper having a general circulation in the county where the open feedlot operation is or is proposed to be located and in the county where manure, process wastewater, or open feedlot effluent which originates

from the open feedlot operation may be applied under the terms and conditions of the nutrient management plan.

b. The notice for public comment shall include all of the following:

(1) The name of the owner of the open feedlot operation submitting the nutrient management plan.

(2) The name of the township where the open feedlot operation is or is proposed to be located and the name of the township where manure, process wastewater, or open feedlot effluent originating from the open feedlot operation may be applied.

(3) The animal unit capacity of the open feedlot operation.

(4) The time when and the place where the nutrient management plan may be examined as provided in Iowa Code section 22.2.

(5) Procedures for providing public comment to the department. The notice shall also include procedures for requesting a public hearing conducted by the department. The department is not required to conduct a public hearing if it does not receive a request for the public hearing within ten days after the first publication of the notice for public comment as provided in this subrule. If such a request is received, the public hearing must be conducted within 30 days after the first date that the notice for public comment was published.

(6) A statement that a person may acquire information relevant to making comments under this subrule by accessing the department's Internet Web site. The notice for public comment shall include the address of the department's Internet Web site as required by the department.

**65.112(8)** A nutrient management plan shall include all of the following:

a. Restrictions on the application of open feedlot effluent based on all of the following:

(1) A phosphorus index of each field in the nutrient management plan, as defined in 65.17(17)"a," including the factors used in the calculation. A copy of the NRCS phosphorus index detailed report shall satisfy the requirement to include the factors used in the calculation. In addition, total phosphorus (as P2O5) available to be applied from the open feedlot operation shall be included.

(2) Calculations necessary to determine the land area required for the application of manure, process wastewater and open feedlot effluent from an open feedlot operation based on nitrogen or phosphorus use levels (as determined by phosphorus index) in order to obtain optimum crop yields according to a crop schedule specified in the nutrient management plan, and according to requirements specified in 65.17(4).

b. Information relating to the application of the manure, process wastewater and open feedlot effluent, including all of the following:

(1) Nutrient levels of the manure, process wastewater and open feedlot effluent.

(2) Application methods, the timing of the application, and the location of the land where the application occurs.

c. If the application is on land other than land owned or rented for crop production by the owner of the open feedlot operation, the plan shall include a copy of each written agreement executed by the owner of the open feedlot operation and the landowner or the person renting the land for crop production where the manure, process wastewater or open feedlot effluent may be applied.

d. An estimate of the manure, process wastewater and open feedlot effluent volume or weight produced by the open feedlot operation.

e. Information which shows all of the following:

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(1) There is adequate storage for manure, process wastewater, stockpiled manure and open feedlot effluent, including procedures to ensure proper operation and maintenance of the storage structures.

(2) The proper management of animal mortalities to prevent discharge of pollutants to surface water and to ensure that animals are not disposed of in an open feedlot operation structure or a treatment system that is not specifically designed to treat animal mortalities.

(3) Surface drainage prior to contact with an open feedlot structure is diverted, as appropriate, from the open feedlot operation.

(4) Animals kept in the open feedlot operation do not have direct contact with any waters of the United States.

(5) Chemicals or other contaminants handled on site are not disposed of in manure, process wastewater, an open feedlot operation structure or a treatment system that is not specifically designed to treat such chemicals or contaminants.

(6) Equipment used for the land application of manure, process wastewater or open feedlot effluent must be periodically inspected for leaks.

(7) Identification of specific records that will be maintained to document the implementation and management of the requirements in this subrule.

**65.112(9)** If an open feedlot operation uses an alternative technology system as provided in rule 65.110(81GA, HF805), the nutrient management plan is not required to provide for settled open feedlot effluent that enters the AT system.

**65.112(10)** Current nutrient management plan, record keeping and inspections.

a. Current nutrient management plan. The owner of an open feedlot operation who is required to submit a nutrient management plan shall maintain a current nutrient management plan at the site of the open feedlot operation and shall make the current nutrient management plan available to the department upon request. If nutrient management practices change, a person required to submit a nutrient management plan shall make appropriate changes consistent with this rule. If values other than the standard table values are used for nutrient management plan calculations, the source of the values used shall be identified.

b. Record keeping. Records shall be maintained by the owner of an open feedlot operation who is required to submit a nutrient management plan. This recorded information shall be maintained for five years following the year of application or for the length of the crop rotation, whichever is greater. Records shall be maintained at the site of the open feedlot operation and shall be made available to the department upon request. Records to demonstrate compliance with the nutrient management plan shall include the following:

(1) Factors used to calculate the manure, process wastewater and open feedlot effluent application rate:

1. Optimum yield for the planned crop.
2. Types of nitrogen credits and amounts.
3. Remaining crop nitrogen needed.
4. Nitrogen content and first-year nitrogen availability of the manure, process wastewater and open feedlot effluent.

5. Phosphorus content of the manure, process wastewater and open feedlot effluent as required in 65.17(3)"i"(1) and (2). If an actual sample is used, documentation shall be provided.

(2) If phosphorus-based application rates are used, the following shall be included:

1. Crop rotation.
2. Phosphorus removed by crop harvest of that crop rotation.

(3) Maximum allowable manure, process wastewater and open feedlot effluent application rate.

(4) Actual manure, process wastewater and open feedlot effluent application information:

1. Method(s) of application when manure, process wastewater or open feedlot effluent from the open feedlot operation was applied.

2. Date(s) when the manure, process wastewater or open feedlot effluent from the open feedlot operation was applied.

3. Weather conditions at time of application and for 24 hours prior to and following the application.

4. Location of the field where the manure, process wastewater or open feedlot effluent from the open feedlot operation was applied, including the number of acres.

5. The manure, process wastewater or open feedlot effluent application rate.

6. Dates when application equipment was inspected.

(5) Date(s) and application rate(s) of commercial nitrogen and phosphorus on fields that received manure, process wastewater or open feedlot effluent. However, if the date and application rate information is for fields which are not owned for crop production or which are not rented or leased for crop production by the person required to keep records pursuant to this subrule, an enforcement action for noncompliance with a nutrient management plan or the requirements of this subrule shall not be pursued against the person required to keep records pursuant to this subrule or against any other person who relied on the date and application rate in records required to be kept pursuant to this subrule, unless that person knew or should have known that nitrogen or phosphorus would be applied in excess of maximum levels set forth in paragraph 65.17(1)"a." If nutrients are applied to fields not owned, rented or leased for crop production by the person required to keep records pursuant to this subrule, that person shall obtain from the person who owns, rents or leases those fields a statement specifying the planned commercial nitrogen and phosphorus fertilizer rates to be applied to each field receiving the nutrients.

(6) A copy of the current soil test lab results for each field in the nutrient management plan.

(7) All applicable records identified in 65.112(8)"e"(7).

c. Record inspection. The department may inspect an open feedlot operation at any time during normal working hours and may inspect the nutrient management plan and any records required to be maintained.

**567—65.113(81GA, HF805) Complaint investigations.**

Complaints of violations of Iowa Code chapter 455B or 459, or 2005 Iowa Acts, House File 805, or these rules, 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 department if it is determined that the complaint is legally sufficient and an investigation is justified.

**65.113(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.

**65.113(2)** A complaint is legally sufficient if it contains adequate information to investigate the complaint and if the

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

allegation constitutes a violation, without an investigation of whether the facts supporting the allegation are true or untrue, of department rules, Iowa Code chapter 455B or 459, or 2005 Iowa Acts, House File 805, or environmental standards in regulations subject to federal law and enforced by the department.

**65.113(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.

**65.113(4)** The department shall notify the complainant and the alleged violator if an investigation is not conducted specifying the reason for the decision not to conduct an investigation.

**65.113(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.

**65.113(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.

**65.113(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 that the county designee accompanies the department official.

**65.113(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 open feedlot operation and the county board of supervisors of the county where the violation is alleged to have occurred.

**65.113(9)** When a person who is a department official, an agent of the department, or a person accompanying the department official or agent enters the premises of an open feedlot 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 2005 Iowa Acts, House File 805, or these rules. 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 its date.

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 open feedlot operation which are necessary in order to control the spread of disease among an animal population.

**567—65.114(455B,81GA,HF805) Transfer of legal responsibilities or title.** If title or legal responsibility for a permitted open feedlot operation and its open feedlot operation structure is transferred, the person to whom title or legal responsibility 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.

These rules are intended to implement Iowa Code sections 455B.171 to 455B.191, 459.314, 459.601 and 2005 Iowa Acts, House File 805.

ITEM 10. Amend **567—Chapter 65, Appendix A**, as follows:

APPENDIX A  
~~MANURE~~ OPEN FEEDLOT EFFLUENT CONTROL ALTERNATIVES  
 FOR OPEN FEEDLOTS FEEDLOT OPERATIONS

Introduction: Water pollution control requirements for animal feeding operations are given in ~~Chapter 65 of the rules of the Iowa department of natural resources~~ **567— 65.101(81GA,HF805)**. Under these rules, open feedlots meeting the operation NPDES permit application requirements of rule ~~567—65.4-104(455B,459 81GA,HF805)~~ must also comply with the minimum ~~manure open feedlot effluent~~ control requirements of subrule ~~65.2(2) 65.101(2)~~. Subrule ~~65.2(2) 65.101(2)~~ requires that all feedlot runoff and other ~~manure open feedlot effluent~~ flows resulting from precipitation events less than or equal to the 25-year, 24-hour rainfall event be collected and land applied. *For the purpose of this appendix, open feedlot effluent includes manure, process wastewater, settled open feedlot effluent and settleable solids.*

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

This appendix describes five feedlot runoff control systems that meet the requirements of subrule ~~65.2(2)~~ 65.101(2). The systems differ in the volume of ~~manure open feedlot effluent~~ storage provided and in the frequency of ~~manure open feedlot effluent~~ application. In general, the time interval between required applications increases with increased storage volume.

A feedlot operator who constructs and operates a ~~manure an open feedlot effluent~~ control facility in accordance with the requirements of any of these five systems will not have additional ~~manure open feedlot effluent~~ control requirements imposed, unless ~~manure open feedlot effluent~~ 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 <del>Manure</del> Open Feedlot Effluent Application Period Per Year . . . . .	33-35 88-90
System 2: July and <del>November</del> October <del>Manure</del> Open Feedlot Effluent Application . . . . .	35-37 90-92
System 3: April, July, and <del>November</del> October <del>Manure</del> Open Feedlot Effluent Application . . . . .	37-39 92-94
System 4: Application After Each Significant Precipitation Event . . . . .	39-41 94-96
System 5: April/May and October/November <del>Manure</del> Open Feedlot Effluent Application . . . . .	41-43 96-98
Figures 1-4 . . . . .	44-45 99-100

SYSTEM 1: ONE ~~MANURE~~ OPEN FEEDLOT EFFLUENT 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 open feedlot effluent~~ control system (additional storage is required if ~~process waters or manure open feedlot effluent~~ from other sources also ~~drain~~ drains into the control system).
- Collected ~~manure open feedlot effluent~~ 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~~ Open Feedlot Effluent Control System: The ~~manure open feedlot effluent~~ control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: Solids settling facilities which meet or exceed the requirements of subrule ~~65.2(1)~~ 65.101(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. The volume determined by multiplying the unpaved feedlot area which drains into the control system by the appropriate runoff value from Figure 1.
  - B. The volume determined by multiplying the paved feedlot area which drains into the control system by 1.5 times the appropriate runoff value from Figure 1.
  - C. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the greater of the following:
    - The amount of runoff expected from these areas as a result of the 25-year, 24-hour precipitation event.\*
    - The average annual runoff expected from these areas.\*
  - D. The volume determined by multiplying the total roof, farmstead, and driveway area draining into the control system by the average annual runoff expected from these areas.\*
  - E. The volume of process wastewater which drains into the control system during a 12-month period.
  - F. The volume of ~~manure open feedlot effluent~~ from other sources which discharges into the control system during a 12-month period.

\*Expected 25-year, 24-hour and average annual runoff values shall be determined using runoff prediction methodologies of the ~~U.S. Soil Conservation Service NRCS~~ (or equivalent methodologies).

~~Manure~~ Open Feedlot Effluent Application Requirements: ~~Manure~~ Open feedlot effluent must be removed from the ~~manure open feedlot effluent~~ control system and land applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected *settleable* solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, *settleable* solids shall be removed at least once annually.
2. Feedlot Runoff Control System: Accumulated ~~manure open feedlot effluent~~ shall be removed from the feedlot runoff control system and disposed of by land application at least once annually. The interval between successive application periods shall not exceed 12 months.



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

During application periods, land application shall be conducted at rates sufficient to ensure complete removal of accumulated ~~manure~~ *open feedlot effluent* from the runoff control system in ten or fewer application days. ~~Manure~~ *Open feedlot effluent* removal is considered complete when the ~~manure~~ *open feedlot effluent* remaining in the runoff control system occupies less than 10 percent of the system's design ~~manure~~ *open feedlot effluent* storage volume.

Land application of ~~manure~~ *open feedlot effluent* shall be conducted on days when weather and soil conditions are suitable. Weather and soil conditions are normally considered suitable for ~~manure~~ *open feedlot effluent* application 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.

SYSTEM 2: JULY AND NOVEMBER ~~OCTOBER~~ *MANURE OPEN FEEDLOT EFFLUENT* APPLICATION

## MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average runoff expected to occur over the ~~eight~~ *nine*-month period from ~~December~~ *November* 1 through July 31 from all feedlot and nonfeedlot areas which drain into the ~~manure~~ *open feedlot effluent* control system (additional storage is required if ~~process waters or~~ *manure* ~~open feedlot effluent~~ from other sources also ~~drain~~ *drains* into the control system).
- Collected ~~manure~~ *open feedlot effluent* 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~~ *open feedlot effluent* must still be disposed of during July and ~~November~~ *October* to reduce the volume of ~~manure~~ *open feedlot effluent* remaining in the control system during these months to less than 10 percent of the system's design ~~manure~~ *open feedlot effluent* storage volume.

## DETAILED SYSTEM REQUIREMENTS:

~~Manure~~ *Open Feedlot Effluent* Control System: The ~~manure~~ *open feedlot effluent* control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: ~~Manure~~ *Open feedlot effluent* solids settling facilities which meet or exceed the requirements of subrule ~~65.2(4)~~ *65.101(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. The volume determined by multiplying the unpaved feedlot area which drains into the control system by the appropriate runoff value from Figure 2.
  - B. The volume determined by multiplying the paved feedlot area which drains into the control system by 1.5 times the appropriate runoff value from Figure 2.
  - C. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the greater of the following:
    - The amount of runoff expected from these areas as a result of the 25-year, 24-hour precipitation event.\*
    - The average runoff expected to occur from these areas during the ~~eight~~ *nine*-month period from ~~December~~ *November* 1 to July 31.\*
  - D. The volume determined by multiplying the total roof, farmstead and driveway area draining into the control system by the average runoff expected to occur from these areas during the ~~eight~~ *nine*-month period from ~~December~~ *November* 1 to July 31.\*
  - E. The volume of process wastewater which drains into the control system during the ~~eight~~ *nine*-month period from ~~December~~ *November* 1 through July 31.
  - F. The volume of ~~manure~~ *open feedlot effluent* from other sources which discharges into the control system during the ~~eight~~ *nine*-month period from ~~December~~ *November* 1 through July 31.

\*Expected 25-year, 24-hour runoff and average runoff for the ~~eight~~ *nine*-month period ~~December~~ *November* 1 through July 31 shall be determined using runoff prediction methodologies of the U.S. Soil Conservation Service NRCS (or equivalent methodologies).

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

**Manure Open Feedlot Effluent Application Requirements:** *Manure Open feedlot effluent* must be removed from the *manure open feedlot effluent* control system and land applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected *settleable* solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, *settleable* solids shall be removed at least once annually.
2. Feedlot Runoff Control System:
  - A. A feedlot operator must comply with the following *manure open feedlot effluent* 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 open feedlot effluent* from the runoff control system in ten or fewer application days. *Manure Open feedlot effluent* removal is considered complete when the *manure open feedlot effluent* remaining in the runoff control system occupies less than 10 percent of the system's design *manure open feedlot effluent* storage capacity.

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

Weather and soil conditions are normally considered suitable for land application of *manure open feedlot effluent* 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 open feedlot effluent* 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 open feedlot effluent* during July and ~~November~~ *October* to reduce the *manure open feedlot effluent* volume remaining in the runoff control system during these months to less than 10 percent of the system's design *manure open feedlot effluent* storage capacity.

A feedlot operator who does not limit *manure open feedlot effluent* application operations to the months of July and ~~November~~ *October* is not required to comply with the specific *manure open feedlot effluent* 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 open feedlot effluent* 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 open feedlot effluent* storage capacity.

SYSTEM 3: APRIL, JULY AND ~~NOVEMBER~~ *OCTOBER* *MANURE OPEN FEEDLOT EFFLUENT* APPLICATION

## MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the average runoff expected to occur during the ~~five~~ *six*-month period from ~~December~~ *November* 1 through April 30 from all feedlot and nonfeedlot areas which drain into the *manure open feedlot effluent* control system (additional storage is required if ~~process waters or~~ *manure open feedlot effluent* from other sources also ~~drain~~ *drains* into the control system).
- Collected *manure open feedlot effluent* 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 open feedlot effluent* must still be disposed of during April, July and ~~November~~ *October* to reduce the volume of *manure open feedlot effluent* remaining in the control system during these months to less than 10 percent of the system's design *manure open feedlot effluent* storage volume.

## DETAILED SYSTEM REQUIREMENTS:

**Manure Open Feedlot Effluent Control System:** The *manure open feedlot effluent* control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: ~~Manure solids~~ *Solids* settling facilities which meet or exceed the requirements of subrule ~~65.2(4)~~ *65.101(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:

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

- A. The volume determined by multiplying the unpaved feedlot area which drains into the control system by the appropriate runoff value from Figure 3.
- B. The volume determined by multiplying the paved feedlot area which drains into the control system by 1.5 times the appropriate runoff value from Figure 3.
- C. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the greater of the following:
- The amount of runoff expected from these areas as a result of the 25-year, 24-hour precipitation event.\*
  - The average annual runoff expected to occur from these areas during the ~~five~~ *six*-month period from ~~December~~ *November* 1 to April 30.\*
- D. The volume determined by multiplying the total roof, farmstead, and driveway area draining into the control system by the average runoff expected to occur from these areas during the ~~five~~ *six*-month period from ~~December~~ *November* 1 to April 30.\*
- E. The volume of process wastewater which drains into the control system during the ~~five~~ *six*-month period from ~~December~~ *November* 1 through April 30.
- F. The volume of ~~manure~~ *open feedlot effluent* from other sources which discharges into the control system during the ~~five~~ *six*-month period from ~~December~~ *November* 1 through April 30.

\*Expected 25-year, 24-hour runoff and average runoff for the ~~five~~ *six*-month period ~~December~~ *November* 1 through April 30 shall be determined using runoff prediction methodologies of the U.S. Soil Conservation Service NRCS (or equivalent methodologies).

~~Manure~~ *Open Feedlot Effluent* Application Requirements: ~~Manure~~ *Open feedlot effluent* must be removed from the ~~manure~~ *open feedlot effluent* control system and land applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected *settleable* solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, *settleable* solids shall be removed at least once annually.
2. Feedlot Runoff Control System:

A. A feedlot operator must comply with the following ~~manure~~ *open feedlot effluent* 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~~ *open feedlot effluent* from the runoff control system in ten or fewer application days. ~~Manure~~ *Open feedlot effluent* removal is considered complete when the ~~manure~~ *open feedlot effluent* remaining in the runoff control system occupies less than 10 percent of the system's design ~~manure~~ *open feedlot effluent* storage capacity.

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

Weather and soil conditions are normally considered suitable for land application of ~~manure~~ *open feedlot effluent* 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~~ *open feedlot effluent* 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~~ *open feedlot effluent* during April, July and ~~November~~ *October* to reduce the ~~manure~~ *open feedlot effluent* volume remaining in the runoff control system during these months to less than 10 percent of the system's design ~~manure~~ *open feedlot effluent* storage capacity.

A feedlot operator who does not limit ~~manure~~ *open feedlot effluent* application operations to the months of April, July and ~~November~~ *October* is not required to comply with the specific ~~manure~~ *open feedlot effluent* 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~~ *open feedlot effluent* volume remaining in the runoff control system during April, July and ~~November~~ *October* will be reduced to less than 10 percent of the system's design ~~manure~~ *open feedlot effluent* storage capacity.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

SYSTEM 4: *OPEN FEEDLOT EFFLUENT* APPLICATION AFTER EACH SIGNIFICANT PRECIPITATION EVENT

MAJOR SYSTEM FEATURES:

- Adequate capacity must be provided to collect and store the runoff expected to occur as a result of the 25-year, 24-hour precipitation event from all feedlot and nonfeedlot areas which drain into the ~~manure~~ *open feedlot effluent* control system (additional storage is required if ~~process waters or manure~~ *open feedlot effluent* from other sources also ~~drain~~ *drains* into the control system).
- Collected ~~manure~~ *open feedlot effluent* must be removed from the control system and land applied whenever the available (unoccupied) storage capacity remaining in the control system is less than 90 percent of that needed to store runoff from the 25-year, 24-hour storm; land application must begin on the first day that conditions are suitable and must continue until application is completed.

DETAILED SYSTEM REQUIREMENTS:

~~Manure~~ *Open Feedlot Effluent* Control System: The ~~manure~~ *open feedlot effluent* control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: ~~Manure~~ *solids* *Solids* settling facilities which meet or exceed the requirements of subrule ~~65.2(4)~~ *65.101(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. The volume determined by multiplying the total feedlot area which drains into the control system by the amount of runoff expected to occur from this area as a result of the 25-year, 24-hour precipitation event.\*
  - B. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the amount of runoff expected to occur from these areas as a result of the 25-year, 24-hour precipitation event.\*
  - C. The volume determined by multiplying the total roof, farmstead and driveway area draining into the control system by the amount of runoff expected to occur from these areas as a result of the 25-year, 24-hour precipitation event.\*
  - D. The volume of process wastewater which drains into the control system during the ~~five~~ *six*-month period from ~~December~~ *November* 1 through April 30.
  - E. The volume of ~~manure~~ *open feedlot effluent* from other sources which discharges into the control system during the ~~five~~ *six*-month period from ~~December~~ *November* 1 through April 30.

\*Expected 25-year, 24-hour runoff shall be determined by using runoff prediction methodologies of the U.S. Soil Conservation Service *NRCS* (or equivalent methodologies).

~~Manure~~ *Open Feedlot Effluent* Application Requirements: ~~Manure~~ *Open feedlot effluent* must be removed from the ~~manure~~ *open feedlot effluent* control system and land applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected *settleable* solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, *settleable* solids shall be removed at least once annually.
2. Feedlot Runoff Control System: Accumulated ~~manure~~ *open feedlot effluent* shall be removed from the feedlot runoff control system and disposed of by land application following each precipitation or snowmelt runoff event which results in significant ~~manure~~ *open feedlot effluent* accumulations in the control system. ~~Manure~~ *Open feedlot effluent* accumulations will be considered significant whenever the available (unoccupied) storage capacity remaining in the control system is less than 90 percent of that required to store the runoff from the 25-year, 24-hour storm.

Once the available storage capacity remaining in the ~~manure~~ *open feedlot effluent* control system is reduced to the point that ~~manure~~ *open feedlot effluent* application is necessary, ~~manure~~ *open feedlot effluent* application operations must be initiated on the first day that conditions are suitable for land application of ~~manure~~ *open feedlot effluent*, and application must continue on subsequent days that suitable conditions exist. Application operations may cease when the storage capacity available in the control system has been restored to greater than 90 percent of that required to store runoff from the 25-year, 24-hour storm.

During application periods, land application shall be conducted at rates sufficient to ensure complete removal of accumulated ~~manure~~ *open feedlot effluent* from the control system in ten or fewer application days.

Weather and soil conditions are normally considered suitable for land application of ~~manure~~ *open feedlot effluent* 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.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

SYSTEM 5: APRIL/MAY AND OCTOBER/NOVEMBER *OPEN FEEDLOT EFFLUENT* 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 October 1 through May 31 from all feedlot and nonfeedlot areas which drain into the *manure open feedlot effluent* control system (additional storage is required if ~~process waters or~~ *manure open feedlot effluent* from other sources also ~~drain~~ *drains* into the control system).
- Collected *manure open feedlot effluent* 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 April/May and the October/November periods, sufficient *manure open feedlot effluent* must still be disposed of during each of these two-month periods to reduce the volume of *manure open feedlot effluent* remaining in the control system during these periods to less than 10 percent of the system's design *manure open feedlot effluent* storage volume.

DETAILED SYSTEM REQUIREMENTS:

~~Manure~~ *Open Feedlot Effluent* Control System: The ~~manure~~ *open feedlot effluent* control system must be constructed to meet or exceed the following requirements:

1. Solids Settling Facilities: ~~Manure~~ *Open feedlot effluent* solids settling facilities which meet or exceed the requirements of subrule ~~65.2(4)~~ *65.101(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~~ *open feedlot effluent* volume determined by summing the following:
  - A. The volume determined by multiplying the unpaved feedlot area which drains into the control system by the appropriate runoff value from Figure 4.
  - B. The volume determined by multiplying the paved feedlot area which drains into the control system by 1.5 times the appropriate runoff value from Figure 4.
  - C. The volume determined by multiplying the total area of cropland, pasture and woodland draining into the control system by the greater of the following:
    - The amount of runoff expected from these areas as a result of the 25-year, 24-hour precipitation event.\*
    - The average runoff expected to occur from these areas during the eight-month period from October 1 to May 31.\*
  - D. The volume determined by multiplying the total roof, farmstead, and driveway draining into the control system by the average runoff expected to occur from these areas during the eight-month period from October 1 to May 31.\*
  - E. The volume of process wastewater which drains into the control system during the eight-month period from October 1 through May 31.
  - F. The volume of ~~manure~~ *open feedlot effluent* from other sources which discharges into the control system during the eight-month period from October 1 through May 31.

\*Expected 25-year, 24-hour runoff and average runoff for the eight-month period October 1 through May 31 shall be determined using runoff prediction methodologies of the ~~U.S. Soil Conservation Service~~ *NRCS* (or equivalent methodologies).

~~Manure~~ *Open Feedlot Effluent* Application Requirements: ~~Manure~~ *Open feedlot effluent* must be removed from the ~~manure~~ *open feedlot effluent* control system and land applied in accordance with the following requirements:

1. Solids Settling Facilities: Collected *settleable* solids must be removed from the solids settling facilities as necessary to maintain adequate capacity to handle future runoff events. As a minimum, *settleable* solids shall be removed at least once annually.
2. Feedlot Runoff Control System: At a minimum, accumulated *manure open feedlot effluent* shall be removed from the feedlot runoff control system and disposed of by land application during the periods April 1 through May 31 and October 1 through November 30.

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

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

Land application of *manure open feedlot effluent* shall be conducted on days when weather and soil conditions are suitable. Weather and soil conditions are normally considered suitable for *manure open feedlot effluent* application if:

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

- 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.

[Filed Emergency 8/23/05, effective 9/14/05]

[Published 9/14/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/14/05.

## ARC 4520B

### SOIL CONSERVATION DIVISION[27]

#### Adopted and Filed Emergency

Pursuant to the authority of 2005 Iowa Acts, Senate File 200, section 5(3)“g,” the Watershed Improvement Review Board hereby adopts new Chapter 101, “Organization and Purpose,” Chapter 102, “Rules of Practice,” Chapter 103, “Appointment and Terms of Members,” Chapter 104, “Local Watershed Improvement Committees,” Chapter 105, “Watershed Improvement Grant Program,” Chapter 106, “Watershed Improvement Fund,” and Chapter 107, “Public Records and Fair Information Practices,” Iowa Administrative Code.

This amendment establishes rules for the Watershed Improvement Review Board and its organization, purpose and rules of practice. Provision is also made for appointment of Board members, local watershed improvement committees and the Watershed Improvement Grant Program.

These rules do not contain a waiver provision, but are subject to the Division's general waiver requirements.

In compliance with Iowa Code section 17A.4, the Watershed Improvement Review Board finds that notice and public participation are impracticable because of the immediate need to implement new legislation.

The Watershed Improvement Review Board finds, pursuant to Iowa Code section 17A.5(2)“b”(2), that the normal effective date of this amendment shall be waived and this amendment shall be made effective upon filing, as it confers an immediate and maximized benefit to the public by making funds available for the development and implementation of watershed improvement grants.

The Watershed Improvement Review Board adopted this amendment on August 22, 2005.

This amendment is also published herein under Notice of Intended Action as **ARC 4521B** to allow public comment.

This amendment became effective on August 25, 2005.

This amendment is intended to implement 2005 Iowa Acts, Senate File 200.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 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** chapters are adopted.

## CHAPTER 101

### ORGANIZATION AND PURPOSE

**27—101.1(81GA,SF200) Watershed improvement review board composition.** The watershed improvement review board shall be comprised of one member of the Agribusiness Association of Iowa; one member of the Iowa Association of Water Agencies; one member of the Iowa Environmental Council; one member of the Iowa Farm Bureau Federation; one member of the Iowa Pork Producers Association; one member of the Iowa Rural Water Association; one member of the Iowa Soybean Association; one member representing soil and water conservation districts of Iowa; one member of the Iowa Association of County Conservation Boards; one person representing the department of agriculture and land stewardship; and one person representing the department of natural resources.

Two state senators shall be appointed, one by the majority leader of the senate and one by the minority leader of the senate. Two state representatives shall be appointed, one by the speaker of the house of representatives and one by the minority leader of the house of representatives.

These members are appointed according to 2005 Iowa Acts, Senate File 200. The board is responsible for administering grants to local watershed improvement committees to promote watershed protection efforts.

**27—101.2(81GA,SF200) Officers.** The officers of the board shall be the chairperson and vice chairperson. Each officer shall be elected by vote of the board for a term of one year and may be reelected by vote of the board to serve one subsequent term in the same office. Members representing the department of agriculture and land stewardship, the department of natural resources and the general assembly are not eligible to serve as an officer of the board.

**101.2(1)** The chairperson shall set the date for meetings, preside at meetings, and sign documents approved by the board.

**101.2(2)** The vice chairperson shall act in the chairperson's place when the chairperson is unable to act.

**27—101.3(81GA,SF200) Staff.** The division of soil conservation of the department of agriculture and land stewardship shall provide administrative support to the board to aid in the completion of its duties.

**27—101.4(81GA,SF200) Meetings.** The board shall meet at the time designated by the chairperson at least once annually and at other times the board determines are necessary. The board may meet by teleconference or through electronic means. All meetings shall be held at such locations as are determined by the board.

## SOIL CONSERVATION DIVISION[27](cont'd)

**27—101.5(81GA,SF200) Quorum.** A majority of the voting members of the board present shall constitute a quorum. A majority of the voting members present during a meeting is necessary to carry out the duties and exercise the powers of the board as provided in this chapter.

**27—101.6(81GA,SF200) Conflict of interest.** A voting member of the board who also serves on a local watershed improvement committee shall abstain from voting on a local watershed improvement grant application submitted by the same local watershed improvement committee of which the person is a member. A member of the general assembly shall abstain from participating on any issues relating to a watershed which is in the member's legislative district.

**27—101.7(81GA,SF200) Board responsibilities.** The board shall do all of the following:

1. Award local watershed improvement grants and evaluate and review through reports the progress of local watershed improvement projects awarded grants.
2. Assist with the development of monitoring plans for local watershed improvement projects.
3. Review monitoring results before, during, and after completion of a local watershed improvement project.
4. Review costs and benefits of mitigation practices utilized by a project.
5. By January 31, annually, submit an electronic report to the governor and the general assembly regarding the progress of the watershed improvement projects during the previous calendar year.
6. Develop and adopt administrative rules pursuant to Iowa Code chapter 17A to administer this chapter.

**27—101.8(81GA,SF200) Technical assistance.** The board shall elicit the expertise of other organizations for technical assistance in the work of the board. The organizations may include but are not limited to all of the following: the State University of Iowa; the Iowa State University of Science and Technology; the U.S. Geological Survey; the U.S. Department of Agriculture, Agricultural Research Service, National Soil Tilth Laboratory; the U.S. Department of Agriculture, Natural Resource Conservation Service; the Leopold Center for Sustainable Agriculture; the Iowa Association of Municipal Utilities; the Iowa chapter of the American Waterworks Association; the Iowa Water Pollution Control Association; the Iowa League of Cities; the Iowa Cattlemen's Association; the Iowa Association of Business and Industry; the Iowa Environmental Health Association; the Iowa Corn Growers Association; the Iowa Poultry Association; the Iowa Farmers' Union; and the Iowa Land Improvement Contractors Association.

These rules are intended to implement 2005 Iowa Acts, Senate File 200.

CHAPTER 102  
RULES OF PRACTICE

**27—102.1(81GA,SF200) Definitions.** All words and terms defined in 2005 Iowa Acts, Senate File 200, and employed in these rules are given the definitions found in that legislation. The following words and terms used in these rules shall have the meanings hereafter ascribed to them:

“Auditor” means the auditor of the state of Iowa.

“Board” means the watershed improvement review board as established in 2005 Iowa Acts, Senate File 200, section 5.

“Committee” means a local watershed improvement committee as provided in 2005 Iowa Acts, Senate File 200, section 6.

“Division” means the division of soil conservation within the department of agriculture and land stewardship as established in Iowa Code section 466A.2.

“Eligible applicant” means a nonprofit organization authorized by the secretary of state or a soil and water conservation district.

“Fund” means the watershed improvement fund as created pursuant to 2005 Iowa Acts, Senate File 200, section 4.

“State” means the state of Iowa.

“Treasurer” means the treasurer of the state of Iowa.

**27—102.2(81GA,SF200) Public information.** The public is invited to obtain information or make informal requests of the board by addressing these matters, either orally or in writing, to the chairperson of the Iowa Watershed Improvement Board, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319; (515)281-6153.

**27—102.3(81GA,SF200) Informal settlement of controversies.** Every possible attempt will be made to handle all complaints and controversies, whether raised by the board or by members of the public, in an informal manner.

**102.3(1)** In cases of a routine nature, the chairperson shall attempt to settle the matter. In cases indicating a need for interpretation of board policy or legal interpretation, the chairperson may defer action until after consultation with legal counsel, or the chairperson may defer action until after discussion of the subject at a board meeting.

**102.3(2)** In cases not of a routine nature, or in cases in which the efforts of the chairperson are unsuccessful, the board itself shall act to resolve the matter. In cases indicating a need for legal advice, the board may defer action until after consultation with legal counsel.

**27—102.4(81GA,SF200) Declaratory rulings.** On petition by an interested party who is aggrieved or adversely affected by the question contained in the petition, the board may issue a declaratory ruling with respect to the interpretation or applicability of any statutory provision, rule, or other written statement of the law or policy, decision, or order of the board.

**102.4(1)** Petitions shall be titled “PETITION FOR DECLARATORY RULING” and shall include the name and address of all petitioners. The body of the petition must state the precise factual situation involved, the exact question to which an answer is desired, and the exact words, passages, sentences, or paragraphs which are the subject of inquiry.

**102.4(2)** The petition shall be filed at the office of the board at Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319.

**102.4(3)** The board will refuse to issue a declaratory ruling if the petition does not state with enough specificity the factual situation or the question presented; if the issuance of the ruling would not be in the best interests of the public; or for any other reason the board deems just and proper.

**102.4(4)** The board shall issue a ruling or dismiss the petition within 60 days of the filing of the petition except that when additional information is requested, the ruling shall be issued within 60 days following receipt of the requested information.

**27—102.5(81GA,SF200) Petition for adoption of rules.** Any interested person may file with the board a written request that the board adopt, amend, or repeal a rule. The petition shall be addressed to the Iowa Watershed Improvement Review Board, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319, and shall include:

## SOIL CONSERVATION DIVISION[27](cont'd)

1. The names of those requesting the change.
2. The proposed rule or present rule as it would read following the desired amendment.
3. The reason for the proposed rule or amendment.
4. The statutory authority for the proposed rule or amendment.

Within 60 days following receipt of the petition, the board shall either deny the petition in writing on the merits, stating the board's reason for denial, or initiate rule-making proceedings.

These rules are intended to implement 2005 Iowa Acts, Senate File 200.

## CHAPTER 103

## APPOINTMENT AND TERMS OF MEMBERS

**27—103.1(81GA,SF200) Appointments.**

**103.1(1)** Not later than three months prior to the end of their term, the organizations pursuant to 27—101.1(81GA, SF200) shall submit to the governor a name for appointment to the board.

**103.1(2)** Not later than 60 days prior to the end of each board member's term of office, the governor shall name a successor pursuant to 103.1(1).

**27—103.2(81GA,SF200) Terms.** An appointed member shall not serve more than three consecutive terms.

These rules are intended to implement 2005 Iowa Acts, Senate File 200.

## CHAPTER 104

## LOCAL WATERSHED IMPROVEMENT COMMITTEES

**27—104.1(81GA,SF200) Purpose.** A committee shall be organized for the purposes of applying for a local watershed improvement grant and implementing a local watershed project.

**27—104.2(81GA,SF200) Structure.** A committee must be authorized by the secretary of state as a not-for-profit organization. The majority of the members of the committee shall represent a cause of the impairment of the watershed.

**27—104.3(81GA,SF200) Governmental entities.** A federal, state or local governmental entity may not be a recipient of a grant from the board. A federal, state or local governmental entity may partner with a committee to implement a local watershed project.

**27—104.4(81GA,SF200) Responsibilities.** A committee shall be responsible for application for and implementation of an approved local watershed grant, including providing authorization for project bids and project expenditures under the grant.

**104.4(1)** The committee shall monitor local performance throughout the local watershed grant project and shall submit a report at six-month intervals regarding the progress and findings of the project.

**104.4(2)** The committee shall provide monitoring data before, during, and after the project's completion.

**27—104.5(81GA,SF200) Audit.** A committee receiving a grant from the board may be subject to an audit performed by the auditor.

These rules are intended to implement 2005 Iowa Acts, Senate File 200.

## CHAPTER 105

## WATERSHED IMPROVEMENT GRANT PROGRAM

**27—105.1(81GA,SF200) Program purpose.** The board shall issue grant awards to projects that address water quality impairments from at least one of the following: agricultural runoff and drainage; stream bank erosion; municipal discharge; stormwater runoff; unsewered communities; industrial discharge; and livestock runoff.

**27—105.2(81GA,SF200) Grant awards.**

**105.2(1)** The board shall issue a request for proposals from applicants that meet the criteria of 27—Chapter 104.

**105.2(2)** The board shall determine the date for submission of grant requests.

**105.2(3)** Projects will be evaluated by the board based on criteria established in the request for proposals.

**105.2(4)** Eligible applicants that have been awarded a grant by the board shall be notified not more than 60 days from the date that the request for proposals closes.

**105.2(5)** Eligible applicants that have been awarded a grant by the board shall be required to sign a contract with the state before any funds are disbursed. Changes to the contract must be negotiated and meet with the approval of the board.

**105.2(6)** Grant awards shall be for not more than three years and shall not exceed 10 percent of the funds available to the board. A grant recipient shall not be precluded from applying for future grant awards.

**105.2(7)** The board may act to award less than all of the funds appropriated for this program if it deems that applications do not meet the program's objectives. Additional requests for proposals may be solicited by the board if all available funds have not been expended.

**27—105.3(81GA,SF200) Disbursement of funds.**

**105.3(1)** Not more than half of the grant award will be disbursed in advance of the project. All remaining funds will be disbursed upon submission of appropriate receipts and records.

**105.3(2)** An eligible applicant that fails to meet the terms and obligations of its contract shall reimburse the state for the portion of the grant received attributed to this failure.

**27—105.4(81GA,SF200) Reports.**

**105.4(1)** Eligible applicants that have been awarded a grant by the board shall submit a written and electronic report at six-month intervals. This report shall include but not be limited to a statement of expenditures; progress toward performance measures established in the contract; progress toward deliverables established in the contract; monitoring methods and results; and the time line for project completion.

**105.4(2)** Eligible applicants that have been awarded a grant by the board shall submit a final written and electronic report at the conclusion of the contract. This report shall include but not be limited to a final statement of expenditures; performance measures established in the contract; deliverables established in the contract; monitoring methods and results; and findings of the project.

These rules are intended to implement 2005 Iowa Acts, Senate File 200.

## CHAPTER 106

## WATERSHED IMPROVEMENT FUND

**27—106.1(81GA,SF200) Purpose.** The fund shall be used for the enhancement of water quality through a variety of impairment-based, locally directed watershed improvement projects; to positively affect the management and use of water for the purposes of drinking, agriculture, recreation, sport and economic development; and to ensure public participation in the process of determining priorities related to water quality.



SOIL CONSERVATION DIVISION[27](cont'd)

**27—106.2(81GA,SF200) Administration.** The treasurer shall administer the fund upon the direction of the board.

**106.2(1)** Moneys in the fund shall be used exclusively for carrying out the purposes of the fund.

**106.2(2)** Moneys appropriated to the fund and any other moneys available to and obtained or accepted by the treasurer for placement in the fund shall be deposited in the fund.

**106.2(3)** Moneys appropriated to the treasurer and deposited in the fund shall not be used by the treasurer for administrative purposes.

**106.2(4)** Notwithstanding Iowa Code section 12C.7, subsection 2, interest or earnings on moneys in the fund shall be credited to the fund.

**106.2(5)** Notwithstanding Iowa Code section 8.33, moneys in the fund that remain unencumbered or unobligated at the end of the fiscal year shall not revert, but shall remain available for the same purpose in the succeeding fiscal year.

These rules are intended to implement 2005 Iowa Acts, Senate File 200.

CHAPTER 107  
PUBLIC RECORDS AND  
FAIR INFORMATION PRACTICES

The Iowa watershed improvement review board hereby adopts, with the following exceptions and amendments, rules of the governor's task force on uniform rules of agency procedure relating to public records and fair information practices which are printed in the first volume of the Iowa Administrative Code.

**27—107.1(17A,22) Definitions.** As used in this chapter: "Board" in these rules means the Iowa watershed improvement review board.

**27—107.3(17A,22) Requests for access to records.**

**107.3(1)** Location of record. In lieu of the words "(insert agency head)", insert "chairperson". In lieu of the words "(insert agency name and address)", insert "Iowa Watershed Improvement Review Board, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 E. 9th St., Des Moines, Iowa 50319".

**107.3(2)** Office hours. In lieu of the words "(insert customary hours and, if agency does not have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays, and legal holidays".

**107.3(7) Fees.**

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

**27—107.6(17A,22) Procedure by which additions, dis-sents, or objections may be entered into certain records.** In lieu of the words "(designate office)", insert "Iowa watershed improvement review board".

**27—107.9(17A,22) Public records; confidential records.**

All records in the possession of the board other than confidential records are public records. The board shall deem to be confidential those categories of records enumerated in Iowa Code section 22.7 which are in its possession.

**27—107.10(17A,22) Personally identifiable information.** Agency records include project applications, reports, and board actions to approve or deny payment. This information is collected pursuant to the authority of 2005 Iowa Acts, Senate File 200, and is stored in the watershed improvement review board files in the division of soil conservation. Any personally identifiable information contained in these records shall be confidential.

**27—107.11(17A,22) Data processing.** No data processing system collates or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system.

These rules are intended to implement Iowa Code section 22.11.

[Filed Emergency 8/25/05, effective 8/25/05]

[Published 9/14/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/14/05.

**ARC 4510B**  
**ADMINISTRATIVE SERVICES**  
**DEPARTMENT[11]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 8A.104, the Administrative Services Department hereby amends Chapter 105, "Procurement of Goods and Services of General Use," Iowa Administrative Code.

The following amendments are adopted to implement 2005 Iowa Acts, House File 814, signed by Governor Vilsack on May 3, 2005, and effective July 1, 2005. 2005 Iowa Acts, House File 814, adds enforcement conditions to provisions presently found in Iowa Code section 73.2 which require the posting of any request for bids or proposals on the official state Internet site operated by the Department of Administrative Services. State agencies are required to implement the requirements of these amendments by September 1, 2005. A formal competitive bidding opportunity or proposal that is not posted pursuant to this rule is void and shall be rebid.

These amendments were published under Notice of Intended Action as **ARC 4294B** and Adopted and Filed Emergency as **ARC 4295B** in the July 6, 2005, Iowa Administrative Bulletin. A public hearing was held on July 26, 2005. No one attended the hearing. The Department received several questions concerning the definition of a formal competitive bidding opportunity. These amendments are identical to those published under Notice.

These amendments were adopted by the Department on August 23, 2005.

These amendments shall become effective on October 19, 2005, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

These amendments are intended to implement Iowa Code sections 73.2 and 8A.311 as amended by 2005 Iowa Acts, House File 814.

The following amendments are adopted.

ITEM 1. Amend subrule 105.7(1) as follows:

**105.7(1)** General notification.

*a. Bid posting.* The department and each state agency shall provide notice of solicitations. *The department and each state agency shall post notice of every formal competitive bidding opportunity and proposal to the official Internet site, <http://bidopportunities.iowa.gov>, operated by the department of administrative services in accordance with Iowa Code sections 73.2 and 8A.311 as amended by 2005 Iowa Acts, House File 814. Instead of direct posting, the agency may add a link to <http://bidopportunities.iowa.gov> that connects to the Web site maintained by the agency on which requests for bids and proposals for that agency are posted. For the purposes of this subrule, a formal solicitation is as defined by the appropriate procurement authority. Informal competitive bidding opportunities and proposals may also be posted on or linked to the official state Internet site operated by the department of administrative services.*

*b. Other forms of notice.* ~~Such notice~~ Notice of competitive bidding opportunities and proposals may be provided electronically, ~~including on the state's Web site in accordance with 2002 Iowa Acts, chapter 1072,~~ by telephone or fax, in print, or by other means that give reasonable notice to vendors, *in addition to the posting or linking of formal solicitations to the official Internet site operated by the department of administrative services.*

*c. Posting of requests for architectural and engineering services.* A request for proposals for architectural or engineering services may be posted electronically by a department or state agency in addition to other methods of advertisement required by law.

*d. Bids voided.* A formal competitive bidding opportunity that is not preceded by a notice that satisfies the requirements of this subrule is void and shall be rebid. This requirement shall be effective for formal competitive bidding opportunities issued on or after September 1, 2005.

ITEM 2. Amend the implementation clause for **11—Chapter 105** as follows:

These rules are intended to implement Iowa Code Supplement sections 8A.201 to 8A.203, 8A.206, 8A.207, 8A.301, 8A.302, 8A.311 *as amended by 2005 Iowa Acts, House File 814*, 8A.341 to 8A.344, 73.1 and 73.2 ~~and 2004 Iowa Acts, House File 2520.~~

[Filed 8/24/05, effective 10/19/05]

[Published 9/14/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/14/05.

**ARC 4502B**

**ENVIRONMENTAL PROTECTION**  
**COMMISSION[567]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 22, "Controlling Pollution," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 11, 2005, as **ARC 4160B**. Two public hearings were held on June 13, 2005, and June 16, 2005. No comments were received at the public hearings. Two written comments were received prior to the close of the public comment period. The public comment period closed on June 24, 2005.

The submitted comments and the Department's response to the comments are summarized in the public participation responsiveness summary available from the Department. Two minor modifications were made from the amendment published under Notice of Intended Action, as detailed below.

Item 1 clarifies that the permitting exemptions in Chapter 22 do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Additionally, sources subject to certain regulatory requirements, such as an NSPS or NESHAP, may still use the exemptions from construction permitting listed in subrule 22.1(2) provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. This clarification allows for the option of obtaining a construction permit in instances where this may be desirable to limit potential to emit to avoid the applicability of some standards.

One comment about the Notice of Intended Action was made in regard to this item. U.S. EPA was concerned that the proposed revision to subrule 22.1(2) would be confusing to businesses and that it could be construed that significant sources of emissions are exempted from the requirements of major New Source Review. To address these concerns, the

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

Department has included alternate language that clarifies that equipment, control equipment, or processes subject to prevention of significant deterioration requirements and special requirements for nonattainment areas may not use the exemptions from construction permitting listed in subrule 22.1(2).

Item 2 adds 12 new construction permitting exemptions to Chapter 22. The exemption in paragraph "x" of subrule 22.1(2) includes various equipment, processes, and activities, many of which are listed as "trivial" activities from EPA's 1995 "White Paper for Streamlined Development of Part 70 Permit Applications." Equipment, processes, and activities that have no specific applicable requirements and result in extremely small emissions are considered to be "trivial" activities for purposes of Part 70 (Title V) operating permit applications. Based on the Department's technical review, these activities generate emissions that have little or no environmental or human health consequences and can therefore also be exempted from the requirement to obtain a construction permit. The other 11 exemptions include direct-fired fuel-burning equipment; closed refrigeration systems; cleaning and phosphating; powder coating operations; curing ovens used in powder coating operations; certain production painting, adhesives, or coating units; production surface coating activities that use only nonrefillable hand-held aerosol cans; certain production welding equipment; soldering; pressurized piping and storage systems; and emissions from the storage and mixing of paints and solvents associated with painting.

Additional internal review by the Department resulted in the modification of the exemption in proposed paragraph "ii" of subrule 22.1(2). This exemption was intended to pertain only to emissions from the storing and mixing of paints and solvents associated with painting. Therefore, a reference to flammable materials was removed. Solvents are by nature flammable. The additional reference could lead to the misinterpretation that stored flammable materials other than solvents were also exempted.

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

These amendments will become effective October 19, 2005.

The following amendments are adopted.

ITEM 1. Amend subrule 22.1(2), introductory paragraph, as follows:

**22.1(2) Exemptions.** ~~The provisions of this rule shall not apply to the following listed equipment or control equipment. The requirement to obtain a permit in 567—subrule 22.1(1) is not required for the equipment, control equipment, and processes listed in this subrule. If review of the equipment or the control equipment is necessary to comply with~~ *The permitting exemptions in this subrule do not relieve the owner or operator of any source from any obligation to comply with any other applicable requirements. Equipment, control equipment, or processes subject to rule 22.4(455B), prevention of significant deterioration requirements, or rule 22.5(455B), special requirements for nonattainment areas, may not use the exemptions from construction permitting listed in this subrule. Equipment, control equipment, or processes subject to 567—subrule 23.1(2), new source performance standards (40 CFR Part 60 NSPS); 567—subrule 23.1(3), emission standards for hazardous air pollutants (40 CFR Part 61 NESHAP); 567—subrule 23.1(4), emission standards for hazardous air pollutants for source categories (40 CFR Part 63 NESHAP); or 567—subrule 23.1(5), emission guidelines, the exemption does not apply and a permit*

~~must be obtained.~~ *may still use the exemptions from construction permitting listed in this subrule provided that a permit is not needed to create federally enforceable limits that restrict potential to emit. If equipment is permitted under the provisions of rule 22.8(455B), then no other exemptions shall apply to that equipment.*

Records shall be kept at the facility for exemptions that have been claimed under the following paragraphs: 22.1(2)"a" (for equipment > 1.0 MMBTU/hour 1 million Btu per hour input), 22.1(2)"b," 22.1(2)"e," 22.1(2)"r" or 22.1(2)"s." The records shall contain the following information: the specific exemption claimed and a description of the associated equipment. These records shall be made available to the department upon request.

The following paragraphs are applicable to 22.1(2)"g" and "i." A facility claiming to be exempt under the provisions of paragraph "g" or "i" shall provide to the department the information listed below. If the exemption is claimed for a source not yet constructed or modified, the information shall be provided to the department at least 30 days in advance of the beginning of construction on the project. If the exemption is claimed for a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the information listed below shall be provided to the department within 60 days of March 20, 1996. After that date, if the exemption is claimed by a source that has already been constructed or modified and that does not have a construction permit for that construction or modification, the source shall not operate until the information listed below is provided to the department:

- A detailed emissions estimate of the actual and potential emissions, specifically noting increases or decreases, for the project for all regulated pollutants (as defined in rule 22.100(455B)), accompanied by documentation of the basis for the emissions estimate;
- A detailed description of each change being made;
- The name and location of the facility;
- The height of the emission point or stack and the height of the highest building within 50 feet;
- The date for beginning actual construction and the date that operation will begin after the changes are made;
- A statement that the provisions of rules 22.4(455B) and 22.5(455B) do not apply; and
- A statement that the accumulated emissions increases associated with each change under paragraph 22.1(2)"i," when totaled with other net emissions increases at the facility contemporaneous with the proposed change (occurring within five years before construction on the particular change commences), have not exceeded significant levels, as defined in 40 CFR 52.21(b)(23) as amended through March 12, 1996, and adopted in rule 22.4(455B), and will not prevent the attainment or maintenance of the ambient air quality standards specified in 567—Chapter 28. This statement shall be accompanied by documentation for the basis of these statements.

The written statement shall contain certification by a responsible official as defined in rule 22.100(455B) of truth, accuracy, and completeness. This certification shall state that, based on information and belief formed after reasonable inquiry, the statements and information in the document are true, accurate, and complete.

ITEM 2. Amend subrule **22.1(2)** by adopting the following new paragraphs:

- x. The following equipment, processes, and activities:

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

(1) Cafeterias, kitchens, and other facilities used for preparing food or beverages primarily for consumption at the source.

(2) Consumer use of office equipment and products, not including printers or businesses primarily involved in photographic reproduction.

(3) Janitorial services and consumer use of janitorial products.

(4) Internal combustion engines used for lawn care, landscaping, and groundskeeping purposes.

(5) Laundry activities, not including dry cleaning and steam boilers.

(6) Bathroom vent emissions, including toilet vent emissions.

(7) Blacksmith forges.

(8) Plant maintenance and upkeep activities and repair or maintenance shop activities (e.g., groundskeeping, general repairs, cleaning, painting, welding, plumbing, retarring roofs, installing insulation, and paving parking lots), provided that these activities are not conducted as part of a manufacturing process, are not related to the source's primary business activity, and do not otherwise trigger a permit modification. Cleaning and painting activities qualify if they are not subject to control requirements for volatile organic compounds or hazardous air pollutants as defined in 22.100(455B).

(9) Air compressors and vacuum pumps, including hand tools.

(10) Batteries and battery charging stations, except at battery manufacturing plants.

(11) Equipment used to store, mix, pump, handle or package soaps, detergents, surfactants, waxes, glycerin, vegetable oils, greases, animal fats, sweetener, corn syrup, and aqueous salt or caustic solutions, provided that appropriate lids and covers are utilized and that no organic solvent has been mixed with such materials.

(12) Equipment used exclusively to slaughter animals, but not including other equipment at slaughterhouses, such as rendering cookers, boilers, heating plants, incinerators, and electrical power generating equipment.

(13) Vents from continuous emissions monitors and other analyzers.

(14) Natural gas pressure regulator vents, excluding venting at oil and gas production facilities.

(15) Equipment used by surface coating operations that apply the coating by brush, roller, or dipping, except equipment that emits volatile organic compounds or hazardous air pollutants as defined in 22.100(455B).

(16) Hydraulic and hydrostatic testing equipment.

(17) Environmental chambers not using gases which are hazardous air pollutants as defined in 22.100(455B).

(18) Shock chambers, humidity chambers, and solar simulators.

(19) Fugitive dust emissions related to movement of passenger vehicles on unpaved road surfaces, provided that the emissions are not counted for applicability purposes and that any fugitive dust control plan or its equivalent is submitted as required by the department.

(20) Process water filtration systems and demineralizers, demineralized water tanks, and demineralizer vents.

(21) Boiler water treatment operations, not including cooling towers or lime silos.

(22) Oxygen scavenging (deaeration) of water.

(23) Fire suppression systems.

(24) Emergency road flares.

(25) Steam vents, safety relief valves, and steam leaks.

(26) Steam sterilizers.

y. Direct-fired equipment burning natural gas, propane, or liquefied propane with a capacity of less than 10 million Btu per hour input, and direct-fired equipment burning fuel oil with a capacity of less than 1 million Btu per hour input, with emissions that are attributable only to the products of combustion. Emissions other than those attributable to the products of combustion shall be accounted for in an enforceable permit condition or shall otherwise be exempt under this subrule.

z. Closed refrigeration systems, including storage tanks used in refrigeration systems, but excluding any combustion equipment associated with such systems.

aa. Pretreatment application processes that use aqueous-based chemistries designed to prepare a substrate for an organic coating, provided that the chemical concentrate contains no more than 5 percent organic solvents by weight. This exemption includes pretreatment processes that use aqueous-based cleaners, cleaner-phosphatizers, and phosphate conversion coating chemistries.

bb. Indoor-vented powder coating operations with filters or powder recovery systems.

cc. Electric curing ovens or curing ovens that run on natural gas or propane with a maximum heat input of less than 10 million Btu per hour and that are used for powder coating operations, provided that the total cured powder usage is less than 75 tons of powder per year at the stationary source. Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that cured powder usage is less than the exemption threshold.

dd. Each production painting, adhesive or coating unit using an application method other than a spray system and associated cleaning operations that use 1,000 gallons or less of coatings and solvents annually, unless the production painting, adhesive or coating unit and associated cleaning operations are subject to work practice, process limits, emissions limits, stack testing, record-keeping or reporting requirements under 567—subrule 23.1(2), 567—subrule 23.1(3), or 567—subrule 23.1(4). Records shall be maintained on site by the owner or operator for a period of at least two calendar years to demonstrate that paint, adhesive, or solvent usage is at or below the exemption threshold.

ee. Any production surface coating activity that uses only nonrefillable hand-held aerosol cans, where the total volatile organic compound emissions from all these activities at a stationary source do not exceed 5.0 tons per year.

ff. Production welding.

(1) Welding using a consumable electrode, provided that the consumable electrodes used fall within American Welding Society specification A5.18/A5.18M for Gas Metal Arc Welding (GMAW), A5.1 or A5.5 for Shielded Metal Arc Welding (SMAW), and A5.20 for Flux Core Arc Welding (FCAW), and provided that the quantity of all electrodes used at the stationary source of the acceptable specifications is below 200,000 pounds per year for GMAW and 28,000 pounds per year for SMAW or FCAW. Records that identify the type and annual amount of welding electrode used shall be maintained on site by the owner or operator for a period of at least two calendar years.

For stationary sources where electrode usage exceeds these levels, the welding activity at the stationary source may be exempted if the amount of electrode used (Y) is less than:

Y = the greater of  $1380x - 19,200$  or 200,000 for GMAW, or

Y = the greater of  $187x - 2,600$  or 28,000 for SMAW or FCAW

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

Where x is the minimum distance to the property line in feet, and Y is the annual electrode usage in pounds per year.

If the stationary source has welding processes that fit into both of the specified exemptions, the most stringent limit must be applied.

(2) Resistance welding, submerged arc welding, or arc welding that does not use a consumable electrode, provided that the base metals do not include stainless steel, alloys of lead, alloys of arsenic, or alloys of beryllium and provided that the base metals are uncoated, excluding manufacturing process lubricants.

gg. Electric hand soldering, wave soldering, and electric solder paste reflow ovens.

hh. Pressurized piping and storage systems for natural gas, propane, liquefied petroleum gas (LPG), and refrigerants, where emissions could only result from an upset condition.

ii. Emissions from the storage and mixing of paints and solvents associated with the painting operations, provided that the emissions from the storage and mixing are accounted for in an enforceable permit condition or are otherwise exempt.

[Filed 8/23/05, effective 10/19/05]

[Published 9/14/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/14/05.

## ARC 4503B

### ENVIRONMENTAL PROTECTION COMMISSION[567]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby amends Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 11, 2005, as **ARC 4158B**. A public hearing was held on June 15, 2005. No comments were received at the public hearing.

At the request of the U.S. Environmental Protection Agency (EPA) Region VII, the Department extended the public comment period to July 18, 2005. The amended Notice of Intended Action extending the public comment period was published in the Iowa Administrative Bulletin on July 6, 2005, as **ARC 4338B**. No changes were made to the Notice of Intended Action.

The Department received one written comment prior to the close of the extended comment period. The submitted comment and the Department's response to the comment are summarized in the responsiveness summary available from the Department.

The Department did not make any changes to the final amendment from the amendment proposed in the Notice of Intended Action.

This amendment clarifies that ordinary travel on an unpaved public road includes routine traffic and road maintenance activities. Scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface are considered to be road maintenance activities that are classified as ordinary travel.

Unpaved public road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping are not continuous by nature and are normally of a short duration at a specific location. These activities usually do not generate particulate matter in quantities sufficient to be considered a nuisance or a threat to public health. The Department has historically treated these types of road maintenance activities as ordinary travel.

EPA Region VII submitted written comments stating their belief that the rule change is not protective of the National Ambient Air Quality Standards (NAAQS) for fine particulate (PM<sub>10</sub>).

The Department disagrees with EPA's assessment. The proposed definition of ordinary travel is consistent with the intent of the fugitive dust rule to address nuisances resulting from fugitive dust emissions, is consistent with past implementation of this rule, and will not result in a change to any public health protection that the fugitive dust rule may have provided in the past. As such, the Department intends to proceed with the final rule as proposed.

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

This amendment will become effective October 19, 2005. The following amendment is adopted.

Amend paragraph **23.3(2)"c,"** subparagraph (1), introductory paragraph, as follows:

(1) Attainment and unclassified areas. ~~No person shall allow, cause or permit any materials to be handled, transported or stored; or a building, its appurtenances or a construction haul road to be used, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved public roads, without taking reasonable precautions to prevent particulate matter in quantities sufficient to create a nuisance, as defined in Iowa Code section 657.1, from becoming airborne. A person shall take reasonable precautions to prevent particulate matter from becoming airborne in quantities sufficient to cause a nuisance as defined in Iowa Code section 657.1 when the person allows, causes or permits any materials to be handled, transported or stored or a building, its appurtenances or a construction haul road to be used, constructed, altered, repaired or demolished, with the exception of farming operations or dust generated by ordinary travel on unpaved roads. Ordinary travel includes routine traffic and road maintenance activities such as scarifying, compacting, transporting road maintenance surfacing material, and scraping of the unpaved public road surface.~~ All persons, with the above exceptions, shall take reasonable precautions to prevent the discharge of visible emissions of fugitive dusts beyond the lot line of the property on which the emissions originate. The public highway authority shall be responsible for taking corrective action in those cases where said authority has received complaints of or has actual knowledge of dust conditions which require abatement pursuant to this subrule. Reasonable precautions may include, but not be limited to, the following procedures.

[Filed 8/23/05, effective 10/19/05]

[Published 9/14/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/14/05.

**ARC 4485B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 1, "Iowa Ethics and Campaign Disclosure Board," Iowa Administrative Code.

The amendment clarifies that elections of Board officers shall take place on an annual basis at the Board's first meeting after April 30. April 30 is the cutoff date for new members of the Board to begin serving their terms.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on June 22, 2005, as **ARC 4255B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on August 15, 2005.

This amendment is intended to implement Iowa Code section 68B.32.

This amendment will become effective on October 19, 2005.

The following amendment is adopted.

Amend subrule 1.1(1) as follows:

**1.1(1)** The Iowa ethics and campaign disclosure board consists of six members appointed by the governor and confirmed by the senate. ~~At the first meeting in each calendar year,~~ *On an annual basis at the board's first meeting after April 30,* the members shall elect a chair and a vice chair. Members may be reelected or elected to a different office.

[Filed 8/17/05, effective 10/19/05]

[Published 9/14/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/14/05.

**ARC 4484B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 1, "Iowa Ethics and Campaign Disclosure Board," Iowa Administrative Code.

The amendment clarifies that persons requesting an advisory opinion concerning the application of the ethics and lobbying laws in Iowa Code chapter 68B as applied to the legislative branch of state government shall be referred to the Senate and House Ethics Committees.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on May 11, 2005, as **ARC 4170B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on August 15, 2005.

This amendment is intended to implement Iowa Code section 68B.32A(11) as amended by 2005 Iowa Acts, House File 253, section 6.

This amendment will become effective on October 19, 2005.

The following amendment is adopted.

Amend subrule 1.2(1) as follows:

**1.2(1)** Who may request opinion. Any person subject to the board's jurisdiction may request a board advisory opinion, including a local official or local employee seeking an opinion on the application of the ethics laws in Iowa Code chapter 68B. A governmental entity not under the board's jurisdiction may request a board advisory opinion on an issue subject to the board's jurisdiction. *A person requesting an opinion on the application of the ethics and lobbying laws in Iowa Code chapter 68B as applied to the legislative branch of state government shall be referred to the senate and house ethics committees.* An authorized agent may seek an opinion on behalf of any person. The board will not issue an opinion to an unauthorized third party. The board may on its own motion issue opinions without receiving a formal request.

[Filed 8/17/05, effective 10/19/05]

[Published 9/14/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/14/05.

**ARC 4483B****ETHICS AND CAMPAIGN  
DISCLOSURE BOARD, IOWA[351]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby amends Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

The amendment changes the official committee address from that of the treasurer to the candidate in the case of a candidate's committee and to the chairperson of a committee for all other types of committees. This change is being made as the law mandates that the candidate or chairperson is the person responsible for filing campaign reports and the Board's communications have historically been sent to these individuals. The amendment also states the Board's policy of communicating by electronic mail whenever possible.

The amendment was published under Notice of Intended Action in the Iowa Administrative Bulletin on May 11, 2005, as **ARC 4171B**. No oral or written comments on the amendment were received. The amendment is identical to that published under Notice.

The Board adopted this amendment on August 15, 2005.

This amendment is intended to implement Iowa Code section 68A.201.

This amendment will become effective on October 19, 2005.

The following amendment is adopted.

Amend subrule 4.4(2) as follows:

**4.4(2)** Committee address and telephone number. The address and telephone number of the ~~treasurer candidate~~ as indicated on the statement of organization shall be ~~considered to be the official committee address and telephone number to be used for routine communication from the board to the candidate's committee.~~ *The address and telephone number of the committee chairperson as indicated on the statement of organization shall be the official address and telephone num-*

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

*ber to be used for communication from the board to every other committee except for a candidate's committee. If an electronic mail address has been provided on the statement of organization, communication from the board to a committee shall be sent by electronic mail.*

[Filed 8/17/05, effective 10/19/05]

[Published 9/14/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/14/05.

## ARC 4488B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby amends Chapter 200, "Licensure of Physical Therapists and Physical Therapist Assistants," Chapter 203, "Continuing Education for Physical Therapists and Physical Therapist Assistants," and Chapter 204, "Fees," Iowa Administrative Code.

These amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 22, 2005, as **ARC 4260B**. A public hearing was held on July 12, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Public comments were received. The Board received one comment that asked whether the exception in subrule 200.9(2) should apply to all licenses, not just initial licenses. In response to the comment, the Board modified subrule 200.9(2) to delete the word "initial." The subrule now reads as follows:

**"200.9(2)** An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later."

The amendments were adopted by the Board of Physical and Occupational Therapy Examiners on August 19, 2005.

These amendments will become effective October 19, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 148A and 272C.

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 Chs 200, 203, 204] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 4260B**, IAB 6/22/05.

[Filed 8/22/05, effective 10/19/05]

[Published 9/14/05]

[For replacement pages for IAC, see IAC Supplement 9/14/05.]

## ARC 4496B

### PROFESSIONAL LICENSURE DIVISION[645]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby amends Chapter 200, "Licensure of Physical Therapists and Physical Therapist Assistants," Chapter 202, "Discipline for Physical Therapists and Physical Therapist Assistants," and Chapter 203, "Continuing Education for Physical Therapists and Physical Therapist Assistants," Iowa Administrative Code.

These amendments add new definitions, make consistent the requirements for practice prior to licensure for physical therapists and physical therapist assistants, clarify signature requirements for supervisors, clarify language, add a posttest to requirements for home study and add new subrule 202.2(31) that provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 22, 2005, as **ARC 4259B**. A public hearing was held on July 12, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Public comments were received. It was suggested that, in the definition of "physical therapy" in rule 645—200.1(147), the first bulleted item under numbered paragraph "4" be changed to delete the statement "but excluding chiropractic spinal manipulation." It was also suggested that, in numbered paragraph "9" of the same definition, the statement beginning with the phrase "including but not limited to" be either deleted or changed. In response to public comment, the Board deleted the phrase in numbered paragraph "4" and modified the wording in numbered paragraph "9."

These amendments are intended to implement Iowa Code chapters 21, 147, 148A and 272C.

The amendments were adopted by the Board of Physical and Occupational Therapy Examiners on August 19, 2005.

These amendments will become effective October 19, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 148B and 272C.

The following amendments are adopted.

ITEM 1. Amend rule **645—200.1(147)** by adopting the following **new** definitions in alphabetical order:

"Impairment" means a mechanical, physiological or developmental loss or abnormality, a functional limitation, or a disability or other health- or movement-related condition.

"Physical therapy" means that branch of science that deals with the evaluation and treatment of human capabilities and impairments, including:

1. Evaluation of individuals with impairments in order to determine a diagnosis, prognosis, and plan of therapeutic treatment and intervention, and to assess the ongoing effects of intervention;

2. Use of the effective properties of physical agents and modalities, including but not limited to mechanical and electrotherapeutic devices, heat, cold, air, light, water, electricity, and sound, to prevent, correct, minimize, or alleviate an impairment;

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

3. Use of therapeutic exercises to prevent, correct, minimize, or alleviate an impairment;
4. Use of rehabilitative procedures to prevent, correct, minimize, or alleviate an impairment, including but not limited to the following procedures:
  - Manual therapy, including soft-tissue and joint mobilization and manipulation;
  - Therapeutic massage;
  - Prescription, application, and fabrication of assistive, adaptive, orthotic, prosthetic, and supportive devices and equipment;
  - Airway clearance techniques;
  - Integumentary protection and repair techniques; and
  - Debridement and wound care;
5. Interpretation of performances, tests, and measurements;
6. The establishment and modification of physical therapy programs;
7. The establishment and modification of treatment planning;
8. The establishment and modification of consultative services;
9. The establishment and modification of instructions to the patient, including but not limited to functional training relating to movement and mobility;
10. Participation, administration and supervision attendant to physical therapy and educational programs and facilities.

ITEM 2. Rescind subrule **200.3(2)**, paragraph “c,” and adopt the following **new** paragraph “c” in lieu thereof:

c. Shall practice only under the on-site supervision of a licensed physical therapist(s) for a period not to exceed six months from the date on which the application was received in the board office for licensure by examination or three months from the date on which the application was received in the board office for licensure by endorsement. The supervising physical therapist shall bear full responsibility for care provided by the applicant;

ITEM 3. Amend subrule **200.6(1)**, paragraph “i,” as follows:

i. Ensure that the signature of a PTA or *applicant* PT on a physical therapy treatment record indicates that the physical therapy services were provided in accordance with the rules and regulations for practicing as a PT or PTA.

ITEM 4. Amend subrule **200.6(5)**, paragraph “a,” as follows:

a. Shall provide only those services for which the PTA has the skills necessary to ~~provide the procedures~~ and shall consult the supervising physical therapist if the procedures are believed not to be in the best interest of the patient;

ITEM 5. Adopt **new** subrule 202.2(31) as follows:

**202.2(31)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

ITEM 6. Amend subrule **203.3(2)**, paragraph “f,” as follows:

f. Participating in home study courses that have a certificate of completion *and a postcourse test*.

[Filed 8/22/05, effective 10/19/05]

[Published 9/14/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/14/05.

**ARC 4491B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby amends Chapter 206, “Licensure of Occupational Therapists and Occupational Therapy Assistants,” Chapter 207, “Continuing Education for Occupational Therapists and Occupational Therapy Assistants,” and Chapter 210, “Fees,” Iowa Administrative Code.

These amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 22, 2005, as **ARC 4258B**. A public hearing will be held on July 12, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Public comments were received. The Board received one comment that asked whether the exception in subrule 206.12(2) should apply to all licenses, not just initial licenses. In response to the comment, the Board modified subrule 206.12(2) to delete the word “initial.” Subrule 206.12(2) reads as follows:

“**206.12(2)** An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.”

The Board also changed Item 21 to correct an error in the Notice. Subrule 210.1(6) is rescinded, instead of 210.1(7).

The amendments were adopted by the Board of Physical and Occupational Therapy Examiners on August 19, 2005.

These amendments will become effective October 19, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 148B and 272C.

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 Chs 206, 207, 210] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4258B**, IAB 6/22/05.

[Filed 8/22/05, effective 10/19/05]

[Published 9/14/05]

[For replacement pages for IAC, see IAC Supplement 9/14/05.]



**ARC 4490B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Physical and Occupational Therapy Examiners hereby amends Chapter 206, "Licensure of Occupational Therapists and Occupational Therapy Assistants," Chapter 207, "Continuing Education for Occupational Therapists and Occupational Therapy Assistants," and Chapter 209, "Discipline for Occupational Therapists and Occupational Therapy Assistants," Iowa Administrative Code.

The amendments make consistent the requirements for practice prior to licensure for occupational therapists and occupational therapy assistants, clarify language, add a post-test to requirements for home study and add new subrule 209.2(31) that provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 22, 2005, as **ARC 4257B**. A public hearing was held on July 12, 2005, from 9 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

The amendments were adopted by the Board of Physical and Occupational Therapy Examiners on August 19, 2005.

These amendments will become effective October 19, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147, 148B and 272C.

The following amendments are adopted.

ITEM 1. Amend rule **645—206.3(147)**, numbered paragraph "**3**," as follows:

3. Practice only under the supervision of an Iowa-licensed OT for a period not to exceed six months *from the date the application was received in the board office*;

ITEM 2. Amend rule **645—206.4(147)**, numbered paragraph "**2**," as follows:

2. Practice only under the supervision of an Iowa-licensed OT for a period not to exceed three months *from the date the application was received in the board office*;

ITEM 3. Amend paragraph **207.3(2)"a**," subparagraph (**5**), as follows:

(5) Participating in home study courses that have a certificate of completion *and a post course test*;

ITEM 4. Adopt **new** subrule 209.2(31) as follows:

**209.2(31)** Violation of the terms of an initial agreement with the impaired practitioner review committee or violation of the terms of an impaired practitioner recovery contract with the impaired practitioner review committee.

[Filed 8/22/05, effective 10/19/05]

[Published 9/14/05]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 9/14/05.

**ARC 4492B****PROFESSIONAL LICENSURE  
DIVISION[645]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners adopts amendments to Chapter 300, "Licensure of Speech Pathologists and Audiologists," Chapter 303, "Continuing Education for Speech Pathologists and Audiologists," and Chapter 305, "Fees," Iowa Administrative Code.

These amendments define licensure status as active or inactive, define the process for license reactivation and reinstatement, change from pre- and post-continuing education audits prior to licensure to post-continuing education audits following licensure, add the grounds for disciplinary action, and establish the fee for reactivation.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 8, 2005, as **ARC 4217B**. A public hearing was held on June 28, 2005, from 8 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building.

One comment was received noting the absence of a provision to allow a licensee who renews within six months of a new licensing cycle to wait to renew until the subsequent renewal period. The Board added new paragraph "c" to subrule 300.11(3) to allow a licensee who renews within six months of a new licensing cycle to wait to renew until the subsequent renewal period.

New paragraph "c" reads as follows:

"c. An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later."

In addition, in subrule 300.17(3), paragraph "b," subparagraphs (2) and (3), the conjunction connecting the subparagraphs has been changed from "and" to "or" to allow the licensee the option of either completing 60 hours of continuing education or passing the National Teacher Examination (NTE) within two years of application for reactivation.

Subparagraphs (2) and (3) now read as follows:

"(2) Verification of completion of 60 hours of continuing education within two years of application for reactivation; or

"(3) Verification of passing the National Teacher Examination (NTE) for Speech Pathology or Audiology within the last two years prior to application for reactivation."

A technical correction has also been made. The amendment to existing rule 645—300.9(147) in Item 2 has not been adopted because new rule 645—300.9(147) is being adopted in Item 6 of **ARC 4493B** published herein.

These amendments will become effective October 19, 2005.

These amendments are intended to implement Iowa Code chapters 21, 147 and 272C.

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 Chs 300, 303, 305] is being omitted. With the exception of the changes noted above,

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

these amendments are identical to those published under Notice as **ARC 4217B**, IAB 6/8/05.

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## **ARC 4493B**

### **PROFESSIONAL LICENSURE DIVISION[645]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Speech Pathology and Audiology Examiners adopts amendments to Chapter 300, "Licensure of Speech Pathologists and Audiologists," Chapter 303, "Continuing Education for Speech Pathologists and Audiologists," and Chapter 304, "Discipline for Speech Pathologists and Audiologists," Iowa Administrative Code.

The amendments amend payment language; clarify required transcript information; provide that applicants may request that the Board retain an incomplete application; add the doctoral degree to educational qualifications; clarify that the Board must approve the permit plan before the applicant may begin practice; adopt a new rule regarding licensure by

endorsement; add two new definitions; remove obsolete language regarding continuing education; clarify the requirements for independent study; and add a subrule that provides the Board the ability to discipline a licensee for breach of an agreement or contract with the Impaired Practitioner Review Committee.

Notice of Intended Action was published in the Iowa Administrative Bulletin on June 8, 2005, as **ARC 4216B**.

A public hearing was held on June 28, 2005, from 8 to 9 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapters 21, 147 and 272C.

These amendments will become effective October 19, 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 [300.3(3), 300.3(4)"b," 300.3(6), 300.4(1)"b," 300.6(2), 300.9, 303.1, 303.2(1), 303.3(2), 304.2(32)] is being omitted. These amendments are identical to those published under Notice as **ARC 4216B**, IAB 6/8/05.

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